

JUDICIARY, RULES & ADMINISTRATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS

05.01.02 - RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS

DOCKET NO. 05-0102-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the end of legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is acted on by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2013 Idaho Administrative Bulletin, [Vol. 13-10, pages 29 through 44](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

No impact on state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon Harrigfeld, Director at (208) 334-5100 x.404.

DATED this October 4, 2013.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
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PO Box 83720, Boise, ID 83720-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rules provide clarification on Prison Rape Elimination Act (PREA) standards and how detention standards and PREA standards relate.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the juvenile detention centers in Idaho are already familiar with the changes being proposed through discussions and committee work.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon Harrigfeld, Director. (208) 334-5100x404.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this August 23, 2013.

[LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0102-1301

010. DEFINITIONS.

As used in this chapter: (4-5-00)

- 01. Adult.** A person eighteen (18) years of age or older. (4-5-00)
- 02. Body Cavity Search.** The examination and possible intrusion into the rectal or vaginal cavities to detect contraband. It is performed only by the medical authority. (4-5-00)
- 03. Chemical Agent.** An active substance, such as oleoresin capsicum, used to deter disturbances that might cause personal injury or property damage. (4-5-00)
- 04. Classification.** A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and/or programs according to their needs and existing resources, while addressing the safety and security of all detained juveniles. (~~4-5-00~~)()
- 05. Commit.** Commit means to transfer legal custody to the Idaho Department of Juvenile Corrections. (3-30-07)
- 06. Community-Based Program.** An in-home detention program or a nonsecure or staff secure residential or nonresidential program operated to supervise and provide competency development to juvenile offenders in the least restrictive setting, consistent with public safety, operated by the state or under contract with the state or by the county. (3-30-07)
- 07. Contact Visiting.** A program that permits juvenile offenders to visit with designated person(s). The area is free of obstacles or barriers that prohibit physical contact. (3-30-07)
- 08. Contraband.** Any item not issued or authorized by the detention center. (3-30-07)
- 09. Corporal Punishment.** Any act of inflicting punishment directly on the body, causing pain or injury. (4-5-00)
- 10. Court.** Idaho district court or magistrate's division thereof. (3-30-07)
- 11. Day Room/Multi-Purpose Room.** That portion of the housing unit used for varied juvenile offender activities which is separate and distinct from the sleeping rooms. (3-30-07)
- 12. Department.** The Idaho Department of Juvenile Corrections. (3-30-07)

13. Detention. Detention means the temporary placement of juvenile offenders who require secure custody for their own or the community's protection in physically restricting facilities. (3-30-07)

14. Detention Center. A facility established pursuant to Title 20, Chapter 5, Sections 20-517 and 20-518, Idaho Code, for the temporary placement of juvenile offenders who require secure confinement. (3-30-07)

15. Detention Records. Information regarding the maintenance and operation of the detention center including but not limited to correspondence, memorandums, complaints regarding the detention center, daily activity logs, security and fire safety checks, head counts, health inspection records, and safety inspection records, use of physical force records and use of restraints records, incident reports, employee training and certification for use of security equipment. (3-30-07)

16. Direct Care Staff. Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. (3-30-07)

17. Director. The Director of the Idaho Department of Juvenile Corrections. (3-30-07)

18. Electroshock Weapons. Weapons used for subduing a person by administering an electric shock which disrupts muscle function. (3-29-12)

19. Emergency Care. Care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call. Emergency care shall be provided to the juvenile offender population by the medical staff, physician, other appropriately trained staff, local ambulance services or outside hospital emergency rooms. (3-30-07)

20. Emergency Plans. Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. (4-5-00)

21. Health Appraisal. An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. (3-30-07)

22. Health Authority. The physician, health administrator, or agency responsible for the provision of health care services at the detention center. (3-30-07)

23. Health-Trained Employee. A person who operates within the limits of any license or certification to provide assistance to a physician, nurse, physician's assistant, or other professional medical staff. Duties may include preparing and reviewing screening forms for needed follow-up; preparing juvenile offenders and their records for sick call; and assisting in the implementation of medical orders regarding diets, housing, and work assignments. (3-29-12)

24. Housing Unit. The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. (3-30-07)

- 25. Incident Report.** A written document reporting any occurrence or event, or any other incident which threatens the safety and security of direct care staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (3-30-07)
- 26. Judge.** A district judge or a magistrate. (4-5-00)
- 27. Juvenile.** A person less than eighteen (18) years of age. (3-30-07)
- 28. Juvenile Detention Records.** Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. (3-30-07)
- 29. Juvenile Offender.** A person who was under the age of eighteen (18) at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (3-30-07)
- 30. Legal Custody.** The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. (3-30-07)
- 31. Legal Guardian.** A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender. (4-5-00)
- 32. Mechanical Restraints.** Devices used to restrict physical activity. (3-30-07)
- 33. Medical Employee.** A certified or licensed person such as a physician, nurse, physician's assistant, or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. (3-29-12)
- 34. Medical Records.** Separate records of medical examinations and diagnoses maintained by the health authority. (4-5-00)
- 35. Intake Medical Screening.** A system of structured observation/initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a medical employee or health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. (3-29-12)
- 36. Observation and Assessment Program.** A residential or nonresidential program designed to complete assessments of juvenile offenders. (3-30-07)
- 37. Pat Search.** The touching or feeling of a subject's clothed body to detect contraband. (4-5-00)

38. Perimeter Security. A system that controls ingress and egress to the interior of a detention center or institution. The system may include electronic devices, walls, fence, patrols or towers. (3-30-07)

39. Perimeter Security Check. Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breach. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas as designated by detention center policy and procedures. (3-30-07)

40. Petition for Exemption. A formal written document addressed to the Director of the Idaho Department of Juvenile Corrections requesting exception from a detention center standard. The petition for exemption must contain written justification why the petitioner should be relieved from enforcement of specific detention standard(s). (3-30-07)

41. Physical Intervention. Appropriate physical control used in instances of justifiable self-defense, protection of others, protection of property, or prevention of escapes. (3-30-07)

42. Policy and Procedures. Standard operating strategies and processes developed by the administrative authority governing detention center operations. (3-30-07)

a. Policy is a course of action that guides and determines present and future decisions and actions. Policies indicate the general course or direction of an organization within which the activities of the direct care staff must operate. (3-30-07)

b. Procedure is the detailed and sequential action which must be executed to ensure that policy is implemented. It is the method of performing an operation or a manner of proceeding on a course of action. It differs from a policy in that it directs actions required to perform a specific task within the guidelines of the policy. (4-5-00)

43. Prison Rape Elimination Act (PREA). A federal act promulgating standards that promote zero (0) tolerance toward sexual abuse of juvenile offenders by staff or by other juvenile offenders. Also known as Public Law 108-79 or PREA. ()

434. Rated Capacity. The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. (3-30-07)

445. Renovation. The alteration of the structure of any existing juvenile detention center, or portion thereof, for the purposes of changing or improving its function. This may include, but not be limited to, altering the physical layout of essential areas within the detention center or reconstruction of the existing structure, areas, or interior features. (3-30-07)

456. Rule Infraction. A violation of detention center rules of conduct or policy and procedures as governed by detention center policy and procedures. (3-30-07)

467. Safety Equipment. Devices primarily used for safety purposes such as but not

limited to firefighting equipment, for example, chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms. (4-5-00)

478. Secure Perimeter. The outer portions of a detention center that provide for secure confinement of juvenile offenders. (3-30-07)

489. Security Devices. Equipment used primarily to confine and control detained persons and may include but is not limited to locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers, electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain detention center security. (3-30-07)

4950. Staffing Plan. A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. (3-30-07)

501. Standards. Rules for Secure Juvenile Detention Centers, IDAPA 05, Title 01, Chapter 02. (3-30-07)

512. Strip Search. A visual examination of a juvenile offender's naked body for weapons, contraband, injuries, or vermin infestations. This also includes a thorough search of the juvenile offender's clothing while such is not being worn. (3-29-12)

523. Volunteer. A person who freely chooses to provide services to juvenile offenders or staff at a juvenile detention center, and is not compensated for the services or time. Volunteers are supervised by direct care staff. Volunteers shall not be unsupervised with juvenile offenders and will be supervised by direct care staff at the detention center. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

212. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.

01. Twenty-Four Hour Supervision. The detention center shall be staffed by detention center employees on a twenty-four (24) hour basis when juvenile offenders are being housed. (3-30-07)

02. Staffing. The detention center shall have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center shall have policy and procedures in place governing staffing and shall submit a staffing plan to the department prior to licensing and renewal. The following staffing plan is a recommendation only, and is not mandatory. It is recommended that ~~the staffing plan have at least two (2) staff awake and on duty through sleeping hours and the following staff during waking hours as governed by the one (1) direct care staff to eight (8) juvenile offenders, plus one (1) staff~~ rule: each secure juvenile facility shall maintain staff ratios of a minimum of one to eight (1:8) plus one (1) during resident waking hours and one to sixteen (1:16) during resident sleeping

hours, except during limited and discrete exigent circumstances, which shall be fully documented.
~~(3-30-07)~~()

a. If the detention center houses eight (8) or fewer juvenile offenders, there should be at least one (1) direct care staff and one (1) other staff awake at all times. (3-30-07)

b. If the detention center houses more than eight (8) juvenile offenders, there should be one (1) direct care staff for each eight (8) juvenile offenders plus one (1) additional staff awake at all times. Example: if the detention center houses thirty-two (32) juvenile offenders, four (4) direct care staff would be recommended (one (1) staff to eight (8) juvenile offenders), plus one (1) additional staff for a total of five (5) staff. (3-29-12)

03. Gender of Employees. At least one (1) of the detention center employees on duty should be female when females are housed in the detention center and at least one (1) should be male when males are housed in the detention center. An employee of the same gender as the juvenile offender being detained shall be on duty at the time of intake. (3-30-07)

04. Minimum Qualifications. (3-30-07)

a. Direct care staff, at the time of employment, shall meet the minimum criminal history background and certification requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

b. Direct care volunteers, before starting volunteer services, shall meet the minimum criminal history background requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

c. The agency shall conduct criminal background records checks at least every five (5) years of current employees, contractors, and volunteers who may have contact with residents as outlined in PREA Standard Section 115.317. ()

05. Training and Staff Development Plan. Each juvenile detention center shall develop a staff training and development plan based on the policy and procedures of the detention center. The plan shall also ensure that all juvenile detention officers earn the juvenile detention officer certificate as mandated in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

a. All new direct care staff shall be provided orientation training. The orientation and training plan shall address areas including, but not limited to: (3-29-12)

i. First aid/CPR; (3-30-07)

ii. Security procedures; (3-30-07)

iii. Supervision of juvenile offenders; (3-30-07)

~~iv. Signs of suicide risks;~~ ~~(3-30-07)~~

- ~~iv.~~ Suicide ~~precautions~~ prevention; ~~(3-30-07)~~()
- ~~vi.~~ Fire and emergency procedures; (3-30-07)
- ~~vii.~~ Safety procedures; (3-30-07)
- ~~viii.~~ Appropriate use of physical intervention; (3-30-07)
- ~~ix.~~ Report writing; (3-30-07)
- ~~x.~~ Juvenile offender rules of conduct; (3-30-07)
- ~~xi.~~ Rights and responsibilities of juvenile offenders; (3-30-07)
- ~~xii.~~ Fire and emergency procedures; (3-30-07)
- ~~xiii.~~ Safety procedures; (3-30-07)
- ~~xiii.~~ Key control; (3-30-07)
- ~~xiv.~~ Interpersonal relations; (3-30-07)
- ~~xv.~~ Social/cultural life styles of the juvenile population; (3-30-07)
- ~~xvi.~~ Communication skills; (3-29-12)
- ~~xviii.~~ *Counseling techniques; and* ~~(3-29-12)~~
- ~~xix.~~ *Inappropriate sexual contact.* ~~(3-29-12)~~
- ~~xvii.~~ Mandatory reporting laws and procedures; ()
- ~~xviii.~~ Professional boundaries; and ()
- ~~xix.~~ All training as outlined in section 115.331 of the PREA Standards. ()
- b.** Ongoing training shall be provided at the minimum rate of twenty-~~eight~~ (208) hours for each subsequent year of employment-, which shall include, but not be limited to:
~~(3-30-07)~~()
 - i. A total of eight (8) hours of appropriate use of force; and ()
 - ii. All other trainings that require recertification. ()
- c.** Volunteers and contractors shall be trained commensurate to their level of contact with juvenile offenders. (3-29-12)
- d.** Each facility shall maintain accurate training documentation. ()

(BREAK IN CONTINUITY OF SECTIONS)

216. DOCUMENTATION.

01. Shift Log. The detention center shall maintain documentation including time notations on each shift which includes the following information, at a minimum: (3-30-07)

- a.** Direct care staff on duty; (3-30-07)
- b.** Time and results of security or well-being checks and head counts; (4-5-00)
- c.** Names of juvenile offenders received or discharged with times recorded;(3-30-07)
- d.** Names of juvenile offenders temporarily released or returned for such purposes as court appearances, work/education releases, furloughs, or other authorized absences from the detention center with times recorded; (3-30-07)
- e.** Time of meals served; (4-5-00)
- f.** Times and shift activities, including any action taken on the handling of any routine incidents; (3-29-12)
- g.** Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; (4-5-00)
- h.** Notations and times of unusual incidents, problems, disturbances, escapes; (3-29-12)
- i.** Notations and times of any use of emergency or restraint equipment; and (4-5-00)
- j.** Notation and times of perimeter security checks. (4-5-00)

02. Housing Assignment Roster. The detention center shall maintain a master file or roster board indicating the current housing assignment and status of all juvenile offenders detained. (3-30-07)

03. Visitor's Register. The detention center shall maintain a visitor's register in which the following will be recorded: (3-30-07)

- a.** Name of each visitor; (4-5-00)
- b.** Time and date of visit; (4-5-00)
- c.** Juvenile offender to be visited; and (3-30-07)

- d. Relationship of visitor to juvenile offender and other pertinent information. (3-30-07)

04. Juvenile Detention Records. The detention center shall classify, retain and maintain an accurate and current record for each juvenile offender detained in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record shall contain, at a minimum, the following: (3-30-07)

- a. Booking and intake records; (4-5-00)
- b. Record of court appearances; (4-5-00)
- c. Documentation of authority to hold; (4-5-00)
- d. Probation officer or caseworker, if assigned; (4-5-00)
- e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; (3-30-07)
- f. Record of deposits/withdrawals from the juvenile offender's account; (3-30-07)
- g. Classification records, ~~if any~~ and information about a resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident; ~~(4-5-00)~~()
- h. ~~Records of participation in programs and services~~ Documentation of education as outlined in PREA Standard Section 115.333; ~~(4-5-00)~~()
- i. Rule infraction reports; (4-5-00)
- j. Records of disciplinary actions; (4-5-00)
- k. Grievances filed and their dispositions; (4-5-00)
- l. Release records; (4-5-00)
- m. Personal information and emergency contact information; (4-5-00)
- n. Documentation of a completed intake medical screening; (3-29-12)
- o. Visitor records; (4-5-00)
- p. Incident reports; (4-5-00)
- q. Photographs. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

220. PROHIBITED CONTACT AND PRISON RAPE ELIMINATION ACT (PREA) COMPLIANCE.

01. Sexual Abuse of Juvenile Offenders. The detention center ~~in accordance with Public Law 108-79, also known as the Prison Rape Elimination Act of 2003 (PREA),~~ shall have written policy and procedures ~~that promote mandating zero (0) tolerance toward the sexual abuse of juvenile offenders by staff or by other juvenile offenders~~ all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct. The policy and procedures shall contain, at a minimum, the following provisions: (3-29-12)()

a. The prohibition of any sexual abuse or sexual harassment as defined by PREA Standards or as defined in Title 18, Chapter 61, Section 18-6110, Idaho Code; (3-29-12)()

b. The appointment of a PREA Coordinator, as ~~required~~ outlined by PREA Standard Section 115.311(c), to be determined by the detention center administrator; (3-29-12)()

c. ~~The restrictions for cross-gender viewing and searches~~ Procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks as outlined by PREA Standard Section 115.315(d); (3-29-12)()

d. ~~The process that will be in place to inform juvenile offenders of their right to be safe from sexual abuse and the means available to safely report sexual abuse~~ The requirement of staff of the opposite gender to announce their presence when entering a resident housing unit or any area where residents are likely to be showering, performing bodily functions, or changing clothing as outlined by PREA Standard Section 115.315(d); (3-29-12)()

e. ~~The provision of two (2) or more avenues for a juvenile offender to report sexual abuse~~ The process that will be in place to provide age appropriate education to juvenile offenders as outlined by PREA Standard Section 115.333; (3-29-12)()

f. ~~The process for gathering information to make classification and housing decisions to reduce the risk of sexual victimization~~ The provision of multiple avenues for a juvenile offender or a third party to report sexual abuse and sexual harassment, at least one of which must be external to the agency as outlined by PREA Standard Section 115.351; (3-29-12)()

g. ~~The handling of all information regarding sexual abuse with confidentiality~~ The process for gathering information to make classification and housing decisions to reduce the risk of sexual victimization as outlined by PREA Standard Section 115.342; (3-29-12)()

h. The handling of all information regarding sexual abuse or sexual harassment with confidentiality as outlined by PREA Standard Section 115.361(c); ()

~~hi.~~ The process ~~which will be in place for an initial internal investigation when a complaint is reported and a subsequent external investigation when sexual abuse is suspected~~ to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior as outlined by PREA Standard Section 115.322;

~~(3-29-12)()~~

~~ij.~~ ~~The process to employ multiple protection measures, including housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims~~ Policies to protect all residents and staff who report sexual abuse or sexual harassment from acts of retaliation as outlined by PREA Standard Section 115.367;

~~(3-29-12)()~~

~~jk.~~ The provision of timely and unimpeded access to crisis intervention services, ~~and~~ medical, and mental health care to victims as outlined by PREA Standard Section 115.382(a);

~~(3-29-12)()~~

~~kl.~~ The provision and documentation of ~~at least one (1) hour of annual~~ training for staff ~~concerning the statutory prohibition of sexual abuse or sexual contact with a juvenile offender, including criminal prosecution~~ as outlined by PREA Standard Section 115.331;

~~(3-29-12)()~~

~~l.~~ ~~The provision and documentation of training for all volunteers and contractors who have contact with residents on the agency's zero-tolerance policy regarding sexual abuse, sexual harassment, and reporting duties, based on the level of contact that they have with juveniles;~~

~~(3-29-12)~~

~~m.~~ ~~The detention center's participation in the yearly "Survey on Sexual Violence" from the Bureau of Justice Statistics; and~~ Within thirty (30) days of the conclusion of every sexual abuse investigation, the facility shall conduct a sexual abuse incident review as outlined in PREA Standard 115.386.

~~(3-29-12)()~~

~~n.~~ ~~The detention center's compliance with the promulgated Rules and Standards of the Prison Rape Elimination Act of 2003.~~

~~(3-29-12)~~

(BREAK IN CONTINUITY OF SECTIONS)

227. SEARCH AND SEIZURE.

01. Detention Center Search Plan. The detention center shall have written policy and procedures which outline a detention center search plan for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders' rooms, day rooms, and activity, work or other areas accessible to juvenile offenders and searches of all materials and supplies coming into the detention center. (3-30-07)

02. Personal Searches. The detention center shall have written policy and procedures governing the searching of juvenile offenders for the control of contraband and weapons which includes, at a minimum, the following provisions: (3-30-07)

a. Search of juvenile offenders upon entering the security perimeter; (3-30-07)

b. Search of newly admitted juvenile offenders; (3-30-07)

c. Periodic unannounced and irregularly timed searches of juvenile offenders; (3-30-07)

d. Provision for strip searches and body cavity searches at such times when there exists reasonable belief that the juvenile offender is in the possession of contraband or weapons or other prohibited material and shall only be conducted as described in Subsections 227.02.f. and 227.02.g.; (3-30-07)

e. Pat searches. Except in cases of emergency, pat searches shall be conducted by direct care personnel of the same sex; (3-29-12)

f. Strip searches. All strip searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. All strip searches shall be conducted by direct care personnel of the same sex as the juvenile offender or by the health authority or medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during the strip search; and (3-30-07)

g. Body cavity searches. All body cavity searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. Body cavity searches shall be conducted only by the health authority or by a medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during body cavity searches. (3-30-07)

h. Prohibition on searches or physical examinations of transgender or intersex residents for the sole purpose of determining genital status; ()

i. Prohibition of cross-gender strip searches or cross-gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners; ()

j. Prohibition of cross-gender pat-down searches except in exigent circumstances; ()

k. The documentation and justification for all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches. ()

03. All Body Cavity Searches Shall Be Documented. Documentation of body cavity searches shall be maintained in detention center records and in the juvenile offender's record.

(3-30-07)

04. Seizure and Disposition of Contraband. The detention center shall have written policy and procedures to govern the handling of contraband. All contraband found during detention center or juvenile offender searches shall be seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband shall be documented. When a crime is suspected to have been committed within the detention center, all evidence shall be maintained and made available to the proper authorities. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

256. MAIL, VISITING, TELEPHONE.

01. Written Policy and Procedures. The detention center shall have written policy and procedures which shall govern the practices of handling mail, visitation, use of the telephone, and any limitations or restriction on these privileges. Juvenile offenders shall have the opportunity to receive visits and to communicate and correspond with persons, representatives of the media or organizations, subject to the limitations necessary to maintain detention center security and order. (3-30-07)

02. Resident Access to Outside Support Services. The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse as outlined by PREA Standard Section 115.353. ()

023. Mail Service. Mail, other than sent to or received from public officials, judges, attorneys, courts, government officials and officials of the confining authority, may be opened and inspected for contraband. (4-5-00)

034. Telephone Service. All juvenile offenders, except those restricted as a result of disciplinary action, shall be provided the opportunity to complete at least two (2) telephone calls weekly to maintain family and community ties. (3-30-07)

a. Telephone calls shall not be monitored, except where legitimate reason exists in order to maintain security and order in the detention center. Notification that the juvenile offender's phone calls may be monitored should be posted in the detention center. (3-30-07)

b. The detention center may require that any costs for telephone calls be borne by the juvenile offender or the party called. (3-30-07)

c. Written policy and procedures shall grant all juvenile offenders the right to make at least one (1) local or collect long distance telephone call to family members, attorneys, or other approved individuals during the admissions process. (3-30-07)

d. Juvenile offenders shall be allowed to make a reasonable number of telephone

calls to their attorneys. (3-30-07)

- i. Telephone calls to attorneys shall be of reasonable duration. (4-5-00)
- ii. Telephone calls to attorneys shall not be monitored. (4-5-00)
- iii. Telephone calls to attorneys shall not be revoked as a disciplinary measure. (4-5-00)

045. Visitation Restrictions. The parents or legal guardians, probation officer, parole officer, detention center administrator or the court of jurisdiction may impose restrictions on who may visit a juvenile offender. (3-30-07)

056. Search of Visitors. Written policy and procedures shall specify that visitors register upon entry into the detention center and the circumstances under which visitors are searched and supervised during the visit. (3-30-07)

067. Confidential Visits. The detention center shall provide juvenile offenders adequate opportunities for confidential access to courts, attorneys and their authorized representatives, probation and parole officers, counselors, caseworkers and the clergy. (3-30-07)

078. Visitation. Attorneys, probation and parole officers, counselors, caseworkers and clergy shall be permitted to visit juvenile offenders at reasonable hours other than during regularly scheduled visiting hours. (3-30-07)

a. Visits with attorneys, probation and parole officers, counselors, caseworkers and clergy shall not be monitored, except that detention center employees may visually observe the visitation as necessary to maintain appropriate levels of security. (3-30-07)

b. Visits with attorneys, probation and parole officers, counselors, caseworkers or clergy should be of the contact type unless otherwise indicated by the juvenile offender or visitor, or the detention center administrator determines there is a substantial security justification to restrict the visit to a non-contact type. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

262. RELEASE.

01. Release. Written policy and procedures shall govern the release of any juvenile offender and the release process including, but not limited to: ()

a. +Verification of juvenile offender's identity; ()

b. +Verification of release papers; ()

~~c.~~ ~~e~~Completion of release arrangements, including the person or agency to whom the juvenile offender is being released; ()

~~d.~~ ~~r~~eturn of personal effects; ~~and~~ ()

~~e.~~ ~~e~~Completion of any pending action, ~~and instructions on forwarding mail.~~
(~~3-30-07~~)()

02. Community Leaves. Written policy and procedures shall govern escorted and unsecured day leaves into the community. (3-30-07)

03. Personal Property Complaints. Written policy and procedures shall govern a procedure for handling complaints about personal property. (4-5-00)

04. Disposal of Property. Property not claimed within four (4) months of a juvenile offender's discharge may be disposed of by the detention center in accordance with Title 55, Chapter 14, Section 55-1402, Idaho Code. (3-29-12)

263. -- 264. (RESERVED)

265. PROGRAMS AND SERVICES AVAILABLE.

01. Written Policies and Procedures Governing Available Programs and Services. The detention center shall have written policy and procedures which govern what programs and services will be available to juvenile offenders. These programs and services shall include, at a minimum, the following: (3-29-12)

a. Access or referral to counseling; (3-29-12)

b. Religious services on a voluntary basis; (3-29-12)

c. One (1) hour per day, five (5) days per week of large muscle exercise; (3-29-12)

d. Passive recreational activities; (3-29-12)

e. Regular and systematic access to reading material; (3-29-12)

f. Work assignments; and (3-29-12)

g. Educational programs according to the promulgated rules of the Idaho State Department of Education. (3-29-12)

02. Records of Participation in Programs and Services. Records of participation in programs and services must be recorded in daily shift log or juvenile offender's file or program records. ()

023. Limitations and Denial of Services. Access to services and programs will be afforded to all juvenile offenders, subject to the limitations necessary to maintain detention center

security and order. Any denial of services must be documented. (3-29-12)

266. -- 274. (RESERVED)

275. DETENTION CENTER DESIGN, RENOVATION, AND CONSTRUCTION.

01. Applicability. All standards in this section, except where exceptions are stated, shall apply to new juvenile detention centers, renovation of existing juvenile detention centers, and renovation of any existing building for use as a juvenile detention center. In the case of a partial renovation of an existing detention center, it is intended that these rules should apply only to the part of the detention center being added or renovated. (3-29-12)

02. Code Compliance. In addition to these rules, all new construction and renovation shall comply with the applicable ADA, building, safety, and health codes of the local authority and the applicable requirements of the State Fire Marshal, and state law. Standards herein which exceed those of the local authority shall take precedence. (4-5-00)

03. Site Selection. Juvenile detention centers should be located to facilitate access to community resources and juvenile justice agencies. If the detention center is located on the grounds or in a building with any other correctional facility, it shall be constructed as a separate, self-contained unit in compliance with Title 20, Chapter 5, Section 20-518, Idaho Code.(3-30-07)

04. General Conditions. All newly constructed or renovated juvenile detention centers shall conform to the following general conditions: (3-30-07)

a. Light levels in all housing areas shall be appropriate for the use and type of activities which occur. Night lighting shall permit adequate illumination for supervision; (3-30-07)

b. All living areas shall provide visual access to natural light; (3-30-07)

c. HVAC systems shall be designed to provide that temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones, and healthful and comfortable living and working conditions exist in the detention center; (3-30-07)

d. All locks, detention hardware, fixtures, furnishings, and equipment shall have the proper security value for the areas in which they are used. The use of padlocks in place of security locks on sleeping room or housing unit doors is prohibited; (3-30-07)

e. Juvenile offenders' rights to privacy from unauthorized or degrading observation shall be protected without compromising the security and control of the detention center. Privacy screening for all toilet and shower areas which still allows adequate supervision of those areas should be incorporated into the design; (3-30-07)

f. The detention center shall have a perimeter which is secured in such a way that juvenile offenders remain within the perimeter and that access by the general public is denied without proper authorization; (3-30-07)

g. The security area of the detention center shall have an audio communication system equipped with monitors in each sleeping room and temporary holding room designed to allow monitoring of activities and to allow juvenile offenders to communicate emergency needs to detention center employees. Closed circuit television should primarily be used to verify the identity of persons where direct vision is not possible. Closed circuit television shall not be used to routinely monitor the interior of sleeping rooms; and (3-30-07)

h. All newly constructed or renovated detention centers shall provide an emergency source of power to supply electricity for entrance lighting, exit signs, circulation corridors, fire alarm, electrically operated locks and the heating and ventilation system. (3-30-07)

i. **When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from any harm including sexual abuse as outlined by PREA Standard Section 115.318.** ()

05. Admission and Release Area. The detention center shall have an intake and release area which should be located within the security perimeter, but apart from other living and activity areas. (3-30-07)

a. Adequate space shall be allocated for, at least but not limited to; (3-30-07)

i. Reception; (3-30-07)

ii. Booking; (3-30-07)

iii. Search; (3-30-07)

iv. Shower and clothing exchange; (3-30-07)

v. Medical screening; (3-30-07)

vi. Storage of juvenile offender's personal property and detention center clothing; (3-30-07)

vii. Telephone calls; (3-30-07)

viii. Interviews; and (3-30-07)

ix. Release screening and processing. (3-30-07)

b. If a detention center has temporary holding rooms, the rooms may be designed to detain juvenile offenders for up to eight (8) hours pending booking, court appearance, housing assignment, transfer, or release. Temporary holding rooms may be designed for multiple occupancy and shall provide thirty-five (35) square feet of unencumbered floor space for each juvenile offender at capacity (3-30-07)

c. Temporary holding rooms shall have access to a toilet and wash basin with hot and

cold water. (3-30-07)

06. Single Occupancy Rooms. Single occupancy sleeping rooms or cells shall have a minimum of thirty-five (35) square feet of unencumbered space and shall be equipped with at least a bed above the floor. (4-5-00)

07. Multiple Occupancy Rooms. Multiple occupancy sleeping rooms or cells shall have at least thirty-five (35) square feet of unencumbered floor space per juvenile offender at the room's rated capacity and shall be equipped with at least a bed off the floor for each juvenile offender. (3-30-07)

08. Sanitation and Seating. All single or multiple occupancy sleeping rooms shall be equipped with, or have twenty-four (24) hours per day access without detention center staff assistance to toilets, wash basins with hot and cold running water, and drinking water at the following ratios: (3-30-07)

a. One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; (3-30-07)

b. One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and (3-30-07)

c. Tables and seating sufficient for the maximum number expected to use the room at one (1) time. (3-30-07)

09. Day Room and Multi-Purpose Room. The detention center shall have at least one (1) day room and multi-purpose room which provides a minimum of thirty-five (35) square feet of floor space per juvenile offender for the maximum number expected to use the room at one (1) time. (3-30-07)

10. Program Space. Adequate space shall be allocated for, but not limited to: (3-30-07)

a. Educational programs; (3-30-07)

b. Individual and group activities; (3-30-07)

c. Exercise and recreation, indoor and outdoor; (3-30-07)

d. Visitation; (3-30-07)

e. Confidential attorney and clergy interviews; and (3-30-07)

f. Counseling. (3-30-07)

11. Interview Space. A sufficient number of confidential interview areas to accommodate the projected demand of visits by attorneys, counselors, clergy, or other officials shall be provided. At least one (1) confidential interview area is required. (4-5-00)

- 12. Medical Service Space.** Space shall be provided for routine medical examinations, emergency first-aid, emergency equipment storage, and secure medicine storage. (4-5-00)
- 13. Food Service.** The kitchen or food service area shall have sufficient space for food preparation, serving, disposal, and clean-up to serve the detention center at its projected capacity. The kitchen or food service area shall be properly equipped and have adequate storage space for the quantity of food prepared and served. (3-30-07)
- 14. Laundry.** Where laundry services are provided in-house, there shall be sufficient space available for heavy duty or commercial type washers, dryers, soiled laundry storage, clean laundry storage, and laundry supply storage. (4-5-00)
- 15. Janitor's Closet.** At least one (1) secure janitor's closet containing a mop sink and sufficient space for storage of cleaning supplies and equipment shall be provided within the security perimeter of the detention center. (3-30-07)
- 16. Security Equipment Storage.** A secure storage area shall be provided for all chemical agents, weapons, and security equipment. (4-5-00)
- 17. Administration Space.** Adequate space shall be provided which includes but is not limited to, administrative, security, professional and clerical staff, offices, conference rooms, storage rooms, a public lobby, and toilet facilities. (4-5-00)
- 18. Public Lobby.** A public lobby or waiting area shall be provided which includes sufficient seating and toilets. Public access to security and administrative work areas shall be restricted. All parts of the detention center that are accessible to the public shall be accessible to, and usable by, persons with disabilities in compliance with ADA standards. (3-30-07)

IDAPA 11 - IDAHO STATE POLICE

11.10.02 - RULES ESTABLISHING FEES FOR SERVICES - IDAHO CRIMINAL JUSTICE INFORMATION SYSTEM

DOCKET NO. 11-1002-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-5202, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2013 Idaho Administrative Bulletin, [Vol. 13-10, pages 108 through 111](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rule does not create an impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Teresa Baker, Idaho State Police, 208-884-7122.

DATED this 22nd day of November, 2013.

Lt. Col. Kedrick Wills, Deputy Director
Idaho State Police
700 S. Stratford Dr.
Meridian, Idaho 83642
Phone: 208-884-7000
Fax: 208-884-7090

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-3001, 67-3003, 67-3004, 67-3007 and 67-3010, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule will include terms defined in Section 67-3001, Idaho Code. This rule will also provide a procedure for the expungement of a person's criminal history record, for the transmittal of criminal history arrest fingerprints, and for a person to contest to the accuracy and completeness of a criminal history record in the database of the Bureau of Criminal Identification, as allowed pursuant to Section 67-3001, Idaho Code.

FEE SUMMARY: No fees are imposed by this rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiation of the rule is not feasible due to the lack of identifiable representatives of affected interests to participate in negotiated rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials to be incorporated by reference to this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dawn Peck, Manager, Bureau of Criminal Identification, 208-884-7130.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 26th day of August, 2013.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1002-1301

11.10.02 - RULES ~~ESTABLISHING FEES FOR SERVICES—IDAHO~~ GOVERNING STATE
CRIMINAL ~~JUSTICE~~ HISTORY RECORDS AND CRIME INFORMATION ~~SYSTEM~~

000. LEGAL AUTHORITY.

These rules are authorized by Sections 67-3001, 67-3003, 67-3004, 67-3007, and 67-3010, Idaho Code. (3-30-01)()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 11.10.02, “Rules ~~Establishing Fees for Services—Idaho~~ Governing State Criminal ~~Justice~~ History Records and Crime Information ~~System.~~” (3-30-01)()

02. Scope. The rules relate to the governance and operation of criminal history records and crime information. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

Except as otherwise specifically provided, the terms defined in Section 67-3001, Idaho Code, shall have the same meaning in these rules. Any other terms defined in Section 67-3001 shall be given their ordinary and commonly understood meaning. (3-30-01)()

01. Acquittal. The legal certification by a jury or judge that a person is not guilty of the crime charged. ()

02. Criminal Summons. Shall include any summons, information or indictment issued in a criminal proceeding or action. ()

03. Dismissal. Termination of a criminal action without further hearing, especially before the trial of the issues involved. ()

04. Expunge. To erase or destroy, to declare null and void outside the record, so that it is noted in the original record as expunged, and redacted from all future copies. ()

05. Serious Misdemeanor. A crime, that if convicted, could be punishable by imprisonment in a county jail. ()

011. ABBREVIATIONS.

Except as otherwise specifically provided, ~~the terms defined in Section 67-3001,~~ any terms abbreviated in Chapter 30, Title 67, Idaho Code, shall have the same identification and meaning in these rules. (3-21-12)()

[Codified Sections 012 and 013 are being moved and renumbered respectively to Sections 031 and 032]

012. -- 020. (RESERVED)

021. EXPUNGEMENT PROCEDURE.

The procedure for any criminal history record expungement shall be as follows: ()

01. Application. A person seeking to expunge their criminal history record must submit the proper application to the Bureau of Criminal Identification as provided by the Bureau. ()

02. Required Information Included. The applicant must also include a copy of one of the following to the Bureau of Criminal Identification: ()

a. Criminal citation; or ()

b. Criminal Summons, Complaint, and Affidavit of Service by the county sheriff's office; or ()

c. Indictment; or ()

d. Information. ()

03. Certified Copy of Acquittal. The applicant must also include a certified copy of the court's order of acquittal finding the applicant was not guilty of the crime charged. ()

04. Return of Incomplete Application. The Bureau of Criminal Identification shall return an application to the applicant, if the application is incomplete or if the required documents are not provided. ()

022. TRANSMITTAL OF CRIMINAL HISTORY RECORDS.

The transmittal of criminal history arrest fingerprint(s) may be via electronic submission from a live-scan or card scanner over a secured and approved network or by hard copy through regular mail. ()

023. PROCEDURE FOR CONTESTING THE ACCURACY AND COMPLETENESS OF A CRIMINAL HISTORY RECORD CONTAINED IN AGENCY FILE.

01. Challenge Accuracy of Records. A person may challenge the accuracy and correctness of their criminal history records contained in the Bureau's database. ()

a. The applicant must submit to fingerprinting through either the Bureau of Criminal Identification or other law enforcement agency. A fingerprinting fee may apply. ()

02. Notification of Fingerprints Not Matched. If the applicant's fingerprints do not match those contained in the Bureau's database, the applicant will be notified by certified mail. ()

03. Documentation of Erroneous Information. If the applicant's fingerprints match, but the applicant has documentation showing the information is in error, the applicant may submit such information to the Bureau of Criminal Identification. ()

04. Correction of Records. The Bureau of Criminal Identification will correct its records per the direction of the law enforcement agency where the initial criminal action arose or appropriate court order. ()

024. -- 030. (RESERVED)

0131. FEES FOR SERVICES.

01. Fingerprint Check. The Bureau shall charge a fee of not more than twenty-five dollars (\$25) for each fingerprint check requested for other than law enforcement purposes. (3-21-12)

02. Name Check. The Bureau shall charge a fee of not more than twenty dollars (\$20) for each name check requested for other than law enforcement purposes. (3-21-12)

03. Rolling Fingerprint. The Bureau shall charge a fee of not more than ten dollars (\$10) for rolling a set of fingerprints and no more than five dollars (\$5) for each additional copy of such rolled fingerprints. (3-21-12)

0132. NON-EXPANSION OF SERVICES.

Nothing within these rules shall be construed to alter or expand the services which will be provided to those requesting fingerprint checks and name checks. (7-1-96)

0133. -- 999. (RESERVED)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-5107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule published in the September 4, 2013 Idaho Administrative Bulletin, [Vol. 13-9, pages 95 through 103](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Flink at (208) 884-7251.

DATED this 26th day of September, 2013.

William L. Flink
Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7251
Fax: (208) 884-7295

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Defines and clarifies the character qualifications and disqualification in the area of moral turpitude, drug use, and criminal record. Allows students who are applicants to attend college training programs to appeal denial of application to the POST Council Hearing Board.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact William Flink at (208) 884-7251.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 9th day of August, 2013.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1301

054. CHARACTER.

01. Moral Turpitude. The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. “Moral turpitude” is conduct that is contrary to justice, honesty, or morality. BLACK’S LAW DICTIONARY 1030 (8th ed. 2004). The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming law enforcement officers, and to protect against acts or conduct which may that might endanger the safety and welfare of the public. (4-2-03)(____)

02. May Be Rejected. An applicant may be rejected who has committed any act involving moral turpitude, even though the applicant has never been charged by a law enforcement agency for such act. Such an act can include, but is not limited to, an act involving fraud, larceny, or the intent to harm persons. Such an act can also encompass certain sexual acts or sex-related acts, such as rape, sexual assault, lewd conduct with a child, sexual abuse of a child or vulnerable adult, child pornography, bestiality, video voyeurism, and prostitution. (____)

03. May Be Accepted. If an applicant committed any act involving moral turpitude, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant’s agency head, with knowledge of the facts and circumstances concerning the act, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (____)

055. DRUG USE.

- 01. Marijuana.** An applicant shall be rejected who has used marijuana: (____)
- a.** Within the past three (3) years; (____)
 - b.** While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the use occurred; or (____)
 - c.** On a regular, confirmed basis within the past five (5) years. (____)
 - d.** This prohibition includes cannabis, hashish, hash oil, and THC in both synthetic and natural forms. (____)

02. Other Controlled Substances. An applicant shall be rejected who has illegally used any Schedule I through Schedule VI controlled substance, as defined in Sections 37-2705 through 37-2713A, Idaho Code, excluding marijuana: ()

a. Within the past five (5) years; ()

b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the illegal use occurred; or ()

c. On more than a minimal and experimental basis during the applicant's lifetime. ()

03. Prescription Drugs. An applicant shall be rejected who has used any prescription drug or a legally obtainable controlled substance in a manner for which it was not intended within the past three (3) years. ()

04. Drug Trafficking, Manufacturing, and Related Offenses. Subject to the rules above regarding use of controlled substances, an applicant shall be rejected who has violated any provision of: ()

a. The Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, including, but not limited to, the illegal sale or manufacture of a controlled substance or conspiring to illegally sell or manufacture a controlled substance; or ()

b. A comparable statute of another state or country. ()

c. Provided, however, that the POST Division Administrator may waive any misdemeanor conviction for violation of the Idaho Uniform Controlled Substances Act. When considering whether to grant such a waiver, the POST Division Administrator shall have the discretion to refer the application to the POST Council. ()

05. Juvenile Drug Offense Convictions. Any misdemeanor conviction of a drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, shall not be a basis for rejection of an applicant. However, an applicant may be rejected who has been convicted of a felony drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code. If an applicant has been convicted of such a felony drug offense, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. ()

0556. CRIMINAL RECORD.

01. Fingerprints. The applicant shall be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results shall be retained by the POST Council. (4-2-03)

- 02. Conviction.** The term “conviction” shall include: (4-2-03)
- a. Any conviction in a federal, tribal, state, county, or municipal court; (3-15-02)
 - b. A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant’s appearance in court as final disposition; (3-15-02)
 - c. The payment of a fine; (3-15-02)
 - d. A plea of guilty, nolo contendere; or (3-15-02)
 - e. A finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed or reduced, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (3-29-12)

03. Misdemeanor Conviction. A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of ~~the~~ an applicant, subject to the following provisions: (4-2-03)()

a. An applicant shall be rejected who has been convicted of any misdemeanor sex crime, or crime of deceit, ~~or drug offense~~ unless the conviction occurred more than five (5) years prior to application and the applicant’s agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator, and ~~The~~ Division Administrator shall have the discretion to refer the application to the POST Council. In all other cases, the POST Council shall review the application and determine whether the individual applicant shall be certifiable in the State of Idaho. (3-29-12)()

b. An applicant shall be rejected who has been convicted of a one (1) or more misdemeanor DUI during offenses within the two (2) years immediately preceding application. No waivers to this rule shall be granted by the POST Council ~~for DUI convictions within the last two (2) years. If the conviction occurred more than two (2) years prior to application, the applicant may be accepted upon approval of the POST Division Administrator provided the applicant’s agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council.~~ (3-15-02)()

c. An applicant shall be rejected who has been convicted of two (2) or more misdemeanor DUI offenses within the five (5) years immediately preceding application. No waivers to this rule shall be granted by the POST Council. ()

d. An applicant who is not subject to the provisions of subsections (b) and (c) above

may be rejected if the applicant has been convicted of one (1) or more misdemeanor DUI offenses within ten (10) years prior to application. Such an applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. This rule is not a basis for rejection of an applicant if the conviction occurred ten (10) or more years prior to application. ()

~~ee.~~ An applicant ~~with~~ may be rejected who has been convicted of any other misdemeanor offense within the two (2) years immediately preceding application. If the misdemeanor conviction occurred within the two (2) years immediately preceding application, the applicant may be accepted upon approval of the POST Division Administrator, provided ~~the conviction occurred more than two (2) years prior to application and~~ the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. ~~If the conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable in the state of Idaho.~~ (3-29-12)()

~~f.~~ An applicant may be rejected who has been convicted of any other misdemeanor offense two (2) or more years but less than ten (10) years prior to application. If the misdemeanor conviction occurred two (2) or more years but less than ten (10) years prior to application, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. This rule is not a basis for rejection of an applicant if the conviction occurred ten (10) or more years prior to application. ()

~~g.~~ Any misdemeanor conviction prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, shall not be a basis for rejection of an applicant. ()

04. Felony Conviction. An applicant shall be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution, unless the felony conviction occurred before the applicant was eighteen (18) years of age and ten (10) or more years prior to application. If the conviction occurred before the applicant was eighteen (18) years of age and ten (10) or more years prior to application, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. For the purpose of this rule, a felony conviction shall ~~continue to~~ be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers to this rule shall be granted by the POST Council. (3-29-12)()

0567. MILITARY RECORD.

01. Military Discharge. A “dismissal,” “bad conduct discharge” (BCD), “dishonorable discharge” (DD), or administrative discharge of other than honorable (OTH) from the military service shall disqualify the applicant. The administrative discharge of “general under honorable conditions” (GEN), a “general” discharge, or an “uncharacterized” discharge may be grounds for rejection. In the case of a “general under honorable conditions” or “uncharacterized” discharge, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator shall have the discretion to refer the application to the POST Council. In the case of a “general” discharge, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, juvenile probation, adult probation and parole, or adult misdemeanor probation officer or as a direct care staff member of the Idaho Department of Juvenile Corrections in the state of Idaho. (4-7-11)

02. Documentation. Proof of military record shall not have been mutilated, altered, or damaged; shall indicate character of service; and shall be in the form of a photocopy of the following: (4-7-11)

- a. DD-214 for any active military service, (4-7-11)
- b. NGB Form 22 for any National Guard service, and (4-7-11)
- c. AF-216 for any Air Force service. (4-7-11)

0578. TRAFFIC RECORD INVESTIGATION.

01. Requirements. (7-1-93)

a. The applicant shall possess a valid driving license from his state of residence and qualify for an Idaho driver’s license. (3-15-02)

b. An applicant with a record of a driver’s license suspension in any jurisdiction, or a driving without privileges conviction or an equivalent conviction in any other jurisdiction, may be accepted upon approval of the POST Division Administrator provided the suspension concluded or conviction occurred more than two (2) years prior to application and the applicant’s agency head, with knowledge of the facts and circumstances concerning the suspension or conviction, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. If the suspension concluded or conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, or juvenile detention officer in the state of Idaho. (3-15-02)

c. Where the applicant's traffic record discloses the commission of five (5) or more moving traffic offenses during the three (3) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, or juvenile detention officer in the state of Idaho. (3-15-02)

02. Procedures. At a minimum, a check of driving records shall be made of the Motor Vehicle Division, Highway Department, state of Idaho, and the files of the motor vehicle

department in the states of the applicant's previous residences. (3-15-02)

0589. BACKGROUND INVESTIGATION.

01. Requirements. The applicant shall have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions. (3-15-02)

02. Procedures. (3-15-02)

a. The applicant shall complete and submit to the appointing law enforcement agency a comprehensive application and personal history statement prior to the start of the background investigation. The history statement shall contain questions which aid in determining whether the applicant is eligible for certified status as a peace, detention, juvenile detention, or juvenile probation officer. The background investigation shall include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information shall be recorded and retained by the appointing agency. (4-2-08)

b. The appointing agency shall conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the law enforcement mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions shall be asked about: (3-15-02)

i. Use of intoxicants, narcotics and drugs; (3-15-02)

ii. Physical, mental, and emotional history; (3-15-02)

iii. Family problems; (3-15-02)

iv. Moral outlook and habits; and (3-15-02)

v. Financial transactions. (3-15-02)

c. The appointing agency shall have a thorough investigation into the character and reputation of the applicant conducted by an experienced investigator. The applicant's morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty shall be explored. (3-15-02)

d. All results of the background investigation shall be considered confidential and processed accordingly. (3-15-02)

e. The results of the background investigation shall ultimately be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable. (3-15-02)

05960. PHYSICAL - MEDICAL.

01. Requirements. (7-1-93)

a. Hearing. The applicant shall have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of five-hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)

b. Vision. (7-1-93)

i. The applicant shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There shall be no pathology of the eye; applicant shall possess a minimum seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)

ii. The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)

c. Disease/Condition. The applicant shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver

of the above may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. (4-7-11)

d. Agency Physical Readiness Test. To determine the applicant's physical capability, a physical readiness test based upon the job requirements of the appointing agency shall be administered by the appointing agency to each applicant. (4-7-11)

02. Procedures. (7-1-93)

a. A POST Council-approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations. (4-7-11)

b. A medical examination shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The physician shall record his findings on the appropriate form and shall note thereon any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown. (3-27-13)

0601. MENTAL EXAMINATION.

01. Requirement. Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation shall be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, or juvenile probation officer. (4-2-08)

02. Procedure. During the interview, the examining psychiatrist or psychologist shall evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination shall be recorded and that record or a summary of recommendations shall be forwarded to the appointing authority for review. (3-15-02)

0612. APTITUDE.

The applicant shall be evaluated on the agency-approved aptitude test to determine if the applicant possesses the aptitude, capacity, and adaptability for absorbing and understanding the training and skills which are essential to the performance of the law enforcement function. (3-15-02)

0623. EXCEPTIONS.

The required minimum standards for employment are not applicable to the director of the Idaho

State Police or any elected official. (4-2-08)

0634. CODE OF ETHICS/STANDARDS OF CONDUCT.

Each applicant shall attest that he has read, understands, and will abide by the POST Council's Code of Ethics as standards of professional conduct and that he has read and understands the conduct that may constitute cause for decertification as found in the POST Council's Code of Ethics and Subsections 091.03 and 091.04. (3-27-13)

01. Fundamental Duty. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice. (3-21-12)

02. Personal and Official Life. I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret, unless revelation is necessary in the performance of my duty. (3-21-12)

03. Appropriately Enforce the Law. I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and the relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. (3-21-12)

04. Public Trust. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of law enforcement service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other law enforcement officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. (3-21-12)

05. Professional Performance. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement. (3-21-12)

0645. PROBATIONARY PERIOD.

01. Probation. Every officer appointed by an agency below the level of agency head shall satisfactorily complete a probationary period of not less than six (6) months. This requirement shall also apply to officers who transfer laterally into an agency. (3-15-02)

02. Supervisor/Mid-Manager. Every officer who is promoted or appointed to a supervisory, middle management, or assistant agency head position shall satisfactorily complete a probationary period of not less than six (6) months in that position. (3-15-02)

03. Extended. No peace, detention, juvenile detention, or juvenile probation officer who lacks the training qualifications required by the Council shall have his temporary or probationary employment extended beyond one (1) year by renewal of appointment or otherwise. (4-2-08)

0656. SPECIAL PROVISIONS.

01. Minimum Standards. It is emphasized that these are minimum standards for employment. Higher standards are recommended whenever the availability of qualified applicants meets the demand. (7-1-93)

02. No Discrimination. No agency shall discriminate as to employment against any persons on the basis of race, creed, color, or sex, pursuant to state or federal law. (3-15-02)

03. Equal Opportunity Employer. Every agency shall be an equal opportunity employer. (3-15-02)

0667. -- 069. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

327. ADMINISTRATION.

01. POST Council Administrative Rules. The ~~vocational college~~ law enforcement program ~~must shall~~ maintain access to a current copy of the POST Council's Administrative Rules. (~~4-11-06~~)()

02. Advisory Board/Committee. The ~~vocational college~~ law enforcement program ~~must shall~~ have an advisory board/committee comprised of the POST Division Administrator or his designee and criminal justice executives from several area agencies/organizations representative of the region the ~~vocational college law enforcement~~ program serves. (~~4-11-06~~)()

a. The advisory board/committee ~~must shall~~ elect a chairman and vice-chairman from among the agency heads on the board/committee. The terms of office ~~should shall~~ be initially staggered. No chairman or vice-chairman ~~may shall~~ serve in that capacity for longer than four (4) consecutive years. (~~4-11-06~~)()

b. The chairman or vice-chairman is responsible for scheduling and setting the agendas for all advisory board/committee meetings as well as for working with the program coordinator and/or administration of the ~~vocational college~~ law enforcement program. The chairman or vice-chairman may perform other duties as necessary. (~~4-11-06~~)()

03. Waiver Requests. The chairman of the advisory board/committee may request a

~~waiver from the POST Division Administrator, as allowed in the Minimum Standards for Employment provided in Sections 050 thru 064 of these rules, for a student who, more than two (2) years prior to application, was convicted of DUI; a misdemeanor other than a sex crime, crime of deceit, or drug offense; driving without privileges; had his driver's license suspended; or received a "general under honorable conditions" or "uncharacterized" discharge from the military service. by following these procedures:~~ (3-30-07)()

a. The advisory board/committee chairman ~~must~~ shall conduct a thorough background investigation to include the review of all police and court documents, including arrest reports and court dispositions; military records; and a written explanation from the student fully describing the circumstances and disposition of each arrest and incident. (3-30-07)()

b. The advisory board/committee chairman has sole discretion in determining whether a waiver ~~should~~ shall be requested. The advisory board/committee may be afforded an appeal at the chairman's discretion or if the advisory board/committee has a policy in place. (4-11-06)()

c. If the advisory board/committee chairman determines that a waiver ~~should~~ shall be pursued, he ~~must~~ shall submit a written request along with all documentation to the POST Division Administrator. The request ~~must~~ shall indicate that the advisory board/committee is aware of the arrest or incident, has investigated the circumstances surrounding the arrest or incident, and that he recommends approval of a waiver. (3-30-07)()

~~d. If the POST Division Administrator denies a request for a waiver, the decision is final unless the student obtains employment with an Idaho law enforcement agency and that agency requests a waiver from the POST Council.~~ (4-11-06)

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD
57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD
DOCKET NO. 57-0101-1201 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is acted on by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 18-8314, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Due to the extensive changes necessary to implement procedures mandated of the Sexual Offender Management Board by Idaho's 2011 Legislature, the entire chapter of IDAPA 57.01.01 was repealed with this rulemaking and re-written under docket 57-0101-1202.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2013 Idaho Administrative Bulletin, [Vol. 13-10, page 525](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

No fiscal impact should be realized as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kathy Baird at (208) 954-8511.

DATED this 22nd day of November, 2013.

Kathy Baird, Management Assistant
Sexual Offender Management Board
IDOC Clinical Services Annex
3125 S. Shoshone St.
Boise, ID 83705
Phone: (208) 954-8511
Fax: (208) 954-8518

**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is **November 1, 2013**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 18-8314, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the agency's supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: Due to extensive changes necessary to implement procedures mandated of the Sexual Offender Management Board by Idaho's 2011 Legislature, the proposed rulemaking repeals this entire chapter of the existing Administrative Rule and the chapter has been re-written.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To implement amendments to Section 18-8314, Idaho Code, as intended and enacted by Idaho's 2011 Legislature, temporary adoption of this rulemaking is appropriate for: Protection of the public health, safety or welfare; and Conferring a benefit.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the October 3, 2012 Idaho Administrative Bulletin, **Volume 12-10, page 991**.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into

this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy Baird at (208) 954-8511.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013. Written comments may be sent electronically by email to: somb@idoc.idaho.gov.

DATED this 27th day of August, 2013.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 57-0101-1301

IDAPA 57.01.01 IS BEING REPEALED IN ITS ENTIRETY