

JUDICIARY, RULES & ADMINISTRATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2011 Legislative Session

IDAPA 06 - BOARD OF CORRECTION

06.01.01 - Rules of the Board of Correction

Docket No. 06-0101-10012

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06.01.01 - RULES OF THE BOARD OF CORRECTION
DOCKET NO. 06-0101-1001
NOTICE OF PROCLAMATION OF RULEMAKING

THE FOLLOWING NOTICE PUBLISHED WITH THE PROCLAMATION

EFFECTIVE DATE: In accordance with Section 20-212(1), Idaho Code, this rule will become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin by the Office of the Administrative Rules Coordinator. The effective date of this rule is November 5, 2010.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Section 20-212, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute.

PUBLIC HEARING SCHEDULE: Pursuant to Section 20-212(1), Idaho Code, public hearing(s) concerning this rulemaking will not be scheduled.

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

The proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. Board of Correction rule changes are summarized by sections as follows:

000. Legal Authority - Amendment is necessary to add the legal authority given to the IDOC pursuant to Section 20-101D, Idaho Code. Section 20-101D is titled "Meritorious Reduction of Sentence."

114. Inmate Funds Receipt and Maintenance - This new section was previously section 410. Renumbering is required to better align with Idaho Department of Correction policy numbering. No changes are being made to this rule.

136. Sentence Administration - This new section is necessary to allow the IDOC to fully implement section 20-101D, Idaho Code. Section 20-101D is titled "Meritorious Reduction of Sentence."

402. Correspondence with Inmates - Amendment is necessary to make subsection 02 consistent with the definition for legal mail currently being used in IDOC standard operating procedure.

410. Inmate Funds Receipt and Maintenance - This section only requires renumbering to section 114 as indicated above.

FEE SUMMARY: There is no increase in fees imposed with this rulemaking.

FISCAL IMPACT: There is no fiscal impact on general funds for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lorenzo Washington, Policy Coordinator, at (208) 658-2133.

DATED this 27th day of August, 2010.

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THE FOLLOWING IS THE TEXT FOR DOCKET NO. 06-0101-1001

000. LEGAL AUTHORITY.

01. Sections 9-340B and 9-347, Idaho Code. Pursuant to Section 9-340B, Idaho Code, the Board shall adopt rules that identify certain department records to be exempt from public disclosure. Pursuant to Section 9-347, Idaho Code, the Board shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the department, the custodian and the physical location of such documents. (7-6-01)

062. Section 18-2510, Idaho Code. Pursuant to Section 18-2510, Idaho Code, it is a crime to convey articles, letters, or things into and out of Department facilities contrary to Department procedures, directives and Section 510. (11-5-99)

03. Section 20-101D, Idaho Code. Pursuant to Section 20-101D, Idaho Code, the Board shall adopt rules for meritorious conduct sentence reduction. ()

024. Section 20-209, Idaho Code. Pursuant to Section 20-209, Idaho Code, the Board shall have control, direction and management of all correctional facilities and property used in connection with correctional facilities. (11-5-99)

035. Section 20-212, Idaho Code. Pursuant to Section 20-212, Idaho Code, the Board shall make all rules necessary to carry out the provisions of Title 20, Chapter 2, Idaho Code, not inconsistent with express statutes or the state constitution. (11-5-99)

046. Section 20-217A, Idaho Code. Pursuant to Section 20-217A, Idaho Code, the director shall assume all the authority, powers, functions and duties as may be delegated to him by the Board. (11-5-99)

057. Section 20-244, Idaho Code. Pursuant to Section 20-244, Idaho Code, the Board shall make and adopt such rules as they may deem necessary for the government and discipline of the correctional facilities. (11-5-99)

(BREAK IN CONTINUITY OF SECTIONS)

111. -- 1153. (RESERVED).

410114. INMATE FUNDS RECEIPT AND MAINTENANCE.

01. Account Established in Inmate Name. The Department shall establish an account in each inmate's name at the time of admission to a facility. All monies in the inmate's possession at admission, all monies earned from institutional employment and all monies sent to the inmate from outside sources, other than money which is contraband, shall be placed in this account. The Department shall develop guidelines for the withdrawal of funds by the inmate or to satisfy the inmate's financial obligations. (11-5-99)

02. Employers of Work Center Inmates. Any person employing an inmate housed in a community work center shall send the inmate's pay directly to the Department for deposit in the inmate's account. (11-5-99)

115. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

136. MERITORIOUS REDUCTION OF SENTENCE.

01. Intent of the Board. It is the intent of the Board that eligible offenders be considered for a meritorious conduct reduction of their sentence by the Director. (____)

02. Eligibility. In order to be considered for a meritorious conduct reduction of sentence, an offender must meet the following criteria: ()

a. Have been convicted of an offense against the state, which was committed on or after July 1, 1986; ()

b. Is confined in an IDOC operated or contract facility for a term other than a life sentence; ()

c. Has completed an extraordinary act of heroism at risk to his or her own life; or for outstanding service to the state of Idaho which results in the saving of lives, prevention of destruction of major property loss during a riot; or the prevention of an escape from a correctional facility. ()

03. Procedure. Any offender who meets the eligibility criteria for a meritorious conduct reduction may be referred to the Director for consideration of a meritorious conduct reduction of his or her sentence. The decision to award a meritorious conduct reduction shall be at the complete discretion of the Director after due consideration to the facts and circumstances giving rise to the referral, together with any other factors the Director deems appropriate. ()

04. Limitations. ()

a. The number of days awarded for a meritorious conduct reduction may not exceed fifteen (15) days for each month of the offender's sentence. ()

b. The Director may withdraw an award of meritorious conduct reduction at his discretion based on an offender's serious misconduct, escape, or commission of a new crime. An offender shall be entitled to a hearing prior to any withdrawal of an award of meritorious conduct reduction. ()

c. Nothing herein shall create any right or entitlement of an offender to receive a meritorious conduct reduction of sentence. ()

1367. -- 144. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

402. CORRESPONDENCE WITH INMATES.

01. Incoming Mail. All incoming mail shall be opened and inspected to ensure it does not contain prohibited items as described in Section 402. Mail may be withheld subject to the provisions of Subsection 402.04 and 402.05. (10-5-07)

a. Books, magazines, newspapers, and other publications may only be received directly from a legitimate publisher or other legitimate business source. Legitimacy of the source

shall be in the sole discretion of the facility head or designee. (10-31-08)

b. Any money order or cashier's check enclosed will be credited to the inmate's trust account, except that money or other forms of exchange hidden or concealed in the correspondence shall be considered contraband and confiscated. Unapproved items of value not otherwise contraband must be returned to the sender at the inmate's expense within forty-five (45) days or they will be considered contraband and confiscated. (10-31-08)

02. Legal Mail. Legal mail is confidential communication directly between an offender and an attorney (for the purposes of seeking or providing legal services only), an offender and the court, opposing parties for service of documents (pursuant to court rules), or ~~sheriff offices~~ **third parties** for service of documents (pursuant to court rules). ~~(10-31-08)~~()

a. To be recognized and treated as legal mail, correspondence from a legal source must be clearly marked "Legal Mail" and display the name, title and address of the sender. (10-5-07)

b. Mail that does not meet the requirements of Section 402 shall be treated as regular mail. (10-5-07)

c. Legal mail should be opened in the presence of the inmate and may be scanned to ensure that it does not violate the provisions of Section 402, Department policies, or division standard operating procedures. (10-5-07)

d. Legal mail that violates the provisions of Section 402, Department policies, or division standard operating procedures may be withheld. (10-5-07)

e. Any sender of legal mail that violates the provisions of Section 402, Department policies, or standard operating procedures may, at the sole discretion of the division chief, have all incoming and outgoing mail treated as regular mail. (10-5-07)

f. Any sender of legal mail that continues to violate the provisions of Section 402, Department policies, or standard operating procedures (or in the case of mail that is a serious threat to the secure and orderly operation of any Department facility) may not, at the sole discretion of the division chief, have his mail delivered to the inmate, and the inmate may also be restricted or prohibited from sending or receiving mail. (10-5-07)

03. Confidential Mail. Confidential mail includes correspondence sent to or received from persons or entities such as the following: the President of the United States, the governor, the Idaho Legislature or U.S. Congress (except for bulk mailings), the Board, the director, IDOC chiefs and deputy chiefs, facility heads, public interest groups or government entities providing assistance for offenders, the Idaho Commission of Pardons and Parole or any member thereof, or the Consulate or Embassy of an offender who is a foreign national. (10-5-07)

a. Mail that does not meet the requirements of Section 402 shall be treated as regular mail. Confidential mail should be opened in the presence of the inmate and may be scanned to ensure that it does not violate the provisions of this section, Department policies, or division standard operating procedures. (10-5-07)

b. Confidential mail that violates the provisions of Section 402, Department policies, or division standard operating procedures may be withheld. (10-5-07)

c. Any sender of confidential mail that violates the provisions of Section 402, Department policies, or standard operating procedures may, at the sole discretion of the facility head, be restricted or prohibited from sending mail to or receiving mail from any inmate. (10-5-07)

d. Any sender of legal mail that continues to violate the provisions of Section 402, Department policies, or standard operating procedures (or in the case of mail that is a serious threat to the secure and orderly operation of any Department facility) may not, at the sole discretion of the division chief, have his mail delivered to the inmate, and the inmate may also be restricted or prohibited from sending or receiving mail. (10-5-07)

04. Prohibited Mail. Mail, including a publication, which poses a threat to the penological interests of the Board or Department, may be withheld from the inmate. Contraband will always be withheld without regard to this section. The Board has determined that some types of mail always pose a threat to penological interests. The following types of materials are prohibited: (10-5-07)

a. Items in a letter or package not authorized by policy or division standard operating procedures; (10-5-07)

b. Packages without prior authorization; (10-5-07)

c. Publications or items that describe the manufacture of weapons, bombs, explosives, alcohol and drugs, drug paraphernalia, or escape materials; (10-5-07)

d. Role-playing games and related materials; (10-31-08)

e. Information related to the crime or identity of another offender; (10-5-07)

f. Promotional items such as fragrance packs, CDs, computer software, stickers, handbags, T-shirts, baseball caps, in publications, magazines, periodicals etc. (Promotional items will be destroyed and the publication will be forwarded so that the mail process is not delayed); (10-5-07)

g. Junk mail (mail that does not contain a typical Idaho Department of Correction [IDOC] offender mailing address [offender's name, IDOC number, facility, housing unit, etc.] and is similar to the following examples: direct marketing, mass mailings, sales flyers, credit card applications, coupons, etc.). Junk mail will be destroyed; (10-31-08)

h. More than one (1) subscription to the same periodical, magazine, etc.; (10-5-07)

i. Publications or items evidencing gang involvement or activities (enemy lists, constitutions, structures, codes, signs, symbols, photographs, drawings, training material, clothing, etc.); (10-5-07)

j. Publications or items advocating that any ethnic, racial, or religious group is inferior or that make such groups an object of ridicule and scorn. However, no publication will be withheld solely because of its appeal to a particular ethnic, racial, or religious group; (10-5-07)

k. Publications or items that encourage violence between recipients and members of another group; (10-5-07)

l. Publications not mailed direct from the publisher or a bookstore; (10-5-07)

m. Clippings from magazines, books, or newspapers; (10-5-07)

n. Postage stamps or envelopes. (Postage stamps are allowed at CWC facilities if the CWC does not have commissary services); (10-5-07)

o. Greeting cards that are padded, laminated, musical, or larger than eight inches by ten inches (8" x 10"); (10-5-07)

p. Photographs larger than five inches by eight inches (5" x 8") and instant photographs, for example, "Polaroid type" with layers. Photocopies are not photographs and may be on standard eight and one-half inches by eleven inches (8.5" x 11") paper; and (10-5-07)

q. Other materials, which in the opinion of the facility head, present a threat to penological interests. (10-5-07)

05. Prohibited Sexually Explicit and Pornographic Materials. Nudity, sexually explicit, and pornographic materials are prohibited. Written material of a sexual nature is permitted and is not included in this definition. Publications that do not feature nudity, but contain nudity illustrative of medical, educational, or anthropological content may be excluded from this definition. (10-5-07)

a. Prohibited materials include pictorial depictions in books, pamphlets, magazines, periodicals, any other graphic images, or any other publication or any personal pictures, drawings, or any other graphic depiction, or photocopies of any of these items. (10-5-07)

b. Publications, drawings, photocopies, and other pictorial materials that meet the description of nudity in this section, but the person has clothing or other covering that is transparent or virtually transparent are not permitted. (10-5-07)

i. Nudity means a pictorial or graphic images depicting male or female genitalia, anus, or where the nipples or areola of female breasts are exposed; (10-5-07)

ii. Feature means that a publication contains pictorial depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues; and (10-5-07)

iii. Sexually explicit means a pictorial depiction of actual or simulated sexual acts including sexual intercourse, oral sex, or masturbation. (10-5-07)

06. Withholding of Prohibited Material. Any incoming mail suspected of containing any prohibited material defined in this section shall be withheld and reviewed by the facility head or designee to determine if it should be withheld or delivered to the inmate. If the facility head determines that the mail should be withheld, the offender will be given written notice. The offender may use the Department grievance procedure to contest the decision. (10-5-07)

(BREAK IN CONTINUITY OF SECTIONS)

Codified Section 410 has been moved to Section 114.

~~410~~. -- 502. (RESERVED).