

**Idaho Department of Health and Welfare
Criminal History Unit Presentation
House Bill No. 310**

IC 56-1004A, "Criminal History and Background Checks"
RE: Amending statute to eliminate references

February 4, 2020

Mister Chairman, members of the Committee:

My name is Fernando Castro and I am the supervisor for the Department of Health and Welfare Criminal History Unit. Our unit is part of the Bureau of Compliance. Thank you for inviting me to present this legislative proposal identified as House Bill 310, concerning the amendment of Idaho Code 56-1004A, *Criminal History and Background Checks*.

First, let me tell you about ourselves. The Criminal History Unit completes over 30,000 background checks a year. These checks help the Department protect those that are vulnerable by screening employees of providers and individuals that participate in certain Department programs such as foster care, adoption and certified family homes. Each year, nearly 500 applicants are denied or voluntarily withdraw from their background checks because of disqualifying elements.

This statute change simply seeks to eliminate subsection 4 (c) of the statute – line 38 of the changed text document –, which makes reference to the National Crime Information Center.

I would like to share with you why this change is being made. When the Department makes changes to its background check rules, we must send our draft proposed rule changes to the FBI to ensure that those changes are not contrary to existing federal mandates, or, to make sure that they do not bestow upon the Department greater powers than authorized by federal law. Accordingly, when the Department considers making such changes, we send them to the FBI for their review. The goal of this exercise is that when this body convenes on Regular Session, we can affirm to you that those rule changes have received the FBI's approval and are ready for your consideration, review and approval.

Last year, as we engaged our stakeholders in negotiated rulemaking, and we submitted those rule changes to the FBI for their review, they pointed out to us that there was language in those rules that was indeed conferring the Department access to more information than allowed by federal law. The Department recognized that similar language was present in this statute and asked the FBI to review it as well. Consequently, they requested that the language in subsection 4 (c) be removed from this statute so that it would accurately represent the scope of the FBI information that federal law authorizes the Department to receive. I would like to let you know that in our companion administrative rule changes that you have already reviewed, we have already removed similar language to the one that we are striking through in this Legislative proposal.

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Ultimately, what this statute change will accomplish is enable the Department to continue to process background checks by removing the language that the FBI does not approve. I would like to reiterate to you that even though it appears that we are getting less from the FBI with this statute change, we still have access to all their resources as authorized by both US Public Laws 92-544 and 113-186. That is, we will continue to receive information from the Interstate Identification Index and the National Sex Offender Registry as authorized by those laws and as appropriate. In cases where information contained in the National Sex Offender Registry information cannot be given to us directly from the FBI, the Department can access other resources that provide literally the same information.

Finally, this statute change does not reduce or add applicant or Department costs. The applicant fees that the Department currently charges for the processing of its background check are adequate to fund the operation of the program. Therefore, there is no fiscal impact to the State with this statute change.

I ask that you send this statute change to the floor with a do pass recommendation so that the Department can continue to receive the FBI criminal history information that is authorized to receive as per federal law to continue to process the background checks that is required to complete under this statute.

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

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Talking Points

- It is necessary to remove references to the FBI National Crime Information Center (NCIC) to assure that DHW continues to receive the information that it currently receives.
 - a. The NCIC is the FBI criminal information clearing house. It is composed of 21 separate files. US Law 92-544 and 113-186 only authorize DHW access to two components of this clearing house: The Interstate Identification Index (III) and the National Sex Offender Registry (NSOR)
 - i. US PL 92-544 authorizes access to the III
 - ii. US PL 113-186 authorizes access to the III and the NSOR only if the background check is for persons that work in a children's daycare environment/setting
- Failure to remove the references to the NCIC will likely result in suspension of the current criminal history information exchanges between the Department and the FBI. If these exchanges are suspended due to the failure to change the statute, they will be restored once the statute is changed to satisfy the FBI request. DHW has until September 30, 2020 to change the statute
- Currently, DHW has unrestricted access to individual state Sex Offender Registries online and the US Department of Justice Dru Sjodin Sex Offender Registry¹. Therefore, loss of access to the FBI NSOR for the background checks of applicants that are not part children's daycare workforce is mitigated by the availability of these other resources
- As long as the FBI remains mentioned in the statute - Section 4 (b) -, DHW will continue to receive any and all FBI information that is authorized as per federal law. Making this change now will likely eliminate the need to make further statute changes if future federal legislation confers or rescinds access to any FBI resources to DHW

¹ The USDOJ Dru Sjodin National Sex Offender Registry website can be found at this location:
<https://www.nsopw.gov/>