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5123:2-5-04 **Denial, suspension, and revocation of certificates and evidence of registration.**

(A) This rule applies to applicants for and holders of certificates or evidence of registration under Chapter 5123:2-5 of the Administrative Code and applicants for and holders of certificates under Chapter 5123:2-7 of the Administrative Code.

(B) Definitions.

(1) "Minor drug possession offense" means either of the following:

(a) A violation of section 2925.11 (drug abuse) of the Revised Code as it existed prior to July 1, 1996;

(b) A violation of section 2925.11 (possession of drugs) of the Revised Code as it exists on or after July 1, 1996 that is a misdemeanor or a felony of the fifth degree.

~~(1)~~(2) "Repeat offender" means a person who has been convicted of or pleaded guilty to the commission of any of the offenses listed or described in paragraphs (D)(1) to ~~(D)(3)~~(D)(4) of this rule in two or more 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.

~~(2)~~ "Sex offense" means ~~any offense described in Chapter 2907. of the Revised Code or a violation of an existing or former law of this state, any other state, or the United States, if the offense is substantially equivalent to any offense described in Chapter 2907. of the Revised Code.~~

(3) "Sexually oriented offense" means any of the following offenses:

(a) Regardless of the age of the victim of the offense, a violation of section 2907.02 (rape), 2907.03 (sexual battery), or 2907.05 (gross sexual imposition) of the Revised Code or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code;

(b) A violation of section 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (child enticement), or 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor) of the Revised Code, or a violation of section 2905.04 (child stealing) of the Revised Code as it

existed prior to July 1, 1996, or a violation of section 2919.23 (interference with custody) 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 occurred prior to that date, when the victim of the offense is under eighteen years of age;

(c) A violation of section 2907.21 (compelling prostitution) of the Revised Code when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;

(d) A violation of division (A)(1) or (A)(3) of section 2907.321 (pandering obscenity involving a minor) or 2907.322 (pandering sexually oriented matter involving a minor) of the Revised Code;

(e) A violation of division (A)(1) or (A)(2) of section 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code;

(f) A violation of division (B)(5) of section 2919.22 (endangering children) of the Revised Code when the child who is involved in the offense is under eighteen years of age;

(g) Regardless of the age of the victim of the offense, a violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), 2905.01 (kidnapping), or division (A) of section 2903.04 (involuntary manslaughter) of the Revised Code that is committed with a purpose to gratify the sexual needs or desires of the offender;

(h) A sexually violent offense listed or described in paragraph (B)(4) of this rule; or

(i) Any violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraphs (B)(3)(a) to (B)(3)(h) of this rule.

(4) "Sexually violent offense" means any of the following:

(a) A "violent sex offense," which means a violation of section 2907.02 (rape) or 2907.03 (sexual battery) of the Revised Code, a violation of division (A)(4) of section 2907.05 (gross sexual imposition) of the Revised Code, or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code, or a felony violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the

offenses listed or described in this paragraph; or

(b) A violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), or 2905.01 (kidnapping) of the Revised Code or a violation of division (A) of section 2903.04 (involuntary manslaughter) of the Revised Code for which the offender also was convicted of or pleaded guilty to a sexual motivation specification, as described in section 2941.147 of the Revised Code, that charges that a person charged with an offense designated in this paragraph committed the offense with a purpose to gratify the sexual needs or desires of the offender, or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in this paragraph.

(C) The department shall deny, suspend, or revoke a certificate or evidence of registration if it finds, pursuant to an adjudication conducted in accordance with Chapter 119. of Revised Code, that the applicant for or holder of the certificate or evidence of registration is guilty of intemperate, immoral, or other conduct unbecoming to his position, or is guilty of incompetence or negligence within the scope of his duties.

(D) Except as provided in paragraphs (G) and ~~(H)~~(K) of this rule, the department shall deny or revoke a certificate or evidence of registration if it finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the applicant for or holder of the certificate or evidence of registration has been convicted or of pleaded guilty to any of the following:

(1) ~~A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, or 3716.11 of the Revised Code as listed in the appendix to this rule;~~the following sections of the Revised Code:

(a) 2903.01 (aggravated murder),

(b) 2903.02 (murder),

(c) 2903.03 (voluntary manslaughter),

(d) 2903.04 (involuntary manslaughter),

(e) 2903.11 (felonious assault),

- (f) 2903.12 (aggravated assault).
- (g) 2903.13 (assault).
- (h) 2903.16 (failing to provide for a functionally impaired person).
- (i) 2903.21 (aggravated menacing).
- (j) 2903.34 (patient abuse and neglect).
- (k) 2905.01 (kidnapping).
- (l) 2905.02 (abduction).
- (m) 2905.05 (criminal child enticement).
- (n) 2907.02 (rape).
- (o) 2907.03 (sexual battery).
- (p) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor).
- (q) 2907.05 (gross sexual imposition).
- (r) 2907.06 (sexual imposition).
- (s) 2907.07 (importuning).
- (t) 2907.08 (voyeurism).
- (u) 2907.09 (public indecency).
- (v) 2907.21 (compelling prostitution).
- (w) 2907.22 (promoting prostitution).
- (x) 2907.23 (procuring).
- (y) 2907.25 (prostitution).
- (z) 2907.31 (disseminating matter harmful to juveniles).
- (aa) 2907.32 (pandering obscenity).
- (bb) 2907.321 (pandering obscenity involving a minor).

- (cc) 2907.322 (pandering sexually oriented matter involving a minor).
- (dd) 2907.323 (illegal use of minor in nudity-oriented material or performance).
- (ee) 2911.01 (aggravated robbery).
- (ff) 2911.02 (robbery).
- (gg) 2911.11 (aggravated burglary).
- (hh) 2911.12 (burglary).
- (ii) 2919.12 (unlawful abortion).
- (jj) 2919.22 (endangering children).
- (kk) 2919.24 (contributing to unruliness or delinquency of child).
- (ll) 2919.25 (domestic violence).
- (mm) 2923.12 (carrying concealed weapon).
- (nn) 2923.13 (having weapons while under disability).
- (oo) 2923.161 (improperly discharging a firearm at or into a habitation or school).
- (pp) 2925.02 (corrupting another with drugs).
- (qq) 2925.03 (trafficking in drugs).
- (rr) 2925.04 (illegal manufacture of drugs or cultivation of marihuana).
- (ss) 2925.05 (funding of drug or marihuana trafficking).
- (tt) 2925.06 (illegal administration or distribution of anabolic steroids).
- (uu) 3716.11 (placing harmful objects in food or confection).
- (vv) 2905.04 (child stealing) as it existed prior to July 1, 1996.
- (ww) 2919.23 (interference with custody) 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 occurred prior to that date.
- (xx) 2925.11 (possession of drugs) that is not a minor drug possession offense

as defined in this rule,

(yy) Felonious sexual penetration in violation of former section 2907.12 of the Revised Code.

- (2) A felony contained in the Revised Code that is not listed in paragraph (D)(1) of this rule, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position for which certification or registration is required; ~~or~~
- (3) Any offense contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided;
- ~~(3)~~(4) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses described in ~~paragraphs~~paragraph (D)(1), and (D)(2), or (D)(3) of this rule.
- (E) The offenses listed or described in paragraph (D)(1) of this rule or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraph (D)(1) of this rule bear a direct and substantial relationship to the duties and responsibilities of any position for which certification or registration is required under Chapter 5123:2-5 of the Administrative Code or for which certification is required under Chapter 5123:2-7 of the Administrative Code.
- (F) The department shall consider the following factors when determining whether a ~~felony contained in the Revised Code that is not an offense listed or described in paragraph (D)(1)(D)(2) or (D)(3)~~ of this rule bears a direct and substantial relationship to the duties and responsibilities of the position for which certification or registration is required:
- (1) The duties and responsibilities of the position;
 - (2) The nature and seriousness of the offense;
 - (3) The circumstances under which the offense was committed;
 - (4) The degree to which the individual participated in the offense;
 - (5) The age and ability of the victim, including whether the victim is an individual

with physical or mental disabilities;

- (6) The likelihood that the circumstances leading to the offense will recur;
 - (7) The extent to which the position provides an opportunity for the commission of the same or similar offenses; and
 - (8) The time elapsed since the individual was fully discharged from imprisonment, probation, and parole.
- (G) The department shall not deny or revoke a certificate or evidence of registration under ~~paragraph (D)~~ paragraphs (D)(1) to (D)(4) of this rule if it finds that the following standards for rehabilitation are met:
- (1) The offense is not a ~~sex~~ sexually oriented offense as listed or described in paragraph (B)(3) of this rule;
 - (2) The offense is not a violation of section 2907.06 (sexual imposition), 2907.07 (importuning), 2907.08 (voyeurism), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity) of the Revised Code or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to the offenses listed or described in this paragraph;
 - (3) The offense is not a violation of section 2903.16 (failing to provide for a functionally impaired person) or 2903.34 (patient abuse and neglect) of the Revised Code or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to the offense listed or described in this paragraph;
 - (4) The victim of the offense was not a person for whom the individual was responsible for providing care;
 - ~~(2)~~(5) The individual is not a repeat offender as defined in paragraph (B)(2) of this rule;
 - ~~(3)~~(6) At least five years have elapsed since the individual was fully discharged from imprisonment, probation, and parole; ~~and~~
 - ~~(4)~~(7) The individual has had the record of his or her conviction sealed pursuant to section 2953.32 of the Revised Code or a substantially equivalent provision under existing or former municipal ordinances or laws of this state, any other state, or the United States; and

(8) The individual's name does not appear on the registry established under section 5123.52 of the Revised Code.

(H) If an individual meets all the standards listed for rehabilitation in paragraph (G) of this rule with the exception of paragraph (G)(7) of this rule due to the nonexistence of a statute that would allow the person to petition the court to have his/her conviction record sealed, the individual may petition the director to be considered rehabilitated under the provisions of this rule. The director shall not consider for rehabilitation an individual for whom a court has denied the individual's request to have the record of his/her conviction sealed. The director shall consider the following factors in determining if the applicant has been rehabilitated:

(1) The duties and responsibilities of the position;

(2) The nature and seriousness of the offense;

(3) The time elapsed since the individual was fully discharged from imprisonment, probation or parole;

(4) The individual's efforts at rehabilitation and the results of those efforts;

(5) Whether any criminal proceedings are pending against the individual;

(6) Any personal references;

(7) The individual's employment history; and

(8) Any other relevant factors.

~~(H)~~(I) It is the duty of an applicant for or holder of a certificate or evidence of registration to provide proof that the standards for rehabilitation specified in paragraph (G) of this rule are met. If the applicant for or holder of the certificate or evidence of registration fails to provide such proof or if the department determines that the proof offered is inconclusive, the certificate or evidence of registration shall be denied or revoked. Any doubt shall be resolved against the applicant for or holder of the certificate or evidence of registration.

~~(I)~~(J) ~~This rule is applicable to records of convictions that have~~The applicant shall disclose a conviction that has 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 any position for which certification or evidence of registration is required under Chapter 5123:2-5 of the Administrative Code or for which certification is required under Chapter 5123:2-7 of the Administrative Code.

~~(J)~~(K) A conviction of or a plea of guilty to an offense listed or described in paragraphs (D)(1) to ~~(D)(3)~~ (D)(4) of this rule shall not constitute a ground for the denial or revocation of a certificate or evidence of registration under the following circumstances:

- (1) The individual has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (2) The individual has been granted an unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code; or
- (3) The conviction or guilty plea has been set aside pursuant to law.

As used in this rule, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.

~~(K)~~(L) Upon complaint by a county board of mental retardation and developmental disabilities that a professional or management employee in a position that requires a certificate issued under section 5126.25 of the Revised Code has violated division (A) of section 5126.29 of the Revised Code, the department shall investigate the complaint.

~~(L)~~(M) If the department finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the individual did violate division (A) of section 5126.29 of the Revised Code, it may suspend the individual's certificate for a period of time not exceeding one year.

~~(M)~~(N) Appeals of adjudication orders issued under this rule are governed by section 119.12 of the Revised Code.

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