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**IDAPA 16
TITLE 05
Chapter 06**

16.05.06 - RULES GOVERNING MANDATORY CRIMINAL HISTORY CHECKS

000. LEGAL AUTHORITY.

The legal authority for promulgation of these rules is in accordance with the following provisions: (12-10-92)

01. Section 56-202(b). Section 56-202(b), Idaho Code, which requires the Director to promulgate, adopt and enforce such rules and methods of administration as may be necessary or proper to carry out the Public Assistance Law, Title 56, Chapter 2, Idaho Code. (12-10-92)

02. Sections 56-203(h) and 56-204(A). Sections 56-203(h) and 56-204(A), Idaho Code, which require the Department to establish rules to be observed in placing children for adoption and for protective services. (12-10-92)

03. Sections 39-1208 and 16-1826(2). Sections 39-1208 and 16-1826(2), Idaho Code, which require the Department to establish minimum standards and licensing requirements for juvenile detention centers. (12-10-92)

04. Section 39-1210(10). Section 39-1210(10), Idaho Code, which requires the Department to obtain a criminal history check on the owners, operators and employees of all children's treatment facilities. (12-10-92)

05. Section 39-1211(4). Section 39-1211(4), Idaho Code, which requires the Board of Health and Welfare to promulgate rules for the provision of criminal background checks for foster homes and foster group homes. (12-10-92)

06. Section 39-1213. Section 39-1213, Idaho Code, which requires the Board of Health and Welfare to establish procedures for licensing foster homes, group homes, children's agencies and children's treatment facilities which include investigation upon application. (12-10-92)

07. Section 39-3372. Section 39-3372, Idaho Code, which requires the Department to obtain a criminal background check on persons applying for certification to provide adult foster care. (12-10-92)

08. Section 39-3342. Section 39-3342, Idaho Code, which requires the Department to obtain a criminal history check from a person applying for licensure as a residential care facility operator. (12-10-92)

09. Section 39-5604. Section 39-5604, Idaho Code, which requires the Director to conduct background checks on all personal care service providers. (12-10-92)

001. TITLE AND SCOPE.

01. Title. These rules are to be cited in full as Idaho Department of Health and Welfare Rules, Title 05, Chapter 06, "Rules Governing Mandatory Criminal History Checks." (12-10-92)

02. Scope. These rules are established to facilitate the protection of children, developmentally disabled, mentally retarded, and other vulnerable persons by requiring criminal history background checks of individuals providing care, services, or assuming responsibility for these persons. (12-10-92)

002. (RESERVED).

003. INDIVIDUALS AND PROGRAMS COVERED.

A criminal history check and self-declaration will be required of the following persons: (12-10-92)

01. Individuals. (12-10-92)

a. Personal care providers. (12-10-92)

b. Adult foster care providers. (12-10-92)

- c. Residential care facility operators. (12-10-92)
- d. Foster home parents and any other nonfoster parent or other individual of the age eighteen or older residing in the home. (12-10-92)
- e. All owners, administrators, operators, employees, and volunteers of private group homes or state operated group homes. (12-10-92)
- f. All owners, administrators, operators, employees, and volunteers of children's treatment facilities. (12-10-92)
- g. All persons applying to the Department for an adoptive study. (12-10-92)
- h. All persons petitioning the court for adoption of a child. (12-10-92)
- i. All owners, administrators, operators, employees, and volunteers of juvenile detention centers. (12-10-92)

02. Department Programs. All current departmental employees presently assigned to, and all new applicants or transferees, reinstated former employees, student interns, promotees, contractors and contract employees, volunteers, and others assigned to programs which involve direct contact with children, either in the provision of direct services or which involve access to juveniles who are in the custody or guardianship or care of the Department or programs within the Department that involve direct contact with children or access to juveniles who are in the custody, guardianship, or care of the Department including, but not limited to, the following: State Hospital South, Adolescent Program; Juvenile Diagnostic Unit; Youth Services Center; all regionally operated day treatment programming staffed by personnel of the Family and Children's Services Program and/or Mental Health Programs and Child Development Center Programs and others; and all other programs that include provision of services to children as an alternative to parental care for all or any portion of the day. "Others assigned" specifically refers to employees of the Department of Education or local school districts assigned to regional day treatment programming or institutional settings. (12-10-92)

004. CRIMINAL HISTORY CHECK.

The criminal history check will consist of a departmental review of information obtained from the Federal Bureau of Investigation, the National Crime Information Center, Bureau of Criminal Identification, the Statewide Criminal Identification Bureau, and the statewide child and adult abuse complaint register. (12-10-92)

01. Costs. The check will be based upon the name(s) and fingerprints of the individual. The cost of the check shall be the responsibility of the individual. Criminal history checks may be repeated for applicants or participants at the cost and discretion of the Department. A new Criminal History Check must be made on any application to a different program if a year or more has lapsed since the last history check. Costs are the responsibility of the applicant. (12-10-92)

02. Complaint Validation. To be validated a complaint must be confirmed, worker witnessed, court determined or evaluated, involve a confession or be substantiated through the presence of significant evidence which establishes a clear factual foundation. (12-10-92)

005. SELF-DECLARATION.

The self-declaration is a signed statement by the individual certifying that they have never been convicted or received a withheld judgment for any felony or misdemeanor except a minor traffic violation; that they have not been the subject of a valid report of child abuse or neglect pursuant to Sections 16-1601, et. seq., Idaho Code, or the subject of a valid report of adult abuse pursuant to Sections 39-5201, et seq., Idaho Code. All convictions or withheld judgments, except for minor traffic violations, must be listed on the self-declaration. (12-10-92)

006. DENIAL.

01. Criminal Record/Valid Complaint. If the criminal record transcript of any of the persons specified

in Section 003 discloses a plea or verdict of guilty to any misdemeanor or felony, or a withheld judgment or a valid child or adult complaint, or a conviction following a plea of "nolo contendere," for any crime other than a minor traffic violation (for which the fine was fifty dollars (\$50) or less) the Department shall deny the licensure, certification, employment, homestudy or recommendation which is being sought. (12-10-92)

02. False Information. Falsification of information or refusal by the applicant to comply with the criminal background check requirements shall be valid grounds for denial. (12-10-92)

03. Previous Denial. A previous denial by the Department within three (3) years of the current application will constitute an automatic denial. (12-10-92)

007. EXEMPTION.

01. Hearing. A person denied under Subsection 006.01 may request an exemption review hearing in accordance with Department of Health and Welfare Rules, Title 05, Chapter 03, Section 304, "Rules Governing Contested Cases and Declaratory Rulings." However, no exemption shall be granted if the criminal record transcript reveals a conviction or withheld judgment for any of the following enumerated crimes or their equivalent under the laws of Idaho or any other jurisdiction: (12-10-92)

02. Enumerated Crimes. (12-10-92)

a. Murder, voluntary manslaughter or assault or battery with intent to commit a serious felony. (12-10-92)

b. Kidnapping. (12-10-92)

c. Arson. (12-10-92)

d. Poisoning. (12-10-92)

e. Mayhem. (12-10-92)

f. Rape. (12-10-92)

g. Incest. (12-10-92)

h. Crime against nature. (12-10-92)

i. Injury to children as defined in Idaho Code 18-1501. (12-10-92)

j. Forcible sexual penetration by use of a foreign object. (12-10-92)

k. Possession of sexually exploitive material as defined in Idaho Code Section 1507A. (12-10-92)

l. Sexual abuse or exploitation of a child. (12-10-92)

m. Lewd conduct with a minor. (12-10-92)

n. Sale or barter of a child. (12-10-92)

o. Any felony punishable by death or imprisonment in the state prison for life. (12-10-92)

008. -- 029. (RESERVED).

030. CRIMINAL HISTORY CHECK RECORDS.

Criminal history checks done pursuant to this chapter become the property of the Department and shall be held confidential. (12-10-92)

01. Release of Criminal History Checks. A copy of the criminal history check shall be released: (12-10-92)
- a. To the individual named therein upon written request to the Department, provided the individual also releases the state from all liability; (12-10-92)
 - b. If necessary to be disclosed as required by law in an employment, adoption, licensing, or certification action; or (12-10-92)
 - c. In response to a subpoena issued by a court of competent jurisdiction. (12-10-92)
02. Retention of Records. Criminal history checks shall be retained in the Central Criminal History Unit for a period of not less than three (3) years after the discontinuance of licensure, certification, employment. (12-10-92)
03. Use and Dissemination Restrictions for FBI Criminal Identification Records. According to the provisions set forth in Title 28, Code of Federal Regulations, Section 50.12, the Department will: (12-10-92)
- a. Notify the applicant or individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; (12-10-92)
 - b. In determining the suitability for licensing or employment, provide the applicant or individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record; (12-10-92)
 - c. Afford the applicant or individual fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and (12-10-92)
 - d. Advise the applicant or individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are set forth in Title 28, CFR, Section 16.34. (12-10-92)

031. -- 995. (RESERVED).

996. ADMINISTRATIVE PROVISIONS.

Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, Title 05, Chapter 03, Sections 300, et. seq. and 304, "Rules Governing Contested Cases and Declaratory Rulings." (12-10-92)

997. CONFIDENTIALITY.

Before any information about an individual covered by these rules and contained in departmental records may be released to the person who is the subject of the record, to another departmental unit, to another governmental agency, or to a private individual or organization, the unit of the Department with custody of the record must comply with Idaho Department of Health and Welfare Rules, Title 05, Chapter 01, "Rules Governing Protection and Disclosure of Department Records." (12-10-92)

998. INCLUSIVE GENDER AND NUMBER.

For purpose of Idaho Department of Health and Welfare Rules, Title 05, Chapter 06, "Rules Governing Mandatory Criminal History Checks," words used in the masculine gender include the feminine, and words used in the singular include the plural, and vice versa where appropriate. (12-10-92)

999. SEVERABILITY.

The rules of Idaho Department of Health and Welfare Rules, Title 05, Chapter 06, "Rules Governing Mandatory Criminal History Checks," are severable. If any rule or part thereof or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter. (12-10-92)