



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Michael Lynch, Ohio Department of Job and Family Services

FROM: Jacob Ritzenthaler, Business Advocate

DATE: August 29, 2024

RE: **CSI Review – Background Checks (OAC 5101:2-5-09.1)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of one amended rule proposed by the Ohio Department of Job and Family Services (ODJFS). This rule package was submitted to the CSI Office on July 30, 2024, and the public comment period was held open through August 6, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on July 30, 2024.

Ohio Administrative Code 5101:2-5-09.1 establishes background check requirements for college interns, subcontractors, volunteers, employees, board presidents, officers, administrators, and foster caregivers. The rule sets forth requirements for the types of background checks and the timelines for completion, as well as ineligibility standards due to background check results, evaluations, and rehabilitation criteria. The rule includes amendments to update references. Appendix A lists the disqualifying offenses for foster caregivers, adoption applicants, and household members and Appendix B lists disqualifying offenses for college interns, subcontractors, volunteers, employees, board presidents, and administrators. These appendices are amended to reflect that many of the disqualifying offenses do not have misdemeanor offenses, as well as to allow for rehabilitation to be considered under the criteria for the following misdemeanor offenses: aggravated vehicular

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homicide, criminal child enticement, unlawful sexual conduct with a minor, disseminating matter harmful to juveniles, and endangering children. Furthermore, felony domestic violence offenses are only to be considered non-rehabilitative if the victim is the spouse of the individual. Appendix C and D set forth the rehabilitation criteria for disqualifying offenses.

During early stakeholder outreach, ODJFS held discussions with industry stakeholders that prompted the proposed amendments to the rule and appendices. During the CSI public comment period, ODJFS received comments from two stakeholders. One stakeholder expressed concern that the rule did not set rehabilitation criteria and that the rule contains offenses that are not listed in statute. ODJFS responded that rehabilitation criteria are contained within the appendices of the rule and that it is within statutory authority when designating some crimes as non-rehabilitative. Another stakeholder requested that aggravated vehicular homicide convictions be removed from the list of non-rehabilitative offenses. ODJFS responded that the appendix has been updated to include misdemeanor convictions as rehabilitative offenses.

The business community impacted by the rule includes eighty-eight public and over one hundred private foster care and adoption agencies. The adverse impact created by the rule is primarily the cost of completing background checks, including associated fees, submitting fingerprints, and completing a search through the Ohio Statewide Automated Child Welfare Information System alleged perpetrator records. ODJFS states that the adverse impact created by the rule is necessary to ensure the safety of children in substitute care.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODJFS should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.