



DCY Guidance Letter 24-024
DIVISION OF POLICY

TO: Directors and Administrators, Public Children Services Agencies
Directors and Administrators, Private Child Placing Agencies
Directors and Administrators, Private Non-Custodial Agencies

FROM: Gina Speaks-Eshler, Division Director of Policy

DATE: July 26, 2024

SUBJECT: Criminal Records Checks

Background

With the passage of HB 33 of the 135th General Assembly additional prohibitive criminal offenses were required to be added to the criminal records checks for certified agencies and foster and adoptive caregivers. Changes were made to rules 5101:2-5-09, 5101:2-5-09.1 and 5101:2-7-02 of the Administrative Code to combine all background check requirements into the appendices in OAC 5101:2-5-09.1 that became effective on April 1, 2024. Since then, we have heard from stakeholders with several concerns and examples of individuals who have been negatively impacted by some of these changes in the appendices. The specific case examples provided relate to domestic violence convictions becoming a non-rehabilitative offense. This change automatically excludes a number of currently certified and potential caregivers without consideration or further assessment of any extenuating circumstances or criteria. While these particular concerns focus on non-rehabilitative domestic violence offenses, updating and extending this guidance allows us the opportunity to review other areas that may have unintended consequences that adversely impact families and children.

Purpose

The purpose of this letter is to extend the date of current guidance from August 1, 2024, to December 31, 2024, and update the process agencies follow for **current and new** foster caregivers, adoption applicants, household members, college interns, subcontractors, volunteers, employees, board presidents, officers, and administrators regarding disqualifying offenses and the use of rehabilitative criteria as outlined in appendices C and D. The clarifications include:

- Agencies are not required to process new criminal record checks for current foster caregivers, adoption applicants, household members, college interns, subcontractors, volunteers, employees, board presidents, officers and administrators.
- Agencies are required to review **current foster caregivers, adoption applicants, household members, college interns, subcontractors, volunteers, employees, board presidents, officers, and administrators** records and analyze their eligibility utilizing the new offenses in rule 5101:2-5-09.1 of the Administrative Code by December 31, 2024. Applicants for any of the positions above should have their background check results reviewed prior to certification, approval, or hire.
- Regarding ORC 2919.25 (Domestic Violence), agencies are to only consider a felony conviction as a non-rehabilitative offense if the victim was a spouse. Other misdemeanor and felony convictions of domestic violence are to be evaluated using the rehabilitative criteria in Appendices C and D of OAC 5101:2-5-09.1.
- Regarding the following offenses, agencies are to only consider a felony conviction as a non-rehabilitative offense. Misdemeanor convictions are to be evaluated using the rehabilitative criteria in Appendices C and D of OAC 5101:2-5-09.1.
 - ORC 2903.06 (Aggravated Vehicular Homicide)
 - ORC 2905.05 (Criminal Child Enticement)
 - ORC 2907.04 (Unlawful Sexual Conduct with a Minor)
 - ORC 2907.31 (Disseminating Matter Harmful to Juveniles)
 - ORC 2919.22 (Endangering Children)
- Appropriate action is to be initiated for those who do not meet eligibility requirements by December 31, 2024.

Next Steps

DCY will revise OAC 5101:2-5-09.1 to update the rule citations and appendix citations to reference the corresponding rehabilitation criteria and will update Appendices A and B to incorporate the changes listed above. Sections in which either a felony or misdemeanor level offense does not exist have been marked N/A as rehabilitative criteria do not apply. DCY is currently working to streamline the background check requirements for persons and entities licensed and certified by DCY. DCY will be engaging stakeholders as part of this ongoing process, which may result in additional revisions to this rule and appendices in the future.

Contact

If you have additional questions, please contact your foster care licensing specialist.