

Dear Senators LODGE, Broadsword & LeFavour, and
Representatives BLOCK, Nielsen & Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Dept. Of Health & Welfare:

IDAPA 16.05.06 - Criminal History and Background Checks

(Docket No. 16-0506-0901).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice
to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis
from Legislative Services. The final date to call a meeting on the enclosed rules is no later than
7-14-09. If a meeting is called, the subcommittee must hold the meeting within forty-two (42)
days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting
on the enclosed rules is 8-11-09.

_____The germane joint subcommittee may request a statement of economic impact with
respect to a proposed rule by notifying Research and Legislation. There is no time limit on
requesting this statement, and it may be requested whether or not a meeting on the proposed rule
is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the
address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker

DATE: June 24, 2009

SUBJECT: Department of Health and Welfare - IDAPA 16.05.06 - Criminal History and Background Checks (Docket No. 16-0506-0901) (Temporary and Proposed Fee).

Through temporary and proposed fee rule Docket No. 16-0506-0901, the Department of Health and Welfare added certain individuals and providers who are required to have a \$55 Department fingerprint-based criminal history and background check and includes additional crimes to the lists of disqualifying crimes and convicted criminal activity which require the Department to issue an unconditional denial if the conviction occurred within five years.

According to the Department, the temporary and proposed fee rule is authorized by section 56-1004A, Idaho Code.

Section 56-1004A, Idaho Code, enacted in 2005 and amended in 2006, specifically deals with criminal history and background checks. Under the provisions of that section, the legislature authorizes the Department “to conduct criminal history and background checks of individuals who provide care or services to vulnerable adults or children and are identified in rule as being required to have a criminal history and background check.” Section 56-1004A(1), Idaho Code. The Department is specifically required to promulgate rules “to further define those individuals who are required to have a background check,” section 56-1004A(3), Idaho Code, to define the time frame for submitting the application, *ibid*, and to “determine which crimes disqualify the applicant and for what period of time,” section 56-1004A(4), Idaho Code. The section anticipates that fingerprinting will be part of the criminal history and background check process. Section 56-1004A(3), Idaho Code. The applicant is responsible for the cost of the background check. Section 56-1004A(5), Idaho Code.

The Governor's justification for the temporary rule is the protection of the public health, safety or welfare and to comply with governing law under section 56-1004A, Idaho Code. In compliance with section 67-5226(2), Idaho Code, the Governor has found that the fee increase is necessary to avoid immediate danger. The temporary rule goes into effect on three separate dates: October 1, 2008, January 1, 2009 and July 1, 2009.

The Department anticipates that the estimated 300 individuals and providers required to pay the criminal history background check fee will impact dedicated funds by \$26,500 and that the remaining additional checks will increase federal fund expenditures through the Community Mental Health Block Grant by \$6,545. No General Fund impact is anticipated. The Department states that negotiated rulemaking was not conducted because the rule is necessary to protect the public health, safety or welfare and to comply with governing law.

Public hearings will be held if requested in writing by 25 persons, a political subdivision or an agency not later than July 15, 2009. All written comments must be directed to the Department on or before July 22, 2009.

ANALYSIS

Section 100 of the docket redefines and adds to the individuals subject to a criminal history and background check. In addition to staff of alcohol or substance use disorder treatment facilities and programs (formerly, alcohol or drug abuse prevention and treatment programs serving children), contractors, volunteers, student interns and others assigned to programs who have direct contact with children and vulnerable adults are required to undergo such checks. Section 100.02. Also added to the list are: individuals seeking appointment as a designated examiner or designated dispositioner, or both, section 100.07 (effective January 1, 2009); Idaho Child Care Program applicants, providers, employees, volunteers, including those in group child care, family child care, relative child care, in-home child care and individuals age 13 or older living in the home, who have direct contact with children, section 100.12 (effective July 1, 2009); and owners, operators and all employees, transfers, reinstated former employees, student interns, contractors and volunteers of nonhospital, medically monitored detoxification/mental health diversion units who provide care or services or have access to clients, section 100.17 (effective October 1, 2008).

In some cases, these listings under this docket do not parallel the listings of those individuals required to undergo such checks in the rule specific to the population. For instance, the criminal history and background checks requirements under IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," do not include owners or operators. See section IDAOA16.07.05.009. Further, there is currently no criminal history background check requirements under the present IDAPA 16.06.12, dealing with the Idaho Child Care Program.

The temporary and proposed fee rule adds volunteers providing direct care services or

have access to children or vulnerable adults to those subject to criminal history and background checks. Section 101.01.

The temporary and proposed fee rule adds section 19-1430, Idaho Code, to the list of disqualifying crimes that result in an unconditional denial being issued. Section 210.01.v. Section 19-1430 abrogates the distinction between an accessory before the fact and a principal and between principals in the first and second degree in case of a felony and is technically not a crime provision, but rather a criminal procedure statute.

The temporary and proposed fee rule adds section 18-2202, Idaho Code (felony computer crimes), section 18-918, Idaho Code (felony domestic violence), section 67-7448, Idaho Code (felony lottery crimes), section 18-3125, Idaho Code (criminal possession of financial transaction card, financial transaction number and FTC forgery devices), section 18-3126, Idaho Code (misappropriation of personal identifying information), section 18-3126A, Idaho Code (acquisition of personal identifying information by false authority), section 18-3127, Idaho Code (receiving or possessing fraudulently obtained goods or services), section 18-3128, Idaho Code (penalty for violation of sections 18-3124 through 18-3127, Idaho Code) and section 19-1430, Idaho Code (abrogating the distinction between an accessory before the fact and a principal and between principals in the first and second degree in case of a felony), to the list of offenses which require the Department to issue an unconditional denial for an individual who has been convicted of the offense for 5 years from the date of the conviction. As noted above, section 19-1430, Idaho Code is not a criminal procedural statute.

SUMMARY

The Department's temporary and proposed fee rule appears to be authorized by and is consistent with section 56-1004A, Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock; Steve Bellomy

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-0901 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of these temporary rules are October 1, 2008, January 1, 2009, and July 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1004A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 15, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department has added certain individuals and providers who are required to have a criminal history and background checks under other Department rule chapters. This chapter of rules is being updated to add those individuals and providers to the list of those who are required to have checks, including references to the programs' rule chapters. The programs or individuals being added are: Alcohol or Substance Use Disorders Treatment Facilities and Programs for Adults, Designated Examiners and Designated Dispositioners, Idaho Child Care Program, and Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.

These rules are also being updated for references and amended to add additional disqualifying crimes to better protect vulnerable adults and children.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of these rules are appropriate for the following reasons: These rules are necessary to protect the public health, safety, or welfare and to comply with governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

The fee amount for providing criminal history and background checks is based on costs incurred to complete these checks. These temporary fee rules add individuals and providers that are required to have these checks and pay for the cost at \$55 per check.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Department estimates that the costs of these added checks will not impact the state general funds. The estimated 300 additional criminal history and background checks will impact the dedicated funds by a total of \$16,500. The remaining additional checks will increase federal fund expenditures through the Community Mental Health Block Grant by \$6,545.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is necessary to protect the public health, safety, or welfare, and to comply with governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Bellomy (208) 334-0609.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 22, 2009.

DATED this 29th day of May, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET 16-0506-0901

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or program rules to complete a criminal history and background check. (3-26-08)

01. Adoptive Parent Applicants. All persons applying to the Department or petitioning the court to be an adoptive parent and all adults in the home, except stepparents applying for adoption of a stepchild, as described in IDAPA 16.06.01, "Rules Governing Family and Children's Services," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~(3-26-08)(7-1-09)T~~

02. Alcohol or ~~Drug Abuse Prevention and~~ Substance Use Disorders Treatment Facilities and Programs ~~Serving Children.~~ Staff, contractors, volunteers, student interns, and others assigned to programs who have direct contact with ~~adolescents in any alcohol/drug abuse treatment program which provides treatment for persons under the age of eighteen (18) children and vulnerable adults, as defined in Section 39-5302, Idaho Code, and as required by IDAPA 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs," Section 020 or IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs."~~ ~~(3-26-08)(7-1-09)T~~

03. Certified Family Homes. Certified family home providers, all adults in the home, and substitute caregivers, as required in Section 39-3520, Idaho Code, and IDAPA 16.03.19, "Rules Governing Certified Family Homes," ~~Sections 009, 101 and 300,~~ and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~Section 009.~~ ~~(3-26-08)(7-1-09)T~~

04. Children's Residential Care Facilities. Owners, operators, and employees of all children's residential care facilities, as required in Section 39-1210, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~(3-26-08)(7-1-09)T~~

05. Children's Therapeutic Outdoor Programs. Staff, volunteers, and interns working in Children's Therapeutic Outdoor Programs, as defined in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~Section 810.~~ ~~(3-26-08)(7-1-09)T~~

06. Commercial Non-Emergency Transportation Providers. Staff of commercial non-emergency transportation providers who have contact with participants, as required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." ~~Section 009.~~ ~~(3-26-08)(7-1-09)T~~

07. Designated Examiners and Designated Dispositioners. Individuals seeking appointment as a designated examiner or designated dispositioner, or both, as required in IDAPA 16.07.39, “Appointment of Designated Examiners and Designated Dispositioners.” (1-1-09)T

078. Developmental Disabilities Agencies. Employees, subcontractors, agents, and volunteers of developmental disabilities agencies, as required in IDAPA 16.04.11, “Rules Governing Developmental Disabilities Agencies,” ~~Section 009~~, and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” ~~Section 009~~. (3-26-08)(7-1-09)T

089. Emergency Medical Services (EMS). Applicants for EMS certification, as required in IDAPA 16.02.03, “Rules Governing Emergency Medical Services.” ~~Section 501~~. (3-26-08)(7-1-09)T

0910. Home and Community-Based Services (HCBS). Providers, employees, and contractors for home and community-based services, as required in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” ~~Section 009~~. (3-26-08)(7-1-09)T

101. Home Health Agencies. Employees and contractors of home health agencies, as required in IDAPA 16.03.07, “Home Health Agencies.” ~~Section 009~~. (3-26-08)(7-1-09)T

12. Idaho Child Care Program (ICCP). ICCP applicants, providers, employees, volunteers, including those in group child care, family child care, relative child care, in-home child care, and individuals age thirteen (13) or older living in the home, who have direct contact with children, as required in IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program.” (7-1-09)T

143. Intermediate Care Facilities for the Mentally Retarded (ICF/MR). Employees and contractors of intermediate care facilities for the mentally retarded, as required in IDAPA 16.03.11, “Intermediate Care Facilities for the Mentally Retarded (ICF/MR).” ~~Section 009~~. (3-26-08)(7-1-09)T

124. Licensed Foster Care. All foster care applicants and other adult members of the household, as required in Section 39-1211, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” ~~Section 404~~. (3-26-08)(7-1-09)T

135. Licensed Child Day Care. Applicants, owners, operators, employees, volunteers, and those over twelve (12) years of age who have unsupervised direct contact with the children of day care centers, group day care facilities and family day care homes, as required in Section 39-1105, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” ~~Section 300~~. (3-26-08)(7-1-09)T

146. Mental Health Clinics. Mental health clinic’s direct care staff, as required in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” ~~Section 009~~ and IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” ~~Sections 009 and 714~~. (3-26-08)(7-1-09)T

17. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units. Owners, operators, and all employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide care or services or have access to clients, as required in IDAPA 16.07.50, “Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.” (10-1-08)T

158. Personal Assistance Agencies. Staff of personal assistance agencies acting as fiscal intermediaries, as required in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” ~~Section 009~~. (3-26-08)(7-1-09)T

169. Personal Care Service Providers. Providers of personal care services, as required in Section 39-5604, Idaho Code, and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” ~~Section 009~~. (3-26-08)(7-1-09)T

1720. Psychosocial Rehabilitation Providers. Individuals providing psychosocial rehabilitation services, as required in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” ~~Sections 009 and 130~~. (3-26-08)(7-1-09)T

~~1921.~~ **Residential Care or Assisted Living Facilities in Idaho.** Employees and contractors of residential care or assisted living facilities, as required in IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” ~~Section 009.~~ (3-26-08)(7-1-09)T

~~1922.~~ **Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill.** Employees and contractors of semi-independent group residential care facilities for the developmentally disabled or mentally ill, as required in IDAPA 16.03.15, “Rules and Minimum Standards for Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill.” ~~Section 009.~~ (3-26-08)(7-1-09)T

~~203.~~ **Service Coordinators and Paraprofessional Providers.** Service coordinators and paraprofessionals working for an agency, as required in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” ~~Section 009.~~ (3-26-08)(7-1-09)T

~~214.~~ **Skilled Nursing and Intermediate Care Facilities.** Employees and contractors of skilled nursing and intermediate care facilities, as required in IDAPA 16.03.02, “Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities.” ~~Section 009.~~ (3-26-08)(7-1-09)T

~~225.~~ **Support Brokers and Community Support Workers.** Support brokers and community support workers, as required in IDAPA 16.03.13, “Consumer-Directed Services.” ~~Section 009.~~ (3-26-08)(7-1-09)T

101. DEPARTMENT INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

The following Department employees and contractors are subject to criminal history and background checks. (3-26-08)

01. Employees, ~~and~~ Contractors, and Volunteers. Employees, ~~and~~ contractors, and volunteers, providing direct care services or who have access to children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. (3-26-08)(7-1-09)T

02. Employees of Bureau of Audits and Investigations. (3-26-08)

a. Fraud Investigators; (3-26-08)

b. Utilization Review Analysts; and (3-26-08)

c. Criminal History Staff. (3-26-08)

03. Employees at State Institutions. All employees of the following state funded institutions; (3-26-08)

a. Idaho State School and Hospital, Nampa, Idaho; (3-26-08)

b. State Hospital North, Orofino, Idaho; and (3-26-08)

c. State Hospital South, Blackfoot, Idaho. (3-26-08)

04. Emergency Medical Services (EMS) Employees. EMS communication specialists and managers. (3-26-08)

05. Other Employees. Other Department employees as determined by the Director. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

01. Disqualifying Crimes. The disqualifying crimes described in Subsections 210.01.a through 210.01.v. of these rules will result in an unconditional denial being issued. (3-26-08)

- a.** Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)
- b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)
- c.** Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)
- d.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)
- e.** Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
- f.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
- g.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
- h.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
- i.** Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- j.** Murder in any degree, voluntary manslaughter, assault, or battery with intent to commit a serious felony, as defined in Sections 18-4001, 18-4003, 18-4006, and 18-4015, Idaho Code; (3-26-08)
- k.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- l.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)
- m.** Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- n.** Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- o.** Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- p.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- q.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)
- r.** Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
- s.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
- t.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)
- u.** Any felony punishable by death or life imprisonment; or (3-26-08)
- v.** Attempt, conspiracy, ~~or~~ accessory after the fact, or aiding and abetting, as defined in Sections 18-

205, 18-306, ~~and~~ 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ~~(3-26-08)~~(7-1-09)T

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.~~ng~~, of this rule: ~~(4-9-09)~~(7-1-09)T

- a.** Aggravated assault, as defined in Section 18-905, Idaho Code; (3-26-08)
- b.** Aggravated battery, as defined in Section 18-907(1), Idaho Code; (3-26-08)
- c.** Arson in the third degree, as defined in Section 18-804, Idaho Code; (3-26-08)
- d.** Burglary, as defined in Section 18-1401, Idaho Code; (3-26-08)
- e.** Felony computer crimes, as defined in Section 18-2202, Idaho Code; (7-1-09)T
- ef.** A felony involving a controlled substance; (3-26-08)
- g.** Felony domestic violence, as defined in Section 18-918, Idaho Code; (7-1-09)T
- h.** Any felony lottery crime as defined in Section 67-7448, Idaho Code; (7-1-09)T
- fi.** Felony theft, as defined in Section 18-2403, Idaho Code; (3-26-08)
- si.** Forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 ~~and~~ through 18-3124~~8~~, Idaho Code; ~~(3-26-08)~~(7-1-09)T
- ~~h~~**k.** Forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-26-08)
- il.** Grand theft, as defined in Section 18-2407(1), Idaho Code; (3-26-08)
- im.** Identity theft, as defined in Section 18-3126, Idaho Code; (4-9-09)
- ~~kn.~~ Insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-26-08)
- lo.** Public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; (4-9-09)
- ~~mp.~~ Attempted strangulation, as defined in Section 18-923, Idaho Code; or (4-9-09)
- ~~ng.~~ Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, ~~and~~ 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. ~~(3-26-08)~~(7-1-09)T

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a.** A withheld judgment; (3-26-08)
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c.** An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d.** A sealed record. (3-26-08)