

**Idaho Department of Health and Welfare
Senate
Criminal History Unit Presentation**

IDAPA 16.05.06, "Criminal History and Background Checks"

RE: Criminal History and Background Check Rule Changes

Docket 16-0506-1902

Pending Rule

January 16, 2020

Mister Chairman / Madam Chair, members of the Committee:

My name is Fernando Castro and I am the supervisor for the Criminal History Unit. Thank you for allowing me to present the rule changes in docket # 16-0506-1902, Criminal History and Background Checks. We developed this rulemaking in compliance with the Red Tape Reduction Act. Changes in this docket increased the overall word count for this chapter by 310 words total, and the number of restrictive words was reduced by six. You may find this docket in Page 1,294 of your Pending Rules book.

In contrast to my previous presentation, this docket is the result of negotiated rulemaking efforts seeking stakeholder participation and support to clarify processes and expectations of all parties involved in the Department's background check process. I am happy to report that we did receive their support and I am excited to present the fruits of that labor with this docket.

The first change that you will see starts at the bottom of page 1,296 and goes on through page 1,297. As the docket shows, we are removing references to the National Crime Information Center throughout this rule. This change is being requested by the FBI and the

Idaho Department of Health and Welfare
Senate
Criminal History Unit Presentation

reason for this is that in the realm of law and subordination of state to Federal law, a state law cannot impose a requirement on a Federal entity. In the opinion of the FBI Criminal Justice Information Law Unit, the FBI unit that is tasked with the review and approval of state laws for compliance with federal criminal justice mandates, the rule as it was written was requiring the FBI to give us access to the entire National Crime Information Center archive of criminal histories to complete our background checks. Access to this resource requires a federal law stipulating so. And, the only law that is currently giving us access to portions of the NCIC is the Child Care and Development Block Grant of 2014. This provision only applies to the background checks that we are completing for our children's daycare workforce as of today. In practice, this means that we will continue to have access to the authorized FBI criminal archives except the FBI's National Sex Offender Registry and Warrants file. However, we will continue to check federal and state Sex Offender Registries that are available by other means. So, the thoroughness of our background check will be minimally affected by this new limitation on our work.

Staying in page 1,297, near the center of the page, at Subsection 010.04. where we define what is a **Conviction** for the purposes of this rule, you will see a renumbering of references that were erroneously included in prior versions of the rule. This renumbering is our correction to those past errors.

Moving on to page 1,298, you will see that we have included the definition of what is a **Direct Patient Access** Employee as a new SubSection 010.09. This change is needed so that our state can meet one of the National Background Check Program (NBCP) milestones

Idaho Department of Health and Welfare
Senate
Criminal History Unit Presentation

for background checks of Long Term Care providers employees. The NBCP is a federal Centers for Medicaid and Medicare Services program that provides grants to states to enhance their current background check systems. Since we are the recipients of one of those grants we are simply attempting compliance with it by adding this definition to our program.

In the same page, near the bottom, you can see that we have made changes to clarify what are the expectations that the Department has for our providers. In Subsection 060.02, in addition to making some changes to the text in to comply with the Red Tape Reduction Act, we are clarifying that a provider must update their information in the Department's background check system to ensure that as ownership of their facilities changes, the Criminal History Unit has accurate information for that provider or facility after the transaction is completed.

In the upper half of page 1,299, in Subsection 061.02, we have rewritten it to clarify what background check related documents must be retained by the provider and for how long they should do so. Our stakeholders had asked for this clarification because some of them were retaining unnecessary documentation or, where retaining them longer than necessary. We believe that this change will provide them some relief on that administrative burden.

Idaho Department of Health and Welfare
Senate
Criminal History Unit Presentation

At the bottom of the same page, in Section 150 of the rule, we are taking the first steps to help our providers comply with the requirements of this rule and protect the vulnerable. Unfortunately, up to this point the Department did not have a clear policy as to how long an employee should be allowed to work with the vulnerable without being fingerprinted and having their background check work initiated. There are multiple and valid reasons for applicants to not be fingerprinted as soon as possible ranging from personal hardships to not being physically present in the state. However, it became apparent that some applicants would postpone their fingerprinting for dubious reasons. With the creation of a 60-day deadline to the applicant to provide their fingerprints to the Department we are effectively creating a definitive point for them to be removed by their employer from any position where they access the vulnerable.

In page 1,300, throughout Section 210 we removed some text to reduce the size of this rule and, at the same time, we are taking this opportunity to add two new permanent disqualifying crimes. Those are Assault and Battery with intent to commit a serious felony. A serious felony in this case can be murder, rape, the infamous crime against nature, mayhem, robbery or lewd and lascivious conduct with a minor child. Being that convictions of these two crimes are indicative of the applicant proclivity to commit grievous crimes against a person, the Department believes that they should be disqualifying.

Idaho Department of Health and Welfare
Senate
Criminal History Unit Presentation

Finally, in Section 300, in page 1,302 of this docket, we are clarifying what background checks actions are required for rehired staff. Without this clarification, an employee could be re-hired without being subjected to a new background check unless the employer would require it voluntarily. And, because the Department does not have a recurring background check requirement for most provider staff, it is easy for unscrupulous persons to remain undetected should they engage in criminal activity after they are cleared by the Department. Even though we believe that the nearly all our providers expend effort and resources to have the highest qualified staff possible, we think that setting this new requirement would further assist them in doing so.

There is no fiscal impact to the State General Fund or to the dedicated funds with this rule change. The costs of modifying the Department's web-based system to accommodate these changes will be performed by Department staff and will be covered with the allocated system maintenance funds of our unit. These proposed changes improve the ability of the Department in its efforts to protect the vulnerable population of our state. I ask that you approve this docket as a Final rule.

This concludes my prepared remarks. Thank you for your time. I stand now for questions.