

**5139-69-02 Initial certification and recertification of juvenile sex offender and child-victim offender treatment programs.**

(A) The purpose of this rule is to outline the initial certification and recertification process for juvenile sex offender, child-victim offender and/or youth with sexually abusive behaviors treatment programs.

(B) Changes to the rules regarding certification and recertification of juvenile sex offender, child-victim offender and/or youth with sexually abusive behaviors shall be applied prospectively.

(C) As used in this rule, the following definitions shall apply:

(1) "Advisory Board" means the juvenile sex offender treatment program certification advisory board, as created in rule [5139-69-01](#) of the Administrative Code.

(2) "Appeal" means the process in which cases are brought before the board where parties request to challenge the decision rendered by the board regarding their certification status.

(3) "Certification" means the review, approval and recommendation for certification by the advisory board to the department for the operation of a juvenile sex offender, child-victim offender and/or youth with sexually abusive behaviors treatment program that complies with the standards established by the department.

(4) "Child-victim offender" means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any child-victim oriented offense pursuant to section [2950.01](#) of the Revised Code.

(5) "Department" means the Ohio Department of Youth Services.

(6) "For cause survey" means an on-site review and examination by the DYS liaison of agency policies for assessments, treatment plans, progress notes and other relevant information in accordance with rule [5139-69-03](#) of the Administrative Code at the location of the agency seeking initial or recertification for those programs that do not hold a license or certificate issued by the Ohio departments of alcohol and drug addiction services, job and family services, mental health and/or developmental disabilities or a national accrediting body or at the discretion of the advisory board.

(7) "Juvenile sex offender" means a child who is adjudicated delinquent for committing or has been adjudicated a delinquent child for committing any sexually oriented offense, pursuant to section [2950.01](#) of the Revised Code.

(8) "OCAP" means the Ohio comprehensive assessment protocol self-assessment instrument.

(9) "Policy" means a set of written basic principles and associated guidelines, formulated and enforced by the governing body of a program, to direct and limit its actions.

(10) "Procedure" means a description of operational implementation or activities necessary for achieving a specific policy, principle or guideline.

(11) "Program" means an entity that provides assessment, treatment and/or transition services to juvenile sex offenders, child-victim offenders and or youth with sexually abusive behaviors in accordance with rule [5139-69-03](#) of the Administrative Code.

(12) "Recertification" means the review, approval and recommendation for recertification by the advisory board to the department for the continued operation of a juvenile sex offender, child-victim offender and/or youth with sexually abusive behaviors treatment program that complies with the standards established by the department.

(13) "Treatment" means a comprehensive set of therapeutic experiences, and interventions planned and organized to improve the prognosis and functioning of a juvenile sex offender, child-victim offender and/or youth with sexually abusive behaviors to reduce the risk of sexual re-offense or other sexually abusive and aggressive behavior.

(14) "Variance" means time limited, written permission granted by the department to a program to meet a modified requirement of a rule of the Administrative Code.

(15) "Waiver" means time limited, written permission granted by the department to a program to be exempted from a rule or specific provision of a rule of the Administrative Code.

(16) "Youth with sexually abusive behaviors" means a child who has been identified as engaging in behavior that could be defined as any sexual offense as defined in section [2950.01](#) of the Revised Code, regardless if the youth was formally adjudicated of the behavior.

#### (D) Application for initial program certification

A program seeking initial certification must complete and submit to the advisory board an application form provided by the advisory board that contains the following elements:

(1) Program name, business address, telephone number, fax number, and email address;

(2) Type of certification a program is applying for: assessment, treatment and/or transition or any combination thereof;

(3) A description of the assessment, treatment and/or transition services provided;

(4) A list of counties the program serves and where treatment services are provided;

(5) A copy of currently held licenses or certificates issued by the Ohio departments of alcohol and drug addiction services, jobs and family services, mental health and/or developmental disabilities' and/or any national accrediting body;

(6) A description of the types of youth served;

(7) A copy of the continuing education plan and policies regarding the qualifications and credentials required for staff responsible for supervising and delivering juvenile sex offender/child-victim offender treatment and/or youth with sexually abusive behaviors to include a minimum of six (6) hours of sex offender specific training within a certification or recertification cycle;

(8) A signed attestation avowing that no staff responsible for supervising and delivering juvenile sex offender/child-victim offender treatment has been disciplined or placed on probationary status by any professional licensing or certifying body, or has a currently revoked, canceled, or suspended license or certificate;

(9) A complete copy of treatment contracts, one treatment plan with personally identifiable information deleted, and practice methodology statement on how treatment and safety plans are developed;

(10) A copy of the program's policy addressing preventing sexual contact between youth and a copy of the program's policy addressing preventing sexual contact between all staff and youth as required in paragraph (C)(4) of rule [5139-69-03](#) of the Administrative Code;

(11) A completed OCAP; and,

(12) Any requests for variances or waivers from provisions of this rule or from provisions of rule [5139-69-03](#) of the Administrative Code.

(E) Application for recertification

A program seeking recertification must submit to the advisory board a recertification application form provided by the advisory board that contains the following elements:

(1) Any changes in the counties the program serves and where treatment services are provided;

(2) A copy of currently held licenses or certificates issued by the Ohio departments of alcohol and drug addiction services, job and family services, mental health and/or developmental disabilities or a national accrediting body;

(3) A copy of the currently held initial program certification for juvenile sex offender and/or child-victim offender treatment programs;

(4) A description of the assessment, treatment and/or transition services provided;

(5) A statement indicating that the initial practice methodology statement on how treatment and safety plans are developed remains the same or identifying any changes to the methodology;

(6) A copy of the continuing education plan and policies focusing on assessment, treatment, transition and/or management of juvenile sex offenders, child-victim offenders and/or youth with sexually abusive behaviors; and, provide documentation of implementation of the plan to include a minimum of six (6) hours of sex offender specific training per recertification cycle;

(7) A copy of the table of organization that identifies the qualifications or credentials of staff responsible for supervising and delivering sex offender services to youth;

(8) Documentation reflecting that the policy for preventing sexual contact between youth and between all staff and youth has been reviewed from the date of the initial certification and revised as appropriate and/or needed. If either policy has been revised, a copy of that policy shall be submitted.

(9) A completed OCAP, signed by the chief executive officer and the individual completing the application; and,

(10) Any requests for variances or waivers from provisions of this rule or from provisions of rule [5139-69-03](#) of the Administrative Code.

(F) Application review and approval

Applications for initial program certification and recertification shall be reviewed by the advisory board within ninety days of receipt of the application by the advisory board.

(1) If the advisory board determines the application is complete and is compliant, it shall recommend to the director of the department or designee that the program shall be notified of approval in writing and a certificate issued.

(2) If the advisory board determines the application to be incomplete or non-compliant, it a designee of the department shall notify the program in writing and identify the timeframe within which the program must correct cited deficiencies.

(a) A revised application may be resubmitted within the specified timeframe demonstrating upon correction of the cited deficiencies.

(b) If deficiencies have not been corrected within the timeframe specified, the advisory board shall withhold any further consideration of the application for a period of one year from the date specified and the advisory board shall require that a new application be submitted after one year. The certification shall be invalid during that year.

(c) The advisory board's return of incomplete or non-complaint materials to the program or failure to take further action to issue a certificate shall not constitute denial of an application for program certification.

(G) Variances and waivers

A program may submit a variance or waiver request to the advisory board of any requirements imposed in paragraph (C) or (D) of this rule, or to the standards as defined in rule [5139-69-03](#) of the Administrative Code. The granting of a variance or waiver is a discretionary act of the department based upon recommendation from the board as to why the program is not in compliance. The refusal to grant a variance or waiver, in whole or in part, shall be final after the appeal process is exhausted and shall not be construed as creating any rights to a hearing under Chapter 119. of the Revised Code.

(1) A request for variance or waiver shall contain the following:

(a) Identification of the required application element and/or standard for which the variance or waiver is being applied for;

(b) The reason for requesting the variance or waiver. Specific barriers to compliance must be identified;

(c) If applicable, submission of evidence supporting the proposed variance's or waiver's effectiveness with treatment of juvenile sex offenders; and,

(d) A description of the efforts that have already been tried to address the issue requiring the variance or waiver.

(2) The advisory board shall review the variance/waiver request within thirty days or next board meeting of having received the request. The advisory board shall make a recommendation to the department to grant or deny a variance or waiver. If it is recommended that a variance or waiver is granted, the advisory board shall have the authority to set forth shall recommend specific program conditions that must be met during the timeframe of the proposed variance/waiver. The department shall make the determination to grant or deny a variance or waiver and set forth specific program conditions to be met if granted. The board department may require the program to submit periodic documentation regarding how the variance/waiver is working and the identification of any benefits or challenges.

(3) If the specific program conditions identified in the variance or waiver are not met, the board department shall have the authority to refuse to issue or may revoke a certificate.

(H) Initial program certification

(1) Upon review and approval of an application for initial program certification, a certificate shall be issued to the program for a period up to two years.

(2) The certified program's name shall be added to the list of certified juvenile sex offender and child-victim offender and/or youth with sexually abusive behaviors programs maintained by the department and which is open to public inspection until certification expires, is revoked or terminated.

(3) After the initial two year period, programs must comply with the recertification process as defined in paragraph (E) of this rule.

(I) Program recertification

(1) Applications for recertification must be received by the department at least ninety days prior to the expiration of the initial certification.

(2) Upon review and approval of an application for recertification, a certificate shall be issued to the program for a period up to two years.

(3) The certified program's name shall remain on the list of certified juvenile sex offender and child-victim offender programs maintained by the board and which is open for public inspection.

(4) If no application for recertification is received by the department, the initial certification shall expire and the program's name shall be removed from the list of certified juvenile sex offender and child-victim offender and/or youth with sexually abusive behaviors programs.

(J) Non-compliant, revocation or termination

(1) The department may revoke or terminate certification of a program for one or more of the following reasons:

(a) Subsequent to review of a program's application for initial certification or recertification, it was determined not to qualify;

(b) It was determined that false or erroneous information was provided on the application;

(c) A complaint of abuse, neglect, fraud, or unethical behavior by program staff is substantiated by the appropriate investigative body;

(d) The program fails to remain in compliance with the rules and/or standards of an appropriate licensing, certifying, accrediting or other regulatory body;

(e) The program or principal in the program has been convicted of Medicaid fraud; or,

(f) Any other circumstances or facts which the department in its discretion determines to require revocation or termination of certification.

(2) The department shall give the program written notice by certified mail, return receipt requested, if it has determined a program to be non-compliant and has denied certification or has revoked or terminated certification. The notice shall include:

(a) The standard(s) with which the program was found to be in non-compliance and/or other reason(s) for the action.

(b) The section(s) of the law or rule(s) involved.

(c) A statement informing the program of the reasons for denial of certification, revocation or termination and that the program is entitled to a hearing if the department receives a written request for a hearing within thirty days of the program having received the notice. The program may appeal the decision by the board under Chapter 119 of the Ohio Revised Code.

(d) A statement that at the hearing, the program's representative may appear in person and/or be represented by its attorney or may present its position, arguments or comments in writing in lieu of personally appearing at a hearing.

(e) A statement that if the program is personally appearing or being represented at the hearing it may present evidence and examine witnesses appearing for and against it.

(f) A copy of the notice shall be mailed via regular mail to the attorney or other representative of record representing the program.

(g) No hearing will be held if a written request by the program is not timely received.

(h) If a notice is returned undeliverable, the department shall utilize a personal service to deliver the notice or shall cause publication of the notice in a newspaper of general circulation in the city of last known residence or business, once a week for three weeks. A copy of the newspaper posting will be mailed to the last known address and the notice shall be considered received as of the date of the last publication.

(3) If a program requests a hearing, the department shall set the date, time and place for the hearing within fifteen days, but not earlier than seven days, after the program has requested a hearing unless otherwise agreed upon by both the department and the program. A copy of the hearing notice shall be mailed to the program's representative or its attorney. The date of the hearing may be continued for good cause.

(a) The department shall conduct the adjudication hearing following the procedures in section [119.09](#) of the Revised Code and among other things may appoint a referee or hearing examiner who is licensed to practice law in the state of Ohio to conduct the proceedings and issue a written report and recommendations to the department including findings of fact and conclusions of law.

(b) The department shall provide a copy of the report and recommendations to the program via certified mail return receipt requested, within five days of the issuance of the report and recommendations by the hearing officer or referee.

(c) The program or program's representative may file an objection within ten days of receipt of the report and recommendations. The department shall consider the objections that are timely filed when making a final decision.

(d) The department, upon consideration of the report and recommendations and any objections shall approve, modify or disapprove the report and recommendations and issue its final decision via certified mailed return receipt requested. The decision of the department shall be considered final.

#### (4) Sanction

(a) Any program which has had its certification revoked or terminated pursuant to this rule shall not be eligible to apply to the department for sex offender treatment program certification for at least two years from the date of revocation without the written consent of the department.

(b) Any program which has been determined non-compliant pursuant to this rule shall not be eligible to apply to the department for sex offender treatment program certification for at least two years from the date of non-compliance without the written consent of the department.

(5) If a certificate is revoked or terminated, the program's name shall be removed from the list of certified and recertified juvenile sex offender and child-victim offender and/or youth with sexually abusive behaviors treatment programs that is open to public inspection.

(6) If a certificate is revoked or terminated, the board department will inform any other regulatory body(ies) having jurisdiction over the program's licenses and/or certificates

(7) Certificates shall be returned to the board department upon termination or revocation of certification, or of the program voluntarily relinquishes the certificate or goes out of business.

(8) A certificate shall be considered terminated and invalid if the program fails to reapply, correct identified deficiencies, voluntarily relinquishes the certificate or goes out of business.

(9) The denial, revocation or termination of certification is subject to appeal under Chapter 119. of the Revised Code.

(K) For cause survey

(1) A for cause survey shall be conducted for those programs who currently do not hold a license or certificate issued by the Ohio departments of alcohol and drug addiction services, job and family services, mental health and/or developmental disabilities or a national accrediting body; or, at the discretion of the board for cause.

(2) A for cause survey will review and examine agency policies, assessments, treatment plans, progress notes and other relevant information in accordance with rule [5139-69-03](#) of the Administrative Code at the location of the agency seeking initial or recertification or at the site where services are delivered if different.

(3) If the advisory board determines the results of the for cause survey are complete and compliant, it shall recommend to the department that the program shall be notified in writing and an initial certificate issued.

(4) If the advisory board determines the for cause survey to be incomplete or non-compliant, it shall notify the department of deficiencies and the department shall notify the agency in writing and identify a timeframe within which the program must correct the cited deficiencies.

(5) The board department shall not certify or recertify the program until the deficiencies have been corrected within the timeframe.

(L) Complaints against certified programs

(1) Should any person have a reason to believe that the certification of a program should be revoked, that individual may submit the concern to the advisory board in writing together with any applicable supporting documentation.

(2) Complaints will be reviewed by the board and forwarded to the department of youth services.



Effective: 4/20/2017

Five Year Review (FYR) Dates: 07/01/2018

Promulgated Under: [119.03](#)

Statutory Authority: [5139.04\(D\)](#), [5139.04\(H\)](#)

Rule Amplifies: [2950.16](#), [5139.34](#), [5139.41](#), [5139.43](#)

Prior Effective Dates: 7/8/08, 8/13/10, 11/29/12, 10/17/13