

Idaho Division of Human Resources
Statewide Executive Branch Policy Section
Section 18: Criminal History Background Check Policy and Procedures

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18A. General Information

Purpose

The purpose of this policy is to outline expectations for conducting criminal history background checks on current and prospective state employees, contractors, and volunteers.

Overview

Criminal history background checks may be conducted to assess the suitability of candidates for positions where specific qualifications, behaviors, or responsibilities are critical to organizational success and the safety of employees, clients, and stakeholders. Agencies with existing background check requirements or procedures must ensure compliance with statewide standards, but such existing background check requirements may exceed the statewide standards outlined in this policy.

Positions are classified based on the level of access to sensitive data, vulnerable populations, financial systems, or critical infrastructure. This classification informs the minimum level of background check required:

- High-risk positions: Require fingerprint-based checks.
- Moderate-risk positions: May require name-based checks.
- Low-risk positions: May not require checks unless mandated by law.

All positions involving access to sensitive information, secure facilities, or vulnerable populations are subject to the same standards of review.

Scope

The presence of a criminal record or adverse information does not automatically disqualify an applicant. Appointing authorities should consider the nature of the offense, the time elapsed, and any evidence of rehabilitation. See Section 18D(4) for review and evaluation procedures and Section 18E for the appeal process.

This policy applies to initial hires, rehires, transfers, promotions, demotions, and any movement into a position of trust. Contractors and volunteers are subject to the same standards when their duties involve access to sensitive information, secure facilities, or vulnerable populations.

Agencies may maintain internal review processes for role specific disqualifiers (e.g., regulatory or program specific violations) in addition to criminal history review.

18B. Legal Compliance

The State of Idaho complies with all applicable state and federal laws, including:

Equal Employment Opportunity Commission (EEOC) Laws

Appointing authorities must not use background check information in a way that results in discrimination based on protected status (e.g., race, sex, age, disability). See Section 18F for resources including EEOC guidance.

Fair Credit Reporting Act (FCRA)

The FCRA regulates how employers use consumer reports – including criminal history – when making employment decisions. When using third-party consumer reporting agencies to gather information, the following are required:

- Disclosure: Inform the individual that a background check will be conducted.
- Consent: Obtain written authorization.
- Pre-Adverse Action Notice: If you might take negative action based on the report, notify the individual and provide a copy of the report.
- Adverse Action Notice: If you decide not to hire or promote based on the report, you must send a formal notice.
- Note: *FCRA requirements apply only when using third-party consumer reporting agencies. Background checks conducted directly through the Idaho State Police Bureau of Criminal Identification (BCI) are governed by state public record laws and are not subject to the FCRA.*

Idaho Fair Employment Practices Act

Also known as the [Idaho Human Rights Act](#), the Idaho Fair Employment Practices Act prohibits discrimination and discourages inquiries into criminal history unless relevant to the job. [Title 67, Chapter 59, Idaho Code](#).

Public Records

Criminal history maintained by the Idaho State Police Bureau of Criminal Identification (BCI) may be accessed with a signed release, in accordance with [Idaho Code §67-3008\(6\)](#).

18C. Definitions

CHRI: Criminal history record information.

Background Check: A review of criminal history record information as defined in Idaho Code §56-2501(3), conducted to assess an individual's suitability for employment or placement in a position of trust.

Contractor: Non-employee providing services via written agreement.

Current Employee: Actively employed individual.

FBI Fingerprint-Based Check: Nationwide search including federal records. Requires statutory authority (approved by the FBI Criminal Justice Information Law Unit) and waiver.

Idaho Bureau of Criminal Identification (BCI): Repository for criminal records.

Name-Based Criminal Background Check: Searches the Idaho Central Repository. No waiver or consent required under Idaho law (limited information available with no signed waiver).

Prospective Employee: An individual being considered for employment.

Risk Level: A classification of position based on the degree of access to sensitive data, vulnerable populations, financial systems, or critical infrastructure. At minimum, high-risk positions require fingerprint-based checks; moderate-risk positions may require name-based checks and low-risk positions may not require checks unless mandated by law.

Secure Facilities: State-operated or state-contracted locations where access is restricted for safety, security, or confidentiality reasons, including correctional facilities, juvenile detention centers, secure treatment units, and other controlled environments.

Waiver Required: Under the [Privacy Act of 1974](#), individuals must be notified about the purpose of the background check, how their information will be used, and their rights to review and challenge the accuracy of the record. This is done through a written waiver or consent form.

WIN Fingerprint-Based Check: State-level search via the Western Identification Network (WIN). Requires a signed waiver and written justification submitted to the appointing authority or their designee prior to initiating recruitment.

Volunteer: Unpaid individual performing services.

Vulnerable Populations: individuals who, because of age, disability, cognitive or physical limitations, dependency on state services, or placement in state custody or care, are at increased risk of harm, abuse, or exploitation. This includes children (under the age of 18), older adults (typically 60 years of age or older), individuals with developmental or other disabilities, individuals receiving behavioral health or social services, and persons in state custody, detention, or supervision.

18D. Criminal History Background Check Requirements Policy & Procedures

The timing of checks must comply with applicable laws and guidance. When feasible, criminal history checks should be conducted only after a conditional offer of employment has been made, except where law or regulation requires earlier screening. For example, Peace Officer Standards Training (POST) requires a full background check prior to making an offer.

Agencies are responsible for ensuring all criminal history background check requirements are included in job announcements.

To ensure consistency and legal compliance, the following statewide process should be followed when conducting background checks:

1. Pre-Check Authorization

- a. Appointing authorities must determine whether a criminal history background check is required based on the position's duties and risk level. Existing agency fingerprinting processes may continue if they meet statewide standards and are documented in the agency's internal procedures.
- b. For fingerprint-based checks, written justification must be submitted to and approved by the appointing authority or their designee prior to recruitment.
- c. Agencies should refer to the Background Check Decision Matrix in Section 18F to guide consistent and defensible decisions about whether a background check is required and what type is appropriate.

2. Disclosure and Consent

- a. Agencies must provide applicants with a clear disclosure of the criminal history background check process and obtain written consent before initiating any check, in accordance with the Fair Credit Reporting Act (FCRA).
 - i. Sample disclosure and authorization language is available through the [Consumer Financial Protection Bureau's model forms and disclosures](#). Final approval of any form should be done in consultation with legal.
- b. If the report was obtained directly through the Idaho State Police, the notice must include instructions for the individual to request their report through the BCI.

3. Check Initiation

- a. For current or prospective employees residing in other states, agencies may conduct additional state-specific checks when required by law, regulation, or agency policy.
- b. Background checks may be initiated through the Idaho State Police Bureau of Criminal Identification (BCI) using one or more of the following methods, depending on the position's classification and risk level:
 - i. Name-Based Check: Used for general screening purposes. Appropriate for low- to moderate-risk positions where fingerprinting is not required. Third-party vendors used for name-based checks must meet minimum standards for completeness, accuracy, and

verification. Agencies must report vendor concerns to DHR for statewide review.

- ii. WIN Fingerprint-Based Check: A state-level fingerprint search conducted through the Western Identification Network. Recommended for positions with access to sensitive data, secure facilities, or vulnerable populations. Requires a signed waiver and written justification submitted by the appointing authority or their designee prior to recruitment. Agencies without fingerprinting capacity should coordinate with DHR to identify regional fingerprinting resources or alternative access points.
- iii. Nationwide Fingerprint-Based Check: A nationwide fingerprint search that includes federal criminal records. Required for high-risk positions or where mandated by law. Requires approved statutory authority and a signed waiver in accordance with the Privacy Act of 1974.

4. Review and Evaluation

- a. Background check results must be reviewed by the appropriate agency personnel authorized to make the suitability determination for the position. When an agency receives a clearance or denial determination rather than the full report, the suitability review must be based on that determination. Access to fingerprint-based criminal history record information (CHRI) must comply with all applicable federal and state access restrictions.
- b. Agencies must consider the nature of any offense, the time elapsed, evidence of rehabilitation, and the relevance of the information to the position.
- c. FCRA Requirements: FCRA notification procedures apply only when an agency uses a third-party consumer reporting agency to obtain a background report for moderate-risk positions. When an employment decision may be negatively affected (e.g. withdrawal of offer) based on the report, agencies must follow the FCRA adverse action requirements¹, including:
 - i. Pre-Adverse Action Notice, including a copy of the report and the FCRA Summary of Rights.
 - ii. A reasonable opportunity for the applicant to respond or dispute the information.
 - iii. Adverse Action Notice if the decision is finalized.

FCRA procedures do not apply to high-risk positions requiring fingerprint-based checks conducted through state or federal criminal justice systems, as these checks are not obtained through a consumer reporting agency.

- d. Disqualification decisions must be based on job relevance, documented risk factors, and consistent application of statewide criteria. Agencies must reference the Background Check Decision Matrix in Section 18F when determining whether an offense is disqualifying.

¹ For detailed guidance, agencies may refer to the [FTC's official summary of FCRA requirements](#).

5. Confidentiality and Recordkeeping

- a. Criminal history background check results must be stored securely and maintained separately from personnel files. Access to, storage, dissemination, or destruction of fingerprint-based CHRI subjects the agency to audits by the ISP BCI and/or FBI audit staff.
- b. Records must be retained for a minimum of five (5) years.
- c. Dissemination of fingerprint-based criminal history information (CHRI) is strictly limited. CHRI may be used only by the requesting agency for the purpose for which it was obtained and may not be shared with any outside individual or agency. The subject of the record may request a copy of their own CHRI directly from the agency with a written request, in accordance with Idaho Code §67-3008(6), but the agency may not transmit CHRI to any third party, even at the subject's request. Agencies must comply with all applicable federal and state CHRI access and dissemination restrictions.

6. Ongoing Monitoring

- a. Agencies may conduct periodic re-checks for positions of trust, safety-sensitive roles, or as required by law or regulation.
 - i. Recommended re-check frequency is every five (5) years, or sooner if any of the following occur:
 - A workplace incident that may warrant review of criminal history, in accordance with [DHR Rule 15.04.01.190](#) regarding potential disciplinary action.
 - Reassignment to a higher-risk role.
 - A change in applicable law, regulation, or agency policy.
- b. Employees in positions of trust are responsible for promptly disclosing any criminal charges or convictions that may affect their ability to perform their duties or maintain required clearances.
- c. Any updates to criminal history must be evaluated using the same criteria as initial checks, including relevance to job duties, time elapsed, and evidence of rehabilitation. If legal requirements or agency policy regarding evaluation criteria change, agencies must update their internal procedures accordingly and ensure agency human resources staff are notified and trained on the revised standards.

7. Appeals

- a. Individuals may appeal adverse decisions through the process outlined in Section 18E.

18E. Appeal Process

This appeal process applies unless an agency or position is subject to a more specific appeal process established in statute or IDAPA. Individuals who receive adverse employment decisions based on background check results have the right to appeal using the following process. An adverse employment action refers to any decision that negatively affects an individual's employment status or opportunity.

1. Notification of Adverse Action

- a. Human resources must provide written notice of the adverse decision. The written notice may take the form of a rescinded offer letter, termination notice, or formal communication outlining the employment decision. It must clearly state that the decision was based in whole or in part on the results of a background check.
- b. The notice must include:
 - i. A copy of the background check report or determination, as applicable.
 - ii. A summary of rights under the FCRA, if applicable.
 - iii. The appeals process outlined in Section 18E(3) below.

2. Timeframe to Appeal

- a. The individual must submit a written appeal within **28 calendar days** of receiving the adverse action notice.
- b. Appeals must be received within this timeframe. Appeals submitted after this period shall be denied unless exceptional circumstances are documented.

3. Appeal Submission

- a. Appeals must include:
 - i. A written statement contesting the decision.
 - ii. Supporting documentation (e.g., court records, rehabilitation evidence, correction of inaccuracies).
- b. Appeals should be submitted to the agency's human resource office.

4. Instructions for Initiating an Appeal

- a. Appeals may be submitted via email or mail.
- b. The appeal should be addressed to the designated human resource contact listed in the adverse action notice.
- c. The subject line or header should clearly state “Background Check Appeal – [Applicant Name]”
- d. Agencies may provide a standard appeal form to streamline the process.

5. **Review Process**

- a. The agency shall conduct an individualized assessment of the background check results, considering:
 - i. The nature and relevance of the information to the position’s duties.
 - ii. The time elapsed since the events reflected in the record.
 - iii. The position’s risk level and required level of trust or access.
 - iv. Any information provided by the applicant regarding accuracy, context, or rehabilitation.
- b. The agency may consult with legal counsel as needed.
- c. When a background check is obtained through a third-party consumer reporting agency, the agency must follow FCRA adverse action procedures before making a final employment decision. This includes:
 - i. Providing a Pre-Adverse Action Notice with a copy of the report and the FCRA Summary of Rights.
 - ii. Allowing the applicant a reasonable opportunity to respond or dispute the information.
 - iii. Issuing an Adverse Action Notice if the decision is finalized.
- d. FCRA procedures do not apply to fingerprint-based criminal history checks conducted through state or federal criminal justice systems, as these are not consumer reports.

6. Decision and Notification

- a. A final decision shall be issued within ten (10) calendar days of receiving the appeal, unless additional time is needed to obtain clarifying information or consult with legal counsel. In such cases, the agency shall notify the applicant of the extended review timeline.
- b. The decision must be communicated in writing and include the rationale for the outcome.

7. Recordkeeping

- a. Agencies must retain appeal documentation in accordance with applicable records retention schedules.

18F. Resources

- [EEOC Background Check Guidance](#)
- [Idaho Code 67-3008\(6\) – Public Records Access](#)
- [FCRA Summary of Rights – Consumer Financial Protection Bureau.](#)
- [Idaho State Police BCI Fingerprinting & Background History Check Forms](#)
- Background Check Decision Matrix

When reviewing the matrix below, risk indicators should be evaluated collectively. A single factor (e.g., supervisory status or secure facility access) does not automatically elevate a position to high-risk. Agencies should use the matrix as guidance in conjunction with job duties, statutory requirements, and agency-specific background check requirements.

Unless otherwise noted, recommended actions apply at the high-risk level.

Review Criteria	Low Risk	Moderate Risk	High Risk	Recommended Action
Access to Sensitive Data	None or minimal	Limited or indirect	Direct and frequent	Fingerprint-based check for high risk
Interaction with Vulnerable Populations*	None	Occasional or supervised	Regular and unsupervised	Consider fingerprint-based check
Access to Financial Systems or Assets	None	View-only or indirect	Direct control or transactional authority	Fingerprint-based check for high risk
Facility Access (Secure/Restricted)	Public areas only	Escort-required access	Unescorted access to secure areas	Fingerprint-based check for high risk
Legal or Statutory Requirement	Not applicable	Agency discretion	Mandated by law or regulation	Follow statutory guidance
Contractor or Volunteer Status	No sensitive duties	Limited access	Duties mirror employee responsibilities	Apply same standards as employees

Supervisory or Fiduciary Role	None	Limited oversight	Full supervisory or fiduciary responsibility	Fingerprint-based check recommended
Prior Incidents or Risk Indicators	None	Minor concerns	Known risk factors or prior issues	Consult legal/DHR before proceeding

**Note: Interaction with vulnerable populations often overlaps with other risk indicators such as secure facility access, supervisory responsibilities, or prior incidents. Agencies should evaluate these criteria holistically to avoid duplication and ensure consistent classification.*