CHAPTER 50-11.3
CRIMINAL HISTORY RECORD INVESTIGATION

50-11.3-01. Criminal history record investigation required.

1. Before appointment as a legal guardian under chapter 27-20.1, the individual to be appointed legal guardian must be subject to an assessment that includes the result of a criminal history record investigation made under this section. In addition, any adult living in the household of the individual to be appointed legal guardian must be subject to a criminal history record investigation made under this section.
2. An individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 shall secure, from a law enforcement agency or other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law. Upon a request made under this section, a law enforcement agency shall take fingerprints of any individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 and may charge a reasonable fee to offset the cost of fingerprinting.
3. An individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 shall assure that information obtained under subsection 2 is provided to the department of health and human services.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of health and human services shall submit those fingerprints and that information to the bureau of criminal investigation.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of health and human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department of health and human services. The bureau of criminal investigation may charge a reasonable fee to offset the cost of providing any criminal history record information and may require payment of any charge imposed by the federal bureau of criminal investigation for a nationwide background check.
6. The department of health and human services shall provide an individual to be appointed legal guardian or any adult living in that individual's household, who provided the department with information under subsection 2, with any information received under this section from the bureau of criminal investigation which the department of health and human services is not prevented by federal law from disclosing to the individual to be appointed legal guardian or any adult living in that individual's household.
7. The department of health and human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11-06.8 and 50-12-03.2.

50-11.3-02. Criminal history record investigation - Effect of results.

1. An individual may not be licensed or approved as a foster parent or treated as having a home suitable for the adoption of any child other than the individual's stepchild and a foster care facility that employs or houses an individual may not be licensed or approved, if the individual is the subject of a criminal history record investigation that reveals:
   a. A felony conviction by a court of competent jurisdiction for criminal conduct involving:
      (1) Child abuse or neglect;
      (2) Domestic violence, as that term is used in chapter 14-07.1;

(3) A crime in which a child was a victim, including the creation or distribution of child pornography; or
(4) A crime involving violence, including rape, sexual assault, or murder, but not including other physical assault or battery;

b. A felony conviction entered within the past five years by a court of competent jurisdiction for criminal conduct involving:
(1) A crime involving violence not described in subdivision a;
(2) Any drug-related offense; or
(3) An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct described in subdivision a;

c. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subdivision b if five years have not elapsed after final discharge or release from any term of probation, parole, or other form of community corrections, without subsequent conviction, unless the individual demonstrates sufficient rehabilitation; or

d. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subdivision b or a misdemeanor conviction by a court of competent jurisdiction for a crime in which a child was the victim or a crime of violence if the individual is not sufficiently rehabilitated.

2. The department, in accordance with section 50-11-02, may adopt rules, using this section as a minimum requirement, to determine whether to deny or revoke a foster care facility's license, in accordance with section 50-11-07, if that facility houses or employs an individual who has a criminal record.

3. The department, in accordance with chapter 50-12, may adopt rules, using this section as a minimum requirement, to determine whether an individual or an individual's home is suitable for the adoption of any child through a child-placing agency.