

Dear Senators MARTIN, Riggs, Stennett, and  
Representatives WOOD, Vander Woude, Chew:

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

IDAPA 16.05.06 - Criminal History and Background Checks (ZBR Chapter Rewrite) - Proposed  
Rule (Docket No. 16-0506-2201).

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 08/29/2022. 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 09/26/2022.

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 334-4854, or send a written request to the address on the  
memorandum attached below.



Terri Kondeff  
Director

# Legislative Services Office Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee  
**FROM:** Principal Legislative Drafting Attorney - Elizabeth Bowen  
**DATE:** August 11, 2022  
**SUBJECT:** Department of Health and Welfare

IDAPA 16.05.06 - Criminal History and Background Checks (ZBR Chapter Rewrite) - Proposed Rule  
(Docket No. 16-0506-2201)

### Summary and Stated Reasons for the Rule

This proposed rule rewrites a chapter of rules relating to criminal history and background checks, in order to streamline and simply the language.

### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund.

### Statutory Authority

This rulemaking appears to be authorized pursuant to several sections of the Idaho Code.

cc: Department of Health and Welfare  
Frank Powell and Trinette Middlebrook

### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

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Paul Headlee, Deputy Director Legislative Services Office	Kristin Ford, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Glenn Harris, Manager Information Technology
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## IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

### 16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

#### DOCKET NO. 16-0506-2201 (ZBR CHAPTER REWRITE)

#### 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, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), 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 August 17, 2022.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule language.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

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

This rulemaking is not anticipated to have any fiscal impact on State General Funds, or any other known funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, ([Vol. 22-4, pp. 30-31](#)).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**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 August 24, 2022.

DATED this 30th day of June, 2022.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500  
fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0506-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS**

**000. LEGAL AUTHORITY.**

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code. US Public Law 92-544, authorizes the Department to submit fingerprints and receive responses from the Federal Bureau of Investigations for the processing of background checks. IRS Publication 1075 requires the Department to submit fingerprints and establish a personnel screening program for its employees who have access to the Federal Tax Information File as part of their duties. Under 42 USC Section 9858f, the Department is required to check specific records for federal child care programs. ( )

**001. SCOPE AND POLICY.**

**01. Scope.** These rules assist the Department in the protection of children and vulnerable adults by providing requirements to conduct criminal history and background checks of individuals licensed or certified by the Department, or who provide care or services to children or vulnerable adults. Individuals requiring a criminal history check are identified in Department rules. ( )

**02. Policy.** It is the Department's policy to conduct fingerprint-based criminal history and background checks on individuals who have completed a criminal history application. The criminal history applicant is required to disclose any pertinent information regarding crimes or findings that would disqualify the individual from providing care or services to children or vulnerable adults. The Department may obtain information for these criminal history and background checks from the following sources: ( )

- a. Federal Bureau of Investigation; ( )
- b. Idaho State Police Bureau of Criminal Identification; ( )
- c. Any state or federal Child Protection Registry; ( )
- d. Any state or federal Adult Protection Registry; ( )
- e. Any state Sexual Offender Registry; ( )
- f. Office of Inspector General List of Excluded Individuals and Entities; ( )
- g. Idaho Department of Transportation Driving Records; ( )
- h. Nurse Aide Registry; and ( )
- i. Other states and jurisdictions records and findings. ( )

**002. -- 009. (RESERVED)**

**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. ( )

**03. Background Check 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. ( )

**04. Clearance.** A clearance is a document designated by the Department as the official result of a completed criminal history and background check with no disqualifying crimes or relevant records found. ( )

**05. Conviction.** An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.04.a. through 010.04.d. of this rule: ( )

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

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

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

**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: ( )

**i.** When the individual has entered into participation in a drug court; or ( )

**ii.** When the individual has entered into participation in a mental health court. ( )

**06. 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. ( )

**07. 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: ( )

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

**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. ( )

**08. Department.** The Idaho Department of Health and Welfare or its designee. ( )

**09. Direct Patient Access Employee.** Any individual who has access to a patient or resident of a long-term care provider or facility whether through employment or contract, and who has duties or performs tasks that involve (or may involve) one-on-one (1:1) contact with a patient or resident or has access to his personal belongings. Volunteers are not considered a Direct Patient Access employee of a long-term care provider or facility unless volunteers are required to undergo a criminal history background check per the rules applicable to that specific type of facility or provider. ( )

**10. 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. ( )

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

**12. Enhanced Clearance.** An enhanced clearance is a clearance issued by the Department that includes a search of child protection registries in states or jurisdictions in which an applicant has resided during the preceding five (5) years. See Section 126 of these rules. ( )

**13. Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. ( )

**14. Good Cause.** Substantial reason, one that affords a legal excuse. ( )

**15. Relevant Record.** A relevant record is a record that is found in a search of criminal records or registries checked by the Department as provided in Section 56-1004A, Idaho Code, and these rules. ( )

**011. -- 049. (RESERVED)**

**050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.**

The fee for a Department fingerprint-based criminal history and background check is up to seventy dollars (\$70) for an individual. The applicant is responsible for the cost of the criminal history and background check. At the discretion of the Department, the fee may be waived for certain individuals. An applicant is responsible for any additional costs incurred by the Department paid to agencies, judicial, or law enforcement jurisdictions in other states. The Department will collect the additional funds to cover its costs. ( )

**051. -- 059. (RESERVED)**

**060. AGENCY RESPONSIBILITIES.**

**01. Initial Registration.** Agencies required to have Department criminal history and background checks on individuals must register with the Department and receive an agency identification number before criminal history and background check applications are processed or accessed. ( )

**02. Change in Name or Ownership.** An agency or facility must: ( )

**a.** If acquired by another entity, the new ownership will register as a new agency and provide contact information to obtain a new agency identification number and website access within thirty (30) calendar days of acquisition. New ownership occurs when the agency obtains a new federal Employer Identification Number with the Internal Revenue Service. ( )

**b.** The previous ownership will settle any background check debt with the Department prior to the completion of the acquisition. The Department reserves the right to not acknowledge the transfer to the new ownership if the previous ownership background check debt is not settled. ( )

**c.** If there is a change to its name or location, the agency will update their profile on the Department website with their new name, location, and contact information within thirty (30) calendar days of the change. ( )

**03. Screen Applicants.** The agency should screen applicant criminal history and background check disclosures that are submitted to the Department website to determine the suitability of the applicant for employment or program participation. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment or program participation should be made during the initial application review. ( )

**04. Ensure Time Frames Are Met.** The agency is responsible for ensuring the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. ( )

**05. Review Background Check Results.** The agency is responsible for reviewing the results of the

criminal history and background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The agency must complete this review within fourteen (14) calendar days of the clearance being accessible on the Department’s website. ( )

**06. Employment Determination.** The Department does not make the final fitness determination for employment or program participation for the applicant. The agency will make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults after reviewing the applicant’s background check results when the applicant is cleared. ( )

**07. Discovery of Criminal Convictions or Disqualifying Records After Clearance is Issued.** Once the Department has issued a clearance, if the agency discovers that the applicant may no longer be eligible to hold a Department clearance due to the existence of either a conviction for a disqualifying offense, or a relevant record, the agency is required to report their discovery to the Background Check Unit. The Department may compel the applicant to be processed for a new background check as described in Subsection 195.04 of these rules if it deems it appropriate to do so. The disqualifying offenses are listed in Section 210 of these rules. Other disqualifying relevant records are listed in Section 200 of these rules. ( )

**08. Retention of Records.** The agency will retain all applicant criminal history and background check documentation as provided in Subsection 300.02.c of these rules. ( )

**061. -- 069. (RESERVED)**

**070. NON-COMPLIANCE WITH THESE RULES.**

The Department will report an agency’s non-compliance with these rules to the applicable licensing or certification unit or appropriate program integrity unit. ( )

**071. -- 099. (RESERVED)**

**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. ( )

<b>Required Classes</b>	<b>Idaho Code and IDAPA Chapter(s)</b>
<b>01.</b> Adoptive Parent Applicants	IDAPA 16.06.01, “Child and Family Services” IDAPA 16.06.02, “Child Care Licensing”
<b>02.</b> Behavioral Health Programs	IDAPA 16.07.17, “Substance Use Disorders Services” IDAPA 16.07.33, “Adult Mental Health Services” IDAPA 16.07.37, “Children’s Mental Health Services.” IDAPA 16.07.39, “Appointment of Designated Examiners and Dispositioners.”
<b>03.</b> Certified Family Homes	Section 39-3520, Idaho Code IDAPA 16.03.19, “Certified Family Homes” IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits”
<b>04.</b> Children’s Agency Facility Staff	IDAPA 16.06.02, “Child Care Licensing”
<b>05.</b> Children’s Residential Care Facilities	Section 39-1210, Idaho Code IDAPA 16.06.02, “Child Care Licensing”
<b>06.</b> Children’s Therapeutic Outdoor Programs	Section 39-1208, Idaho Code IDAPA 16.06.02, “Child Care Licensing”
<b>07.</b> Citizen Review Panel Members	Public health district volunteers who must comply with Section 16-1647, Idaho Code, “Citizen Review Panels - Child Protection Legislative Review Panel”

<b>Required Classes</b>	<b>Idaho Code and IDAPA Chapter(s)</b>
<b>08.</b> Contracted Non-Emergency Medical Transportation Providers	IDAPA 16.03.09, "Medicaid Basic Plan Benefits"
<b>09.</b> Court Appointed Guardians and Conservators	Title 15, Chapter 5, Idaho Code, & Title 66, Chapter 4, Idaho Code. Court required guardian and conservator criminal history and background checks are not provided Department clearances described in Section 180.01 of these rules
<b>10.</b> Designated Examiners and Dispositioners	IDAPA 16.07.39, "Appointment of Designated Examiners and Dispositioners"
<b>11.</b> Developmental Disabilities Agencies	IDAPA 16.03.21, "Developmental Disabilities Agencies" (DDA) IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
<b>12.</b> Emergency Medical Services (EMS)	IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements"  IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements"
<b>13.</b> High Risk Providers of Medicaid	IDAPA 16.03.09, "Medicaid Basic Plan Benefits" The Medicaid Provider Handbook
<b>14.</b> Home and Community-Based Services (HCBS)	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" IDAPA 16.04.17, "Residential Habilitation Agencies"
<b>15.</b> Home Health Agencies	IDAPA 16.03.07, "Home Health Agencies"
<b>16.</b> Idaho Behavioral Health Plan (IBHP)	IDAPA 16.03.09, "Medicaid Basic Plan Benefits"
<b>17.</b> Idaho Child Care Program (ICCP)	IDAPA 16.06.12, "Idaho Child Care Program" (ICCP)
<b>18.</b> Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)	IDAPA 16.03.11, "Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)"
<b>19.</b> Licensed Foster Care	Section 39-1211, Idaho Code IDAPA 16.06.02, "Child Care Licensing"
<b>20.</b> Licensed Day Care	Sections 39-1105, 39-1113, and 39-1114, Idaho Code IDAPA 16.06.02, "Child Care Licensing"
<b>21.</b> Mental Health Services	IDAPA 16.07.33, "Adult Mental Health Services" IDAPA 16.07.37, "Children's Mental Health Services"
<b>22.</b> Personal Assistance Agencies	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
<b>23.</b> Personal Care Service Providers	Section 39-5604, Idaho Code IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
<b>24.</b> Residential Assisted Living Facilities	IDAPA 16.03.22, "Residential Assisted Living Facilities"
<b>25.</b> Service Coordinators and Paraprofessional Providers	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
<b>26.</b> Skilled Nursing Facilities	IDAPA 16.03.02, "Skilled Nursing Facilities"
<b>27.</b> Substance Use Disorders Services	IDAPA 16.07.17, "Substance Use Disorders Services"
<b>28.</b> Support Brokers and Community Support Workers	IDAPA 16.03.13, "Consumer-Directed Services"

( )



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

The following Department employees, contractors, and volunteers are subject to criminal history and background checks. ( )

**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. ( )

**02. Employees of Bureau of Compliance.** ( )

**a.** Fraud Investigators; ( )

**b.** Utilization Review Analysts; and ( )

**c.** Background Check Unit staff. ( )

**03. Employees at State Institutions.** All employees of the following state funded institutions; ( )

**a.** Southwest Idaho Treatment Center, Nampa, Idaho; ( )

**b.** State Hospital North, Orofino, Idaho; ( )

**c.** State Hospital South, Blackfoot, Idaho; and ( )

**d.** State Hospital West, Nampa, Idaho. ( )

**04. Emergency Medical Services (EMS) Employees.** EMS communication specialists and managers. ( )

**05. Other Employees.** Other Department employees as determined by the Director. ( )

**102. -- 119. (RESERVED)**

**120. APPLICATION FOR A CRIMINAL HISTORY AND BACKGROUND CHECK.**

Individuals who are subject to a criminal history and background check must submit their application on the Department website. ( )

**01. Application Form.** The applicant requests a criminal history and background check by completing and submitting the Department's application on the Department website. The individual's application authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The following information is required to complete the application: ( )

**a.** Name, current and former names, or aliases; ( )

**b.** Current and former addresses as requested in the application; ( )

**c.** Date of birth, that appears on a valid identification document issued by a governmental entity; ( )

**d.** State and country of birth; ( )

**e.** Driver's license number, if licensed, state where licensed, and whether a license has ever been revoked or suspended. ( )

**f.** Other identifying information, including Social Security Number, Alien Registration Number,

gender, race, height, weight, eye color, and hair color; ( )

**g.** Agency information; ( )

**h.** Any criminal record or criminal offense information; ( )

**i.** Any pending charges or outstanding warrants; ( )

**j.** Any child or adult protection involvement; ( )

**k.** Any current Medicare or Medicaid Provider Exclusion; and ( )

**l.** Any other information requested on the application. ( )

**02. Disclosures.** The individual must disclose any conviction, pending charges or indictment for crimes, and furnish a description of the crime and the particulars on the application. The individual must also disclose any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint, and any other information as required. ( )

**03. Failure to Disclose Information.** ( )

**a.** An applicant who falsifies or fails to disclose information on the application, may be subject to a conditional denial under Section 230.01 and prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. ( )

**b.** An applicant required to obtain a criminal history and background check under Section 126 of these rules that knowingly makes a materially false statement in connection to their background check will receive an unconditional denial as provided in Section 200 of these rules. ( )

**121. -- 124. (RESERVED)**

**125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.**

The Department will provide the results of a check of the Idaho Child Protection Central Registry to any agency that requires it to comply with the provisions of applicable federal, state, or local law. The Department will process those requests as described in this rule. ( )

**01. Request for an Idaho Child Protection Central Registry Check.** A request for an Idaho Child Protection Central Registry check must be submitted on the Department form by mail, facsimile transmission, or e-mail attachment. ( )

**02. Fee Amount.** The fee for an Idaho Child Protection Central Registry check is twenty dollars (\$20) for each subject checked. ( )

**03. Department Response.** A response will be returned to the agency initiating the request for the check within fourteen (14) days of receipt of the request. The Department's response will be limited to confirmation whether the subject is listed in the Registry. If detailed information is wanted, the requestor may contact the Department's Division of Family and Community Services for assistance. ( )

**126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.**

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a criminal history and background check. If the applicant's previous background check included checks of out-of-state Central Child Protection Registries within the previous six (6) months, the applicant is not required to complete them again. ( )

**01. Adoptive Parent Applicants.** ( )

**02. Behavioral Health Programs.** ( )

- 03. Certified Family Homes. ( )
- 04. Children’s Agency Facility Staff. ( )
- 05. Children’s Residential Care Facilities. ( )
- 06. Children’s Therapeutic Outdoor Programs. ( )
- 07. Citizen Review Panel Members. ( )
- 08. Idaho Child Care Program (ICCP). ( )
- 09. Licensed Foster Care. ( )
- 10. Licensed Day Care. ( )
- 11. Mental Health Services. ( )
- 12. Substance Use Disorders Services. ( )

**127. -- 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. ( )

**01. Department Fingerprinting Locations.** A fingerprint appointment is scheduled at designated Department locations where the Department will collect the individual's fingerprints. Locations for the closest Department fingerprint collection office where an individual may submit fingerprints are listed on the Department’s website. The applicant may contact the Background Check Unit for additional guidance. ( )

**02. Submitting Fingerprints by Mail.** When an individual elects to have fingerprints collected by a local law enforcement agency or by the applicant’s agency, a federal FD-258 Applicant fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the applicable fee to the address indicated on the Department’s website. The applicant fingerprints and fees must be received by the Department in the time frame required in Section 150 of these rules. ( )

**03. Submission of Reprints.** In the event that an individual’s submitted fingerprints are deemed unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. ( )

**141. -- 149. (RESERVED)**

**150. TIME FRAME FOR SUBMITTING FINGERPRINTS.**

The applicant fingerprints must be received by the Department within twenty-one (21) days from the date of submission in the Department background check system whether the fingerprints are sent by mail or collected at a Department fingerprinting location. If the Department does not receive the applicant fingerprints within sixty (60) calendar days from the background check submission date on the Department website, the applicant must complete a new application. ( )

**01. Availability to Provide Services.** The applicant may provide services on the day the application is submitted on the Department website, provided the applicant has not disclosed any disqualifying crimes or relevant records. ( )

**02. Unavailability to Provide Services.** The applicant is not eligible to provide services when their fingerprints have not been collected within this timeframe, Failure to meet the timeframe designates the applicant background check as incomplete. ( )

**03. No Extension of Time Frame.** The Department will not extend the twenty-one (21) day time frame, unless the agency provides just cause. If the Department does not extend the time frame, the applicant must be removed from any situation where they can have direct access to the vulnerable person or their belongings. ( )

**151. -- 159. (RESERVED)**

**160. WITHDRAWAL OF APPLICATION.**

An individual may withdraw their application for a criminal history and background check at any time. An individual who withdraws their application cannot provide services, or receive licensure or certification. Fees paid for the cost of the criminal history and background check are non-refundable once the fingerprints have been submitted by the Department to the Idaho State Police. ( )

**161. -- 169. (RESERVED)**

**170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE CRIMINAL HISTORY AND BACKGROUND CHECK.**

An individual is available to provide services pending completion of the criminal history and background check as described in Subsections 170.01 and 170.02 of this rule. The individual must have submitted their application and fingerprints in the time frame required in Section 150 of these rules, in order to provide services. ( )

**01. Employees of Providers, Contractors, Bureau of Emergency Medical Services (EMS), or the Department.** An individual is available to provide services on a provisional basis at the discretion of the agency or EMS Bureau if no disqualifying crimes or relevant records are disclosed on the application. The agency must review the application for any disqualifying crimes listed in Section 210 of these rules or other relevant records listed in Section 230 of these rules. The agency determines whether the applicant poses a health or safety risk to vulnerable clients before allowing the individual to provide services until a clearance or denial is issued by the Department. ( )

**02. Individuals Licensed or Certified by the Department.** Individuals applying for licensure or certification by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is complete and a clearance is issued by the Department. The following are individuals required to have a clearance prior to providing services: ( )

- a.** Adoption or foster care applicants and adults in the home; ( )
- b.** Certification or licensure applicants; ( )
  - i.** Certified family homes; ( )
  - ii.** Licensed Emergency Medical Services applicants; and ( )
  - iii.** Department licensed child care providers. ( )

**171. -- 179. (RESERVED)**

**180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.**

The Department will issue a clearance or denial once the criminal history and background check is completed. ( )

**01. Results of Criminal History and Background Checks.** The results may be accessed by the individual on the Department's website. The agency may access the information that is provided by the applicant and information obtained from the state, county, or through registries. ( )

**02. Findings for Court Required Criminal History and Background Checks.** As required in Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court ordered criminal history and background check to individuals appointed by the court according to Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code. ( )

**03. Department Employees That Have Access to the Internal Revenue Service Federal Tax Information File.** Employees assigned to the Self Reliance Division that access the Internal Revenue Service Federal Tax Information file as part of their duties will be processed for a background check by the Background Check Unit. The Self Reliance Division will make their fitness determination based on their own policies. ( )

**181. APPLICATION STATUS.**

An individual and their agency may check on the criminal history and background check status and the individual's availability to work on the Department website at <https://healthandwelfare.idaho.gov/chu>. ( )

**182. -- 189. (RESERVED)**

**190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.**

**01. 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 is available for printing to the individual and their agency. ( )

**02. Clearance Types.** An applicant required to pass a criminal history and background must receive a clearance as provided below: ( )

**a.** A clearance for an applicant who is not seeking an enhanced clearance for employment in classes listed in Section 126 of these rules, may receive a clearance for a criminal history and background check when a relevant record identified on any child protection registry is disclosed, but the applicant has no conviction of any crimes listed in Subsections 210.01, 210.02, 210.03 of these rules. ( )

**b.** An applicant who receives an enhanced clearance has met the criteria to have obtained a clearance as provided in Subsection 190.02.a. of this rule. An enhanced clearance is required for each of the classes listed in Section 126 of these rules and requires searches from states and jurisdictions where the applicant has resided in the previous five (5) years. A relevant record on any child protection registry will result in a denial under Subsection 200.01 of these rules and no clearance will be issued. An applicant who applies to work in any of these classes must receive or have an enhanced clearance. ( )

**03. Revocation of Clearance.** An individual's previously issued clearance may be revoked for the following: ( )

**a.** The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. ( )

**b.** The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. ( )

**c.** The applicant withdraws their application from the background check process as described in Section 160 of these rules. ( )

**d.** The criminal history and background check fees are not paid, or are insufficient to cover the costs of the background check. ( )

**191. -- 194. (RESERVED)**

**195. USE OF PREVIOUSLY COMPLETED CRIMINAL HISTORY AND BACKGROUND CHECKS.**

The agency is responsible for confirming that the applicant has completed a criminal history and background check under Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same agency eliminates the requirement for a new background check. ( )

**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: ( )

**a.** An applicant is accepting employment with a new agency, and their last Department criminal history and background check was completed more than three (3) years prior to their employment date; or ( )

**b.** An applicant is applying for licensure or certification with the Department, and their last Department criminal history and background check was completed more than three (3) years prior to their employment date or licensure application date; ( )

**c.** An applicant is terminated by the agency, is subsequently rehired by the same agency, and the applicant background check is older than three (3) years at the time of the rehire, the provisions of Subsections 300.01.a through 300.01.b of these rules apply. ( )

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

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

**b.** Prior to allowing the individual to provide services, the agency must affiliate itself to the individual's clearance through the Department's website by having the agency's identification number added to the individual's background check; and ( )

**c.** The agency completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. ( )

**i.** The action must be initiated by the agency 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 agency 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.c of these rules. ( )

**d.** An applicant is terminated by the agency, is subsequently rehired by the same agency, and the applicant background check was completed less than three (3) years from the time of the rehire, the provisions of Subsections 300.02.b and 300.02.c of these rules apply. ( )

**e.** An agency not listed in Section 126 of these rules may use an individual's Department clearance or enhanced clearance that was obtained within three (3) years from date of employment. ( )

**f.** An individual with a current clearance that is not Enhanced but is completed within three (3) years from date of employment, who applies to a new agency or employer identified in Section 126 of these rules, must submit an application for a new criminal history and background check to obtain an enhanced clearance. An agency or employer identified in Subsections 126.08 and 126.10 of these rules may not hire an employee with a clearance obtained prior to January 1, 2020, unless the Enhanced clearance complies with the requirements found in 42 USC Section 9858. ( )

**03. Agency Discretion.** Any agency or 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. ( )

**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 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. ( )

**196. -- 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. ( )

**01. Reasons for an Unconditional Denial.** Unconditional denials are issued for: ( )

**a.** Disqualifying crimes described in Section 210 of these rules; ( )

**b.** A relevant record on any Child Protection Registry for the classes of individuals listed in Section 126 of these rules; ( )

**c.** A relevant record on the Idaho Child Protection Central Registry with a Level one (1) or Level two (2) designation for all other applicants covered by these rules; ( )

**d.** A relevant record on the Nurse Aide Registry; ( )

**e.** A relevant record on either the state or federal sex offender registries; ( )

**f.** A relevant record on the U. S. Health and Human Services, Office of the Inspector General List of Excluded Individuals and Entities (LEIE); ( )

**g.** A relevant record on the state Medicaid Exclusion List; or ( )

**h.** A materially false statement made knowingly in connection to the Department's criminal history and background check application for the classes of individuals listed in Section 126 of these rules will result in a five-year disqualification period for the applicant. ( )

**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. ( )

**03. Challenge of Department's Unconditional Denial.** An individual has twenty-eight (28) 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 Background Check Unit. ( )

**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, "Contested Case Proceedings and Declaratory Rulings," Section 152. ( )

**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, "Contested Case Proceedings and Declaratory Rulings," Section 152. ( )

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

**05. Appeal of an Unconditional Denial.** Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of

the Department. ( )

**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 their record as described in this rule. ( )

**01. Disqualifying Crimes.** The disqualifying crimes, described in Subsection 210.01 of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. ( )

- a.** Crimes against vulnerable adults: ( )
  - i.** Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; ( )
  - ii.** Abandoning a vulnerable adult, as defined in Section 18-1505A, Idaho Code; ( )
  - iii.** Sexual abuse and exploitation of a vulnerable adult, as defined in Section 18-1505B, Idaho Code. ( )
- b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; ( )
- c.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6604, Idaho Code; ( )
- d.** Hiring, employing, or using a minor to engage in certain acts, as defined in Section 18-1517A, Idaho Code; ( )
- e.** Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code; ( )
- f.** Incest, as defined in Section 18-6601, Idaho Code; ( )
- g.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; ( )
- h.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; ( )
- i.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ( )
- j.** Mayhem, as defined in Section 18-5001, Idaho Code; ( )
- k.** 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; ( )
- l.** Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ( )
- m.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; ( )
- n.** Rape, as defined in Section 18-6101, Idaho Code; ( )



- o.** Robbery, as defined in Section 18-6501, Idaho Code; ( )
  - p.** Felony stalking, as defined in Section 18-7905, Idaho Code; ( )
  - q.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ( )
  - r.** Ritualized abuse of a child, as defined in Section 18-1506A, Idaho Code; ( )
  - s.** Female Genital Mutilation, as defined in Section 18-1506B, Idaho Code; ( )
  - t.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506, Idaho Code; ( )
  - u.** Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code; ( )
  - v.** Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code; ( )
  - w.** Video voyeurism, as defined in Section 18-6605, Idaho Code; ( )
  - x.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ( )
  - y.** 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; ( )
  - z.** Any felony punishable by death or life imprisonment; ( )
  - aa.** Attempted strangulation, as defined in Section 18-923, Idaho Code; ( )
  - bb.** Felony domestic violence, as defined in Section 18-918, Idaho Code; ( )
  - cc.** Battery with intent to commit a serious felony, as defined in Section 18-911, Idaho Code; ( )
  - dd.** Assault with intent to commit a serious felony, as defined in Section 18-909, Idaho Code; or ( )
  - ee.** Aggravated sexual battery, as defined in Section 18-925, Idaho Code; ( )
  - ff.** Sexual abuse of an animal, as defined in Section 18-6602, Idaho Code; ( )
  - gg.** Sexual abuse of human remains, as defined in Section 18-6603, Idaho Code; or ( )
  - hh.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-304, 18-305, 18-306, 18-307, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ( )
- 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 this rule, or any substantially conforming foreign criminal violation: ( )
- a.** Any felony not described in Subsection 210.01, or 210.03 of this rule; ( )
  - b.** Misdemeanor domestic violence, as defined in Section 18-918, Idaho Code; ( )
  - c.** Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; ( )
  - d.** Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; ( )

- e. Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; ( )
  - f. Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; ( )
  - g. Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; ( )
  - h. Public assistance fraud, as defined in Sections 56-227, 56-227A, 56-227D, 56-227E and 56-227F, Idaho Code; ( )
  - i. Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; ( )
  - j. Stalking in the second degree, as defined in Section 18-7906, Idaho Code; ( )
  - k. Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; ( )
  - l. Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; ( )
  - m. Sexual Battery, as defined in Section 18-924, Idaho Code; ( )
  - n. Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; ( )
- or
- o. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-204, 18-205, 18-304, 18-306, 18-307, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. ( )

**03. Disqualifying Three-Year Crimes.** The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for three (3) years from the date of the conviction for the crimes listed in this rule, or any substantially conforming foreign criminal violation: ( )

- a. A controlled substance manufacture, delivery, or possession with intent to deliver or manufacture offense, as defined in Section 37-2732, Idaho Code, felony; ( )
  - b. A controlled substance paraphernalia offense, as defined in Section 37-2734B, Idaho Code, felony; ( )
- or
- c. Operating a motor vehicle under the influence of alcohol, drugs, or any other intoxicating substance offense, as defined in Section 18-8004, Idaho Code, felony. ( )

**04. 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: ( )

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

**211. -- 219. (RESERVED)**

**220. CONDITIONAL DENIAL.**

The Department may issue a conditional denial within fourteen (14) days of the completion of a criminal history and background check. An individual who receives a conditional denial is not available to provide services or be licensed or certified by the Department. ( )

**01. Reasons for a Conditional Denial Issuance.** A conditional denial is issued when the criminal history and background check reveals a relevant record as described in Section 230 of these rules. ( )

**02. Effective Date of a Conditional Denial.** A conditional denial is effective immediately. An applicant may not reapply for a criminal history and background check for three (3) years from the date of the conditional denial. ( )

**03. Request an Exemption Review.** An individual may request an exemption review as described in Section 250 of these rules when a conditional denial has been issued. ( )

**221. -- 229. (RESERVED)**

**230. RELEVANT RECORDS RESULTING IN A CONDITIONAL 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 relevant record on their record as described Subsections 230.01 and 230.02 of this rule. ( )

**01. Individuals Licensed or Certified by the Department or a Department Employee.** A conditional denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.d. of this rule: ( )

- a. A substantiated child protection complaint or a substantiated adult protection complaint; ( )
- b. The Department determines there is a potential health and safety risk to vulnerable adults or children; ( )
- c. The individual has falsified or omitted information on the application form; or ( )
- d. The Department determines additional information is required. ( )

**02. Employees of Providers or Contractors.** A conditional denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.02.b. of this rule. ( )

- a. A substantiated child protection complaint or a substantiated adult protection complaint; or ( )
- b. The Department determines additional information is required. ( )

**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: ( )

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

**231. -- 249. (RESERVED)**

**250. EXEMPTION REVIEWS.**

An individual cannot request an exemption review for an unconditional denial. An individual may request an exemption review within fourteen (14) days from the date of the issuance of a conditional denial by the Department, unless good cause is shown for a delay. Once the Department receives the request for an exemption review, the Department will initiate a review for crimes or actions not designated in Section 210 of these rules. The review may consist of examining documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review the Department determines is necessary. Exemption reviews are governed and conducted as provided in Subsections 250.01 through 250.05 of this rule. ( )

**01. Scheduling an Exemption Review.** Upon receipt of a request for an exemption review, the Department will determine the type of review and conduct the review within thirty (30) days from the date of the request. Where an in-person review is appropriate, the Department will provide the individual at least seven (7) day notice of the review date unless the time is waived by the individual. When an in-person review is scheduled, the individual will be notified by the Department that they may bring witnesses and present evidence during the review. ( )

**02. Factors Considered at the Exemption Review.** The Department will consider the following factors or evidence during the exemption review: ( )

- a.** The severity or nature of the crime or other findings; ( )
- b.** The period of time since the incident under review occurred; ( )
- c.** The number and pattern of incidents; ( )
- d.** Circumstances surrounding the incident that would help determine the risk of repetition; ( )
- e.** Relationship of the incident to the care of children or vulnerable adults; ( )
- f.** Activities since the incident, such as continuous employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of rehabilitation; ( )
- g.** Granting of a pardon by the Governor or the President; and ( )
- h.** The falsification or omission of information on the application form and other supplemental forms submitted. ( )

**03. Exemption Review Determination.** The Department determines the individual's suitability based upon the information provided during the exemption review. The Department will issue a notice of decision within fifteen (15) business days of the close of the review. ( )

**04. Exemption Review Decision Effective Dates.** The Department's exemption review decision is effective for three (3) years from the date of the notice of decision. ( )

**05. Exemption Review Appeal.** Exemption reviews conducted under this section of rule may be appealed under IDAPA 16.05.03, "Contested Cases Proceedings and Declaratory Rulings." The filing of a notice of appeal does not stay the action of the Department. The individual who files an appeal must establish that the Department's denial was arbitrary and capricious. ( )

**251. -- 259. (RESERVED)**

**260. PREVIOUS EXEMPTION REVIEW DENIALS.**

The individual's current request for a criminal history and background check for any Department program when there has been a denial from an exemption review within the last three (3) years will automatically be denied. ( )

**261. -- 269. (RESERVED)**

**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 them 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. Any previous clearance issued by the Department will be revoked as described in Section 190 of these rules. ( )

**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 within one hundred and twenty (120) calendar days from the date of notice. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. When the Department's reconsideration results in a clearance after review, any previously revoked clearance will be restored as described in Section 190 of these rules. ( )

**271. -- 299. (RESERVED)**

**300. CRIMINAL HISTORY AND BACKGROUND CHECK RECORDS.**

Criminal history and background checks done under this chapter become the property of the Department and are held confidential. ( )

**01. Release of Criminal History and Background Check Records.** A copy of the criminal history and background check as defined in Section 010 of these rules will be released: ( )

**a.** To the individual who has requested the criminal history and background check and upon receipt of a written request to the Department, provided the individual releases the state from all liability; ( )

**b.** In response to a subpoena issued by a court of competent jurisdiction; or ( )

**c.** As otherwise required by law. ( )

**02. Retention of Records.** ( )

**a.** If an exemption is granted, the criminal history and background record, supplemental documentation received, notes from the review, and the decision will be retained by the Department for a period of at least five (5) years after the criminal history and background check is completed. ( )

**b.** If an exemption is denied, the Department retains all records and electronic recordings pertaining to the review for five (5) years after the criminal history and background check is completed. ( )

**c.** The agency will retain all applicant criminal history and background check documentation for a period consistent with the agency's own personnel documentation retention schedule. ( )

**03. Use and Dissemination Restrictions for FBI Criminal Identification Records.** According to the provisions under 28 CFR 50.12, the Department will: ( )

**a.** Notify the individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; ( )

**b.** In determining the suitability for licensing or employment, provide the individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record; ( )

**c.** Notify the individual that they have fifteen (15) days to correct or complete the FBI identification

record or to decline to do so; and ( )

**d.** Advise the individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are provided in 28 CFR 16.34. ( )

**301. -- 999. (RESERVED)**

## PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

**Department or Agency:** Idaho Department of Health and Welfare \_\_\_\_\_

**Agency Contact:** Fernando Castro \_\_\_\_\_ **Phone:** 208-332-7999 \_\_\_\_\_

**Date:** 05/02/2022 \_\_\_\_\_

**IDAPA, Chapter and Title Number and Chapter Name:**

[IDAPA 16.05.06, Criminal History and Background Checks](#) \_\_\_\_\_

**Fee Rule Status:** XX \_\_\_\_\_ **Proposed** \_\_\_\_\_ **Temporary**

**Rulemaking Docket Number:** 16-0506-2201 \_\_\_\_\_

### STATEMENT OF ECONOMIC IMPACT:

The Department expects to incur in expenses related to rule promulgation and other administrative and public information expenses related to its name change from Criminal History Unit (CHU) to Background Check Unit (BCU) as it is proposed in the rule text. The current estimate is \$8,000.00 for these combined expenditures.

Regarding revenue, the fees that the Department charges for the processing of background checks and queries into the State of Idaho Central Child Protection Registry remain unchanged from the rule that became effective on 3/15/2022.

The fee for the Department's background check is up to seventy dollars (\$70). The applicant is responsible for any additional costs incurred by the Department that it paid to other agencies, judicial or law enforcement jurisdictions and the Department will collect the corresponding amount.

The fee for the completion of the check of the Idaho Child Protection Central Registry that the Department completes to support a lawful request is twenty dollars (\$20).