

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fifth Legislature Second Regular Session - 2020

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 310

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO CRIMINAL HISTORY AND BACKGROUND CHECKS; AMENDING SECTION  
56-1004A, IDAHO CODE, TO REMOVE A REFERENCE TO THE NATIONAL CRIME INFOR-  
MATION CENTER.

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

SECTION 1. That Section 56-1004A, Idaho Code, be, and the same is hereby  
amended to read as follows:

56-1004A. CRIMINAL HISTORY AND BACKGROUND CHECKS. (1) To assist in the  
protection of children and vulnerable adults, the legislature hereby autho-  
rizes the department of health and welfare to conduct criminal history and  
background checks of individuals who provide care or services to vulnera-  
ble adults or children and are identified in rule as being required to have a  
criminal history and background check.

(2) To further assist in the protection of vulnerable adults, the de-  
partment of health and welfare may:

(a) Conduct criminal history and background checks of those seeking  
guardianship or conservatorship and those who reside in an incapacit-  
ated person's proposed residence;

(b) Make the findings of such criminal history and background checks  
available to visitors, guardians ad litem and evaluation committees ap-  
pointed pursuant to chapter 5, title 15 or chapter 4, title 66, Idaho  
Code; and

(c) Promulgate such rules as are necessary to carry out the provisions  
of this section.

The provisions of subsection (6) of this section shall not apply to criminal  
history and background checks conducted pursuant to this subsection.

(3) Criminal history and background checks will be conducted by the de-  
partment of health and welfare when:

(a) Required or ordered by the court pursuant to chapter 5, title 15 or  
chapter 4, title 66, Idaho Code;

(b) Requested by those required to undergo such checks; and

(c) Paid for in full by those required to undergo such checks.

(4) The criminal history and background check will be a fingerprint-  
based check of state and national records and may include information from  
the following:

(a) Statewide criminal identification bureau;

(b) Federal bureau of investigation (FBI);

(c) ~~National crime information center;~~

~~(d)~~ Statewide sex offender registry;

~~(e)~~ Idaho transportation department driving records;

~~(f)~~ Adult and child protection registries;

~~(g)~~ Nurse aide registry; and

1       (hg) Department of health and human services office of the inspector  
2       general list of excluded individuals and entities.

3       (5) The department of health and welfare shall promulgate rules to fur-  
4       ther define those individuals who are required to have a criminal history and  
5       background check and the effective date. Each individual shall complete an  
6       application, which includes a notarized signature, on forms provided by the  
7       department. The completed application authorizes the department to obtain  
8       and release information in accordance with state and federal law. The appli-  
9       cant must disclose all information requested, including information on past  
10      convictions, driver's license revocations, and known adult or child protec-  
11      tion findings. Once an application has been completed, the employer, at its  
12      discretion, may allow the individual to provide care or services prior to the  
13      individual completing fingerprinting and pending completion of the criminal  
14      history and background check by the department. The department shall pro-  
15      mulgate rules defining the time frame for submitting the application. Under  
16      no circumstances may the individual be allowed to provide care or services  
17      where the employer has reviewed the completed application and the individual  
18      has disclosed a designated crime as set forth in rule.

19      (6) The department shall review the information received from the crim-  
20      inal history and background check and determine whether the applicant has  
21      a criminal or other relevant record that would disqualify the individual.  
22      The department shall determine which crimes disqualify the applicant and  
23      for what period of time according to promulgated rules. The process for the  
24      check and the issuance of a clearance or denial is set forth in department  
25      rules. The applicant shall be provided an opportunity for a formal review  
26      of a denial. The department shall communicate clearance or denial to the  
27      applicant and the applicant's employer.

28      (7) Applicants are responsible for the cost of the criminal history and  
29      background check except where otherwise provided by department rules.

30      (8) The department, or an employer of an applicant, who acts in reason-  
31      able reliance on the results of the criminal history and background check in  
32      making an employment decision, is immune from liability for that decision  
33      when it is based on such results.

34      (9) The department, its officers and employees are immune from liabil-  
35      ity for the consequences of including or excluding classes of individuals in  
36      the criminal history and background check process.

37      (10) Clearance through the criminal history and background check  
38      process is not a determination of suitability for employment.