

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 494, As Amended in the Senate

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO BACKGROUND CHECKS; AMENDING TITLE 56, IDAHO CODE, BY THE AD-
2 DITION OF A NEW CHAPTER 25, TITLE 56, IDAHO CODE, TO DEFINE TERMS, TO
3 PROVIDE AUTHORIZATION FOR CERTAIN BACKGROUND CHECKS AND TO ESTABLISH
4 PROVISIONS REGARDING CONFIDENTIALITY, TO ESTABLISH PROVISIONS RE-
5 GARDING RULES AND FEES, TO ESTABLISH PROVISIONS REGARDING INDIVIDUALS
6 SUBJECT TO BACKGROUND CHECKS, TO ESTABLISH PROVISIONS REGARDING APPLI-
7 CATIONS, TO ESTABLISH PROVISIONS REGARDING SUITABILITY FOR EMPLOYMENT,
8 AND TO PROVIDE A LIMITATION ON LIABILITY; REPEALING SECTION 56-1004A,
9 IDAHO CODE, RELATING TO CRIMINAL HISTORY AND BACKGROUND CHECKS; AMEND-
10 ING SECTION 32-1805, IDAHO CODE, TO REVISE PROVISIONS REGARDING TEMPO-
11 RARY CARE ASSISTANCE PROGRAM REQUIREMENTS; AMENDING SECTION 15-5-308,
12 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION
13 15-5-311, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SEC-
14 TION 15-5-316, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO
15 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-1105, IDAHO CODE, TO
16 PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 66-404, IDAHO CODE,
17 TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS;
18 AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
19

20 Be It Enacted by the Legislature of the State of Idaho:

21 SECTION 1. That Title 56, Idaho Code, be, and the same is hereby amended
22 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
23 ter 25, Title 56, Idaho Code, and to read as follows:

24 CHAPTER 25
25 BACKGROUND CHECKS

26 56-2501. DEFINITIONS. As used in this chapter:

27 (1) "Applicant" means an individual who has submitted to undergo a
28 background check pursuant to this chapter.

29 (2) "Application" means a request for a background check by an individ-
30 ual required to undergo a background check pursuant to this chapter in which
31 the applicant fully and completely discloses any convictions, pending crim-
32 inal charges, or child or adult protection findings, and that authorizes the
33 department to obtain information relating to the individual from available
34 databases and sources.

35 (3) "Background check" means a fingerprint-based check of an individ-
36 ual's criminal record and other relevant records that may include informa-
37 tion from the following:

- 38 (a) The Idaho state police;
39 (b) The federal bureau of investigation;
40 (c) The central registry created in chapter 83, title 18, Idaho Code;
41 (d) Idaho transportation department driving records;

- 1 (e) Adult and child protection registries;
2 (f) The nurse aide registry;
3 (g) The United States department of health and human services office of
4 the inspector general's list of excluded individual and entities; and
5 (h) The records of other states and jurisdictions.
6 (4) "Clearance" means a document issued by the department as the of-
7 ficial determination of a completed background check with no disqualifying
8 crimes or disqualifying records found.
9 (5) "Denial" means a document issued by the department indicating that
10 disqualifying crimes or disqualifying records were found but does not re-
11 lease any criminal history record information as defined in 28 CFR 20.3(d).
12 (6) "Department" means the department of health and welfare.
13 (7) "Disqualifying crime" means a crime designated in a rule by the de-
14 partment that results in an applicant's denial.
15 (8) "Disqualifying record" means a record that is found by the depart-
16 ment in the course of a background check that results in the issuance of a de-
17 nial.

18 56-2502. BACKGROUND CHECKS AUTHORIZED -- CONFIDENTIALITY. (1) The de-
19 partment is authorized to conduct background checks of applicants pursuant
20 to this chapter. To carry out the purposes of this chapter, the department
21 shall submit fingerprints to the Idaho state police to process background
22 checks through the state criminal history repository and the federal bureau
23 of investigation.

24 (2) The records and information obtained as part of any background
25 check are confidential and shall not be disclosed by the department except as
26 permitted under applicable state or federal law.

27 56-2503. RULES AND FEES. (1) The department is authorized to promul-
28 gate rules, subject to legislative approval, to carry out the purposes of
29 this chapter, including rules enumerating disqualifying crimes, relevant
30 records, and the administrative procedure for challenging a denial.

31 (2) Except as otherwise provided in law, an applicant is responsible
32 to pay the nonrefundable fee for any background check conducted pursuant to
33 this chapter. The department is authorized to establish fees by administra-
34 tive rule, subject to legislative approval, to carry out the purposes of this
35 chapter.

36 56-2504. INDIVIDUALS SUBJECT TO BACKGROUND CHECK. (1) The following
37 individuals or classes of individuals, license applicants, certificate
38 holders, members of vocations or professions, position holders, and any
39 employees, contractors, agents, or volunteers for one of the listed entities
40 or programs with direct access to children, elderly, or vulnerable adults
41 shall be subject to a background check pursuant to this chapter:

- 42 (a) Adoptive parent applicants under chapter 15, title 16, Idaho Code;
43 (b) Children's agencies, children's residential care facilities,
44 children's therapeutic outdoor programs, and licensed foster care un-
45 der chapter 12, title 39, Idaho Code;
46 (c) Licensed daycare facilities under chapter 11, title 39, Idaho Code;
47 (d) Citizen review panel members under section 16-1647, Idaho Code;

- 1 (e) The Idaho child care program under department rule;
 2 (f) Certified family homes under chapter 35, title 39, Idaho Code;
 3 (g) Home health agencies;
 4 (h) Personal assistance agencies;
 5 (i) Personal care services providers;
 6 (j) Residential care or assisted living facilities under chapter 33,
 7 title 39, Idaho Code;
 8 (k) Skilled nursing facilities and intermediate care facilities for
 9 individuals with intellectual disabilities under chapter 13, title 39,
 10 Idaho Code;
 11 (l) Temporary caregivers under chapter 18, title 32, Idaho Code;
 12 (m) Medicaid providers who are categorized by the department as high-
 13 risk pursuant to 42 CFR 455.450;
 14 (n) Home-based and community-based services;
 15 (o) The Idaho behavioral health plan under department rule;
 16 (p) Children's mental health services under chapter 24, title 16, Idaho
 17 Code;
 18 (q) Substance use disorder services under chapter 3, title 39, Idaho
 19 Code;
 20 (r) Adult behavioral health services under chapter 31, title 39, Idaho
 21 Code;
 22 (s) Developmental disabilities agencies;
 23 (t) Service coordinators and paraprofessionals under department rule;
 24 (u) Support brokers and community support workers under department
 25 rule;
 26 (v) Contracted nonemergency medical transport providers;
 27 (w) Emergency medical services personnel licensed under chapter 9, ti-
 28 tle 46, Idaho Code;
 29 (x) Court-appointed guardians and conservators under chapter 12, title
 30 15, Idaho Code, or chapter 4, title 66, Idaho Code;
 31 (y) Designated examiners and dispositioners under chapter 3, title 66,
 32 Idaho Code; and
 33 (z) Any other specific categories of individuals or classes of indi-
 34 viduals for whom the department requires a background check pursuant to
 35 Idaho law.
 36 (2) Employees, contractors, and volunteers of the department who re-
 37 quire a background check include those who:
 38 (a) Provide direct care services or have access to children, elderly,
 39 or vulnerable adults;
 40 (b) Are permitted access to federal tax information;
 41 (c) Conduct background checks; or
 42 (d) Are permitted access to confidential information or systems within
 43 the scope of their duties while investigating fraud, waste, or abuse.

44 56-2505. APPLICATION. The department shall conduct a finger-
 45 print-based background check on any applicant required to undergo a back-
 46 ground check pursuant to this chapter who submits an application and pays
 47 the accompanying fee. An applicant must disclose any pertinent information
 48 regarding disqualifying crimes or disqualifying records.

1 56-2506. SUITABILITY FOR EMPLOYMENT. An applicant's clearance
2 through a background check pursuant to this chapter is not a determination
3 of suitability for employment.

4 56-2507. LIMITATION ON LIABILITY. The department or an employer that
5 acts in reasonable reliance on the clearance determination of a background
6 check of an applicant in making an employment decision is immune from liabil-
7 ity for that decision when it is based on such clearance determination.

8 SECTION 2. That Section 56-1004A, Idaho Code, be, and the same is hereby
9 repealed.

10 SECTION 3. That Section 32-1805, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 32-1805. TEMPORARY CARE ASSISTANCE PROGRAM REQUIREMENTS. (1) A For
13 a temporary care assistance program, the department of health and welfare
14 shall check against the state's sex offender registry operated by the Idaho
15 state police and against the national sex offender public website operated
16 by the United States department of justice that checks names and addresses
17 in the registries before allowing someone to become a temporary caregiver
18 within the program's service. The process must include a criminal history
19 and background check conducted by the department of health and welfare
20 comparable to the background check processed for foster parents. The back-
21 ground check shall be fingerprint-based, requiring that the fingerprints
22 of temporary caregivers be submitted to the federal bureau of investigation
23 and the Idaho state police bureau of criminal identification to complete a
24 national criminal history background check., pursuant to chapter 25, title
25 56, Idaho Code, which shall be conducted in the same manner as background
26 checks for foster parents. The background check shall be fingerprint-based
27 and shall require that the fingerprints of temporary caregivers be submitted
28 to the Idaho state police to process the background check through the state
29 criminal history repository and the federal bureau of investigation for
30 a national criminal history search. The department of health and welfare
31 shall not charge a fee for background checks required by this section.

32 (2) The temporary caregiver's residence must be inspected annually by
33 the affiliated temporary care assistance program.

34 (3) The temporary care assistance program must disclose to any parent
35 or guardian using its services that any delegation of parental rights and re-
36 sponsibilities shall be made to a temporary caregiver, not to the temporary
37 care assistance program itself.

38 SECTION 4. That Section 15-5-308, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 15-5-308. VISITOR IN GUARDIANSHIP PROCEEDING. (1) A visitor is, with
41 respect to guardianship proceedings, an individual with no personal inter-
42 est in the proceedings and who meets the qualifications identified in Idaho
43 supreme court rule. A visitor may either be an employee of or appointed by
44 the court. If appointed, a visitor becomes an officer of the court.

1 (2) A visitor must report to the court on the status of the person pro-
2 posed to be under guardianship. All reports must be under oath or affirma-
3 tion and must comply with Idaho supreme court rules.

4 (3) A visitor shall be personally immune from any liability for acts,
5 omissions or errors in the same manner as if such visitor were a volunteer or
6 director under the provisions of section 6-1605, Idaho Code.

7 (4) A visitor cannot serve as guardian ad litem. The visitor and the
8 guardian ad litem for the person proposed to be under guardianship may not be
9 members or employees of the same entity.

10 (5) The visitor may request to order a criminal history and background
11 check at the proposed guardian's expense on any individual who resides in or
12 may frequent the residence of the person proposed to be under guardianship.
13 Any such check shall be conducted pursuant to ~~section 56-1004A(2) and (3)~~
14 chapter 25, title 56, Idaho Code.

15 SECTION 5. That Section 15-5-311, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 15-5-311. WHO MAY BE GUARDIAN -- PRIORITIES. (1) Any competent person,
18 except as set forth hereafter, or a suitable institution may be appointed
19 guardian of an incapacitated person.

20 (2) The person preferred by the incapacitated person shall be appointed
21 guardian unless good cause be shown why appointment of such person is con-
22 trary to the best interests of the incapacitated person. If the incapaci-
23 tated person is unable to express a preference, any previous expression, in-
24 cluding a durable power of attorney for health care, may be considered by the
25 court.

26 (3) Persons who are not disqualified have priority for appointment as
27 guardian in the following order:

28 (a) The person preferred by the incapacitated person. The court shall
29 always consider the wishes expressed by an incapacitated person as to
30 who shall be appointed guardian;

31 (b) The person(s) nominated as health care agent in a durable power of
32 attorney for health care by the incapacitated person, in the order of
33 priority set forth in such power;

34 (c) The spouse of the incapacitated person;

35 (d) An adult child of the incapacitated person;

36 (e) A parent of the incapacitated person, including a person nominated
37 by will or other writing signed by a deceased parent;

38 (f) Any relative of the incapacitated person with whom he has resided
39 for more than six (6) months prior to the filing of the petition;

40 (g) A person nominated by the person who is caring for him or paying ben-
41 efits to him.

42 (4) No convicted felon, or person whose residence is the incapacitated
43 person's proposed residence or will be frequented by the incapacitated per-
44 son and is frequented by a convicted felon, shall be appointed as a guardian
45 of an incapacitated person unless the court finds by clear and convincing ev-
46 idence that such appointment is in the best interests of the incapacitated
47 person.

48 (5) No individual shall be appointed as guardian of an incapacitated
49 person unless all of the following first occurs:

1 (a) The proposed guardian has submitted to and paid for a criminal his-
 2 tory and background check conducted pursuant to ~~section 56-1004A(2) and~~
 3 ~~(3) chapter 25, title 56,~~ Idaho Code;

4 (b) Pursuant to an order of the court so requiring, any individual who
 5 resides in the incapacitated person's proposed residence has submit-
 6 ted, at the proposed guardian's expense, to a criminal history and back-
 7 ground check conducted pursuant to ~~section 56-1004A(2) and (3) chapter~~
 8 ~~25, title 56,~~ Idaho Code;

9 (c) The findings of such criminal history and background checks have
 10 been made available to the visitor and guardian ad litem by the depart-
 11 ment of health and welfare; and

12 (d) The proposed guardian provided a report of his or her civil judg-
 13 ments and bankruptcies to the visitor, the guardian ad litem and all
 14 others entitled to notice of the guardianship proceeding pursuant to
 15 section 15-5-309, Idaho Code.

16 (6) The provisions of paragraphs (a) and (d) of subsection (5) of this
 17 section shall not apply to an institution nor to a legal or commercial en-
 18 tity.

19 (7) Each proposed guardian and each appointed guardian shall imme-
 20 diately report any change in his or her criminal history and any material
 21 change in the information required by subsection (5) of this section to the
 22 visitor, guardian ad litem, all others entitled to notice of the guardian-
 23 ship proceeding pursuant to section 15-5-309, Idaho Code, and to the court.

24 SECTION 6. That Section 15-5-316, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 15-5-316. GUARDIAN AD LITEM -- RIGHTS AND POWERS. The guardian ad
 27 litem has the following rights and powers to fulfill the duties set forth in
 28 section 15-5-315, Idaho Code, which shall continue until the resignation of
 29 the guardian ad litem or until the court removes the guardian ad litem or no
 30 longer has jurisdiction, whichever occurs first.

31 (1) The guardian ad litem shall have the right and power to file plead-
 32 ings, motions, memoranda and briefs on behalf of the ward, and to have all of
 33 the rights of the ward, whether conferred by statute, rule of court, or oth-
 34 erwise.

35 (2) All parties to any proceeding under this chapter shall promptly no-
 36 tify the guardian ad litem, and the guardian's attorney, if any, of all hear-
 37 ings, staff hearings or meetings, investigations, depositions, and signifi-
 38 cant changes of circumstances of the ward.

39 (3) Except to the extent prohibited or regulated by federal law, upon
 40 presentation of a copy of the order appointing the guardian ad litem, any
 41 person or agency, including, without limitation, any hospital, school or-
 42 ganization, department of health and welfare, doctor, nurse or other health
 43 care provider, psychologist, psychiatrist, police department, or mental
 44 health clinic, shall permit the guardian ad litem to inspect and copy perti-
 45 nent records relating to the ward necessary for the proceeding for which the
 46 guardian ad litem has been appointed.

47 (4) The guardian ad litem may request, and the court may order whether
 48 in response to such request or otherwise, a criminal history and background
 49 check to be conducted at the proposed guardian's expense on any individual

1 who resides in the ward's proposed residence. Any such check shall be con-
2 ducted pursuant to ~~section 56-1004A(2) and (3)~~ chapter 25, title 56, Idaho
3 Code.

4 SECTION 7. That Section 39-1105, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 39-1105. CRIMINAL HISTORY CHECKS. (1) All owners, operators, and em-
7 ployees of a daycare facility who have direct contact with children and all
8 other individuals thirteen (13) years of age or older who have unsupervised
9 direct contact with children or are regularly on the premises of a daycare
10 facility shall complete and pass a criminal history and background check in
11 conformance with ~~section 56-1004A~~ chapter 25, title 56, Idaho Code, at least
12 every five (5) years.

13 (2) Criminal history checks on those persons under eighteen (18) years
14 of age shall include a check of the juvenile justice records of adjudications
15 of the magistrate division of the district court, county probation services
16 and department records as authorized by the minor and his parent or guardian.

17 (3) Notwithstanding the provisions of section 39-1103, Idaho Code,
18 which provide for exemption from the provisions of this chapter, any per-
19 son who owns, operates or is employed by a private school for educational
20 purposes for children four (4) through six (6) years of age or a private
21 kindergarten shall comply with the provisions of this section.

22 SECTION 8. That Section 66-404, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSERVA-
25 TORS. (1) A person with a developmental disability or any person interested
26 in his welfare may petition for a finding of legal disability or partial le-
27 gal disability and appointment of a guardian or co-guardians, or conservator
28 or co-conservators, or both.

29 (2) The petition shall:

30 (a) State the names and addresses of the persons entitled to notice un-
31 der subsection (4) of this section;

32 (b) Describe the impairments showing the respondent is developmentally
33 disabled, the respondent's ability to receive, evaluate and communi-
34 cate information, and the respondent's ability to manage financial re-
35 sources and meet essential requirements for physical health or safety;

36 (c) State the nature and scope of guardianship and/or conservatorship
37 services sought;

38 (d) Describe the respondent's financial condition, including signif-
39 icant assets, income and ability to pay for the costs of judicial pro-
40 ceedings; and

41 (e) State if the appointment is made by will pursuant to section 15-5-
42 301, Idaho Code, and the name-(s) and address-(es) of the person-(s) named
43 in the will to be guardian.

44 (3) Upon filing of a petition, the court shall set a date for a hearing,
45 appoint an attorney to represent the respondent in the proceedings unless
46 the respondent has an attorney, and authorize an evaluation committee to ex-
47 amine the respondent, interview the proposed guardians and/or conservators

1 and report to the court in writing. All reports shall be under oath or affir-
2 mation and shall comply with Idaho supreme court rules.

3 (4) Notice of the time and place of the hearing on the petition together
4 with a copy of the petition shall be served no less than fourteen (14) days
5 before the hearing on:

6 (a) The respondent;

7 (b) The respondent's spouse, parents and adult children, or if none,
8 the respondent's closest relative, if any can be found; and

9 (c) Any person who is currently serving as guardian, or conservator or
10 who is providing care for the respondent.

11 Notice shall be served personally if the person to be served can be found
12 within the state. If the person to be served cannot be found within the
13 state, service shall be accomplished by registered mail to such person's
14 last known address.

15 (5) The respondent is entitled to be present at the hearing in person,
16 to present evidence, to call and cross-examine witnesses, and to see or hear
17 all evidence in the proceeding.

18 (6) At the hearing, the court shall:

19 (a) Determine whether the respondent has a developmental disability;

20 (b) Evaluate the respondent's ability to meet essential requirements
21 for physical health or safety and manage financial resources;

22 (c) Evaluate the ability of the proposed guardian and/or conservator
23 to act in the respondent's best interests to manage the respondent's fi-
24 nancial resources and meet essential requirements for the respondent's
25 physical health or safety;

26 (d) Determine the nature and scope of guardianship or conservatorship
27 services necessary to protect and promote the respondent's well-being;

28 (e) Evaluate the ability of the respondent or those legally responsible
29 to pay the costs associated with the judicial proceedings and fix re-
30 sponsibility therefor; and

31 (f) (i) As an alternative to appointing one (1) guardian or
32 one (1) conservator, the court may appoint no more than two (2)
33 co-guardians or no more than two (2) co-conservators if the court
34 finds:

35 1. The appointment of co-guardians or co-conservators will
36 best serve the interests of the person with a developmental
37 disability; and

38 2. The persons to be appointed as co-guardians or co-con-
39 servators will work together cooperatively to serve the best
40 interests of the person with a developmental disability.

41 (ii) The parents of a person with a developmental disability
42 shall have preference over all other persons for appointment as
43 co-guardians or co-conservators, unless the court finds that the
44 parents are unwilling to serve as co-guardians or co-conserva-
45 tors, or are not capable of adequately serving the best interests
46 of the person with a developmental disability; and

47 (iii) If the court appoints co-guardians or co-conservators, the
48 court shall also determine whether the co-guardians or co-conser-
49 vators:

50 1. May act independently;

1 2. May act independently but must act jointly in specified
2 matters; or

3 3. Must act jointly.

4 The determination by the court must be stated in the order of appointment and
5 in the letters of guardianship or conservatorship.

6 (7) No individual shall be appointed as guardian or conservator of an
7 incapacitated person unless all of the following first occurs:

8 (a) The proposed guardian or conservator has submitted to and paid for
9 a criminal history and background check conducted pursuant to ~~section~~
10 ~~56-1004A(2) and (3)~~ chapter 25, title 56, Idaho Code;

11 (b) In the case of a petition for guardianship and pursuant to an order
12 of the court so requiring, any individual who resides in the inca-
13 pacitated person's proposed residence has submitted, at the proposed
14 guardian's expense, to a criminal history and background check con-
15 ducted pursuant to ~~section 56-1004A(2) and (3)~~ chapter 25, title 56,
16 Idaho Code;

17 (c) The findings of such criminal history and background checks have
18 been made available to the evaluation committee by the department of
19 health and welfare; and

20 (d) The proposed guardian or conservator provided a report of his or
21 her civil judgments and bankruptcies to the evaluation committee and
22 all others entitled to notice of the guardianship or conservatorship
23 proceeding pursuant to subsection (4) of this section.

24 (8) The provisions of paragraphs (a) and (d) of subsection (7) of this
25 section shall not apply to an institution ~~nor~~ or to a legal or commercial en-
26 tity.

27 (9) Each proposed guardian and conservator and each appointed guardian
28 and conservator shall immediately report any change in his or her criminal
29 history and any material change in the information required by subsection
30 (7) of this section to the evaluation committee, to all others entitled to
31 notice of the guardianship or conservatorship proceeding pursuant to sub-
32 section (4) of this section and to the court.

33 SECTION 9. An emergency existing therefor, which emergency is hereby
34 declared to exist, this act shall be in full force and effect on and after
35 July 1, 2026.