

Dear Senators LODGE, Broadsword, Bock, and
Representatives BLOCK, Hartgen, Ringo* AND McGeachin, Bilbao Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Health and Welfare:

IDAPA 16.05.06 - Rules Pertaining To Criminal History and Background Checks (Docket No.
16-0506-1101).

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 10/12/2011. 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 11/09/2011.

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 334-4845, or send a written request to the address or FAX
number indicated on the memorandum enclosed.

*This cover memo was originally sent on Sept. 12, 2011 to House Commerce & Human Resources
Committee (in error).



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

REVISED MEMORANDUM

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

FROM: Legislative Research Analyst - Ryan Bush

DATE: September 22, 2011

SUBJECT: Department of Health and Welfare

IDAPA 16.05.06 - Rules Pertaining To Criminal History and Background Checks (Docket No. 16-0506-1101)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.05.06 - Rules Pertaining To Criminal History and Background Checks. The Department states that the proposed rulemaking is to clarify the process for receiving and assessing an applicant's criminal history check records. Specifically, this rulemaking accomplishes the following:

- (1) Amends the definitions of agency and employer to make them synonymous terms;
- (2) Updates citations to other Department rules;
- (3) Adds Department volunteers as a group subject to a criminal history and background check;
- (4) Clarifies the time frame for an application for a criminal history or background check;
- (5) Revises the list of disqualifying crimes for different types of manslaughter; and
- (6) Adds a relevant record on the state or federal Medicaid Exclusion List to the reasons for an unconditional denial.

The Department states that negotiated rulemaking was not conducted because the Department is clarifying its rules. There is no negative fiscal impact resulting from this rulemaking. Public hearings are scheduled on September 19, 2011, at the DHW Region II office in Lewiston, ID; September 21, 2011, at the DHW Region V office in Pocatello, ID; and at the DHW Region IV office in Boise, ID.

The proposed rule appears to be within the statutory authority granted to the Department in Sections 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 56-202(b) and 56-1004A, Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock & Feernando Castro

*This memo was sent on Sept. 12th, 2011, to House Commerce and Human Resources Committee (in error).

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1101

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520 and 39-5604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Monday, September 19, 2011 2:00 p.m. (Local)	Wednesday, September 21, 2011 2:00 p.m. (Local)	Friday, September 23, 2011 1:00 p.m. (Local)
DHW Region II 1118 "F" Street, 2nd Floor Conf. Rm. Lewiston, ID	DHW Region V 1070 Hiline Rd. Suite 230 Pocatello, ID	DHW Region IV 1720 Westgate Dr. Suite A, Rm. 131 Boise, ID

The hearing sites 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rules are being amended to clarify the process for receiving and accessing an applicant's criminal history check (CHC) records. Changes to these rules include the following:

1. Definitions are being amended to clarify that an agency and employer are synonymous terms;
2. Citations to other Department rule chapters are being updated;
3. The application time frames are being clarified to help alleviate confusion by the applicant and employers on when an individual's application and fingerprints must be done to be in compliance with these rules;
4. The list of disqualifying crimes resulting in unconditional denials are being updated for the different types of manslaughter in Section 18-4006, Idaho Code, and for any substantially conforming foreign criminal violations; and
5. Clarify that an individual sanctioned by Department programs will receive an unconditional denial.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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.

There is no anticipated fiscal impact due to these rule changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is clarifying its rules.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Fernando Castro, at (208) 332-7999.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2011.

DATED this 8th day of August, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 16-0506-1101

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of this chapter of rules, the following terms apply: ()

01. Agency. An administrative subdivision of government or an establishment engaged in doing business for another entity. This term is synonymous with the term employer. ()

02. Application. An individual's request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. (3-26-08)

03. Clearance. A clearance issued by the Department once the criminal history and background check is completed and no disqualifying crimes or relevant records are found. (3-26-08)

04. Conviction. An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.03.a. through 010.03.d. of this rule: (3-26-08)

a. When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-26-08)

b. When there has been a finding of guilt against the individual by any federal, state, military, or local court; (3-26-08)

c. When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-26-08)

d. When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: (3-26-08)

i. When the individual has entered into participation in a drug court; or (3-26-08)

ii. When the individual has entered into participation in a mental health court. (3-26-08)

05. Criminal History and Background Check. A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records. (3-4-11)

06. Criminal History Unit. The Department's Unit responsible for processing fingerprint-based

criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. (3-26-08)

067. Denial. A denial is issued by the Department when an individual has a relevant record or disqualifying crime. There are two (2) types of denials: (3-26-08)

a. Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. (3-26-08)

b. Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime or a relevant record found in Sections 200 and 210 of these rules. (3-4-11)

078. Department. The Idaho Department of Health and Welfare or its designee. (3-26-08)

089. Disqualifying Crime. A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. (3-26-08)

10. Employer. An entity that hires people to work in exchange for compensation. This term is synonymous with the term agency. ()

0911. Exemption Review. A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)

102. Federal Bureau of Investigation (FBI). The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

113. Good Cause. Substantial reason, one that affords a legal excuse. (3-4-11)

124. Idaho State Police Bureau of Criminal Identification. The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

135. Relevant Record. A relevant record is a record that is ~~from~~ found in a search of criminal records or ~~from~~ registries checked by the Department as provided in Section 56-1004A, Idaho Code. ~~(3-4-11)~~()

(BREAK IN CONTINUITY OF SECTIONS)

060. EMPLOYER REGISTRATION.

Employers required to have Department criminal history and background checks on their employees, contractors, or staff must register with the Department and receive an employer identification number before criminal history and background check applications can be processed or accessed. ~~(3-26-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

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 Department rules to complete a criminal history and background check. (3-4-11)

01. Adoptive Parent Applicants. Individuals who must comply with IDAPA 16.06.01, "Child and Family Services," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

02. Alcohol or Substance Use Disorders Treatment Facilities and Programs. Individuals who must comply with IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services"

Facilities and Programs,” and IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (3-4-11)

03. Certified Family Homes. Individuals who must comply with Section 39-3520, Idaho Code, IDAPA 16.03.19, “Rules Governing Certified Family Homes,” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

04. Children's Residential Care Facilities. Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

05. Children's Therapeutic Outdoor Programs. Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

06. Contracted Non-Emergency Medical Transportation Providers. Individuals who must comply with IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (3-4-11)

07. Designated Examiners and Designated Dispositioners. Individuals who must comply with IDAPA 16.07.39, “Appointment of Designated Examiners and Designated Dispositioners.” (3-4-11)

08. Developmental Disabilities Agencies. Individuals who must comply with IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA),” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

09. Emergency Medical Services (EMS). Individuals who must comply with IDAPA 16.02.03, “Rules Governing Emergency Medical Services,” and IDAPA 16.01.07, “Emergency Medical Services (EMS) -- Personnel Licensing Requirements.” (3-4-11)()

10. Home and Community-Based Services (HCBS). Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” and IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies.” (3-4-11)()

11. Home Health Agencies. Individuals who must comply with IDAPA 16.03.07, “Home Health Agencies.” (3-4-11)

12. Idaho Child Care Program (ICCP). Individuals who must comply with IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program.” (3-4-11)

13. Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID). Individuals who must comply with IDAPA 16.03.11, “Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).” (3-4-11)

14. Licensed Foster Care. Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

15. Licensed Day Care. Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

16. Mental Health Clinics. Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” and IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (3-4-11)

17. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units. Individuals who must comply with IDAPA 16.07.50, “Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.” (3-4-11)

18. Personal Assistance Agencies. Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

19. Personal Care Service Providers. Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

20. Psychosocial Rehabilitation Providers. Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

21. Residential Care or Assisted Living Facilities in Idaho. Individuals who must comply with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (3-4-11)

22. Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill. Individuals who must comply with IDAPA 16.03.15, "Rules and Minimum Standards for Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill." (3-4-11)

23. Service Coordinators and Paraprofessional Providers. Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

24. Skilled Nursing and Intermediate Care Facilities. Individuals who must comply with IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities." (3-4-11)

25. Support Brokers and Community Support Workers. Individuals who must comply with IDAPA 16.03.13, "Consumer-Directed Services." (3-4-11)

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

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

01. Employees, Contractors, and Volunteers. Employees, 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. (3-29-10)

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. Southwest Idaho Treatment Center, 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)

130. SUBMISSION OF APPLICATION.

An application for a criminal history and background check must be submitted and received by the Department

before a criminal history and background check can be initiated. ~~Once the Department has received the notarized application and signed fingerprint card, the~~ application is pending until the Department issues a clearance or denial, or the individual withdraws the application. ~~An application must be submitted and received by the Department within twenty-one (21) days of it being completed and notarized.~~ (3-26-08)()

01. Submitting an Application On-Line. An application may be submitted through the Criminal History Unit's website at <https://chu.dhw.idaho.gov>. Individuals who submit their application through the website may schedule a fingerprinting appointment at a Department location. At the fingerprinting appointment, the Department will print the application and notarize the individual's signature. (3-26-08)

02. Submitting an Application by Mail. An individual may complete the application provided on the Department's website, print the application, have it notarized, and mail it to the Criminal History Unit with the signed fingerprint card and applicable fee. The application must be mailed to ~~the nearest fingerprint location as found on the Department's website or contact the Criminal History Unit as described in Section 005 of these rules.~~ Criminal History Unit, P. O. Drawer B, Lewiston, ID 83501. (3-26-08)()

131. -- 139. (RESERVED)

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department must obtain fingerprints electronically at one of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (3-26-08)()

01. Department Fingerprinting Locations. A fingerprint appointment may be scheduled at designated Department locations where the Department will collect the individual's fingerprints. The locations are listed on the Department's website, or you may contact the Criminal History Unit as described in Section 005 of these rules. (3-26-08)

02. Submitting Fingerprints by Mail. An individual may elect to have fingerprints collected by a local law enforcement agency or by the applicant's employer. The fingerprint card must be signed and mailed with the completed notarized application and applicable fee to ~~the nearest fingerprinting location.~~ Criminal History Unit, P. O. Drawer B, Lewiston, ID 83501. (3-26-08)()

141. -- 149. (RESERVED)

150. TIME FRAME FOR SUBMITTING APPLICATION AND FINGERPRINTS.

The completed notarized application and fingerprints must be submitted and received by the Department within twenty-one (21) days from the date of notarization. ()

01. Availability to Provide Services. The applicant is not available to provide services or be licensed or certified when the notarized application is not received or the fingerprints have not been rolled ~~for an on-line application~~ within this time frame. ()

02. Incomplete Application. The criminal history and background check is incomplete and will not be processed by the Department if this time frame is not met. (3-26-08)()

03. No Extension of Time Frame. The Department will not extend the twenty-one (21) day time frame, unless the applicant or employer provides just cause. An applicant for employment or employer can not submit a new application for the same purpose, or repeatedly re-sign and re-notarize the original application. ()

(BREAK IN CONTINUITY OF SECTIONS)

190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.

A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual ~~or his employer~~ may print copies of the clearance. The employer must print out the clearance and maintain a copy readily available for inspection. (3-26-08)()

191. -- 199. (RESERVED)

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial. Unconditional denials are issued for: (3-4-11)

a. Disqualifying crimes described in Section 210 of these rules; (3-4-11)

b. A relevant record on the Idaho Child Abuse Central Registry with a Level 1 or Level 2 finding; ~~or~~ (3-4-11)()

c. A relevant record on the Nurse Aide Registry; ~~or~~ (3-4-11)()

d. A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules. ()

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has thirty (30) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. (3-4-11)

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. Final Order. The Department's final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152, may be appealed in District Court. (3-26-08)

201. -- 209. (RESERVED)

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~~ this rules, or any substantially conforming foreign criminal violation, 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.** Manslaughter: ()
 - i.** Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; ()
 - ii.** Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; ()
 - iii.** Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; ()
- jk.** Murder in any degree, ~~voluntary manslaughter, or~~ assault, ~~or battery~~ with intent to commit a ~~serious felony~~ murder, as defined in Sections 18-4001, 18-4003, ~~18-4006~~, and 18-4015, Idaho Code; ~~(3-26-08)~~()
- kl.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- lm.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)
- mn.** Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- no.** Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- op.** Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- pq.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- qr.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)
- rs.** Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
- st.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
- tu.** 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)

- ~~#y.~~ Any felony punishable by death or life imprisonment; or (3-26-08)
- ~~#w.~~ Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-29-10)

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.~~hi.~~ of this rule, or any substantially conforming foreign criminal violation: ~~(3-4-11)()~~

- a.** Any felony not described in Subsection 210.01, of this rule; (3-4-11)
- b.** Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-4-11)
- c.** Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)
- d.** Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)
- e.** Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)
- f.** Misdemeanor public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; ~~or~~ ~~(3-4-11)()~~
- g.** Stalking in the second degree, as defined in Section 18-7906, Idaho Code; ~~;~~ ~~(3-4-11)()~~
- h.** Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; or ()
- ~~hi.~~ Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-29-10)

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)

(BREAK IN CONTINUITY OF SECTIONS)

240. MEDICAID EXCLUSION.

Individuals subject to these rules, who are excluded by the Office of the Inspector General, Department of Health and Human Services; or, are listed in the State of Idaho Medicaid Exclusion list, cannot provide Department funded services within the scope of these rules. At the expiration of the exclusion, the individual may reapply for a criminal history and background check. ~~(3-26-08)()~~

(BREAK IN CONTINUITY OF SECTIONS)

270. CRIMINAL OR RELEVANT RECORD - ACTION PENDING.

01. Notice of Inability to Proceed. When the applicant is identified as having a pending criminal action for a crime or relevant record that may disqualify him from receiving a clearance for the criminal history and background check, the Department may issue a notice of inability to proceed. ()

02. Availability to Provide Services. The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Department. ()

03. Reconsideration of Action Pending. In the case of an inability to proceed status, ~~the~~ applicant can submit documentation that the matter has been resolved to the Department for reconsideration. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. ~~(3-26-08)~~()

271. -- 299. (RESERVED)

300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.

The employer is responsible for confirming that the applicant has completed a criminal history and background check as provided in Section 190 of these rules. ~~(3-26-08)~~()

01. New Criminal History and Background Check. Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: (3-26-08)

a. Accepting employment with a new employer; or (3-26-08)

b. Applying for licensure or certification with the Department; and (3-26-08)

c. His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. (3-26-08)

02. Use of Criminal History Check Within Three Years of Completion. Any employer may use a Department criminal history and background check clearance obtained under these rules if: (3-26-08)

a. The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; and (3-26-08)

b. The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. (3-26-08)

i. The action must be initiated by the employer within thirty (30) calendar days of obtaining access to the individual's criminal history and background check clearance issued by the Department; and ()

ii. The employer must be able to provide proof of this action by maintaining a copy of the records required in Subsections 300.02.a. and 300.02.b. of this rule. ()

03. Employer Discretion. The new employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. (3-26-08)

04. Department Discretion. The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required. (3-26-08)