

Proposed Amendments to the Idaho Court Administrative Rules
September 2024

The Administrative Office of the Court's Justice Services Division is seeking input on proposed revisions to Idaho Court Administrative Rule 47 regarding Criminal History Background Checks for certain court personnel and court appointed positions. Please send your comments to **Deena Layne**, dlayne@idcourts.net by **Tuesday, September 17, 2024**. Thank you.

(NOTE: Due to the significant number of revisions, this document does not include track changes or strikethroughs/underlines to indicate where the changes were made.)

Idaho Court Administrative Rule 47. Criminal History Background Checks.

Rule 47. Criminal History Background Checks

(a) **Persons Subject to a Criminal History Background Check.** All persons serving in, or applying for, the following positions or appointments must comply with this rule.

(1) Parenting Coordinator, section 32-717D, Idaho Code, and Rule 1002, Idaho Rules of Family Law Procedure,

(2) Domestic Violence Evaluator, Rule 75, Idaho Court Administrative Rules,

(3) Supervised Access Provider, section 32-717E, Idaho Code, and Rule 1003, Idaho Rules of Family Law Procedure,

(4) Guardian Ad Litem program director, staff member, volunteer, and board member, section 16-1632, Idaho Code and Rule 35, Idaho Juveniles Rules,

(5) Family Court Services Coordinator, section 32-1407, Idaho Code, and

(6) Domestic Violence Court Coordinator, section 32-1407, Idaho Code.

A record of all criminal history background checks shall be maintained in the office of the Supreme Court, through the Administrative Office of the Courts. If the applicant has cleared a

criminal history check for any position identified in this rule within the past 12 months, the criminal history check may also be used for any other position identified under this rule.

(b) Program or Employer Responsibilities.

The criminal history background check clearance is not a determination of suitability for employment or voluntary appointment. The Administrative Office's clearance means that a person was found to have no disqualifying crime or relevant record. The programs or employers are responsible for determining the individual's suitability for employment or volunteer appointments as described in this rule.

(1) *Screen Applicants.* The program or employer must screen applicants prior to initiating a criminal history and background check in determining suitability of the applicant for employment or voluntary appointment. If the applicant discloses a designated crime or offense as provided in subsection (h) of this rule, or discloses other information that would indicate a risk to the health and safety of children or vulnerable adults, a determination of suitability for appointment or employment should be made during the initial screening of the application.

(2) *Ensure Time Frames are Met.* The program or employer is responsible for ensuring that the required time frames are met for completion and submission of the application and fingerprints to the Administrative Office as required by this rule or as otherwise provided by law.

(3) *Employment or appointment determinations.* The program or employer will make a determination as to the ability or risk of the person to provide care or services to children or vulnerable adults.

(4) *Discovery of Criminal Conviction or Disqualifying Records After Clearance is Issued.* After a clearance is issued, if the employer or program discovers that the applicant may no longer be eligible for clearance due to the existence of either a conviction for a disqualifying offense, or a relevant record listed in this rule, the employer or program is required to report their discovery to the Administrative Office of the Courts. The Administrative Office may compel the applicant to be processed for a new background check under subsection (d) of this rule.

(c) Application for a Criminal History and Background Check. The criminal history check will consist of a self-declaration, fingerprints of the person applying, and information obtained from the following:

- (1) Federal Bureau of Investigation,
- (2) National Crime Information Center,
- (3) Idaho State Police Bureau of Criminal Identification,
- (4) State-based court records management systems,
- (5) National Sex Offender Registry,
- (6) Idaho Child Abuse and Neglect Central Registry, and
- (7) as otherwise required by law.

(d) **Self-Declaration.** Every person subject to this rule must complete a self-declaration form signed under penalty of perjury. The self-declaration authorizes the Supreme Court to obtain and release information without liability. The applicant must provide or disclose the following information on the self-declaration form:

- (1) The applicant's name(s), including any former, maiden or aliases used, address and date of birth which appears on a valid identification document issued by a governmental entity,
- (2) A description of all criminal conviction(s) or charges and the circumstances surrounding the incident(s),
- (3) Any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint,
- (4) A signed release of information authorizing the Supreme Court, through their Administrative Office of the Courts, to obtain the criminal background check information and release information without liability,
- (5) If the person has lived in another country or jurisdiction that is not covered by a national criminal background check under this rule, a criminal records check or a

“certificate of good conduct” from the embassy of any country or jurisdiction in which the person has resided within the previous seven (7) years.

The Administrative Director of Courts or designee may inquire or request details regarding any information provided on, or omitted from, the self-declaration form prior to making a determination. The Supreme Court, through its Administrative Office of the Courts, will complete the criminal history check and inform the person and applicable entity of the results.

(e) **Failure to Disclose Information.** Failure to provide a self-declaration form containing a release of information provision or information required under this rule will result in a denial of the application.

(f) **Criminal or Relevant Record - Action Pending.**

(1) *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 background check, the Administrative Director of Courts or designee may issue a notice of inability to proceed.

(2) *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 Administrative Director of Courts or designee. Any previous clearance will be revoked.

(3) *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 Administrative Director of Courts or designee for reconsideration within one hundred and twenty (120) calendar days from the date of notice. When the Administrative Director of Courts or designee receives this documentation, they will notify the applicant of the reconsideration and issue a clearance or denial. When the Administrative Director of Courts or designee’s reconsideration results in a clearance after review, any previously revoked clearance will be restored.

(g) **Updating Criminal History Checks.** Unless otherwise required by law or court rule to complete a criminal history check more frequently, every person subject to this rule must complete an updated criminal history check at least every five (5) years. An updated criminal history check must include a self-declaration form, and information as required under subsection (d) of this rule. The Supreme Court through its Administrative Office of the Courts

or any appointing court may, at its discretion, require a criminal history check or updated criminal history check of any person subject to this rule at any time. Five (5) years will be calculated from the date of the person's most recent criminal history check approval.

(h) Unconditional Denial.

Persons subject to this rule shall not be eligible to serve if they have pled guilty or been found guilty of one (1) or more of the designated crimes listed below, or their equivalent under the laws of any other jurisdiction, regardless of the form of the judgment or withheld judgment.

(1) *Designated Crimes.* No exemption shall be granted for any of the following designated crimes:

- (A) Armed Robbery, as defined by section 18-6501, Idaho Code,
- (B) Arson, as defined by sections 18-801 through 18-805, Idaho Code,
- (C) Forcible sexual penetration by use of a foreign object, as defined by section 18-6604, Idaho Code,
- (D) Incest, as defined by section 18-6601, Idaho Code,
- (E) Injury to a child, felony or misdemeanor, as defined by section 18-1501, Idaho Code,
- (F) Kidnapping, as defined by sections 18-4501 through 18-4503, Idaho Code,
- (G) Lewd conduct with a minor, as defined by section 18-1508, Idaho Code,
- (H) Mayhem, as defined by section 18-5001, Idaho Code,
- (I) Murder in any degree, voluntary manslaughter, assault or battery with intent to commit a serious felony, as defined by sections 18-4001, 18-4003, 18-4006, 18-4015, 18-909 and 18-911, Idaho Code,
- (J) Poisoning, as defined by sections 18-4014 and 18-5501, Idaho Code,
- (K) A felony involving a controlled substance, where the judgment or withheld judgment was entered within seven (7) years preceding the denial,
- (L) Possession of sexually exploitative material, as defined by section 18-1507A, Idaho Code,
- (M) Rape, as defined by sections 18-6101, Idaho Code,
- (N) Felony stalking, as defined by section 18-7905, Idaho Code,
- (O) Sale or barter of a child, as defined by section 18-1511, Idaho Code,
- (P) Sexual abuse or exploitation of a child, as defined by sections 18-1506, 18-1506A, 18-1507, and 18-1507A, Idaho Code,
- (Q) Any felony punishable by death or life imprisonment,

(R) Any felony involving any type or degree of embezzlement, fraud, theft or burglary, where the judgment or withheld judgment was entered within seven (7) years preceding the denial,

(S) Abuse, neglect, exploitation or abandoning of a vulnerable adult, as defined by sections 18-1505, 18-1505A, and 18-1505B Idaho Code,

(T) Attempt, solicitation, or conspiracy to commit any of the designated crimes,

(U) Domestic violence, felony, as defined by section 18-918, Idaho Code,

(V) Attempted strangulation, felony, as defined by section 18-923, Idaho Code, or

(W) Aggravated sexual battery, felony, as defined by section 18-925, Idaho Code.

(i) **Conditional Denial.** Except with respect to any crime which results in an unconditional denial under subsection (h) of this rule, the Administrative Director of Courts or designee may conditionally deny a person's application if:

(1) the criminal history check reveals a plea, finding or adjudication of guilt to any felony or misdemeanor (excluding traffic violations which do not result in a suspension of the individual's driver's license),

(2) the person has been found to have committed abuse, abandonment or neglect in a child protection or adult protection case,

(3) the person has a pending charge or criminal investigation,

(4) the person appears on the Idaho Child Abuse and Neglect Central Registry,

(5) the person has falsified or omitted information on the self-declaration form, or

(6) the person has a current or past civil protection order or criminal no contact order against him or her.

A conditional denial becomes a final unconditional denial within twenty-one (21) days from the date of the conditional denial notice unless, prior to the expiration of this period, the individual requests an exemption review which shall be conducted as provided in subsection (j) of this rule. The twenty-one (21) day period for filing a request for an exemption review may be extended by the Administrative Director of Courts or designee for good cause.

(j) **Exemption Review.** If an exemption review is requested in accordance with subsection (i) of this rule, the Administrative Director of Courts or designee shall initiate an exemption review of any cause, action, or crime for which a conditional denial was issued under subsection (i) of this rule. The review may consist of an evaluation of the documents and supplemental information provided by the applicant, a telephonic, virtual or in-person interview with the applicant, or any other examination of the applicant's criminal history background. The Administrative Director of Courts may appoint any authorized designee or designees to conduct any exemption review.

Exemption reviews shall be governed by and conducted as follows.

(1) *Scheduling an Exemption Review.* Upon receipt of the request for an exemption review, the Administrative Director of Courts or designee shall determine the type of review to be conducted. An exemption review shall be conducted within fifteen (15) business days from the receipt of the request. If an in-person review is scheduled, the applicant shall be provided with at least seven (7) days' notice of the exemption review date.

(2) *Factors to Be Considered.* During the review, the following factors shall be considered:

- (A) The severity or nature of the crime or other findings,
- (B) The period of time since the incident(s) under current review,
- (C) The number and pattern of incident(s),
- (D) Circumstances surrounding the incident(s) that would help determine the risk of repetition,
- (E) Activities since the incident(s) such as continuous employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of rehabilitation,
- (F) Granting of a pardon by the Governor or the President,
- (G) The falsification or omission of information on the self-declaration form and other supplemental forms submitted,
- (H) The relationship between the crime or finding and the position sought, and
- (I) Any other factor deemed relevant.

(3) *Decision After Review.* A notice of decision shall be issued within fifteen (15) business days of the date of review.

(k) **Criminal History Records.** Criminal history checks done pursuant to this rule become the property of the Supreme Court and shall be held confidential as provided by law or court rule.

(1) *Release of Criminal History Checks.* A copy of the criminal history check shall be released:

- (A) To the person named in the criminal history upon receipt of a written request to the Supreme Court, provided the person also releases the state from all liability; or
- (B) In response to a subpoena issued by a court of competent jurisdiction.

(2) *Release of Information Obtained Through a Criminal History Check.* Information may be released, upon written request or upon signed release by the person who is the subject of the criminal history check, to:

- (A) any judge considering appointment of the person; and
- (B) as otherwise required by law.

(3) *Retention of Records.* The criminal history record, supplemental documentation received, notes from the review, and the decision shall be retained by the Supreme Court for a period of not less than six (6) years after the criminal background check is completed.

(4) *Use and Dissemination Restrictions for FBI Criminal Identification Records.* According to the provisions set forth in 28 CFR 50.12, the Supreme Court shall:

- (A) Notify the person fingerprinted that the fingerprints will be used to check the criminal history records of the FBI;
- (B) In determining the suitability for providing services or employment, provide the person the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record;
- (C) Afford the person fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and
- (D) Advise the person who wishes to correct the FBI identification record that the procedures for changing, correcting, or updating are set forth in 28 CFR 16.34.

(l) **Confidentiality.** Before any information obtained in a criminal history check may be released to the person who is the subject of the record, to another governmental agency or to a private person or organization, the Idaho Supreme Court will comply with federal Public Law 103-209 and 92-544.