

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PROPOSED
RULE I and the amendment of ARM)	ADOPTION AND AMENDMENT
23.12.102 pertaining to criminal)	
history information provided by the)	NO PUBLIC HEARING
department to qualified entities)	CONTEMPLATED

TO: All Concerned Persons

1. On January 8, 2024, the Department of Justice proposes to adopt and amend the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on December 22, 2023, to advise us of the nature of the accommodation that you need. Please contact Anne Dormady, Department of Justice, 2225 11th Avenue, Helena, Montana, 59601; telephone (406) 444-9759; fax (406) 444-0689; or e-mail adormady@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I ACCESS TO CRIMINAL HISTORY INFORMATION
PROVIDED BY THE DEPARTMENT TO QUALIFIED ENTITIES (1) A qualified entity shall register with the department before submitting a request for screening under this rule per the following conditions:

(a) each request shall be voluntary and conform to the requirements established in the National Child Protection Act of 1993, as amended;

(b) the qualified entity shall agree to comply with state and federal law and shall so indicate by signing an agreement approved by the department; and

(c) the department may periodically audit qualified entities to ensure compliance with federal law and this rule.

(2) A qualified entity shall submit a request to the department for screening of an employee, volunteer, or person applying to be an employee or volunteer, by submitting fingerprints. The qualified entity must maintain a signed waiver allowing the release of the state and national criminal history record information to the qualified entity.

(3) Each request shall be accompanied by the fee authorized by 44-5-307, MCA, plus the amount currently prescribed by the Federal Bureau of Investigation for the national criminal history check in compliance with the National Child Protection Act of 1993, as amended.

(4) The department shall provide directly to the qualified entity the state criminal history records that are not exempt from disclosure under 44-5-103, MCA, or otherwise confidential under law. A person who is the subject of a state criminal history record may challenge the record only as provided in 44-5-215, MCA.

(5) The determination whether the criminal history record shows that the employee or volunteer has been convicted of or is under pending indictment for any crime that bears upon the fitness of the employee or volunteer to have responsibility for the safety and well-being of children, the elderly, or disabled persons shall solely be made by the qualified entity. This rule does not require the department to make such a determination on behalf of any qualified entity.

(6) The qualified entity shall notify in writing the person's right to obtain a copy of any background screening report, including the criminal history records, if any, contained in the report, and of the person's right to challenge the accuracy and completeness of any information contained in any report and to obtain a determination as to the validity of the challenge before a final determination regarding the person is made by the qualified entity reviewing the criminal history information. A qualified entity that is required by law to apply screening criteria, including any right to contest or request an exemption from disqualification, shall apply screening criteria to the state and national criminal history record information received from the department for those persons subject to the required screening.

AUTH: 44-5-105, MCA

IMP: 44-5-105, MCA

REASON: The federal government now requires states with a Volunteer and Employee Criminal History System (VECHS) program to have either a state statute or rule in place to allow eligible entities to conduct federal criminal record checks on individuals such as employees, volunteers, contractors, and vendors who will have ongoing unsupervised interaction with vulnerable populations. The Department of Justice is proposing to adopt this rule to meet the federal government requirement.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

23.12.102 DEFINITIONS Unless the context requires otherwise, the following definitions apply to ARM 23.12.102 through 23.12.106:

(1) remains the same.

(2) "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(2) through (11) remain the same, but are renumbered (3) through (12).

(13) "Qualified entity" means a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

(12) and (13) remain the same, but are renumbered (14) and (15).

AUTH: 44-5-105, MCA

IMP: 44-5-213, MCA

REASON: After further consideration, the department decided to re-notice MAR Notice No. 23-12-274 as it was determined that the new rule would be more properly placed into ARM Title 23, chapter 12, subsection 1, thereby necessitating placing these two definitions into ARM 23.12.102 instead of into ARM 23.12.201. The definitions are necessary to clarify their meaning as used in proposed NEW RULE I.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Anne Dormady, Department of Justice, 2225 11th Avenue, Helena, Montana, 59601; telephone (406) 444-9759; fax (406) 444-0689; or e-mail adormady@mt.gov, and must be received no later than 5:00 p.m., January 5, 2024.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Anne Dormady at the above address no later than 5:00 p.m., January 5, 2024.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3,309 persons based on the number of background checks done last year.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. These rule changes will not result in any fee changes to what the department is currently charging for criminal history background checks. The rule

changes are simply memorializing what is already charged for this service. Last year, the department conducted 33,088 background checks for a fee of \$30 per background check.

/s/ DAVID ORTLEY

David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN

Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State November 28, 2023.