



March 26, 2021

**Family, Children and Adult Services Manual Transmittal Letter No. 452**

**TO:** Family, Children and Adult Services Manual Holders

**FROM:** Matt Damschroder, Interim Director

**SUBJECT: Five Year Rule Review and Amendment of Rule 5101:2-48-10**

This letter transmits Ohio Administrative Code (OAC) Rule 5101:2-48-10 which was amended as a result of the five-year review, the passage of the Family First Prevention Services Act, and to maintain alignment with foster care requirements. This rule will be effective April 1, 2021. The following is a brief explanation of the changes:

**OAC 5101:2-48-10** entitled **Restrictions Concerning Provision of Adoption Services** provides guidance to agencies regarding the criminal records check requirement for an adoption placement approval. The name of Bureau of Criminal Investigation is updated throughout the rule. Paragraphs (C), (D) and (G) were amended to remove the violation section codes, provide reference to the offense list in appendix A to rule 5101:2-7-02 and to clarify rehabilitation standards. Paragraph (I) was deleted since the minimum age of a foster caregiver and an adoptive parent are aligned to be eighteen years old.

**INSTRUCTIONS:** The following chart indicates the material that should be removed from the Family, Children and Adult Services Manual (FCASM) and the materials that are to be inserted in the FCASM.

LOCATION	REMOVE AND FILE AS OBSOLETE	INSERT/REPLACEMENT
Social Services	OAC 5101:2-48-10	OAC 5101:2-48-10
	Appendix A	
Transmittal Letters		FCASMTL No. 452

5101:2-48-10

**Restrictions concerning provision of adoption services.**

- (A) A public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) shall request that the bureau of criminal identification and investigation (~~BCH~~BCI) conduct a criminal records check on prospective adoptive parents and adult members of the prospective adoptive parent's household pursuant to the procedures set forth in section 2151.86 of the Revised Code.
- (B) The PCSA, PCPA or PNA shall request that ~~BCH~~BCI include information from the federal bureau of investigation (FBI) in the criminal records check for each person subject to a criminal records check in accordance with division (A)(4) of section 109.572 of the Revised Code.
- (C) ~~Except as provided in paragraph (D) of this rule, a~~ PCSA, PCPA or PNA shall not approve an adoptive placement if the results of the ~~BCH~~BCI criminal records check or the FBI check indicate that a prospective adoptive parent or, when applicable, any adult who resides with the prospective adoptive parent has been convicted of or pleaded guilty to any ~~of the following:~~ offense listed in appendix A to rule 5101:2-7-02 of the Administrative Code.
- ~~(1) A violation of section 959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321 (2907.32.1), 2907.322 (2907.32.2), 2907.323 (2907.32.3), 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2913.49, 2917.01, 2917.02, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161 (2923.16.1), 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2927.12 or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, two or more OVI or OVUAC violations committed within the three years immediately preceding the submission of the application or petition that is the basis of the request, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code.~~
- ~~(2) A violation or an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in paragraph (C)(1) of this rule.~~

(D) Rehabilitative criteria for adoptive applicants and all other adult household members: unless specifically disqualified in appendix A to rule 5101:2-7-02 of the Administrative Code. ~~No~~ no person who has been convicted of or pleaded guilty to an offense listed in ~~paragraph (C) of this appendix A to rule 5101:2-7-02 of the Administrative Code~~ shall be considered for adoptive placement or be an adult resident of the prospective adoptive parent's household unless the PCSA, PCPA or PNA finds and documents that person has met all of the following conditions:

~~(1) Where the offense was a misdemeanor, or would have been a misdemeanor if conviction had occurred under the current criminal code, at least three years have elapsed from the date the person was fully discharged from any imprisonment or probation arising from the conviction.~~

~~(2) Where the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation. If a person has a felony conviction for spousal abuse, rape, sexual assault, or homicide, the home shall not be approved.~~

~~(3)~~ (1) The victim of the offense was not one of the following: a person under the age of eighteen.

~~(a) A person under the age of eighteen or a person sixty years of age or older.~~

~~(b) A functionally impaired person as defined in section 2903.10 of the Revised Code.~~

~~(c) A developmentally disabled person as defined in section 5123.01 of the Revised Code.~~

~~(d) A person with a mental illness as defined in section 5122.01 of the Revised Code.~~

~~(4)~~ (2) The prospective adoptive parent's approval, or the person's residency in the prospective adoptive parent's household, will not jeopardize in any way the health, safety, or welfare of the children the PCSA, PCPA, or PNA serves. The following factors shall be considered in determining the person's approval as an adoptive parent or the person's residency in the adoptive parent's household:

(a) The person's age at the time of the offense.

(b) The nature and seriousness of the offense.

(c) The circumstances under which the offense was committed.

- (d) The degree of participation of the person involved in the offense.
- (e) The time elapsed since the person was fully discharged from imprisonment or probation.
- (f) The likelihood that the circumstances leading to the offense will recur.
- (g) Whether the person is a repeat offender. "Repeat offender" means a person who has been convicted of or pleaded guilty to the commission of any of the offenses listed in ~~paragraph (C) of this~~ appendix A to rule 5101:2-7-02 of the Administrative Code two or more times in separate criminal actions. Convictions or guilty pleas resulting from or connected with the same act, or resulting from offenses committed at the same time, shall be counted as one conviction or guilty plea.
- (h) The person's employment record.
- (i) The person's efforts at rehabilitation and the results of those efforts.
- (j) Whether any criminal proceedings are pending against the person.
- (k) Whether the person has been convicted of or pleaded guilty to a felony contained in the Revised Code that is not listed in ~~paragraph (C) of this~~ appendix A to rule 5101:2-7-02 of the Administrative Code, if the felony bears a direct and substantial relationship to being an adoptive parent or adult member of the adoptive parent's household.
- (l) The victim of the offense was:
  - (i) A functionally impaired person as defined in section 2903.10 of the Revised Code.
  - (ii) A developmentally disabled person as defined in section 5123.01 of the Revised Code.
  - (iii) A person with a mental illness as defined in section 5122.01 of the Revised Code.
  - (iv) A person sixty years of age or older.
- ~~(m)~~ (m) Any other factors the PCSA, PCPA, or PNA considers relevant.

(E) It is the prospective adoptive parent's duty to provide written verification that the conditions specified in paragraph (D) of this rule are met. If the prospective adoptive

parent fails to provide such proof or if the PCSA, PCPA, or PNA determines that the proof offered by the prospective adoptive parent is inconclusive, the prospective adoptive parent shall not be considered. Any doubt shall be resolved in favor of protecting the children the PCSA, PCPA, or PNA serves.

- (F) All paragraphs of this rule are applicable to records of convictions that have been sealed pursuant to section 2953.32 of the Revised Code because the information contained in those sealed records bears a direct and substantial relationship to the care to be provided to any child who may be placed in the home.
- (G) A conviction of, or a plea of guilty to, an offense listed in ~~paragraph (C) of this appendix A~~ to rule 5101:2-7-02 of the Administrative Code shall not prevent a person's approval as an adoptive parent or being an adult household member of the home if the person has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. For purposes of this rule, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.
- (H) The report of any criminal records check conducted by ~~BCHBCI~~ in accordance with section 109.572 of the Revised Code and pursuant to a request made by the PCSA, PCPA or PNA is not a public record for purposes of section 149.43 of the Revised Code. The report shall be made available only to the following persons:
- (1) The person who is the subject of the criminal records check or his representative.
  - (2) The PCSA, PCPA, or PNA requesting the criminal records check or its representative.
  - (3) The department of job and family services, a county department of job and family services or a public children services agency.
  - (4) Any court, hearing officer, or other necessary individual involved in a case dealing with the denial of a final decree of adoption or interlocutory order of adoption.
- ~~(I) Prospective adoptive parents who are applying for simultaneous approval for adoptive placement and certification as a foster home must be at least twenty-one years of age in order to meet the foster care requirements contained in rule 5101:2-7-02 of the Administrative Code.~~
- ~~(J)~~(L) Foster parents who are being considered for adoption of a foster child residing in their home shall be assessed according to the standards contained in rule 5101:2-48-11 or 5101:2-48-11.1 of the Administrative Code, as applicable.

Effective: 4/1/2021  
Five Year Review (FYR) Dates: 11/30/2020 and 04/01/2026

CERTIFIED ELECTRONICALLY

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Certification

03/22/2021

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Date

Promulgated Under: 119.03  
Statutory Authority: 2151.86, 5153.166  
Rule Amplifies: 2151.86, 5153.166  
Prior Effective Dates: 07/01/1990, 09/01/1994, 12/15/1995 (Emer.),  
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10/01/2014