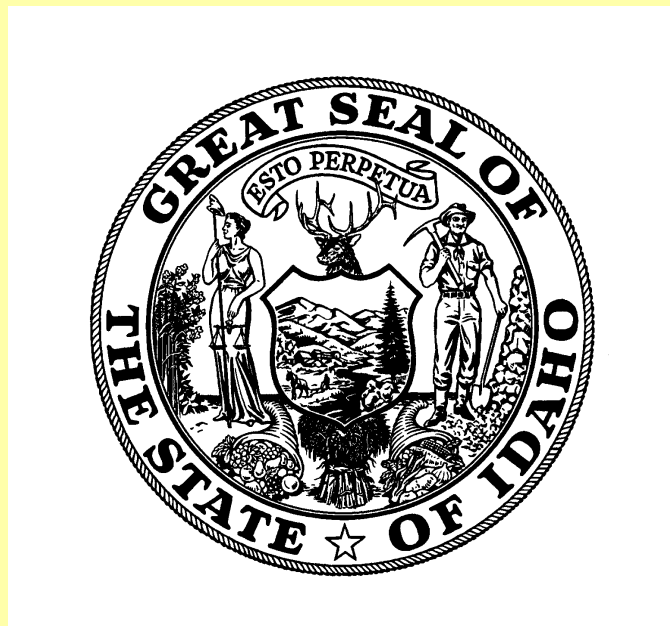


# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

Submitted for Review Before  
**Senate Judiciary & Rules Committee**  
63rd Idaho Legislature  
Second Regular Session



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2016*

**SENATE JUDICIARY & RULES COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**05.01.02 - RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS**  
**DOCKET NO. 05-0102-1501**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 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 September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9 pages 37 - 47](#).

**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 on the General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Karen Skow, (208) 884-7323.

DATED this 30th Day of September, 2015.

Sharon Harrigfeld, Director  
Idaho Department of Juvenile Corrections  
954 W. Jefferson, Boise, ID 83702  
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 Section 20-504A(2), 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 16, 2015.

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:

These changes were made in an effort to provide better clarity. All changes were vetted by the Standards Committee which consists of juvenile detention administrators.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes will only increase clarity to existing rules and to strike the outdated rules.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karen Skow, (208) 884-7323.

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 23, 2015.

DATED this 6th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0102-1501**

**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 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. (3-20-14)

**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. (3-20-14)

**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. Suicide prevention; (3-20-14)

v. Fire and emergency procedures; (3-30-07)

vi. Safety procedures; (3-30-07)

vii. Appropriate use of physical intervention, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified appropriate use of force instructor using a P.O.S.T. approved grading matrix; ~~(3-30-07)~~ ( )

viii. Report writing; (3-30-07)

ix. Juvenile offender rules of conduct; (3-30-07)

x. Rights and responsibilities of juvenile offenders; (3-30-07)

xi. Fire and emergency procedures; (3-30-07)

xii. 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)

- xvii. Mandatory reporting laws and procedures; (3-20-14)
- xviii. Professional boundaries; and (3-20-14)
- xix. All training as outlined in section 115.331 of the PREA Standards. (3-20-14)

**b.** All direct care staff who are considered part-time, on-call, or working fewer than forty (40) hours per week and any direct care staff who works in a facility classified as Rural Exception, must obtain a part-time juvenile detention officer certification as mandated by IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." ( )

**b.c.** Ongoing training shall be provided at the minimum rate of twenty-eight (28) hours for each subsequent year of employment, which shall include, but not be limited to: (3-20-14)

i. A total of eight (8) hours of appropriate use of force, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified appropriate use of force instructor using a P.O.S.T. approved grading matrix; and (3-20-14)( )

ii. All ongoing training as outlined in section 115.331 of the PREA Standards; and ( )

iii. All other trainings that require recertification. (3-20-14)

**d.** Volunteers and contractors shall be trained commensurate to their level of contact with juvenile offenders. (3-29-12)

**d.e.** Each facility shall maintain accurate training documentation. (3-20-14)

**(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 and information about a resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident; (3-20-14)
- ~~h.~~ Documentation of education as outlined in PREA Standard Section 115.333; (3-20-14)
- ~~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)

223. SAFETY AND EMERGENCY PROCEDURES.

01. **Written Policy and Procedures.** The detention center shall have written policy and procedures that address fire safety, ~~fire emergency evacuation plans, other safety-related practices, and the detention center's~~ plans for responding to emergency situations. (3-30-07)( )

02. **Compliance with Fire Code.** The detention center shall comply with local and state fire codes. A request for an annual inspection shall be made to the local fire marshal or authorized agency. The detention center shall maintain documentation of this inspection. (3-30-07)

224. DETENTION CENTER SECURITY.

01. **Security and Control Policy.** The detention center's policy and procedures manual shall contain all procedures for detention center security and control, with detailed instructions for implementing these procedures, and are reviewed at least annually and updated as needed. The manual shall be made available to all staff. (3-30-07)

02. **Personal Observation.** The detention center shall have written policy and procedures that ~~detention center policy and procedures shall~~ govern the observation of all juvenile offenders and shall, at a minimum, require direct care staff to personally observe all juvenile offenders every thirty (30) minutes on an irregular schedule and the time of such checks shall be logged. More frequent checks should be made of juvenile offenders who are violent, suicidal, mentally ill, or who have other special problems or needs warranting closer observation. (3-30-07)( )

03. **Cross Gender Supervision.** The detention center shall have written policy and procedures governing supervision of female juvenile offenders by male employees and male juvenile offenders by female employees which shall be based on privacy needs and legal standards. Except in emergencies, detention center employees shall not observe juvenile offenders of the opposite sex in shower areas. Reasonable accommodation of privacy needs shall be observed. (4-2-08)

04. **Head Counts.** The detention center shall have written policy and procedures which shall outline a system to physically count or account for all juvenile offenders, including juvenile offenders on work release, educational release, or other temporary leave status who may be absent from the detention center for certain periods of the day. At least three (3) documented counts shall be conducted every twenty-four (24) hours. At least one (1) count shall be conducted each shift and there shall be at least four (4) hours between each count. (3-30-07)

05. **Camera Surveillance.** Camera surveillance equipment shall not be used in place of the personal observation of juvenile offenders. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

226. PERIMETER SECURITY CHECKS AND SECURITY INSPECTIONS.

01. **Perimeter Security Checks.** The detention center shall have written policy and procedures which govern the frequency and performing of perimeter security checks. (3-30-07)

02. **Security Inspections.** The detention center ~~administrator or his designee shall conduct monthly inspections of all locks, windows, floors, walls, ventilator covers, access plates, glass panels, protection screens, doors, and other security equipment. The date, time, and results of these inspections shall be recorded on a checklist or log. The detention center administrator shall promptly correct any identified problems~~ shall have written policy and procedures that require timely notification to the detention center administrator or designee of any structural or security deficiencies. The detention center administrator shall promptly correct any identified problems. The facility shall maintain documentation of any corrective action. (3-30-07)( )



(BREAK IN CONTINUITY OF SECTIONS)

228. SECURITY DEVICES.

01. **Key Control.** The detention center shall have policy and procedures in place to govern key and tool control. (3-30-07)

02. **Security Devices.** The detention center shall have written policy and procedures that govern the use of security devices. Detention center employees shall use only security equipment on which they have been properly trained and is issued through, or authorized by, the detention center administrator. ~~Certification~~ **The facility shall maintain documentation** of proper training ~~shall be kept in detention records.~~ (3-30-07)( )

03. **Weapons Locker.** The detention center shall provide a weapons locker or similar arrangement at security perimeter entrances for the temporary storage of weapons belonging to law enforcement officers who must enter the detention center. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

234. MEALS.

01. **Providing Meals.** The detention center shall have written policy and procedures which govern the providing of meals. Three (3) meals, at least two (2) of which includes a hot entree, shall be served daily. (3-29-12)

a. Meals must be served at approximately the same time every day. No more than fourteen (14) hours shall elapse between the evening meal and breakfast the next day unless an evening snack is served. If snacks are provided, up to sixteen (16) hours may elapse between the evening meal and breakfast. (4-5-00)

b. Juvenile offenders out of the detention center attending court hearings or other approved functions when meals are served shall have a meal provided upon their return if they have not already eaten. (3-30-07)

c. If meals are provided to staff, the menu should be the same as provided to juvenile offenders. (3-30-07)

d. The health authority or a medical employee shall be notified when a juvenile offender does not eat three (3) consecutive meals. (3-30-07)

02. ~~Use of Food~~ **Withholding of Meals as Disciplinary Sanction Prohibited.** The detention center shall have written policy and procedures which dictate that ~~food meals~~ shall not be withheld from juvenile offenders, nor the menu varied as a disciplinary sanction. (3-30-07)( )

03. **Control of Utensils.** The detention center shall have a control system for the issuance and return of all food preparation and eating utensils. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

245. PERSONAL HYGIENE.

01. **Personal Hygiene Items.** The detention center shall have written policy and procedures which shall govern the provision of, without charge, the following articles necessary for maintaining proper personal hygiene: (3-30-07)

a. Soap; (4-5-00)

- b. Toothbrush; (4-5-00)
- c. Toothpaste; (4-5-00)
- d. Comb or brush; (3-30-07)
- e. Shaving equipment upon request; (3-30-07)
- f. Products for female hygiene needs; and (3-30-07)
- g. Toilet paper. (3-30-07)

**02. Removal of Personal Hygiene Items.** The detention center shall have written policy and procedures that govern the removal of personal hygiene items from juvenile offenders' sleeping areas. Removal must be based upon sufficient reason to believe that the juvenile offender's access to the items poses a risk to the safety of juvenile offenders, staff or others, or poses a security risk to the detention center. (3-30-07)

**03. Clothing and Linens.** The detention center shall provide for the issue of clean clothing, bedding, linens, and towels to new juvenile offenders held overnight. At a minimum, the following shall be provided: (3-30-07)

- a. A set of standard detention center clothing or uniform; (3-30-07)
- ~~b.~~ A set of standard detention center bedding and linens; ( )
- ~~b.c.~~ Fire-retardant mattress; (4-5-00)
- ~~e.~~ Pillow and pillow case; (4-5-00)
- ~~d.~~ Two (2) sheets or one (1) sheet and one (1) mattress cover; (4-5-00)
- ~~e.d.~~ Sufficient blankets to provide comfort under existing temperature conditions; and (4-5-00)
- ~~f.e.~~ One (1) clean towel. (4-5-00)

**04. Laundry Services.** Laundry services shall be sufficient to allow required clothing, bedding, and towel exchanges for juvenile offenders. (3-30-07)

- a. Clothing and towels used by the juvenile offender while in the detention center shall be laundered or exchanged at least twice each week. (3-30-07)
- b. Linen shall be changed and laundered or exchanged at least once weekly or more often, as necessary. (4-5-00)
- c. Blankets in use shall be laundered or exchanged at least monthly, or before re-issue to another juvenile offender. (3-30-07)

**05. Clothing and Linen Supplies.** The detention center inventory of clothing, bedding, linen, and towels shall exceed the maximum population to ensure that a reserve is always available. (3-30-07)

**246. -- 249. (RESERVED)**

**250. HEALTH SERVICES.**

**01. Written Policy and Procedures.** The detention center shall have written policy and procedures to govern the delivery of reasonable medical, dental, and mental health services. These written policy and procedures must at a minimum address, but are not limited to the following: (3-30-07)

- a.** Intake medical screening must be documented and performed on all juvenile offenders upon admission to the detention center. (3-29-12)
- i.** The medical screening should include inquiry of current illness and health problems, dental problems, sexually transmitted and other infectious diseases, medication taken and special health requirements, if any, the use of alcohol or drugs, mental illness and/or suicidal behavior. (3-29-12)
- ii.** The screening should also include observations of unusual behavior, including state of consciousness, mental status, appearance, conduct, tremor, sweating, body deformities, physical injuries, trauma markings, bruises, rashes, evidence of body vermin, and ease of movement; (3-29-12)
- b.** Handling of juvenile offenders' requests for medical treatment; (3-30-07)
- c.** Non-emergency medical services; (4-5-00)
- d.** Emergency medical and dental services; (4-5-00)
- ~~**e.** Emergency evacuation plan of juvenile offenders from the detention center; (3-30-07)~~
- ~~**f.** Use of ~~an~~ a vehicle for emergency ~~vehiele~~ transport; (4-5-00)( )~~
- ~~**g.** Use of one (1) or more hospital emergency rooms or other appropriate health care facility; (4-5-00)~~
- ~~**h.** Emergency on-call physician and dental services when the emergency health care facility is not located nearby; (4-5-00)~~
- ~~**i.** First-aid and CPR instructions and training, including the availability of first-aid supplies; (4-5-00)~~
- ~~**j.** Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; (3-30-07)~~
- ~~**k.** Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; (3-30-07)~~
- ~~**l.** Delousing; (3-29-12)~~
- ~~**m.** Infectious disease control and medical isolation; (4-5-00)~~
- ~~**n.** Temporary, immediate isolation, and proper examination by the medical employee of juvenile offenders suspected of having contagious or infectious diseases; (3-30-07)~~
- ~~**o.** Management of pharmaceuticals, including storage in a secure location; and (3-30-07)~~
- ~~**p.** Notification of next of kin or appropriate authorities in case of serious illness, injury or death. (3-30-07)~~
- 02. Medical Judgments.** Except for regulations necessary to ensure the safety and order of the detention center, all matters of medical, mental health, and dental judgment shall be the sole province of the health authority, who shall have final responsibility for decisions related to medical judgments. (3-30-07)
- 03. Informed Consent.** Permission to perform medical, surgical, dental or other remedial treatment shall be obtained from parents, spouse, guardian, court or other competent person as stated in Title 16, Chapter 16, Section 16-1627, Idaho Code. (3-30-07)
- 04. Health Appraisal.** A health appraisal for each juvenile offender shall be provided by the health

authority or medical employee within fourteen (14) days of admission. (3-30-07)

**251. -- 254. (RESERVED)**

**255. RULES AND DISCIPLINE.**

**01. Written Policy and Procedures.** The detention center shall have written policy and procedures for maintaining discipline and regulating juvenile offenders' conduct. The following general principle shall apply: (3-30-07)

**a.** The conduct of juvenile offenders shall be regulated in a manner which encourages and supports appropriate behavior, with penalties for negative behavior; (3-30-07)

**b.** The detention center shall have written rules of conduct which specify prohibited acts, the penalties that may be imposed for various degrees of violation, and the disciplinary procedures to be followed; (3-30-07)

**c.** Disciplinary action shall be of a nature to regulate juvenile offenders' behavior within acceptable limits and shall be taken at such times and in such degrees as necessary to accomplish this objective; (3-30-07)

**d.** The behavior of juvenile offenders shall be controlled in an impartial and consistent manner; (3-30-07)

**e.** Disciplinary action shall not be arbitrary, capricious, retaliatory, or vengeful; (4-5-00)

**f.** Corporal or unusual punishment is prohibited, and care shall be taken to insure juvenile offenders' freedom from personal abuse, humiliation, mental abuse, personal injury, disease, property damage, harassment, or punitive interference with daily functions of living, such as eating or sleeping; (3-30-07)

**g.** Use of restraints or use of physical force as punishment is prohibited; (3-30-07)

**h.** Withholding of ~~food meals~~ or variation of diet as punishment is prohibited; and ~~(4-5-00)~~( )

**i.** Juvenile offenders shall not be subject to any situation in which juvenile offenders impose discipline on each other. (3-30-07)

**02. Resolution of Rule Infractions.** The detention center shall have written policy and procedures to define and govern the resolution of rule infractions. (3-30-07)

**03. Grievance Procedures.** The detention center shall have written policy and procedures for juvenile offenders which will identify grievable issues and define the grievance process. (3-30-07)

**04. Criminal Law Violations.** The detention center shall have written policy and procedures to govern the handling of incidents that involve the violation of federal, state, or local criminal law, including prompt referral to the appropriate authority for possible investigation and prosecution. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**261. ADMISSION.**

**01. Orientation Materials.** Written policy and procedures shall provide that new juvenile offenders receive orientation materials, including conduct rules. If, at any time, a literacy or language barrier is recognized, the detention center shall make good faith efforts to assure that the juvenile offender understands the material. (3-30-07)

**02. Written Procedures for Admission.** The detention center shall have written policy and procedures for admission of juvenile offenders which shall address, but are not limited to, the following: (3-30-07)

- a. Determination that the juvenile offender is lawfully detained in the detention center; (3-29-12)
  - b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; (3-30-07)
  - c. If the juvenile offender shows signs of illness, injury, is incoherent, or unconscious, he shall not be admitted to the detention center until the detaining officer has provided written documentation from medical personnel or a physician of examination, treatment, and fitness for confinement; (3-29-12)
  - d. A complete search of the juvenile offender and possessions; (3-30-07)
  - e. The care and disposition of personal property; ~~(3-30-07)~~ ( )
  - f. Provision of shower and the issuance of detention clothing and personal hygiene articles; (3-30-07)
  - g. The provision of medical, dental and mental health screening; (3-30-07)
  - h. Male and female juvenile offenders shall not occupy the same sleeping room; (3-30-07)
  - i. The recording of basic personal data and information; (3-30-07)
  - j. Providing assistance to juvenile offenders in notifying their families of their admission and the discussion of procedures for mailing and visiting; (3-29-12)
  - k. The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; and (3-29-12)
  - l. The administration of the MAYSI or other approved risk tool. (3-29-12)
- 03. Court Appearance Within Twenty-Four Hours.** According to Title 20, Chapter 5, Section 20-516(4), Idaho Code, written policy and procedures shall ensure that any juvenile offender placed in detention or shelter care be brought to court within twenty-four (24) hours, excluding Saturdays, Sundays and holidays for a detention hearing to determine where the juvenile offender will be placed until the next hearing. Status offenders shall not be placed in any jail or detention center, but instead may be placed in juvenile shelter care facilities. (3-30-07)
- 04. Limitations of Detention.** Written policy and procedures shall limit the use of detention in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code. (3-30-07)

## IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

### 05.02.01 - RULES FOR RESIDENTIAL TREATMENT PROVIDERS

DOCKET NO. 05-0201-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Sections 20-504(10) 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 September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9 pages 48 - 53](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x. 410.

DATED this 30th Day of September, 2015.

Sharon Harrigfeld, Director  
Idaho Department of Juvenile Corrections  
954 W. Jefferson, Boise, ID 83702  
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 September 16, 2015.

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 minor changes made to this rule are in an effort to clarify the currently existing rules, and as requested during the 2015 legislative session. The changes include:

In the definition of “body cavity search” the term medical “authority” has been changed to medical “health professional” for consistency in the rule; adds the words “provider employee” to clarify that staff at the residential treatment provider are prohibited from transporting juveniles in their personal vehicles unless an emergency situation exists.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because many contracted providers are already in compliance with these rules, and the changes made will only increase clarity and decrease any duplicative efforts made by contracted providers.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 ext. 410.

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 23, 2015.

DATED this 6th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0201-1501**

**010. DEFINITIONS.**

- 01. Adult.** A person eighteen (18) years of age or older. (4-11-15)
- 02. Assessment.** The process of gathering information to determine risk and program needs for the purpose of guiding placement decisions and to develop the individualized treatment/service plan. (4-11-15)
- 03. 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~~ **health professional**. (~~4-11-15~~)(    )
- 04. Body Search, Clothed.** Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. (4-11-15)
- 05. Body Search, Unclothed.** Also referred to as a Strip Search. A search during which a juvenile offender is required to remove all clothing that is conducted by a medical health professional. (4-11-15)
- 06. Clinical Supervisor.** Person who supervises juvenile services coordinators and clinicians in assigned regions and reviews and approves case management documentation. This responsibility also includes

oversight of the regional observation and assessment process, and assisting in the maintenance and development of programs. (4-11-15)

- 07. Commit.** To transfer legal custody to the Idaho Department of Juvenile Corrections. (4-11-15)
- 08. Community Service Hours.** Hours of community service performed by a juvenile offender in response to a court order or which may be imposed following a formal disciplinary process within a residential treatment provider program for damages to the facility or program. (4-11-15)
- 09. Community Treatment Team.** A team including the juvenile services coordinator, residential treatment provider case manager, juvenile probation officer, family, and others, as necessary, who work together to provide input into each juvenile offender's service implementation plan, implement their respective sections of that plan, and monitor and report progress on treatment goals. (4-11-15)
- 10. Contraband.** Any item not issued or authorized by the residential treatment provider. (4-11-15)
- 11. Confidential Information.** Information that may only be used or disclosed as provided by state or federal law, federal regulations, or state rule. (4-11-15)
- 12. Court.** District court or magistrate's division thereof. (4-11-15)
- 13. Criminogenic Risks and Needs.** Assessed juvenile offender risk factors or attributes of juvenile offenders that are directly linked to criminal behavior and, when changed, influence the probability of recidivism. (4-11-15)
- 14. Department.** The Idaho Department of Juvenile Corrections. (4-11-15)
- 15. Detention.** Refers to the temporary placement of juveniles who require secure custody for their own or the community's protection in physically restricting facilities. (4-11-15)
- 16. Director.** The director of the Idaho Department of Juvenile Corrections. (4-11-15)
- 17. Escape/Attempted Escape.** Attempting to leave or leaving a facility without permission, or attempting to leave or leaving the lawful custody of any officer or other person responsible for juvenile's supervision without permission. (4-11-15)
- 18. Facility.** The physical plant associated with the operation of residential or nonresidential programs. (4-11-15)
- 19. Facility Treatment Team.** The group of staff employed by the department or by the residential treatment provider who have input into developing the juvenile offender's service implementation plan, who provide direct services to juvenile offenders, and who monitor and report on the progress on meeting the goals in that plan. The facility treatment team is responsible for working with the community treatment team to develop and implement the service implementation plan. (4-11-15)
- 20. Incident Report.** A written document reporting any occurrence or event, or any other incident which threatens the safety and security of staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (4-11-15)
- 21. Interns.** A paraprofessional staff who is pursuing a degree and who, as a part of documented coursework with a college or university, may provide counseling or other services to juvenile offenders in the department's custody or their families, under direct supervision of qualified staff. (4-11-15)
- 22. Judge.** A district or a magistrate judge. (4-11-15)
- 23. Juvenile.** A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act.



(4-11-15)

**24. Juvenile Offender.** A person under the age of eighteen (18), at the time of any act, omission, or status and who has been adjudicated as being within the purview of the Juvenile Corrections Act. (4-11-15)

**25. Juvenile Records.** Information concerning the juvenile offender's delinquent or criminal, personal, and medical history, behavior and activities. (4-11-15)

**26. Juvenile Services Coordinator.** An individual, employed by the department, who provides ongoing coordination of services for juvenile offenders committed to the custody of the department. Services include but are not limited to: case coordination/management, family services, and reintegration. In all cases, the juvenile services coordinator collaborates with the facility case manager in providing these services. The juvenile services coordinator communicates information with families, communities, courts, and with other IDJC employees throughout a juvenile's commitment. (4-11-15)

**27. 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. (4-11-15)

**28. Legal Guardian.** A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this title, 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. (4-11-15)

**29. Mechanical Restraints.** Mechanical devices used to prevent an uncontrollable juvenile offender from injuring themselves or others. (4-11-15)

**30. Medical Health Professional.** An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. (4-11-15)

**31. Mental Health Professional.** An individual who possesses a master's degree and meets the applicable state's criteria as a licensed LPC, LMFT, LCPC, LCSW, LMSW, psychologist or the equivalent. (4-11-15)

**32. Observation and Assessment Evaluation.** Written documentation of assessment tool results, observations, interviews, risks, and any special considerations resulting in the creation of the service plan, which includes the initial reintegration plan. (4-11-15)

**33. Observation and Assessment Program.** A residential or nonresidential program designed to complete assessments of juveniles in the custody of the department. (4-11-15)

**34. Physical Restraint.** Any method of physical control of a juvenile offender which involves staff touching or holding a juvenile offender to limit or control the juvenile offender's actions. (4-11-15)

**35. PREA.** A federal act promulgating standards that promote zero tolerance toward sexual abuse of juvenile offenders by staff or by other juvenile offenders. Also known as Public Law 108-79 or the Prison Rape Elimination Act. (4-11-15)

**36. Program Director.** The administrator of the residential treatment provider for juvenile offenders. (4-11-15)

**37. Progress Report.** A written report summarizing progress toward the goals and objectives set in the service implementation plan. (4-11-15)

**38. Quality Improvement Services Bureau.** Department employees responsible for overseeing residential treatment provider's compliance with contract terms and these rules. (4-11-15)

**39. Referral Packet.** The information necessary for a potential residential treatment provider to

determine whether the program can appropriately meet the identified criminogenic risks and needs of the juvenile being referred. (4-11-15)

**40. Region.** Subunits of the department organized by geographical areas and including all services and programs offered by the department in that area. (4-11-15)

**41. Regional Facility.** Department-operated juvenile correctional centers located in each region of the state. (4-11-15)

**42. Reintegration Plan.** That part of the juvenile offender's service plan which specifically addresses the terms, conditions and services to be provided as the juvenile offender moves to a lower level of care or leaves the custody of the department. (4-11-15)

**43. Relapse Prevention Plan.** A document completed by the juvenile, used to identify interventions for problem behavior, positive supports, and high risk people and places. (4-11-15)

**44. Release from Department Custody.** Termination of the department's legal custody of a juvenile. (4-11-15)

**45. Residential Treatment Provider.** Also known as Provider. A residential program under contract with the department to supervise juvenile offenders, provide accountability and competency development in the least restrictive setting, consistent with public safety. (4-11-15)

**46. Restitution.** Financial payment intended to reimburse victims for loss, damage, or harm caused by a juvenile offender. Restitution must be court ordered. Providers may not impose restitution against a juvenile offender without a court order. (4-11-15)

**47. Restricted Clinical Information.** Any record, document or other information legally protected from dissemination to the general public by statute or rule, such as psychological evaluations, therapy notes, therapy journals, sex histories, polygraph results, psychological testing, or other legally confidential information. (4-11-15)

**48. Room Confinement.** Instances in which juvenile offenders are confined in the room in which they usually sleep, rather than being confined in an isolation room. (4-11-15)

**49. Separation or Isolation.** Any instance when juvenile offenders are confined alone for over fifteen (15) minutes in a room other than the room in which they usually sleep. (4-11-15)

**50. Service Implementation Plan.** A written document produced and regularly updated by a residential treatment provider with input from the community treatment team. This plan describes interventions and objectives to address the service plan goals including the areas of community protection, accountability, and competency development. (4-11-15)

**51. Service Plan.** A written document produced during the observation and assessment period following commitment to the department that defines the juvenile offender's criminogenic needs and risks, strengths, goals, and recommendations for family and reintegration services. The service plan addresses the relevant needs and services for each juvenile offender in areas such as mental health, medical, education, substance abuse, and social skills. (4-11-15)

**52. Sexual Abuse.** Includes any type of contact which is sexual in nature and directed toward a juvenile offender by staff or by juvenile offenders as well as sexual harassment which includes repeated and unwelcomed sexual advances, comments, gestures, voyeurism, implied threats, and coercion. (4-11-15)

**53. Staffings.** Regularly scheduled meetings of the community and facility treatment team members to review progress on treatment goals and objectives identified in each juvenile offender's service implementation plan. (4-11-15)

**54. Subcontractor.** A person or business which has contracted with the residential treatment provider

for provision of some portion of work or services. (4-11-15)

**55. Suicide Risk Assessment.** An evaluation performed by a mental health professional to determine the level of immediate risk of a juvenile offender attempting suicide, and to apply this information in developing a safety plan for the juvenile offender. (4-11-15)

**56. Suicide Risk Screening.** An evaluation that is used to quickly determine, based upon known history and current behavior, whether a juvenile offender presents any identifiable risk of immediate suicidal behavior, and to call in a mental health professional to complete a suicide risk assessment. (4-11-15)

**57. Superintendent.** The person who has responsibility and oversight of a regional facility and over the region of the state where the regional facility is located. (4-11-15)

**58. Transfer.** Any movement of a juvenile offender in the custody of the department from one (1) residential treatment provider to another without a release from department custody. (4-11-15)

**59. Treatment.** Any program of planned services developed to meet risks and needs of juvenile offenders and their families, as identified in an assessment, and as related to activities designed to teach alternate behaviors and to support change in the beliefs that drive those behaviors. Treatment as referenced in this context also includes the maintenance of conditions that keep juvenile offenders, staff and the community safe. (4-11-15)

**60. Variance.** The means of complying with the intent and purpose of a residential treatment provider rule in a manner other than that specifically prescribed in the rule. (4-11-15)

**61. Vocational Services.** Any service provided related to assessment, education, guidance or training in the area of work or basic living skills. (4-11-15)

**62. Volunteer.** A person from the community who freely chooses to do or provide both direct or indirect services to juvenile offenders or staff at a facility or juvenile correctional center. This person is not compelled to do so and is not compensated for the services. (4-11-15)

**63. Waiver.** The non-application of one (1) or more of these rules based upon a request by the residential treatment provider and a written decision issued by the department. (4-11-15)

**64. Work Program.** A public service work project which employs juveniles at a reasonable wage for the purpose of reimbursing victims of juvenile offender's delinquent behavior. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**205. TRANSPORTATION.**

**01. Transportation for Service Plan.** It shall be the responsibility of the residential treatment provider to provide all transportation associated with the juvenile offender's service implementation plan. The family may be relied upon to provide transportation for passes and some other community contacts as long as this does not present any undue risk or burden to the juvenile offender, family, or community. (4-11-15)

**02. Transportation for Court Proceedings.** It is the provider's responsibility to immediately notify the juvenile offender's juvenile services coordinator of court dates and appearances. Arrangements for transportation related to court appearances, as well as related to transfer or release of juvenile offenders from department custody, must be made between the residential treatment provider and the juvenile services coordinator. (4-11-15)

**03. Transport in Personal Vehicles.** Juveniles in the custody of the department will not be transported in personal provider employee vehicles unless an emergency situation exists and is substantiated by documentation. (4-11-15)( )

## IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

### 05.02.02 - RULES FOR STAFF SECURE PROVIDERS

DOCKET NO. 05-0202-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 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 September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9 pages 54 - 57](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x. 410.

DATED this 30th Day of September, 2015.

Sharon Harrigfeld, Director  
Idaho Department of Juvenile Corrections  
954 W. Jefferson, Boise, ID 83702  
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 September 16, 2015.

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 minor changes made to this rule are in an effort to clarify the currently existing rules, and as requested during the 2015 legislative session. The changes include:

In the definition of “body cavity search” the term medical “authority” has been changed to medical “health professional” for consistency in the rule; adds provisions for unclothed body and body cavity searches that state that “unclothed body searches must be conducted with an adult in the room, in addition to the medical health professional, who is of the same gender as the juvenile offender being searched...”; clarifies that body cavity searches may only be conducted “in a medical facility outside of the residential treatment provider.”

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because many contracted providers are already in compliance with these rules, and the changes made will only increase clarity and decrease any duplicative efforts made by contracted providers.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 x. 410.

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 23, 2015.

DATED this 6th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0202-1501**

**010. DEFINITIONS.**

**01. 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~~ **health professional**. (4-11-15)(    )

**02. Body Search, Clothed.** Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. (4-11-15)

**03. Body Search, Unclothed.** Also referred to as a Strip Search. A search during which a juvenile offender is required to remove all clothing that is conducted by a medical health professional. (4-11-15)

**04. Education Plan.** A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Common Core Standards recommended coursework for their grade level based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. (4-11-15)

**05. General Education Student.** A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). (4-11-15)

**06. Health Services.** Including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. (4-11-15)

**07. Independent Living Services.** Services that increase a juvenile offender's ability to achieve independence in the community. (4-11-15)

**08. Individual Community Pass.** Any instance in which a juvenile offender leaves the residential treatment provider's facility for a planned activity, without direct supervision by at least one (1) residential treatment provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: (4-11-15)

- a. Day passes with family or other, approved individuals; (4-11-15)
- b. Day or overnight home visits; (4-11-15)
- c. Recreational activities not otherwise approved as a part of a group activity; and (4-11-15)
- d. Funeral leave. (4-11-15)

**09. Individual Education Plan (IEP).** A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. (4-11-15)

**10. Medical Health Assessment.** A thorough review to determine a juvenile offender's comprehensive health needs. This information is used to develop the medical terms of a juvenile offender's service plan. (4-11-15)

**11. Medical Health Professional.** An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. (4-11-15)

**12. Medical Health Screening.** A process used to quickly identify a juvenile offender's immediate health needs and to determine if there are any immediate needs related to a chronic health condition. (4-11-15)

**13. Mental Health Assessment.** A thorough review to determine a juvenile offender's comprehensive mental health needs. This information is used to develop the medical terms of a juvenile offender's service plan. (4-11-15)

**14. Mental Health Screening.** A process used to quickly identify a juvenile offender's immediate mental health needs and to determine if there are any immediate needs related to a chronic mental health condition. (4-11-15)

**15. Privileged Mail.** Mail between the juvenile offender and their attorneys, legal aid services, other agencies providing legal services to juvenile, or paraprofessionals having legitimate association with such agencies; judges and clerks of federal, state and county courts; public officials and their authorized representatives acting in their official capacities; and the communications with clergy of the juvenile's faith. (4-11-15)

**16. Staff Secure Facility.** Secure residential facility with awake staff twenty-four (24) hours a day, seven (7) days a week for intensive supervision of juvenile offenders. This includes architecturally secure residential facilities. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**220. SEARCHES FOR CONTRABAND.**

**01. Searches of Personal Items.** Routine searches of personal items being introduced into the program may be conducted by staff prior to the juvenile offender taking possession of his property, or when the juvenile offender is returning to the program from an individual community pass. Search of a juvenile offender's belongings may be done at any time and must be minimally intrusive. (4-11-15)

**02. Policies and Procedures Governing Consequences.** The provider must have written policies and procedures establishing the consequences for juvenile offenders found with contraband. (4-11-15)

**03. Visitor Searches.** (4-11-15)

**a.** Prior to visitors being allowed in the program, they must be given rules established by the provider that govern their visit and advised that they may be subject to a search by trained staff. They must sign a statement of receipt of these rules and it shall be placed in the provider's file. (4-11-15)

**b.** Visitors may be required to submit personal items for inspection. If there is reason to believe that additional searches are necessary, admission to the facility shall be denied. Visitors who bring in items that are unauthorized, but not illegal, will have these items taken and locked in an area inaccessible to the juvenile offenders during the visit. These items will be returned to the visitors upon their exit from the facility. (4-11-15)

**c.** All visitor searches must be documented. When contraband is found, a written report must be completed and submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency will be notified. (4-11-15)

**04. Clothed Body Searches.** (4-11-15)

**a.** Clothed body searches of juvenile offenders may be conducted whenever the provider believes it is necessary to discourage the introduction of contraband into the program, or to promote the safety of staff, juvenile offenders, and visitors. A clothed body search may be used when a juvenile offender is returning from a visit, outside appointment, or activity. (4-11-15)

**b.** Clothed body searches must be conducted in the manner required by the rules of the Idaho Department of Health and Welfare under IDAPA 16.06.02, "Standards for Child Care Licensing." Clothed body searches of juvenile offenders will be conducted by staff of the same gender as the juvenile offender. Clothed body searches will be conducted using a pat down search on the outside of the juvenile's clothing. The staff member must have had appropriate training in conducting clothed body searches. (4-11-15)

**05. Unclothed Body Searches.** Unclothed body searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Unclothed body searches must be conducted with an adult in the room, in addition to the medical health professional, who is of the same gender as the juvenile offender being searched. Unclothed body searches must be based upon a reasonable belief that the juvenile is concealing contraband or signs of abuse. Immediately after conducting an unclothed body search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." (4-11-15)( )

**06. Body Cavity Searches.** Body cavity searches of juvenile offenders may only be conducted in a medical facility outside of the residential treatment provider, by a medical health professional, and with prior written authorization from the program director or designee. Body cavity searches of juveniles will not be performed by staff, interns, or volunteers under any circumstances. Looking into a juvenile's mouth, ears, or nose does not constitute a body cavity search. Body cavity searches must be based upon a reasonable belief that the juvenile is concealing contraband. Immediately after conducting a body cavity search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." (4-11-15)( )

**07. Documentation of Searches.** All searches must be documented in terms of reason for the search, who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator must be notified and it shall be reported according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." If necessary, the appropriate law enforcement agency should be notified. (4-11-15)

**08. Contraband Disposal.** All contraband found in the possession of juvenile offenders, visitors, or staff must be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement must be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the program director, in consultation with the department, to dispose of all contraband not confiscated by police. (4-11-15)



## IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

### 05.02.03 - RULES FOR REINTEGRATION PROVIDERS

DOCKET NO. 05-0203-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 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 September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9 pages 58 - 61](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x. 410.

DATED this 30th Day of September, 2015.

Sharon Harrigfeld, Director  
Idaho Department of Juvenile Corrections  
954 W. Jefferson, Boise, ID 83702  
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 September 16, 2015.

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 minor changes made to this rule are in an effort to clarify the currently existing rules, and as requested during the 2015 legislative session. The changes include:

In the definition of “body cavity search” the term medical “authority” has been changed to medical “health professional” for consistency in the rule; adds provisions for unclothed body and body cavity searches that state that “unclothed body searches must be conducted with an adult in the room, in addition to the medical health professional, who is of the same gender as the juvenile offender being searched...”; clarifies that body cavity searches may only be conducted “in a medical facility outside of the residential treatment provider.”

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because many contracted providers are already in compliance with these rules, and the changes made will only increase clarity and decrease any duplicative efforts made by contracted providers.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 x. 410.

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 23, 2015.

DATED this 6th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0203-1501**

**010. DEFINITIONS.**

**01. 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~~ **health professional**. (4-11-15)(    )

**02. Body Search, Clothed.** Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. (4-11-15)

**03. Body Search, Unclothed.** Also referred to as a Strip Search. A search during which a juvenile offender is required to remove all clothing that is conducted by a medical health professional. (4-11-15)

**04. Education Plan.** A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Common Core Standards recommended coursework for their grade level based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. (4-11-15)

**05. General Education Student.** A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). (4-11-15)

**06. Health Services.** Including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. (4-11-15)

**07. Independent Living Services.** Services that increase a juvenile offender's ability to achieve independence in the community. (4-11-15)

**08. Individual Community Pass.** Any instance in which a juvenile offender leaves the residential treatment provider's facility for a planned activity, without direct supervision by at least one (1) residential treatment provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: (4-11-15)

- a. Day passes alone or with family or other, approved individuals; (4-11-15)
- b. Day or overnight home visits; (4-11-15)
- c. Recreational activities not otherwise approved as a part of a group activity; and (4-11-15)
- d. Funeral leave. (4-11-15)

**09. Individual Education Plan (IEP).** A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. (4-11-15)

**10. Medical Health Professional.** An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. (4-11-15)

**11. Privileged Mail.** Mail between the juvenile offender and their attorneys, legal aid services, other agencies providing legal services to juvenile, or paraprofessionals having legitimate association with such agencies; judges and clerks of federal, state and county courts; public officials and their authorized representatives acting in their official capacities; and the communications with clergy of the juvenile's faith. (4-11-15)

**12. Reintegration Placement.** The placement of a juvenile offender receiving independent living and reintegration skills services from the provider. This placement may be with a host family, in a group setting, or in an apartment. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**220. SEARCHES FOR CONTRABAND.**

**01. Searches of Personal Items.** Routine searches of personal items being introduced into the program or residence may be conducted by staff prior to the juvenile offender taking possession of their property, or when the juvenile offender is returning to the program or residence from an individual community pass. Search of a juvenile offender's belongings or residence may be done at any time and must be minimally intrusive. (4-11-15)

**02. Policies and Procedures Governing Consequences.** The reintegration provider must have written policies and procedures establishing the consequences for juvenile offenders found with contraband. (4-11-15)

**03. Clothed Body Searches.** (4-11-15)

**a.** Clothed body searches of juvenile offenders may be conducted whenever the reintegration provider believes it is necessary to discourage the introduction of contraband into the facility, or to promote the safety of staff, juvenile offenders, and visitors. A clothed body search may be used when a juvenile offender is returning from a visit, outside appointment, or activity. (4-11-15)

**b.** Clothed body searches must be conducted in the manner described in the rules of the Idaho Department of Health and Welfare under IDAPA 16.06.02, "Standards for Child Care Licensing." Clothed body searches of juvenile offenders will be conducted by staff of the same gender as the juvenile offender. Clothed body searches will be conducted using a pat down search outside the juvenile's clothing on each quadrant. (4-11-15)

**04. Unclothed Body Searches.** Unclothed body searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Unclothed body searches must be conducted with an adult in the room, in addition to the medical health professional, who is of the same gender as the juvenile offender being searched. Unclothed body searches must be based upon a reasonable belief that the juvenile is concealing contraband or signs of abuse. Immediately after conducting an unclothed body search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." (4-11-15)( )

**05. Body Cavity Searches.** Body cavity searches of juvenile offenders may only be conducted in a medical facility outside of the residential treatment provider, by a medical health professional and with prior written authorization from the program director or designee. Body cavity searches of juveniles will not be performed by staff, interns, or volunteers under any circumstances. Looking into a juvenile's mouth, ears, or nose does not constitute a body cavity search. Body cavity searches must be based upon a reasonable belief that the juvenile is concealing contraband. Immediately after conducting a body cavity search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." (4-11-15)( )

**06. Documentation of Searches.** All searches must be documented in terms of reason for the search, who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator must be notified and it shall be reported according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." If necessary, the appropriate law enforcement agency should be notified. (4-11-15)

**07. Contraband Disposal.** All contraband found in the possession of juvenile offenders, visitors, or staff must be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement must be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the program director, in consultation with the department, to dispose of all contraband not confiscated by police. (4-11-15)

**IDAPA 11 - IDAHO STATE POLICE  
ALCOHOL BEVERAGE CONTROL BUREAU**

**11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL**

**DOCKET NO. 11-0501-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or as 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 Sections 23-901, 23-392, 23-1330 and 23-1408, 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 September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9, pages 82-85](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Capt. Russell Wheatley, Idaho State Police Alcohol Beverage Control (208) 884-7060 or [abc@isp.idaho.gov](mailto:abc@isp.idaho.gov) and reference Docket Number 11-0501-1401.

DATED this 24th day of November, 2015.

Colonel Ralph W. Powell, Director  
Idaho State Police  
700 S. Stratford Dr., Meridian, ID 83642  
Tel: (208) 884-7003 / 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 23-901, 23-392, 23-1330 and 23-1408, 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 16, 2015.

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:

Provide a definition for the term “Actual Use” as it pertains to an alcohol license and establishes criteria which define the minimum standards for placing a newly issued or transferred license into use for purposes of clarification and compliance.

**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: NA

**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 1, 2014 Idaho Administrative Bulletin, **Vol. 14-10, page 183**.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Capt. Russell Wheatley, Idaho State Police Alcohol Beverage Control (208) 884-7060 or [abc@isp.idaho.gov](mailto:abc@isp.idaho.gov) and reference Docket Number 11-0501-1401.

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 23, 2015.

DATED this 5th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0501-1401**

**010. DEFINITIONS.**

**01. Licensee.** Any person who has received a license from the Director under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. (7-1-93)

**02. Licensed Premises.** Any premises for which a license has been issued under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. All areas included on the floor plan submitted to the Director with the licensee’s application for a license constitute the licensed premises. In the event of loss or move of the physical licensed premises, the licensee has ninety (90) days to secure and occupy a new premises in which to display the license. All licenses must be prominently displayed in a suitable premises and remain in actual use by the licensee and available for legitimate sales of alcoholic beverages by the drink. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. (3-6-07)

**a. Actual Use.** A liquor-by-the-drink license is in actual use when all of the following requirements are satisfied: ( )

**i. The license must be prominently displayed in a premise that is suitable for carrying on the business of selling liquor-by-the-drink.** ( )

**ii. Except as provided in Section 23-908(4), Idaho Code, the business using the license must be open to the public with liquor-by-the-drink available for sale and consumption therein for at least twenty (20) hours per**

week, and the hours of sale must occur during the times specified in Section 23-927, Idaho Code. ( )

iii. The business must make at least twenty (20) sales of liquor-by-the-drink per week. ( )

**03. New Licenses.** For purposes of Section 23-908(4), Idaho Code, a “new license” is one that has become available as an additional license within a city’s limits under the quota system after July 1, 1980. The requirement of Section 23-908(4), Idaho Code, that a new license be placed into actual use by the licensee and remain in use for at least six (6) consecutive months is satisfied if the licensee makes actual sales of liquor by the drink during at least eight (8) hours per day, no fewer than six (6) days per week. (3-6-07)

**04. Multipurpose Arena.** (4-4-13)

**a.** For purposes of Section 23-944(3), Idaho Code, a Multipurpose Arena is a: (4-4-13)

i. Publicly or privately owned or operated arena, coliseum, stadium, or other facility where sporting events, concerts, live entertainment, community events, and other functions are presented for a ticketed price of admission or one whose premises are leased for private events such as receptions; (4-4-13)

ii. Facility that is licensed to sell liquor by the drink at retail for consumption upon the premises; and (4-4-13)

iii. Facility that has been endorsed by the director. (4-4-13)

**b.** A Multipurpose Arena facility must apply annually for an endorsement on its alcohol beverage license. (4-4-13)

**c.** To receive a Multipurpose Arena endorsement under this Section will require the facility to have food available including, but not limited to, hamburgers, sandwiches, salads, or other snack food. The director may also restrict the type of events at a Multipurpose Arena facility at which beer, wine, and liquor by the drink may be served. The director will also consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a Multipurpose Arena facility before the director will endorse the license. (4-4-13)

**d.** A licensee that applies for a Multipurpose Arena endorsement must submit with the application an operating/security plan to the director and the local law enforcement agency for review and approval. Once approved, the plan remains in effect until the licensee requests a change or the director determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan. The plan must be submitted in a format designated by the director and must contain all of the following elements: (4-4-13)

i. How the Multipurpose Arena facility will prevent the sale and service of alcohol to persons under twenty-one (21) years of age and those who appear to be intoxicated; (4-4-13)

ii. The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served; (4-4-13)

iii. Training provided to staff who serve, regulate, or supervise the service of alcohol; (4-4-13)

iv. The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one (1) transaction; (4-4-13)

v. A list of event type/categories to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event; and (4-4-13)

vi. Diagrams and designation of alcohol service areas for each type of event category with identified restrictions of minors. (4-4-13)

**e.** Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the director and local law enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the director and local law enforcement at least twenty-four (24) hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. (4-4-13)

**f.** To prevent persons who are under twenty-one (21) years of age or who appear intoxicated from gaining access to alcohol, the director may require that an operating plan include additional mandatory requirements if it is determined that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one (21) years of age or who are apparently intoxicated from obtaining alcohol. (4-4-13)

**g.** If premises, licensed as a Multipurpose Arena, subsequently ceases to meet the qualifications of a Multipurpose Arena, the restrictions contained in Section 23-943, Idaho Code, shall apply and the posting of signs as provided for in Section 23-945, Idaho Code, shall be required. The licensee shall advise the director, by mail, that his premises no longer constitute a Multipurpose Arena, so that the license may be modified accordingly. (4-4-13)

**05. Partition.** A partition, as used in Section 23-944 Idaho Code, is defined as a structure separating the place from the remainder of the premises. Access through the structure to the place will be controlled to prevent minors from entering the place. The structure must be: (3-6-07)

- a.** Permanently fixed from the premises ceiling to the premises floor. (3-6-07)
- b.** Made or constructed of solid material such as glass, wood, metal or a combination of those products. (3-6-07)
- c.** Designed to prevent an alcoholic beverage from being passed over, under or through the structure. (3-6-07)
- d.** All partitions must be approved by the Director. (3-6-07)

**06. Place.** For the purposes of Section 23-943, Idaho Code, "Place" as defined by Section 23-942(b), for a one (1) room restaurant without a barrier or partition, refers to the immediate bar area wherein there is seating alongside a counter or barrier that encloses bar supplies and equipment that are kept, and where alcoholic beverages are mixed, poured, drawn or served for consumption. (3-6-07)

**07. Restaurant.** The term Restaurant, as defined by Section 23-942(c), Idaho Code, is further defined as an establishment maintained, advertised and held out to the public as primarily a food eating establishment, where individually priced meals are prepared and regularly served to the public, primarily for on-premises consumption. The establishment must also have a dining room or rooms, kitchen and cooking facilities for the preparation of food, and the number, and type of employees normally used in the preparing, cooking and serving of meals. Primarily as defined for the purposes of Section 010, also includes that the licensee must show to the director the following: (3-6-07)

- a.** An established menu identifying the individually priced meals for consumption; (3-20-04)
- b.** Food service and preparation occurs on the premises by establishment employees; (3-20-04)
- c.** Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (3-20-04)
- d.** The licensee must demonstrate to the satisfaction of the Director, through appropriate business records, that the establishment is advertised and held out to the public as primarily a food eating establishment, or that at least forty percent (40%) of the establishments consumable purchases are derived from purchases of food and non-alcoholic beverages. (3-20-04)

**08. Stock Transfer.** For the purposes of Section 23-908, Idaho Code, the sale or exchange of stock in a



closely held corporation holding a license is deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, is not a transfer. (3-6-07)

## IDAPA 11 - IDAHO STATE POLICE

### 11.10.03 - RULES GOVERNING THE SEX OFFENDER REGISTRY

#### DOCKET NO. 11-1003-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or as 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 Sections 18-8301 through 18-833, 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:

The pending rule will provide a mechanism for Idaho State Police to provide a determination as to what convictions in other jurisdictions are “substantially equivalent” to a conviction under Idaho’s statutes that require a person to be registered as a sex offender in Idaho. This determination will be made before a person moves to, begins working in or becomes a student in Idaho.

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 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 140–143](#).

**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:

There is no negative fiscal impact on the state general fund or dedicated funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Dawn Peck, Manager, Bureau of Criminal Identification, (208) 884-7130.

DATED this 24th day of November, 2015.

Colonel Ralph W. Powell  
Director  
Idaho State Police  
700 S. Stratford Dr.  
Meridian, ID 83642  
(208) 884-7003/(208) 884-7090

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2015.

**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 Sections 18-8301 through 18-8331, 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 21, 2015.

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 its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The amendment to this rule will provide a mechanism for Idaho State Police to provide a determination as to what convictions in other jurisdictions are “substantially equivalent” to a conviction under Idaho’s statutes that require a person to be registered as a sex offender in Idaho. This determination will be made before a person moves to, begins working in or becomes a student in Idaho.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule is necessary to comply with the Idaho Supreme Court’s opinion in *Doe v. State of Idaho*, Docket No. 42372 (June 30, 2015).

**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:

There is no negative fiscal impact on the state general fund or dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there was no substantive change to the rule and no new federal regulations were adopted.

**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: NA

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

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 28, 2015.

DATED this 28th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1003-1501**

**010. DEFINITIONS.**

The terms defined in Section 67-3001, Idaho Code, will have the same meaning in these rules. In addition, the following terms shall have the meanings set forth below: (3-29-12)

- 01. Bureau.** “Bureau” means the Bureau of Criminal Identification, Idaho State Police. (3-18-99)
- 02. Central Registry.** “Central Registry” means the state-level records system containing information, photographs and fingerprints relating to persons required to register as a sex offender under Title 18, Chapters 83 and 84, Idaho Code. (3-18-99)
- 03. Department.** “Department” means the Idaho State Police. (3-18-99)
- 04. Director.** “Director” means the director of the Idaho State Police. (3-18-99)
- 05. Substantially Equivalent ~~or Similar~~.** “Substantially Equivalent” means any sex offense related crime, regardless of whether a felony or misdemeanor, that consists of similar elements defined in Title 18 of the Idaho Criminal Code. It does not mean exactly the same, nor exactly identical to. (3-29-12)(    )
- 06. Working Days.** “Working Days” means each day except Saturday, Sunday, or a legal state holiday. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. SEX OFFENDER CENTRAL REGISTRY -- ADMINISTRATION.**

- 01. Central Registry Established.** Pursuant to Title 18, Chapter 83, Idaho Code, the department establishes a sex offender central registry in the bureau of criminal identification. The bureau is responsible for administration of the central registry pursuant to the requirements set forth in Title 18, Chapters 83 and 84, Idaho Code and these rules. (3-18-99)
- 02. Forms.** The following forms and procedures will be used to provide notice to and collect information from persons required to register as a sex offender pursuant to Title 18, Chapters 83 and 84, Idaho Code. (3-29-12)
- a.** “Idaho Sex Offender Registry Form.” This three (3) page form notifies an offender of register requirements and collects from an offender information required for registration or any change of address or status, as required by statute. (3-29-12)
- b.** “Idaho Sex Offender Registry Homeless - Location Verification Form.” This one (1) page form is used during weekly reporting to collect from an offender the information required when the offender does not provide a physical address at the time of registration. (3-29-12)
- 03. Registration Location.** An offender who is required to register either as an adult under Title 18, Chapter 83, Idaho Code, or as a juvenile under Title 18, Chapter 84, Idaho Code, must notify and register at the sheriff’s office in the county where the offender’s primary address is located. (3-29-12)
- 04. Photographs and Fingerprints.** Whenever the Idaho Sex Offender Registry Form is used to register an offender, it will be submitted to the central registry with the offender’s photograph, fingerprints, and palmprints. (3-29-12)
- a.** An offender’s photograph will be in color. The sheriff will forward a copy of the photograph with tagging information so it may easily be located by registry staff in the department of transportation photo database. Photographs submitted to the central registry will be a copy of the new photographs taken at the time of each registration. From collected registration fees, the sheriff will pay to the state the cost of photography materials lawfully required by a state agency or department. (3-29-12)
- b.** The sheriff will also submit the required fingerprints on the federal bureau of investigation form FD-249. For each registrant, the sheriff will forward one (1) FBI fingerprint card with each registration Form.

(3-29-12)

c. The sheriff will also submit the required palmprints on the federal bureau of investigation form. For each registrant, the sheriff will forward one (1) set of FBI palmprint cards with each registration form, unless a set was previously submitted. (3-29-12)

**05. Notification to Local Law Enforcement.** Lists of all offenders registered within a county are available on the sex offender registry web site located at [http://isp.idaho.gov/sor\\_id/](http://isp.idaho.gov/sor_id/). The bureau will notify the appropriate county law enforcement agency with jurisdiction any time the bureau becomes aware of a change of status or change of residence of a registered sex offender; and of a registered offender's intent to reside in an agency's jurisdiction. Whenever practical, the bureau will provide notification using the Idaho law enforcement telecommunication system (ILETS). (3-29-12)

**06. Notification to Other Jurisdictions.** Within one (1) working day of receiving notification that a registered sex offender is moving to another jurisdiction, the bureau will notify the receiving jurisdiction's designated sex offender registration agency of the move by mail or electronic means. (3-29-12)

**07. Expungement of Central Registry Information.** (3-18-99)

a. Upon receipt of a certified copy of a death certificate recording the death of a person registered with the central registry, the bureau will expunge all records concerning the person from the central registry. (3-18-99)

b. Upon receipt of a duly attested copy of a pardon issued by the governor of the jurisdiction where the conviction was entered and then reported to the central registry, the bureau will expunge all records concerning the conviction from the central registry. If the pardoned person has no other conviction requiring registration, the bureau will expunge all references concerning the person from the central registry. (3-29-12)

c. Upon receipt of a duly attested document from a court clerk that a conviction previously reported to the central registry has been reversed by the court of conviction, the bureau will expunge all records concerning the conviction from the central registry, provided that the person has no other conviction requiring registration. (3-29-12)

i. Expungement of a record will not occur in cases where a court has ordered a dismissal for a withheld judgment. (3-29-12)

d. Pursuant to Section 18-8310(5), Idaho Code, if a person is exempted from the registration requirement by court order, the bureau will expunge all records and references concerning the offender from the central registry. (3-29-12)

**08. Determination of Substantially Equivalent or Similar Crime.** (3-29-12)

a. A person convicted of a sex offense in another jurisdiction and who moves to, works in, or becomes a student in Idaho may be required to register as a sex offender in Idaho pursuant to Title 18, Chapters 83 or 84, Idaho Code. ~~(3-29-12)~~ ( )

b. The bureau shall determine if a person's out-of-jurisdiction conviction is substantially equivalent or similar to an Idaho sex related offense, as defined by Idaho's Criminal Code, for the purposes of requiring a person to register in Idaho. (3-29-12)

c. The bureau may make all substantially equivalent determinations using the following documents: ( )

i. Police Report (of the incident related to the sex offense): ( )

ii. Indictment or Information or other lawful charging document: ( )

iii. Judgment or Order (of sex-offense conviction): ( )

iv. Psychosexual Evaluation Report; and ( )

v. Order of Probation. ( )

d. If a person seeks a substantially equivalent determination by the bureau before moving to, working in, or becoming a student in Idaho, that person shall provide a completed application and attach certified copies of all above-named documents to the bureau. If all documents are not provided as required by this rule, the application and any documents provided shall be returned to the applicant. ( )

e. The bureau shall issue a substantially equivalent determination within sixty (60) days upon receipt of a completed application and the required documents. ( )

ef. The bureau's decision determination is ~~an agency action~~ a declaratory ruling as defined by Chapter 52, Title 67, Idaho Code. ~~(3-29-12)~~( )

ig. Judicial review of the bureau's decision determination shall be made in accordance with Chapter 52, Title 67, Idaho Code. ~~(3-29-12)~~( )

## IDAPA 11 - IDAHO STATE POLICE

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

#### DOCKET NO. 11-1101-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or as 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:

The text of the pending rule differs from the text of the proposed rule due to the following:

1. It was recently discovered that POST does not qualify as a law enforcement agency and therefore must pay for the processing of fingerprint cards. The pending rule text now requires the agencies to maintain records check results and verify an applicant's compliance with the minimum standards for employment to the POST Council.
2. Repetitive language in reference to misdemeanor conviction was deleted.
3. Language was deleted that prohibited the consideration of misdemeanor convictions prosecuted pursuant to Title 18, Chapter 15, Idaho Code.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 144-168](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Victor McCraw at (208) 884-7251.

DATED this 19th day of November, 2015.

Victor R. McCraw  
POST 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 October 21, 2015.

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:

Language modified to encompass all disciplines POST now trains; “shall” changed to “will” and “must” pursuant to direction in Rule Writer’s Manual; makes all academies open campus, greatly enhancing law enforcement agencies’ ability to hire single parents who cannot put their children in daycare for ten weeks while they attend a live-in academy; language in reference to attending every academy class and not being late to class is deleted, as those issues are addressed in policy and in the disciplinary matrix; fingerprint requirements were updated to reflect current Bureau of Criminal Identification requirements; the Physical Readiness Testing was deleted from the challenge requirements to enhance agencies’ ability to hire retired officers from other states; no certification is ever reactivated, so the language was corrected to reflect recertification; added decertification investigation language where missing to make the language identical to other similar sections; vo-tech programs are now called “college programs,” so language was updated to reflect that; language in reference to being able to challenge (Subsection 176.05) was corrected from “may” to “will”; revamps the instructor and school certification rules to decrease the amount of regulation and increase the amount of support offered by POST to improve training.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: NA

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected interests 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Victor McCraw 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 October 28, 2015.

DATED this 28th Day of August, 2015.

**LSO Rules Analysis Memo**

**Italicized red text that is double underscored is new text that has been added to the pending rule.**



**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1501**

**010. DEFINITIONS.**

- 01. Act.** Title 19, Chapter 51, of the Idaho Code. (4-5-00)
- 02. Adult Probation and Parole Officer.** Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (3-30-07)
- 03. Agency.** A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 04. Agency Head.** A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 05. Applicant.** Any person applying to participate in a POST training program or applying for POST certification. (4-2-08)
- 06. Basic Adult Probation and Parole Academy.** A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. (4-2-08)
- 07. Basic Correction Academy.** A basic course of instruction for Correction Officers as recognized by POST Council. (4-2-08)
- 08. Basic Detention Academy.** A basic course of instruction for Detention Officers as recognized by POST Council. (4-2-08)
- 09. Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. (4-2-08)
- 10. Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (4-2-08)
- 11. Basic Patrol Academy.** A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)
- 12. College Credit.** A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other POST-accepted U.S. regional accrediting agency. (3-18-15)
- 13. Correction Officer.** Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. (3-30-07)

**14. Correction Standards and Training Council.** An advisory group to the POST Council that is comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. (4-2-08)

**15. Council.** The Idaho Peace Officer Standards and Training Council. (4-2-08)

**16. County Detention Officer.** An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)

**17. Crime of Deceit.** Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (4-2-08)

**18. Direction.** Direction, at its broadest term, allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. This does not allow a Level II reserve officer to operate alone in his official capacity. He ~~shall~~ **must** be under direct observation and control of the agency's full-time peace officer. (3-29-12)( )

**19. Field Training.** Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)

**20. Full Time.** Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days. (4-2-08)

**21. In-Service Training.** Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned. (7-1-93)

**22. Juvenile Detention Center.** A juvenile detention facility that is part of or administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders. (4-2-08)

**23. Juvenile Detention Officer.** Any employee of a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center. (4-2-08)

**24. Juvenile Probation Officer.** Any employee of a juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders. (4-2-08)

**25. Juvenile Training Council.** An advisory group to the POST Council that is composed of the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Detention and Juvenile Probation Academies. (4-2-08)

**26. Law Enforcement Profession.** As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center; an employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (4-2-08)

**27. Manual.** This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (4-5-00)

**28. Part Time.** Employment of less than one hundred sixty (160) hours per month for ninety (90) consecutive calendar days. (4-2-08)

**29. Part-Time Juvenile Detention Officer.** Any employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-2-08)

**30. Peace Officer.** Any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho. (4-5-00)

**31. POST.** The Idaho Peace Officer Standards and Training Program. (7-1-93)

**32. POST Basic Training Academy.** The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile

Probation Academy, or the Basic Patrol Academy. (4-2-08)

**33. POST Certified Instructor.** Any person certified by the Idaho POST Council as being qualified to instruct or assess students in a course of instruction which meets POST standards for certification or training credit. ( )

**34. Prosecutor.** A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)

~~**34. Qualified Instructor.** Any person certified by the Idaho POST Council as being competent to teach in a Council-approved school. (4-2-08)~~

**35. Reserve Peace Officer.** An individual assigned by an agency to perform the duties of a peace officer on a part-time basis. All reserve officers ~~shall~~ **must** be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (4-2-08)( )

**36. School.** Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)

**37. School Director or Coordinator.** An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)

**38. Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

**39. Supervision.** Supervision allows the employing agency to utilize a Level I reserve officer to work by himself without the immediate presence or direction of a full-time peace officer, but acting under the overall on-duty supervision of an on-duty, full-time peace officer. This may allow a Level I reserve officer to work alone in his jurisdiction, without immediate oversight of an agency full-time peace officer, as long as there were another full-time peace officer of the agency working at the same time to provide supervision of the Level I reserve officer's activities. (3-29-12)

**40. Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

**41. Trainee.** An officer participating in any POST approved training program. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**041. THE RECORDS SYSTEM.**

**01. Training File.** The Idaho Peace Officer Standards and Training Council will maintain a training file on all Idaho law enforcement officers. Officer certifications granted and ~~certified~~ **POST-approved** training schools attended by officers will be recorded in these files. (4-5-00)( )

**02. Notification of Employment/Termination.** The agency head of any agency whose officers are required to attend a POST Basic Training Academy ~~shall~~ **must** notify the Council of all presently employed officers every January and July. The names of all officers hired after submission of the original list must be submitted to the Council within fifteen (15) days of employment. The termination of an officer's employment must also be relayed to the Council within fifteen (15) days of such action on an appropriate form designated by the Council. (4-2-08)( )

**03. Training Record.** A training record listing all ~~certified~~ **POST-approved** courses an officer has completed, the hours credit, and other pertinent data will be kept along with the officer's file. (4-5-00)( )

~~**04. Other Law Enforcement Personnel.** A file on other law enforcement personnel may be maintained.~~

~~This file will contain records for other law enforcement persons who successfully complete POST-certified courses.~~  
(4-5-00)

~~054.~~ **Instructors.** Names of certified instructors will be maintained. (4-5-00)

~~065.~~ **Instructors and Schools.** A list of approved instructors and schools will be maintained. (4-5-00)

**042. PROCEDURE.**

**01. Application.** Each individual officer may apply for certification when they have met the requirements. When they are certified by the Council, this is entered into their file. (Refer to “Certification of Peace, Detention, Juvenile Detention, and Juvenile Probation Officers.”) (4-2-08)

**02. Roster.** School coordinators will furnish to the Council a “Course Attendance Roster” on the appropriate form designated by the Council upon the completion of each certified training school. (Refer to “~~School Formation and Certification~~ Required Documentation for School or Course Approval.”) (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**056. CRIMINAL RECORD.**

**01. Fingerprints.** The applicant ~~shall~~ must be fingerprinted on ~~two (2) copies of~~ the standard FBI Applicant fingerprint ~~form card~~, and a search made by the hiring agency of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results ~~shall~~ must be retained by the ~~POST Council hiring agency. The hiring agency must verify the applicant’s compliance with the minimum standards for employment outlined in this section to the POST Council upon submission of the appropriate notification of employment form designated by the Council.~~ (4-2-03)( )

**02. Conviction.** The term “conviction” ~~shall~~ includes: (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 an applicant, subject to the following provisions: (3-20-14)

a. An applicant ~~shall~~ must be rejected who has been convicted of any misdemeanor sex crime or crime of deceit, 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~~ will have the discretion to refer the application to the POST Council. In all other cases, the POST

Council *shall must* review the application and determine whether the applicant *shall will* be certifiable in the State of Idaho. (3-20-14)( )

b. An applicant *shall must* be rejected who has been convicted of one (1) or more misdemeanor DUI offenses within the two (2) years immediately preceding application. No waivers to this rule *shall will* be granted by the POST Council. (3-20-14)( )

c. An applicant *shall must* 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 will* be granted by the POST Council. (3-20-14)( )

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 will* 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. (3-20-14)( )

~~e. An applicant 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 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. (3-20-14)~~

~~f. An applicant may be rejected who has been convicted of any other misdemeanor offense two (2) or more years but less than within the ten (10) years prior to immediately preceding application. If the misdemeanor conviction occurred two (2) or more years but less than ten (10) years prior to application, the 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 will* 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. (3-20-14)( )~~

~~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. (3-20-14)~~

**04. Felony Conviction.** An applicant *shall must* 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 will* have the discretion to refer the application to the POST Council. For the purpose of this rule, a felony conviction *shall will* 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 will* be granted by the POST Council. (3-20-14)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**071. BASIC TRAINING ACADEMY.**



**01. Begin Academy Within Six (6) Months of Appointment.** Every ~~peace and detention~~ officer *shall must* begin the respective POST Basic Training Academy within six (6) months from the date of their appointment as a full-time officer. Every ~~peace, detention, juvenile detention, and juvenile probation~~ officer *shall must* successfully complete the respective POST Basic Training Academy, including the field training portion, within twelve (12) months from the date of their appointment as a full-time officer. This time period includes probationary time. (4-7-11)( )

~~**01. Closed Campus.** The POST Basic Patrol, Juvenile Detention, and Juvenile Probation Training Academies shall operate as a closed campus Monday through Thursday. The POST Division Administrator may consider an exemption to this requirement in the case of a documented personal hardship for the applicant where no other reasonable alternative exists and provided the applicant's agency head files a written request for review with the POST Division Administrator. A trainee granted a hardship exemption shall be required to attend all mandatory classes, and shall not be late to any class. Unauthorized lateness to or absence from any class shall be grounds for revocation of the hardship exemption by the POST Division Administrator. The POST Council may consider an exemption to this requirement on a case-by-case basis for a scheduled POST Basic Patrol, Juvenile Detention, or Juvenile Probation Training Academy. (4-7-11)~~

~~**02. POST Basic Misdemeanor Probation Academy.** The POST Basic Misdemeanor Probation Academy may operate as a closed campus depending upon the availability of POST resources. (3-29-12)~~

~~**03. Open Campus.** All other POST Basic Training Academies shall operate as an open campus. (4-2-08)~~

~~**04. Attendance.** Attendance shall be required of each trainee at all classes in the Basic Training Academy. (3-29-12)~~

**052. Completion.** A trainee *shall must* successfully complete the Basic Training Academy within six (6) months of the date they enroll in such course. In a case of delay of more than six (6) months, the entire course *shall must* be repeated. (4-7-11)( )

**063. Field Training.** The field training portion *shall must* be completed to be eligible for certification. (4-7-11)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**096. LAPSE OF PEACE OFFICER CERTIFICATION.**

The certification of any peace officer *shall will* be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified peace officer who remains in an administrative, jail, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision *shall will* retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein *shall will* be tolled during any time period that a peace officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (3-21-12)( )

**01. Three to Five Years.** A peace officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to ~~reactivate certification shall~~ **be recertified must** meet the following POST requirements: (3-21-12)( )

- a. Submit a POST Certification Patrol Challenge Packet; (4-2-03)
- b. Disclose information regarding any decertification investigation or proceeding or the substantial

equivalent from any other jurisdiction and the results thereof. (3-29-10)

c. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)

d. Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (3-21-12)

ii. The POST Firearms Qualification Course; ~~and~~ ~~(4-2-03)~~( )

~~iii: The POST Physical Readiness Test; and~~ ~~(3-21-12)~~

e. Satisfy the probationary period requirement of Section 065. (4-2-08)

**02. Over Five Years.** A peace officer who has been out of full-time law enforcement status for over five (5) years ~~shall~~ **must** attend the POST Basic Patrol Academy to ~~reactivate certification~~ **be recertified**. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence ~~shall~~ **must** be submitted with a POST Certification Patrol Challenge Packet. Upon receiving a waiver, the officer ~~shall~~ **must** meet the following POST requirements: ~~(3-21-12)~~( )

a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

b. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)

c. Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)

d. Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (3-21-12)

ii. The POST Firearms Qualification Course; ~~and~~ ~~(4-2-03)~~( )

~~iii: The POST Physical Readiness Test; and~~ ~~(3-21-12)~~

e. Satisfy the probationary period requirement of Section 065. (4-2-08)

**03. Over Eight Years.** A peace officer who has been out of full-time law enforcement status for over eight (8) years ~~shall~~ **must** attend the POST Basic Patrol Academy to be recertified. No waiver of this requirement ~~shall~~ **will** be granted by the Council. ~~(3-21-12)~~( )

**04. Exception.** The provisions of Subsections 096.01 through 096.03 ~~shall~~ **do** not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. ~~(3-21-12)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. THE BASIC AND PART-TIME BASIC CERTIFICATE.**

In addition to the requirements set forth in Section 098 of these rules, the requirements in Section 101 are necessary for award of the basic certificate and the part-time basic certificate. (3-21-12)



**01. Probation.** The applicant ~~shall~~ **must** have satisfactorily completed at least a six (6) month probationary period, which may include basic patrol academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time ~~shall~~ **must** be continuous with the agency the officer is appointed to when applying for certification. The probationary period ~~shall~~ **must** not extend over one (1) year for certification purposes. (4-2-03)( )

**02. Basic Training.** The applicant ~~shall~~ **must** have satisfactorily completed: (4-2-03)( )

**a.** The POST Basic Patrol Academy as required by the Council in Section 071; or (4-2-03)

**b.** Be a graduate of a college law enforcement program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Patrol Academy, and ~~shall~~ **must** have passed the POST patrol certification examination approved by the Council. The applicant ~~shall~~ **will** be allowed two (2) attempts to pass the examination. The attempts ~~shall~~ **must** be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he ~~shall~~ **must** successfully complete the POST Basic Patrol Academy to be certified. (3-21-12)( )

**03. Field Training.** The applicant ~~shall~~ **must** have satisfactorily completed forty (40) hours of POST-approved field training. (4-2-03)( )

**04. College Law Enforcement Program Graduates.** Graduates from Idaho POST-certified college law enforcement programs ~~shall~~ **must** also comply with the requirements of Subsection 073.02. (3-21-12)( )

**05. Patrol and Detention College Law Enforcement Program or POST Academy Graduates.** An applicant who is appointed to a peace officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified college law enforcement program or the Idaho POST Academy, ~~shall~~ **will** be eligible for peace officer certification in Idaho without attending the POST Basic Patrol Academy, provided the officer: (3-21-12)( )

**a.** Was appointed to a county detention officer position in Idaho within three (3) years from graduating from the college law enforcement program or POST Academy; (3-21-12)

**b.** Possesses detention officer certification from Idaho; (4-2-08)

**c.** Submits a POST Certification Patrol Challenge Packet; (4-2-08)

**d.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

~~**e.**~~ Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-08)

~~**f.**~~ Passes the following tests administered by a POST Training Specialist: (4-2-08)

**i.** The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (4-2-08)

**ii.** The POST Firearms Qualification Course; and (4-2-08)( )

~~**iii.**~~ The POST Physical Readiness Test; and (3-21-12)

~~**g.**~~ Satisfies the probationary period requirement of Section 065. (4-2-08)

**102. CHALLENGING THE BASIC PATROL ACADEMY.**

Any peace officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a peace officer or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic

Patrol Academy within the last three (3) years may be eligible for certification in the state of Idaho without attending the Basic Patrol Academy, provided the officer: (3-29-10)

**01. Submission of Challenge Packet.** Submits a POST Certification Patrol Challenge Packet to POST Council, which ~~shall~~ **must** include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; ~~(3-21-12)~~( )

**02. Discloses Decertification Information.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

**03. Law Course Attendance.** Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-03)

**04. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-2-03)

**a.** The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (3-21-12)

**b.** The POST Firearms Qualification Course; and (4-2-03)

~~**c.** The POST Physical Readiness Test.~~ ~~(3-21-12)~~

**05. Completes Probationary Period.** Completes his probationary period as required by Subsection 101.01. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**171. LAPSE OF DETENTION OFFICER CERTIFICATION.**

The certification of any county detention officer will be considered lapsed if the officer does not serve as a county detention officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified county detention officer who remains in an administrative, patrol, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein ~~shall~~ **will** be tolled during any time period that a county detention officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(3-29-10)~~( )

**01. Three to Five Years.** A county detention officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to ~~reactivate certification~~ **be recertified** must meet the following POST requirements: ~~(3-29-10)~~( )

**a.** Submit a POST Certification Detention Challenge Packet; (4-2-03)

**b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

**c.** Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)

**d.** Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

ii. The POST Firearms Qualification Course; ~~and~~ (4-2-03)( )

~~iii. The POST Physical Fitness Test Battery; and~~ (4-2-03)

e. Satisfy the probationary period requirement of Section 065. (4-2-08)

**02. Over Five Years.** A county detention officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Detention Academy to ~~reactivate certification~~ **be recertified**. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Detention Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (3-29-10)( )

a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

b. Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)

c. Attend and pass Idaho POST-certified courses in Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)

d. Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

ii. The POST Firearms Qualification Course; ~~and~~ (4-6-05)( )

~~iii. The POST Physical Fitness Test Battery; and~~ (4-6-05)

e. Satisfy the probationary period requirement of Section 065. (4-2-08)

**03. Over Eight Years.** A county detention officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Detention Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**176. THE LEVEL I CERTIFICATE.**

In addition to the requirements set forth in Section 173 of these rules, the requirements in Section 176 are necessary for award of the Level I Certificate. (4-2-03)

**01. Probation.** The applicant ~~shall~~ **must** have satisfactorily completed at least a six (6) month probationary period, which may include basic detention academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time ~~shall~~ **must** be continuous with the agency the officer is appointed to when applying for certification. The probationary period ~~shall~~ **must** not extend over one (1) year for certification purposes. (4-2-03)( )

**02. Basic Training.** The applicant ~~shall~~ **must** have satisfactorily completed: (4-2-03)( )

- a. The POST Basic Detention Academy as required by the Council in Section 071; (4-2-03)
- b. The POST Patrol-to-Detention Transition Academy; or (4-2-03)
- c. Be a graduate of a college law enforcement ~~vo-tech~~ program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Detention Academy, and ~~shall~~ **must** have passed the POST detention certification examination approved by the Council. The applicant ~~shall~~ **will** be allowed two (2) attempts to pass the examination. The attempts ~~shall~~ **must** be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he ~~shall~~ **must** successfully complete the POST Basic Detention Academy to be certified. (~~4-2-03~~)(    )
- 03. Jail Training.** The applicant ~~shall~~ **must** have satisfactorily completed forty (40) hours of POST-approved jail training. (~~4-2-03~~)(    )
- 04. ~~Vo-Tech~~ College Law Enforcement Program Graduates.** Graduates from Idaho POST-certified college law enforcement ~~vo-tech~~ programs ~~shall~~ **must** also comply with the requirements of Subsection 073.02. (~~4-2-03~~)(    )
- 05. Patrol and Detention ~~Vo-Tech~~ College Law Enforcement Program or POST Academy Graduates.** An applicant who is appointed to a detention officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified college law enforcement ~~vo-tech~~ program or the Idaho POST Academy, ~~may~~ **will** be eligible for detention officer certification in Idaho without attending the POST Basic Detention Academy, provided the officer: (~~4-7-11~~)(    )
- a. Was appointed to a peace officer position in Idaho within three (3) years from graduating from the ~~vo-tech~~ college law enforcement program or POST Academy; (~~4-7-11~~)(    )
- b. Possesses peace officer certification from Idaho; (4-2-08)
- c. Submits a POST Certification Detention Challenge Packet; (4-2-08)
- d. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- e. Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-2-08)
- f. Passes the following tests administered by a POST Training Specialist: (4-2-08)
- i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)
- ii. The POST Firearms Qualification Course; **and** (~~4-2-08~~)(    )
- iii. ~~The POST Physical Fitness Test Battery;~~ **and** (~~4-2-08~~)(    )
- g. Satisfies the probationary period requirement of Section 065. (4-2-08)

**177. CHALLENGING THE BASIC DETENTION ACADEMY.**

Any county detention officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a detention officer or a student who has satisfactorily completed a Basic Detention Academy equivalent to the Idaho POST Basic Detention Academy within the last three (3) years may be eligible for certification in the state of Idaho without attending the Basic Detention Academy, provided the officer: (3-29-10)

- 01. Submission of Challenge Packet.** Submits a POST Certification Detention Challenge Packet to

POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-6-05)

**02. Discloses Decertification Information.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

**03. Detention Legal Issues Course Attendance.** Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-6-05)

**04. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-2-03)

a. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

b. The POST Firearms Qualification Course; and (4-2-03)

~~c. The POST Physical Fitness Test Battery. (4-2-03)~~

**05. Completes Probationary Period.** Completes his probationary period as required by Subsection 176.01. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. GENERAL PROVISIONS.**

**01. Purpose.** ~~The~~ Instructor Certification ~~process are is~~ established for the purpose of ~~recognizing~~ ~~competence~~ training, assessing, and approving a person as an instructor of law enforcement subjects and/or general subjects pertinent to law enforcement personnel. (4-2-03)(    )

~~02. Certification. The Council shall certify instructors who meet the requirements set forth in Sections 250 through 256 and are deemed qualified to teach one (1) or more of the prescribed training courses. (4-2-03)~~

~~03. Applications. All applications for award of Instructor Certificates shall be completed by the applicant on the prescribed "Certified Instructor Packet" as provided by the POST Council. (4-2-03)~~

~~04. Submission Certification. The Certified Instructor Packet shall be submitted by the applicant to his agency head who shall review it prior to signing it and forwarding it to the POST Regional Training Specialist. The Council will certify applicants who meet the requirements set forth in Sections 250 through 256 and are deemed qualified to develop and instruct training courses to POST standards. Certificates shall will be issued to the agency head or school director for award to the applicant. (4-2-03)(    )~~

~~05. POST Training Credit. No The POST Council will grant training credit shall be given for attendance at a school taught successful completion of training sponsored and conducted by the POST Council or instructed entirely by one (1) or more instructors who are not POST-certified instructors, or an approved instructor as defined in Subsection 07 of this section, provided the training is properly documented and meets established POST standards regarding measurable, verifiable training. However, POST training credit may be given for attendance at a school taught by an instructor seeking instructor certification in the respective subject pursuant to Sections 250 through 256. (4-2-03)(    )~~

~~06. POST-Certified School. A school taught by one (1) or more POST-certified instructors in their respective subjects shall be considered a POST-certified school. (4-2-03)~~

~~07. Quality. Instructor certification cannot insure good is not a guarantee of quality instruction.~~

Therefore, it ~~shall~~ will be the continuing responsibility of agencies, school directors, ~~or coordinators to see that instructors are assigned only subjects which they are qualified to teach and are supervised on a regular basis and POST Academy and Regional Training Specialists to supervise, monitor, and audit instructors and courses to ensure~~ that instructional excellence is maintained. (4-7-11)( )

**05. Suspension.** Instructor certification may be suspended by the POST Division Administrator whenever an instructor significantly or repeatedly fails to develop, document, conduct, or report training activities according to POST standards, or fails to abide by the POST Instructor Code of Ethics. ( )

**a.** Suspensions are not punitive, and will only be initiated for the purpose of maintaining the integrity of POST standards and training activities. ( )

**b.** Suspensions are temporary and will remain in effect no longer than one (1) year, pending review. ( )

**c.** A suspension will initiate an immediate review of the suspended instructor's certification to determine if a revocation is warranted. ( )

**086. Revocation.** Instructor certification may be revoked by the Council whenever an instructor is deemed to be unqualified to continue ~~teaching~~ instructing. Review of instructor certification may be initiated upon the request of an agency head, school director or coordinator, POST Division Administrator, or other reliable source. Such review may also be initiated by the Council in the absence of external requests or complaints. (4-2-03)( )

**097. Exceptions POST Approval in Lieu of Certification.** Judges, attorneys, educators, doctors, federal officials, state officials, and other non-police personnel ~~are exempt from the instructor certification requirements, and should~~ may be utilized as "Approved" instructors when their ~~talents are~~ expertise is deemed appropriate. The POST Council may grant training credit for training provided by an independent expert when the expert: (4-7-11)( )

**a.** Has completed a POST-approved instructor orientation course; or ( )

**b.** Acts as a presenter, guest speaker, or panel member of a course facilitated by a POST-certified instructor; or ( )

**c.** Acts as a presenter, guest speaker, or panel member at a management or executive-level course or seminar (for management or executive credit only). ( )

## 252. REQUIREMENTS FOR INSTRUCTORS OF LAW ENFORCEMENT SUBJECTS.

The requirements in Sections 250 through 252 are necessary for ~~award of the~~ instructor certification for law enforcement subjects and/or general subjects pertinent to law enforcement personnel: (4-2-03)( )

**01. Law Enforcement Experience.** The applicant ~~shall~~ must have a minimum of three (3) years of law enforcement experience, possess a current or previous Idaho POST professional certification, and may not have been previously decertified as a public safety official of any jurisdiction. (4-2-03)( )

**02. Education.** ~~The applicant shall be a high school graduate or the equivalent as recognized by the Council.~~ (4-2-03)

**032. Instructor Development Course.** The applicant ~~shall have~~ must satisfactorily completed ~~an the Idaho POST~~ Instructor Development Course approved by the Council. ~~The Council may waive this requirement in exceptional cases reflecting outstanding education, experience, or achievement, or under unusual circumstances upon written application by a school director or coordinator.~~ (4-2-03)( )

**043. Subsequent Applications.** A current POST-certified instructor in good standing is not required to complete the Instructor Development Course again when making application for an instructor ~~certification endorsement~~ in an additional subject ~~and who has already satisfactorily completed an Instructor Development Course approved by the Council shall not have to complete the course again.~~ (4-2-03)( )



~~054.~~ **Conducted Energy Device Instructor Certification Endorsement**. ~~An applicant POST Certified Instructor applying for Conducted Energy Device Instructor Certification shall Endorsement must~~ provide proof of successful completion of the device manufacturer's "operator" and "instructor" courses ~~for the Conducted Energy Device they will be instructing in to obtain or maintain POST instructor endorsement for the device.~~ (4-7-11)(    )

~~253. REQUIREMENTS FOR INSTRUCTORS OF GENERAL SUBJECTS PERTINENT TO LAW ENFORCEMENT PERSONNEL.~~

~~The requirements in Sections 250, 251, and 253 are necessary for award of the instructor certificate for general subjects pertinent to law enforcement personnel such as criminal law, human relations, and management topics:~~ (4-2-03)

~~01. Experience. The applicant shall have a minimum of three (3) years of experience in the subject area to be instructed.~~ (4-2-03)

~~02. Education. The applicant shall have a baccalaureate or higher degree in a related field.~~ (4-2-03)

~~03. Recommendation. The applicant shall be recommended by a school director or coordinator.~~ (4-2-03)

~~2543.~~ **PROCEDURES FOR POST INSTRUCTOR CERTIFICATION**.

~~01. Application for the Instructor Development Course.~~ After meeting the requirements set out in Sections 250, ~~and~~ 251, and ~~either 252 or 253~~, the applicant ~~shall~~ must submit ~~to his POST Regional Training Specialist a completed POST "Certified Instructor Packet;" to his POST Regional Training Specialist,~~ which ~~shall~~ must include: (4-2-03)(    )

~~a. Three (3) letters A signed attestation of recommendation eligibility for certification;~~(4-2-03)(    )

~~b. A resume of schools attended in preparation for instructing the selected subject~~ The applicant's agency head's or school director's signature; (4-2-03)(    )

~~c. A lesson plan, including visual aids, equipment needed, handouts, performance objectives, and test questions with answers.~~ (4-2-03)

~~02. Evaluation Completion of the Instructor Development Course.~~ Applicants for Instructor Certification must attend and successfully complete all of the requirements of the POST Instructor Development Course. (4-2-03)(    )

~~03. POST Instructor Certification.~~ Pending written notification of certification, Instructor Development Course graduates may only observe or co-instruct courses which generate data or records for POST certification, recognition, or credit. Applicants may only act as a lead instructor as part of the evaluation process conducted by a POST Regional Training Specialist. (    )

~~a. Within two (2) weeks after submitting the packet, t~~The applicant ~~shall~~ must contact his POST Regional Training Specialist upon successful completion of the POST Instructor Development Course to set up a time for the Training Specialist to monitor evaluate a class the applicant is instructing. ~~In addition to evaluating the quality of instruction provided by the applicant, the Training Specialist shall take into consideration background, education, achievement, teaching experience, and qualifications, as well as such variables as need, region, and recommendations.~~ (4-2-03)(    )

~~b. A current POST-certified instructor making application for instructor certification in an additional subject and who has previously had a class monitored by a POST Training Specialist shall not be required to have a class in the additional subject monitored~~ Applicants who fail to arrange for and complete an evaluation within one (1) calendar year of completion of the Instructor Development Course may be required to complete a POST Instructor Orientation Course prior to proceeding with the certification process. (4-2-03)(    )

~~03.c.~~ **Recommendation.** After ~~ensuring all requirements are met and the Certified Instructor Packet is complete~~ evaluating the applicant for compliance with POST standards for certification as an instructor, the POST Regional Training Specialist ~~shall~~ will attach his comments and recommendation to the Certified Instructor Packet and forward it to the POST Division Administrator. ( )

**d.** The POST Division Administrator ~~shall~~ will review the POST Regional Training Specialist's evaluation and recommendation, and upon approval, issue the POST Instructor eCertification. (4-7-11)( )

**e.** POST will notify applicants in writing of their certification status. ( )

**254. PROCEDURES FOR HIGH LIABILITY INSTRUCTOR ENDORSEMENT.**

**01. Requirements.** POST Certified Instructors must obtain additional endorsements to instruct topics related to Defensive Tactics, Firearms, Conducted Energy Devices, Emergency Vehicle Operations, and any other topic deemed as "high liability" by the POST Council. High liability topic instructor endorsement must be maintained as required by Subsection 256.02.e. ( )

**02. Application.** After meeting the requirements set out in Sections 250 through 253, the applicant must submit a completed POST High Liability Instructor Endorsement Application Packet to his POST Regional Training Specialist. Upon notification from the POST Regional Training Specialist, the applicant may begin observation of instruction in the topic for which the application was submitted. The POST High Liability Instructor Endorsement Application Packet must include: ( )

**a.** A resume of experience and schools attended in preparation for instructing the selected subject; ( )

**b.** The applicant's agency head's or school director's signature. ( )

**03. Completion of a High Liability Instructor School.** An applicant for High Liability Instructor Endorsement must attend and successfully complete all of the requirements of the POST instructor course specific to the high liability area he intends to instruct. ( )

**a.** The POST Regional Training Specialist will verify the high liability instructor school roster bearing the applicant's name. ( )

**b.** Upon notification from the POST Regional Training Specialist, the applicant may begin co-instruction of the topic for which the application was submitted, in preparation for evaluation as an endorsed instructor in the high liability area. ( )

**04. Evaluation.** Prior to evaluation by a POST Regional Training Specialist, high liability instructor endorsement applicants are not approved to act as a lead instructor for any course offered for POST training credit in the topic for which the application was submitted. Within one (1) calendar year after completing the high liability instructor school, the applicant must arrange and complete a practical evaluation conducted by his POST Regional Training Specialist. In addition to evaluating the quality of instruction provided by the applicant, the Training Specialist will take into consideration documented observation and co-instructor experience, and recommendations of currently endorsed instructors. ( )

**05. Recommendation.** After ensuring all requirements are met and the High Liability Endorsement Instructor Packet is complete, the POST Regional Training Specialist will attach his recommendation to the packet and forward it to the POST Division Administrator. The POST Division Administrator or his designee will review the POST Regional Training Specialist's evaluation and recommendation, and upon approval, issue the endorsement. ( )

**06. Multiple Endorsements.** A current POST-endorsed high liability instructor making application for instructor endorsement in an additional high liability topic must meet the requirements of this section for the additional topic prior to endorsement in that topic area. ( )



255. EXPIRATION.

01. **Valid Instructor Certification.** Instructor certification ~~shall will~~ remain valid ~~for a period of two (2) years with the exception of firearms instructor certification which shall remain valid for a period of one (1) year indefinitely, provided the instructor remains in good standing and complies with all POST requirements for refresher training.~~ ~~(4-7-11)( )~~

~~a. Instructors who fail to instruct for a period of two (2) years will be deemed inactive and may not instruct as a POST instructor until they have reapplied as required in Subsection 253.01. ( )~~

~~b. Inactive instructors must complete a POST-approved instructor orientation course. The POST Regional Training Specialist will verify and approve the POST-approved instructor orientation course roster or course record. The POST Division Administrator will then re-issue the instructor certification. ( )~~

02. **Valid High Liability Endorsement.** Instructor endorsements will remain valid for two (2) years, ~~with the exception of Firearms endorsements which will remain valid for one (1) year, provided the instructor remains in good standing and complies with all POST requirements for refresher training.~~ ( )

~~a. High Liability Instructors who fail to instruct for a period of two (2) years will be deemed inactive with respect to the relevant endorsement(s) and may not instruct as a POST instructor in the topic area(s) until they have reapplied as required in Subsection 254.02. ( )~~

~~b. Inactive high liability instructors must be re-evaluated by a POST Regional Training Specialist. ( )~~

~~c. After ensuring all requirements are met and the High Liability Endorsement Instructor Packet is complete, the POST Regional Training Specialist will attach his recommendation to the packet and forward it to the POST Division Administrator. The POST Division Administrator or his designee will review the POST Regional Training Specialist's evaluation and recommendation, and upon approval, re-issue the endorsement. ( )~~

023. **Conducted Energy Device.** A POST-~~certified endorsed~~ Conducted Energy Device instructor ~~shall~~ ~~must~~ maintain valid certification through the manufacturer for each Conducted Energy Device they are POST-~~certified endorsed~~ to instruct. If their certification through the manufacturer becomes invalid for any reason, their POST Conducted Energy Device Instructor ~~Certification Endorsement~~ for that device ~~shall will~~ immediately be deemed inactive. ~~(4-7-11)( )~~

256. **RENEWAL OF HIGH LIABILITY ENDORSEMENT.**

01. **Notification.** At the end of the ~~certification endorsement~~ period, the POST Council will send notification to the instructor, provided the instructor still meets the qualifications for instructor certification ~~and endorsement.~~ ~~(4-11-15)( )~~

02. **Requirements.** To renew the ~~certification endorsement~~, the instructor must submit the following to POST Council: ~~(4-11-15)( )~~

~~a. A teaching log indicating the instruction of at least one (1) class during the last ~~certification endorsement~~ period; (4-2-03)( )~~

~~b. An updated lesson plan, if any changes have been made since it was last submitted; and (4-2-03)~~

~~eb. A firearms qualification score sheet witnessed by a current POST-~~certified endorsed~~ firearms instructor other than the renewing instructor. The qualification course must be the POST Council-approved course pertinent to the topic the instructor is certified to teach. This requirement applies only to POST-~~certified endorsed~~ firearms instructors who are renewing their firearms instructor ~~certification endorsement.~~ (4-11-15)( )~~

~~dc. Instructors must meet ~~recertification endorsement~~ requirements in compliance with Council and applicable industry standards. (4-11-15)( )~~

**ed.** In addition to the above subsections, instructors of topics related to Defensive Tactics, Firearms, and Emergency Vehicle Operations must complete a minimum of eight (8) hours of continuing instructor training every two (2) years, to include use of force law, liability, and further instructor training specific to the knowledge and skills to teach in the ~~certified~~ **endorsed** instructional topic area(s). (4-11-15)( )

**fe.** Conducted Energy Device instructors must submit proof of successful completion of the manufacturer's recertification requirements for each Conducted Energy Device they are POST-~~certified~~ **endorsed** to instruct. (4-11-15)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**281. ~~POST TRAINING CREDIT: APPROVAL OF FORMAL SCHOOLS FORMATION AND CERTIFICATION~~ **OTHER COURSES OF INSTRUCTION.****

**282. GENERAL PROVISIONS.**

**01. Purpose.** School ~~certification~~ **and course approval** is established for the purpose of recognizing ~~schools training~~ deemed adequate to effectively teach law enforcement subjects and/or general subjects pertinent to law enforcement personnel. (4-2-03)( )

**02. Certification Approval.** The Council ~~shall certify~~ **may approve** schools ~~deemed adequate to effectively teach one (1) or more of the prescribed~~ **or courses that meet established POST standards regarding measurable, verifiable** training ~~courses~~. (4-2-03)( )

~~**03. Applications.** All applications for award of school certification shall be completed by the school director on the prescribed "Application for Certification of School" as provided by the POST Council. (4-2-03)~~

~~**04. Submission.** The Application for Certification of School form shall be submitted by the school director to his agency head who shall review it prior to signing it and forwarding it to the POST Regional Training Specialist. (4-2-03)~~

~~**053. Appeal.** In the event that ~~certification~~ **approval** is denied, appeal may be made directly to the Council. (7-1-93)( )~~

~~**064. No POST Training Credit.** No POST training credit ~~shall~~ **will** be given for attendance at a school that has not been ~~certified~~ **approved** by the Council. (4-2-03)( )~~

~~**075. POST-Certified Approved School or Course.** A school sponsored and conducted by the POST Council or a school taught by a POST-certified instructor in their respective subject shall be considered a POST-certified school. **In addition to training instructed according to Subsection 251.04 of these rules, the POST Council will grant training credit for schools and organized collections or series of courses according to the following criteria:** (4-2-03)( )~~

~~**a.** A school or course facilitated by a POST-certified or approved instructor which is taught in whole or in part by one (1) or more instructors who are not POST-certified or approved will be considered a POST-approved school provided the training meets the requirements of Section 284. ( )~~

~~**b.** A school or course provided by a third party will be considered a POST-approved school provided the sponsoring agency provides documentation meeting the pre-approval status requirements of Subsection 284.02, and if applicable, Sections 306 through 310. All schools or courses approved pursuant to this subsection are subject to the provisions of Section 285, "Course Evaluation Fee." ( )~~

~~**c.** A school or course which is taught or delivered outside of the state of Idaho will be considered a POST-approved school provided the trainee provides either documentation of POST course approval of the host state~~

or documentation of International Association of Directors of Law Enforcement Standards and Training (IADLEST) national course certification and provides a certificate indicating successful completion of the training within thirty (30) days of the completion of the training session. ( )

d. Any management or executive-level school or course attended for the purpose of compliance with Sections 119 or 120 of these rules by a trainee currently holding a command level rank will be considered a POST-approved school provided the trainee provides a certificate indicating successful completion of the training within thirty (30) days of the completion of the training session. ( )

~~08. **Revocation.** Certification may be revoked by the Council whenever a school is deemed to be inadequate. In such event, the head of the sponsoring agency of the school shall be notified by the Council. The school may be recertified by the Council when it deems the deficiencies have been corrected.~~ (4-2-03)

**283. EXAMINATIONS.**

Written examinations may be required of each trainee in each school ~~certified~~ approved by the Council for thirty-five (35) or more POST training hours. (4-2-03)( )

~~284. **CERTIFICATES OF COMPLETION.**~~

~~Certificates of completion may be issued by the Council to those satisfactorily completing schools worth thirty-five (35) or more POST training hours.~~ (4-2-03)

~~285. **SCHOOL CERTIFICATION.**~~

~~01. **Temporary Certification.** Temporary certification may be granted for a specific law enforcement training school offered on a one (1) time or infrequent basis. Temporary certification shall be issued for a definite period of time not to exceed one (1) year.~~ (4-2-03)

~~02. **Continuing Certification.** Continuing certification may be granted for longer than one (1) year for law enforcement training schools offered on a regular basis. Such certification may be reviewed at any time at the discretion of the POST Division Administrator.~~ (4-2-03)

**286.4. PROCEDURES REQUIRED DOCUMENTATION FOR SCHOOL OR COURSE APPROVAL.**

**01. Application Documentation.** ~~The completed Application for Certification of School form shall~~ Documentation must be submitted ~~to~~ by the POST-certified or approved instructor acting as the lead instructor or facilitator for the training ~~Regional Training Specialist a minimum of thirty (30) days prior to the start of the school,~~ and ~~shall~~ must include: (4-2-03)( )

a. A course outline; (4-2-03)

b. A course description of the subject material being offered and the time period to be devoted to each subject area; (4-2-03)

~~e. A schedule of classes;~~ (4-2-03)

~~dc.~~ A statement about the law enforcement personnel to whom it ~~shall~~ will be directed; (4-2-03)( )

~~ed.~~ A resume on each instructor, unless the instructor is a POST-certified or approved instructor; and (4-2-03)( )

~~fe.~~ A lesson plan meeting the guidelines presented in the POST Instructor Development and POST Instructor Orientation Courses, unless the lesson plan is permanently on file at the sponsoring agency, including all performance objectives and any documentation of the assessment method(s) used to verify student participation and/or measure the students' completion of the performance objectives. (4-2-03)( )

**02. Evaluation.** ~~An evaluation of the school shall be made on the basis of the information provided in the Application for Certification of School. A school inspection may be conducted by the Council or its representative~~

~~as part of the certification procedure. If there is still a question about whether or not the school shall be certified after the evaluation is complete, the POST Council shall review the application and determine whether the school shall be certified. **Submission Deadlines.** The documentation listed in Subsection 284.01 must be submitted to the POST Regional Training Specialist within the following timeframes to be eligible for POST training credit. (4-2-03)(\_\_\_\_)~~

~~**a.** For pre-approval status, documentation should be submitted as early as possible and must be submitted no later than thirty (30) days prior to the start of the training session, school, or course. All third-party training must be pre-approved, with the exception of management or executive-level training. (\_\_\_\_)~~

~~**03b. Notification.** Notification of approval or denial of the request for certification shall be sent in the form of a letter from the POST Regional Training Specialist to the agency head. If approval is granted, the letter shall indicate how many POST training hours shall be awarded for completion of the training. Documentation should be submitted as early as possible and must be submitted no later than thirty (30) days following the completion of a training session, school, or course, including management or executive-level training. (4-2-03)(\_\_\_\_)~~

~~**043. Course Attendance Roster.** The school director shall submit the original copy of the An original or electronic POST Course Attendance Roster ~~to the POST Regional Training Specialist within seven~~ must be submitted by the POST-certified or approved instructor acting as the lead instructor or facilitator no later than thirty (730) days of following the completion of the a training session, school, or course for POST training credit approval. (4-2-03)(\_\_\_\_)~~

~~287. **THE SCHOOL DIRECTOR.**~~

~~**01. Responsibilities.** The school director shall be responsible for the overall supervision of the school, including, if applicable: (4-2-03)~~

~~**a.** Arranging for qualified instructors; (4-2-03)~~

~~**b.** Arranging for adequate facilities such as classrooms, gymnasium, safe firearms ranges, etc.; (4-2-03)~~

~~**c.** Applying for POST certification of school; (4-2-03)~~

~~**d.** Providing for food and lodging for trainees where appropriate; (4-2-03)~~

~~**e.** Preparing and grading examinations; (4-2-03)~~

~~**f.** Grading classroom notebooks; and (4-2-03)~~

~~**g.** The conduct and discipline of the trainees. (7-1-93)~~

~~**02. Determination of Successful Completion.** The school director shall make the final determination as to whether a trainee has successfully completed all reasonable standards and requirements of the training course. The school director shall also have the authority to dismiss from the school any trainee prior to the completion of the course if, in the school director's opinion, the trainee is unable or unwilling to successfully complete the prescribed training course. Immediately upon such dismissal, the school director shall submit a written report to the Council and the trainee's agency head with a detailed explanation of the action. (4-2-03)~~

~~**03. Records.** The school director shall maintain complete records on each trainee. Within seven (7) days of completion of the school, he shall submit the original copy of the POST Course Attendance Roster to the POST Regional Training Specialist. (4-2-03)~~

~~288.—295. **(RESERVED)**~~

~~296. **CERTIFICATION OF HIGH LIABILITY SCHOOLS.**~~

~~In addition to the requirements set forth in Sections 281 through 287 of these rules, the requirements in Sections 296 through 298 are necessary for evaluation of the request for certification of a high liability school. (4-2-03)~~

**297. REQUIREMENTS.**

~~01. **Determination of High Liability.** The POST Training Specialist shall have the discretion to make the determination whether the school includes an element of risk or potential damage or injury to the trainees, property, or a third party not directly involved with the school. If such a determination is made, some or all of the following may be required:~~ (4-2-03)

~~a. Course evaluations from past participants or from agencies having direct knowledge of the course content and presentation;~~ (4-2-03)

~~b. A list of past participants having direct knowledge of the course content and presentation;~~ (4-2-03)

~~c. Documentation of certification of the school in other states;~~ (4-2-03)

~~d. A complete lesson plan, to include:~~ (4-2-03)

~~i. How the material relates to Idaho Code;~~ (4-2-03)

~~ii. Any applicable court rulings;~~ (4-2-03)

~~iii. Any content warnings or precautions;~~ (4-2-03)

~~iv. A safety plan; and~~ (4-2-03)

~~v. A legal review.~~ (4-2-03)

~~e. A demonstration of the course for the POST Training Specialist and/or a subject matter expert who shall evaluate the content and presentation.~~ (4-2-03)

~~02. **Specialized Equipment.** Any associated costs or specialized equipment needed for the evaluation process shall be provided by the applicant at the time of application.~~ (4-2-03)

~~03. **Liability Disclaimer.** A liability disclaimer indemnifying the state of Idaho may be required as a condition of POST certification of the school.~~ (4-2-03)

**298.5. COURSE EVALUATION FEE.**

**01. Fee Schedule.** The entity making application *shall will* be charged a course evaluation fee at the time of application. The course evaluation fee schedule is as follows: (4-2-03)(    )

a. The fee for evaluating a one (1) to four (4) hour course *shall will* be two hundred dollars (\$200). (4-2-03)(    )

b. The fee for evaluating a five (5) to eight (8) hour course *shall will* be four hundred dollars (\$400). (4-2-03)(    )

c. The fee for evaluating a nine (9) to sixteen (16) hour course *shall will* be six hundred dollars (\$600). (4-2-03)(    )

d. The fee for evaluating a seventeen (17) to twenty-four (24) hour course *shall will* be eight hundred dollars (\$800). (4-2-03)(    )

e. The fee for evaluating a twenty-five (25) to forty (40) hour course *shall will* be one thousand dollars (\$1,000). (4-2-03)(    )

f. The fee for evaluating a course in excess of forty (40) hours *shall will* be a combination of the

above as determined by the POST Division Administrator.

(4-2-03)( )

**02. Exception.** The course evaluation fee *shall will* not be charged for courses developed and conducted by governmental agencies.

(4-2-03)( )

**03. Waiver.** The course evaluation fee may be waived in whole or in part at the discretion of the POST Division Administrator.

(4-2-03)

**29986. -- 305. (RESERVED)**

**306. ~~CERTIFICATION OF SCHOOLS~~ APPROVAL OF TRAINING UTILIZING ALTERNATIVE METHODS OF TRAINING DELIVERY.**

**307. ALTERNATIVE METHODS OF TRAINING DELIVERY.**

Alternative methods of training delivery *shall will* include, but not be limited to, the following types of technology:

(4-2-03)( )

- 01. Videotape;** (4-2-03)
- 02. Television-Based;** (4-2-03)
- 03. Computer-Based;** (4-2-03)
  - a. Simulator;** (4-2-03)
- 04. Web-Based;** (4-2-03)
  - a. Distance learning;** (4-2-03)
  - b. On-line interactive; and** (4-2-03)
- 05. Correspondence.** (4-2-03)

**308. GENERAL PROVISIONS.**

**01. Minimum Length.** Each course *shall must* be a minimum of two (2) hours in length.

(4-2-03)( )

**02. Notification.** Notification of approval or denial of the request for ~~certification shall~~ *approval will* be sent in the form of a letter from the POST Regional Training Specialist to the applicant. If approval is granted, the letter *shall will* indicate how many POST training hours *shall will* be awarded for completion of the training.

(4-2-03)( )

**03. Examinations.** (4-2-03)

**a.** Upon completion of the course, each trainee *shall must* be given an examination to assess their knowledge of the course material. The examination *shall must* be proctored by an Idaho POST-certified instructor or a subject matter expert approved by POST prior to the examination.

(4-2-03)( )

**b.** Only those trainees receiving a passing score on the examination *shall will* be awarded POST training hours for the course.

(4-2-03)( )

**04. POST Training Credit.** To receive credit on their POST training record, the trainee *shall must* submit the following to POST:

(4-2-03)( )

**a.** The certificate of completion; (4-2-03)

b. A signed statement from their agency head or school director verifying participation and completion of the course. ~~(4-2-03)~~( )

**05. Falsification of Information.** The POST Council may proceed with decertification proceedings against any officer who falsifies any information. (4-2-03)

**06. Liability Disclaimer.** A liability disclaimer indemnifying the state of Idaho ~~shall~~ **must** be printed on all commercially-developed or distributed training materials ~~certified~~ **approved** by POST Council. ~~(4-2-03)~~( )

**309. REQUIREMENTS.**

In addition to the requirements set forth in Sections 281 and 282 of these rules, the requirement in Sections 306 through 311 are necessary for evaluation of the request for certification of a school utilizing an alternative method of training delivery. (4-2-03)

**01. Training Medium.** The training medium utilized ~~shall~~ **must** be indicated on the Application for Certification of School. ~~(4-2-03)~~( )

**02. Specialized Equipment.** Any specialized equipment, software, network access, etc. needed for the evaluation process ~~shall~~ **must** be provided to POST free-of-charge by the applicant at the time of application. ~~(4-2-03)~~( )

**03. Course Evaluation Fee.** A course evaluation fee ~~shall~~ **will** be charged pursuant to Section 298~~5~~ of these rules. ~~(4-2-03)~~( )

**310. RECORDS.**

A course file ~~shall~~ **must** be maintained by the applicant host agency or facilitating instructor and ~~shall~~ **must** be readily available to POST Council. The file ~~shall~~ **must** include: ~~(4-2-03)~~( )

- 01. Name.** The name of the course provider; (4-2-03)
- 02. The Lesson Plan;** (4-2-03)
- 03. Objectives.** The course learning objectives; (4-2-03)
- 04. Hours Awarded.** The number of POST training hours awarded; (4-2-03)
- 05. Attendance.** The attendance policy and the methodology for ascertaining and validating trainee attendance and participation, such as secure password, attendance roster, encrypted passcode, etc. (4-2-03)
- 06. Assessment Record.** The trainee assessment record; (4-2-03)
- 07. Certificate of Completion.** The names of the trainees awarded a certificate of completion and the date they completed the course; and (4-2-03)
- 08. Course Evaluations.** The Course Evaluations By The Trainees. (4-2-03)

**311. CERTIFICATES OF COMPLETION.**

The ~~applicant shall~~ host agency or facilitating instructor will issue a certificate of completion to each trainee successfully completing the training course. The certificate ~~shall~~ **will** include the following information: ~~(4-2-03)~~( )

- 01. Course Provider.** The name of the course provider; (4-2-03)
- 02. Trainee.** The name of the trainee successfully completing the course; (4-2-03)
- 03. Date.** The date the trainee completed the course; (4-2-03)



04. **Hours.** The number of course hours completed; and (4-2-03)

05. **Course Administrator Facilitator.** The name of the ~~person~~ POST-certified or POST-approved instructor responsible for the general administration of the course. ~~(4-2-03)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**351. SELF-SPONSORED STUDENT PROGRAM SELECTION STANDARDS.**

01. **Requirement.** Every Self-Sponsored Student ~~shall~~ must meet the minimum standards for employment (Sections 050 through 065) of this manual. ~~(4-2-08)~~ ( )

02. **Procedures.** (3-20-97)

a. The applicant ~~shall~~ will be required to complete and submit to the POST Council a comprehensive application and personal history packet, along with ~~two (2)~~ a sets of fingerprints on the standard FBI applicant fingerprint cards. A non-refundable application fee is required and must accompany the application. ~~(3-20-97)~~ ( )

b. In order to determine the applicant's suitability as a Self-Sponsored Student, the POST Council ~~shall~~ will conduct a thorough criminal and personal history background investigation. The fingerprint cards ~~shall~~ will be submitted to the Bureau of Criminal Identification, ~~which shall use one (1) set to conduct a statewide search, and shall forward the other set to the FBI for a national criminal history record check.~~ All results of the background investigation will be considered confidential and processed accordingly. ~~(3-20-97)~~ ( )

c. The applicant must also successfully complete a polygraph, psychological evaluation, physical agility test, and a Police Officer Selection written examination approved by POST Council. (3-20-97)



## IDAPA 11 - IDAHO STATE POLICE

### 11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or as 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:

The text of the pending rule differs from the text of the proposed rule due to a recent discovery that POST does not qualify as a law enforcement agency and therefore must pay for the processing of fingerprint cards. The pending rule text now requires the agencies to maintain records check results and verify an applicant's compliance with the minimum standards for employment to the POST Council.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 169-174](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Victor McCraw at (208) 884-7251.

DATED this 19th day of November, 2015.

Victor R. McCraw  
POST 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 October 21, 2015.

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:

Fingerprint requirements were updated to reflect current Bureau of Criminal Identification requirements; “shall” changed to “will” and “must” pursuant to direction in Rule Writer’s Manual; no certification is ever reactivated, so the language was corrected to reflect recertification; the Physical Agility Testing was deleted from the challenge requirements to enhance agencies’ ability to hire retired officers from other states; firearms qualification was added to the correction officer challenge requirements, as this is a required job task for correction officers; added decertification investigation language where missing to make the language identical to other similar sections.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Victor McCraw 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 October 28, 2015.

DATED this 28th Day of August, 2015.

### LSO Rules Analysis Memo

Italicized red text that is double underscored is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1104-1501

#### 036. CRIMINAL RECORD.

01. **Fingerprints.** The applicant must be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form card, and a search made by the hiring agency of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results must be retained by the POST Council hiring agency. The hiring agency must verify the applicant's compliance with the minimum standards for employment outlined in this section to the POST Council upon submission of the appropriate notification of employment form designated by the Council. (4-11-06)( )

- 02. Conviction.** The term “conviction” includes: (4-11-06)
- a.** Any conviction in a federal, tribal, state, county, or municipal court; (4-11-06)
  - b.** A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant’s appearance in court as final disposition; (4-11-06)
  - c.** The payment of a fine; (4-11-06)
  - d.** A plea of guilty, nolo contendere; or (4-11-06)
  - e.** A finding of guilt 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 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 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. (4-11-06)
- 03. Misdemeanor Conviction.** A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-11-06)
- a.** An applicant must be rejected who has been convicted of any misdemeanor sex crime, 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. The Division Administrator will have the discretion to refer the application to the POST Council. In all other cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)
  - b.** An applicant with any other misdemeanor conviction will be accepted upon approval of their agency head provided the conviction occurred more than two (2) years prior to application and the applicant’s agency head submits written documentation that, with knowledge of the facts and circumstances concerning the offense or violation, he approves the applicant. If the conviction occurred during the two (2) years immediately preceding application, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)
- 04. Felony Conviction.** An applicant must 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. For the purpose of this rule, a felony conviction will 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 will be granted by the POST Council, except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. LAPSE OF CORRECTION OFFICER CERTIFICATION.**

The certification of any correction officer ~~shall~~ **will** be considered lapsed if the officer does not serve as a correction officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified correction officer who remains in an administrative duty assignment with the Idaho Department of Correction ~~shall~~ **will** retain their POST certification provided they do not leave employment with the Idaho Department of Correction and satisfy the continuing training requirement of at least twenty (20) hours per year. The three-year period provided herein ~~shall~~

will be tolled during any time period that a correction officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-4-13)( )

**01. Three to Five Years.** A correction officer who has been out of full-time correction officer status from three (3) to five (5) years and who wants to ~~reactivate certification shall~~ **be recertified must** meet the following POST requirements: (4-4-13)( )

- a. Submit a POST Certification Correction Challenge Packet; (4-11-06)
- b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c. Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (4-11-06)( )
  - ii. The POST ~~Correction Officer Physical Agility Test~~ **Firearms Qualification Course**; and (4-11-06)( )
- d. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**02. Over Five Years.** A correction officer who has been out of full-time correction officer status for over five (5) years ~~shall~~ **must** attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to ~~reactivate certification~~ **be recertified**. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time correction officer status, the officer was engaged in an occupation requiring correction officer training, skill, and experience. This evidence ~~shall~~ **must** be submitted with a POST Certification Correction Challenge Packet. Upon receiving a waiver, the officer ~~shall~~ **must** meet the following POST requirements: (4-4-13)( )

- a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b. Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (4-11-06)( )
  - ii. The POST ~~Correction Officer Physical Agility Test~~ **Firearms Qualification Course**; and (4-11-06)( )
- c. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**03. Over Eight Years.** A correction officer who has been out of full-time correction officer status for over eight (8) years ~~shall~~ **must** attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to be recertified. No waiver of this requirement ~~shall~~ **will** be granted by the Council. (4-4-13)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**054. CHALLENGING THE BASIC CORRECTION ACADEMY.**

Any correction officer presently appointed by the Idaho Department of Correction or by a private prison contractor of the State Board of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a correction officer or a student who has satisfactorily completed a Basic

Correction Academy equivalent to the Idaho POST Basic Correction Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Correction Academy, provided the officer: (4-11-06)

**01. Submission of Challenge Packet.** Submits a POST Certification Correction Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-11-06)

**02. Discloses Decertification Information.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**023. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-11-06)

**a.** The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (4-11-06)( )

**b.** The POST ~~Correction Officer Physical Agility Test~~ Firearms Qualification Course; and (4-11-06)( )

**034. Completes Probationary Period.** Completes his probationary period as required by Subsection 053.01. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**062. LAPSE OF ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.**

The certification of any adult probation and parole officer ~~shall~~ will be considered lapsed if the officer does not serve as an adult probation and parole officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified adult probation and parole officer who remains in an administrative duty assignment with the Idaho Department of Correction ~~shall~~ will retain their POST certification provided they do not leave employment with the Idaho Department of Correction and satisfy the continuing training requirement of at least twenty (20) hours per year. The three-year period provided herein ~~shall~~ will be tolled during any time period that an adult probation and parole officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-4-13)( )

**01. Three to Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status from three (3) to five (5) years and who wants to ~~reactivate certification shall be recertified must~~ meet the following POST requirements: (4-4-13)( )

**a.** Submit a POST Certification Adult Probation and Parole Challenge Packet; (4-11-06)

**b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

**c.** Pass the following tests administered by a POST Training Specialist: (4-11-06)

**i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)

**ii.** The POST Firearms Qualification Course; ~~and~~ (4-2-08)( )

**iii.** ~~The POST Adult Probation and Parole Officer Physical Agility Test; and~~ (4-11-06)

**d.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**02. Over Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over five (5) years ~~shall~~ **must** attend the POST Basic Adult Probation and Parole Academy to ~~reactivate certification~~ **be recertified**. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time adult probation and parole officer status, the officer was engaged in an occupation requiring adult probation and parole officer training, skill, and experience. This evidence ~~shall~~ **must** be submitted with a POST Certification Adult Probation and Parole Challenge Packet. Upon receiving a waiver, the officer ~~shall~~ **must** meet the following POST requirements: ~~(4-4-13)~~( )

- a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b.** Attend and pass Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)
- c.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)
  - ii.** The POST Firearms Qualification Course; ~~and~~ ~~(4-2-08)~~( )
  - iii.** ~~The POST Adult Probation and Parole Officer Physical Agility Test; and~~ ~~(4-11-06)~~
- d.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**03. Over Eight Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over eight (8) years ~~shall~~ **must** attend the POST Basic Adult Probation and Parole Academy to be recertified. No waiver of this requirement ~~shall~~ **will** be granted by the Council. ~~(4-4-13)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**065. CHALLENGING THE BASIC ADULT PROBATION AND PAROLE ACADEMY.**

Any adult probation and parole officer presently appointed by the Idaho Department of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as an adult probation and parole officer or a student who has satisfactorily completed a Basic Adult Probation and Parole Academy equivalent to the Idaho POST Basic Adult Probation and Parole Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Adult Probation and Parole Academy, provided the officer: (4-11-06)

**01. Submission of Challenge Packet.** Submits a POST Certification Adult Probation and Parole Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-11-06)

**02. Discloses Decertification Information.** ~~Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof.~~ ( )

**023. Attends and Passes POST-Certified Courses.** Attends and passes Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)

**034. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-11-06)

a. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)

b. The POST Firearms Qualification Course; ~~and~~ (4-2-08) ( )

~~e. The POST Adult Probation and Parole Officer Physical Agility Test. (4-2-08)~~

**045. Completes Probationary Period.** Completes his probationary period as required by Subsection 064.01 of these rules. (4-11-06)



**IDAPA 50 - IDAHO COMMISSION OF PARDONS AND PAROLE**

**50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE**

**DOCKET NO. 50-0101-1501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 20-223, 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:

The pending rule updates and revises the rules to include changes passed through the legislative session for 2015.

Changes made to the pending rule include report information in the restoration of firearms and clarifies victim's information and notifications.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Vol. 15-10, pages 618-644](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Mary Schoeler 208-334-2520.

DATED this 25th day of November 2015.

Sandy Jones  
Executive Director  
3506 Elder St  
Boise, Idaho 83705  
208-334-2520

**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 20-223, 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 21, 2015.



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:

To update and revise the rules to include changes passed through the legislative session for 2015; to implement violation hearing officers' authority to impose sanctions; mirror statutory language from JRI and correct minor clerical errors. To allow the implementation of firearm restoration guidelines, implement the firearm application to include conditions to be met; to make additions to confidential evaluations of substance abuse; additional explanation of executive director's authority to recall a decision; additional explanation of conditions of parole contract; remove ambiguous terms such as "excessive" in excessive alcohol use; removal of instructional parole due to no benefit of parole; to include the authority of Violation Hearing Officers to implement 90/180 day sanctions without appearing before the commission; to clarify public records requests regarding hearing officer reports and interviews as confidential; and further clarify and mirror statutory language in rules; to include guidelines for Foreign National Treaty transfer; to remove institutional parole.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: NA

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because The Commission of Pardons and Parole is updating its administrative rules to reflect current operating processes and legislation passed in the 2015 session. The commission will be correcting minor clerical errors and mirroring statutory language found when implementing the Justice Reinvestment Initiative and further clarifying the Justice Reinvestment Initiative parole guidelines to be placed into current practice. The Commission anticipates prosecuting attorneys, law enforcement agencies, the judiciary, and the Idaho Department of Corrections will support the proposed rules. It is unlikely that defense attorneys, offenders and their families will support the rule changes, as they will be perceived as disadvantageous to these groups' interest. Consequently, negotiated rulemaking is not a viable option and will unnecessarily expend commission resources.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mary Schoeler, Paralegal (208) 334-2520.

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 28, 2015.

DATED this 2nd Day of September, 2015.

**LSO Rules Analysis Memo**

**Italicized red text that is double underscored is new text that has been added to the pending rule.**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 50-0101-1501**

**010. DEFINITIONS.**

- 01. Abscond.** An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. (4-11-15)
- 02. Case Worker/Manager.** For purposes of reference, the case worker/manager is an Idaho Department of Correction employee who is involved with assisting offenders/parolees regarding their problems, needs, and adjustments. Such case worker/manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician. (4-11-15)
- 03. Commission.** The Idaho Commission of Pardons and Parole. (4-11-15)
- 04. Commission Warrant.** Warrant of arrest for alleged parole violation issued by the executive director or a commissioner. This warrant is a non-bondable warrant. (3-23-98)
- 05. Commutation.** Clemency powers granted to the commission, or the governor, or both, which allow for a sentence to be modified. (4-11-15)
- 06. Concurrent Sentence.** Sentence served at the same time as another. (3-23-98)
- 07. Conditions of Parole.** Conditions under which an offender is released to parole supervision. (4-11-15)
- 08. Confidential.** Privileged from disclosure. (3-23-98)
- 09. Consecutive Sentence.** Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)
- 10. Decision.** A determination arrived at after consideration, a conclusion. (3-23-98)
- 11. Detainer.** A document authorizing the detention of an offender in custody for a new felony crime or parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. (4-11-15)
- 12. Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (4-11-15)
- 13. DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)
- 14. Early Parole Discharge.** Release from further custody of parole supervision prior to the maximum expiration date and after statutory minimum of one (1) year of their sentence has been completed. (4-11-15)
- 15. Escape.** Flight from confinement. (3-23-98)
- 16. Evidence Based Program.** A treatment program evaluated using an experimental methodological design, with outcomes reviewed by a variety of scientific professionals, and deemed effective in the delivery method and the desired participant population outcomes. (4-11-15)
- 17. Executive Session.** Any meeting or part of a meeting of the commission which is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. (4-11-15)
- 18. Fixed Term.** Portion of sentence during which the convicted person is not eligible for parole. (3-23-98)
- 19. Full Term Release Date.** The date an offender completes the term of sentence without good time

credits. (4-11-15)

**20. Good Time Release Date.** The date an offender completes the term of sentence, minus statutory good time credits when applicable. Good time credit applies to offenses committed prior to July 1, 1986, and for which an offender is confined to a correctional institution for a definite term other than life. (4-11-15)

**21. Hearing.** The opportunity to be interviewed by the commission, a commissioner, or other designated commission staff. (4-11-15)

**22. Hearing Officer.** An impartial person employed by the commission and selected by the executive director to conduct an interview and take testimony from an offender regarding offender's history, criminal record, social history, present condition of offender, and offense. (4-11-15)

**23. Hearing Session.** A series of hearings conducted by the commission. (3-23-98)

**24. Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (4-11-15)

**25. Institutional Parole.** Parole granted on one (1) or more consecutive sentences where the offender/parolee remains incarcerated on other consecutive sentences. If released to parole on the remaining consecutive sentences, the parole becomes regular parole. (4-11-15)

**26. Jacket, File, or Case Review.** Review of central file, commission file, and/or additional information submitted, without testimony or interview of offender or parolee. (4-11-15)

**27. NCIC.** National Crime Information Center. (3-23-98)

**28. Non Restricted Sentence.** Sentence not restricted by statute. (3-23-98)

**29. Non Technical Violation.** Violation of parole by absconding or a new felony or ~~violent~~ misdemeanor ~~or infraction~~ conviction. (4-11-15) ( )

**30. Offender.** A person under the legal care, custody, supervision, or authority of the board or correction, including a person within or without Idaho pursuant to agreement with another state or contractor. (4-11-15)

**31. On-Site Parole Violation Hearing.** Parole violation hearing to determine guilt or innocence which must be held reasonably near the site of the alleged violation(s). (4-11-15)

**32. Open Parole Date.** Tentative parole granted without setting an actual tentative release date and subject to release by commission authorization; offender's parole eligibility date has passed when a tentative parole date is granted. A tentative parole date will become an open parole date if the tentative parole date passes without the offender being released to an acceptable plan on the specific date. (4-11-15)

**33. Pardon.** Clemency powers granted to the commission or the governor that allows release from consequences of conviction of a crime and restores a persons' civil rights. (4-11-15)

**34. Parole.** Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and offender. Parole is not a right, but is a matter of grace. (4-11-15)

**35. Parole Eligibility Date.** The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. (4-11-15)

**36. Parole Hearing Interview.** An interview conducted by a hearing officer for the purpose of gathering information and testimony from the offender regarding the offender's history, criminal record, social

history, present condition, instant offense, and other factors, when the offender is scheduled for a forthcoming parole consideration hearing. (4-11-15)

**37. Parole Violation Hearing.** A fact-finding hearing conducted by a hearing officer to determine a subject's guilt or innocence of alleged violations of parole. The hearings are conducted for both technical and non-technical violations, and may be held on-site, or at a location as determined by the executive director or the hearing officer. (4-11-15)

**38. Parolee.** Offender being supervised on parole. (4-11-15)

**39. Permanently Incapacitated.** As defined in Section 20-223, Idaho Code, permanently incapacitated means a person who, by reason of an existing physical condition which is not terminal, is permanently and irreversibly physically incapacitated. (4-11-15)

**40. Rescission.** Cancellation of a previous decision. (4-11-15)

**41. Reprieve.** Temporary suspension of the execution of sentence; delay a punishment. (3-23-98)

**42. Restricted Sentence.** Sentence restricted by Idaho Statutes, by carrying a mandatory minimum to be served prior to parole eligibility. (4-11-15)

**43. Return of Service.** The document that establishes what legal documents were served on whom, by whom, and when. (4-11-15)

**44. Revocation/Violation File.** File containing the documents pertinent to a particular violation/revocation proceeding. (4-11-15)

**45. Risk Assessment.** Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)

**46. Session.** See "Hearing Session." (4-11-15)

**47. Statutory Release Date.** Maximum full-term expiration date, minus any good time credits accumulated during incarceration. The maximum full-term date may change upon forfeiture of time on parole due to a violation of that parole. (4-11-15)

**48. Substantive Conditions of Parole.** Conditions of parole which relate to the rehabilitation of a parolee including, but not limited to, performance of community service, use of alcohol, use of a motor vehicle, limitations on financial matters, use of drugs, associations with other felons, employment requirements, residence requirements, traveling outside of their district, etc. (4-11-15)

**49. Technical Violation.** Violation of parole by not conforming to conditions of parole, but not to include absconding or a new criminal conviction ~~or infraction.~~ (4-11-15)( )

**50. Terminally Ill.** As defined by Section 20-223, Idaho Code, terminally ill shall mean a person who has an incurable condition caused by illness or disease and who is irreversibly terminally ill. (3-23-98)

**51. Victim.** As defined by Section 19-5306, Idaho Code. "Any individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense." Including as defined by Section 19-5304, Idaho Code, "will mean a person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct and will also include the immediate family of a minor and the immediate family of the actual victim in homicide cases." (4-11-15)( )

**52. Witness.** Anyone who observes a hearing, appears as attorney for the subject of a hearing, or others who provide written or verbal testimony. (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. HEARING SESSIONS.**

**01. Number of Hearings Scheduled.** The executive director or designee will schedule hearing sessions according to the number of hearings ~~scheduled~~ required for the specific month. (4-11-15)( )

**02. Designation of Presiding Officer.** The executive director may designate one (1) of the members of the commission as the presiding officer to conduct individual hearings or a hearing session, or a business meeting. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**108. RIGHTS, POWERS, AND AUTHORITY OF THE COMMISSION.**

**01. Commutation, Pardon, Restoration of Firearms, and Remission.** The commission succeeds to and has all rights, powers and authority of the Board of Pardons as granted and provided by the provision of the constitution of the state of Idaho, in reference to commutation, pardon, restoration of firearms, and remission of fines. (4-11-15)( )

**02. Decision to Release to Parole.** The commission has the power to decide whether or not any offender eligible for parole may be released to parole. (4-11-15)

**03. Advisory Commission to Board of Correction.** The commission may act as the advisory commission to the board of correction. The commission has any and all authority necessary to fulfill the duties and responsibilities and other duties imposed upon it by law under Section 20-201, Idaho Code and other applicable provisions of Idaho law. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. COMMISSION AND STAFF.**

**01. Commission Members.** (3-23-98)

**a.** The commission is composed of five (5) members appointed by the governor for three (3) year terms; vacancies for unexpired terms will be for the remainder of the term and appointees may be reappointed. (4-11-15)

**i.** No more than three (3) members will be from one (1) political party. (4-11-15)

**ii.** Appointments are subject to the advice and consent of the senate. (3-23-98)

**b.** The commissioners are compensated as provided by Sections 20-210, 59-509(I), and 67-2008, Idaho Code. (4-11-15)

**02. Commission Staff.** (3-23-98)

**a.** The executive director is the official representative for the commission and is responsible for the managing and administration of commission business and will have other duties and responsibilities as assigned by the governor. (4-11-15)

**i.** The commission has delegated to the executive director the authority to approve recommended conditions of parole following the hearing process, issue commission warrants, issue parole release documents, and

all other official documents pertaining, but not limited to paroles, commutations, pardons, restoration of firearms and remissions of fines. (3-23-98)( )

ii. The executive director shall assume all authority and duties as may be delegated by the commission and the governor. (3-30-01)

b. The commission, the executive director, and all staff will maintain professional integrity in all matters of commission business. (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. HEARING PROCESS.**

**01. Information for Scheduled Commission Hearings.** (3-30-01)

a. A schedule of commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. The hearing schedule will be available five (5) business days prior to a hearing session. The hearing schedule may be revised due to offender movement between institutions or other circumstances and may not be published earlier. A person may obtain the offender's hearing date by contacting the commission office. (4-11-15)

b. The hearing schedule will reflect the date, location and starting time of each hearing session and a list of offenders scheduled for hearings and will be published on the commission website. (4-11-15)

**02. Location of Hearings.** The executive director will determine the location of hearings, based upon available information when the schedule is set. Due to circumstances beyond the commission's control, it may be necessary to change the location and date of a hearing or hearing session. (4-11-15)

a. It may be necessary to continue a hearing to a later date to allow for the offender's personal appearance or for other unforeseen reasons. (4-11-15)

**03. Interview Method.** For parole hearing, commutation hearings, and pardon hearings, remission of fines hearing, and restoration of firearms hearing, an interview may be conducted by face-to face, by telephone, or by other electronic means. The interview may be conducted by a hearing officer or other designee of the executive director. If an interview is not required, the offender may simply appear before the commission for a hearing. (4-11-15)( )

i. An in-depth investigational report explaining the offender's social history, criminal history, present condition, and offense will be prepared for the commission. The in-depth investigational report is exempt from public disclosure pursuant to Section 20-223, Idaho Code. (4-11-15)( )

ii. The commission will determine if they will conduct another hearing or make a decision based upon the report. (3-30-01)

**04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), Substance Abuse Evaluation, or Other.** (4-11-15)( )

a. A psychological report, or SORA, or both, will be prepared for the commission for all offenders serving a commitment for a sex offense, or whose history and conduct indicate an offender may be a sexually dangerous person as described in Section 20-223, Idaho Code. (4-11-15)

b. The commission, the executive director, or a hearing officer can order any psychological report, evaluation, or assessment for an offender serving a commitment for any crime. (4-11-15)

c. All psychological, ~~or~~ SORA, substance abuse evaluations, and mental health reports will be maintained in a confidential manner. (4-11-15)( )

**05. Interview/Hearing.** The offender who is the subject of an interview/hearing may be required to be present at a scheduled interview/hearing. (4-11-15)

**a.** Parole Consideration Hearing. The offender who is the subject of a hearing may be required to be present at a scheduled hearing. If the offender declines to be present at a parole consideration hearing, the offender is required to complete and submit the Inmate Refusal to Participate in Parole Interview/Hearing Process form and state the reason for not participating to the commission. A decision may be made by the commission based upon available information. ~~(4-11-15)~~( )

**b.** Parole Revocation/Violation. The parolee is required to be present at the revocation/violation hearing, with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

**c.** Commutation. The offender is required to be present at the scheduled commutation hearing, unless the commission determines otherwise. (4-11-15)

**d.** Pardon and Remission of Fine. The offender ~~of the hearing~~ is encouraged to be present at the hearing; the commission may make such appearance mandatory or may make a final decision based upon the information which is available. ~~(4-11-15)~~( )

**e.** Medical Parole. The offender is encouraged to be present at the hearing; the commission may make such an appearance mandatory or may make a final decision based on information available. (4-11-15)

**f.** Restoration of Firearms. The offender is encouraged to be present at the hearing. The commission may make such appearance mandatory or may make a final decision based upon the information that is available. ( )

**06. Witnesses and Documents.** The commission allows for the ~~offender/parolee~~ participation of attorneys, families of the subject, victims, and others who have a direct relationship to the specific hearing or offender/parolee of the hearing. ~~(4-11-15)~~( )

**a.** Persons who want to participate in a hearing must notify the commission staff five (5) days in advance of the scheduled hearing. Children under the age of sixteen (16) will not be allowed to attend the hearings without prior approval of the executive director. (4-11-15)

**b.** All written documents and letters to be considered must be submitted seven (7) days in advance of the scheduled hearing to ensure they will be considered; other documents may be allowed by unanimous consent from the commissioners present. (4-11-15)

**c.** An attorney or others as determined by the executive director or commission may be seated with the offender/parolee at the hearing. (3-23-98)

**d.** Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. The commission will allow the attorney representing the offender/parolee a designated time frame to provide information to the commission. Victims will be allowed to testify. Victim testimony is normally taken following comments of offender's attorney and family or friends of the offender/parolee. All persons who testify will direct their comments to the commission. Persons will keep their comments to the relevance of parole. (4-11-15)

**e.** Contacts from the public to an individual commissioner outside of the hearing process, are to be forwarded to the executive director in order that all commissioners will receive the information. (3-23-98)

**07. Conflict of Interest.** A commissioner who has personal knowledge of a case will make such knowledge available to the sitting commissioners prior to the scheduled hearing, and the sitting members of the commission will decide whether that commissioner should be disqualified from participating in deliberation and voting. (4-11-15)



a. A commissioner may remove themselves from the hearing. The commissioner may step down from the panel and leave the room during the hearing and deliberations. ( )

**08. Decisions. (3-23-98)**

a. Any decision of the commission requires a majority vote of three (3) or more commissioners. (4-11-15)

b. Decisions will be given orally following the hearing and deliberation of a case by the commission. Written notice of the decision may be submitted at a later date. The decision may be sent to the offender in writing with specific information/conditions. (4-11-15)

c. Following the decision being given orally, further testimony is allowed only at the discretion of the commission, or the executive director, or hearing officer. (4-11-15)

d. In the case of a review by the commission without a commission hearing, the decision will be published within a reasonable time. Individual written decisions may not be submitted, but will be available on the commission's website in a published list of a session's action taken. (4-11-15)

~~e.~~ Any decision made by the commission may be reconsidered at any time. The commission or executive director may bring forward any case determined to need reconsideration before the next hearing session as described in Section 105. (3-23-98)( )

**09. Rules of Conduct at Hearings. (3-23-98)**

a. All persons attending any hearing will conduct themselves in a manner which does not disrupt the proceedings or they may be removed from the hearing room and/or facility. (3-23-98)

b. All persons attending a hearing or hearing session, must abide by security policies of the department of correction, the facility where the hearing is being held, and pertinent statutes; number of witnesses allowed in the hearing room will be in line with life and safety codes; and all persons may be screened through metal detectors or similar technology and will be subject to search. (4-11-15)

c. Audio recording or video recording of any hearing or any hearing session may be allowed at the discretion of the commission or the executive director; such recordings will proceed only at the direction of the commission or the executive director as to the placement, manner and type of equipment. (4-11-15)

d. The media is invited to attend any hearing or session of the commission. (3-23-98)

i. Interviews with offenders or witnesses will not be allowed during the hearing process and the commission and staff will not be responsible for arranging any interviews. (4-11-15)

ii. During the hearing process, interviews with victims are not allowed without the express consent of the victim. (3-23-98)

iii. Arrangements for interviewing the commission or staff should be made in advance. (4-11-15)

**10. Official Record of Hearing/Review.** The official record of a hearing or case review will be the summary minutes of that hearing or review, once signed, and the original record will be maintained in the commission office. (3-30-01)

**201. -- 249. (RESERVED)**

**250. PAROLE.**

**01. Parole Determination.** The commission will use clear, evidence-based parole guidelines in making parole determinations, while still maintaining discretion of individual cases. (4-11-15)

a. The commission may release an offender to parole on or after the date of parole eligibility, or not at all. During a minimum term of confinement, an offender will not be eligible for parole, discharge, credit, or reduction of sentence for good conduct, except for meritorious conduct reduction service, or as provided in Section 20-101D, Idaho Code. (4-11-15)

b. Parole consideration is determined by the individual merits of each case. (4-11-15)

c. The commission uses evidence based parole consideration factors that are embedded in the clear parole guidelines; these guidelines will include the use of a validated risk and needs assessment. The commission still retains the discretion to deny parole of individual cases based on countervailing, discrete, individual case factors. Factors considered include, but are not limited to: (4-11-15)

i. Seriousness and aggravation and/or mitigation involved in the crime. (3-23-98)

ii. Prior criminal history of the offender. (4-11-15)

iii. Failure or success of past probation and parole. (3-23-98)

iv. Institutional history to include conformance to established rules, involvement in programs and jobs custody level at time of the hearing, and overall behavior. (3-23-98)

v. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. (3-23-98)

vi. Information or reports regarding physical or psychological condition. (3-23-98)

vii. The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. (3-23-98)

viii. Outcome of a validated risk and needs assessment. (4-11-15)

**02. Primary Review.** ~~For offenders eligible for parole a~~ review for the purpose of setting the initial parole hearing will be conducted on all offenders, ~~except those serving a court-retained jurisdiction and those offenders sentenced to death.~~ ~~†~~The commission is not responsible for the setting of a hearing until an official sentence calculation document has been received. (4-11-15)( )

a. The executive director or a designee will conduct the review following receipt of the sentence calculation from the department of correction, records office. The month and year of the initial parole hearing will be established based upon the sentence calculation. (4-11-15)

~~i. In cases of an offender serving a court-retained jurisdiction and have a current sentence, the primary review will not be scheduled on that case until the court-retained jurisdiction has been adjudicated. ( )~~

~~ii. In cases where the offender has a death sentence a primary hearing will not be scheduled. ( )~~

~~iii. In cases of specified minimum terms, the initial hearing will be set approximately six (6) months prior to the offender's parole eligibility date based on the sentence calculation. (4-11-15)~~

~~iv. In cases of offenses committed on or after February 1, 1987, and a minimum fixed term has been specified, the initial hearing may be scheduled six (6) months prior to the parole eligibility date, during the month of parole eligibility, or as noted in Subsection 250.02.b.vi. (4-11-15)~~

~~v. Consecutive Sentences. All fixed terms will be served before the indeterminate terms commence. (3-23-98)~~

~~vi. Concurrent Sentences. The initial hearing will not be scheduled until all fixed terms have been~~

served. (4-11-15)

vii. If an offender escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the offender's return to custody, taking into consideration any additional commitments and the time to conduct an interview and report. (4-11-15)

viii. If an offender is committed to the department of correction and such offender is eligible for parole immediately, or within the first six (6) months of their incarceration, the initial parole hearing will be scheduled within six (6) months from the month the commission was notified of the commitment. ~~(4-11-15)~~( )

~~ix.~~ix. The commission is not responsible for the accuracy of the sentence calculation as determined by the department of correction, records office. (4-11-15)

**03. General Conditions of Parole.** The commission establishes rules and conditions for every offender released to parole. Rules and conditions of parole will be provided in writing and acknowledged by the parolee. Parolee will sign the agreement indicating the parolee's understanding of the conditions of parole. Conditions of parole include: ~~(4-11-15)~~( )

a. The parolee is required to enter into and comply with an agreement of supervision with the board of correction. The agreement of supervision shall include provisions setting forth potential sanctions for a violation of the conditions imposed and potential rewards for compliance with the conditions imposed, as such sanctions and rewards are set forth in rules of the board. ~~(4-11-15)~~( )

b. Parolee will go directly to the destination approved by the commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the commission staff. (3-23-98)

c. The parolee will: (4-11-15)

i. Work diligently in a lawful occupation or a program approved by the commission or supervising officer and not change employment or designated program without written permission from the commission or supervising officer. (3-23-98)

ii. Support dependents to the best of parolee's ability. (4-11-15)

iii. Live within lawful income without incurring unnecessary indebtedness. (3-23-98)

d. The parolee must submit a complete and truthful report to the assigned parole officer. (4-11-15)

e. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee who is unavailable, communication will be directed to the district section supervisor. (4-11-15)

f. The parolee will: (3-23-98)

i. Obey all municipal, county, state, and federal laws. (3-23-98)

ii. Conduct himself or herself in a manner that is not, nor intended to be, harmful to himself or herself or others. (4-11-15)

iii. Follow written or oral instructions of the parole officer or commission. (3-23-98)

iv. Not purchase, own, sell, or have in the parolee's control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. (4-11-15)

v. Not have any dangerous weapons used or intended to be used for other than normal purposes, such as knives for household use. (3-23-98)

- g.** The parolee will: (4-11-15)
- i.** Abstain from ~~excessive~~ use of alcoholic beverages. (3-23-98)(    )
- ii.** Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (3-23-98)
- iii.** Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, narcotics, or other substances, which may be at the parolee's expense. (4-11-15)
- iv.** Participate in treatment programs as specified by the commission or ordered by the parole officer. (3-23-98)
- h.** The parolee will submit to a search of person or property, or both, to include residence and vehicle, at any time and place by any agent of field services or the commission, and the parolee waives the constitutional right to be free from such searches. (4-11-15)
- i.** The parolee is fully advised that written permission is required to: (3-23-98)
- i.** Willfully change employment; (3-23-98)
- ii.** Willfully change residence; and (3-23-98)
- iii.** Leave the assigned district. (3-23-98)
- j.** The parolee will make himself available for supervision and will not actively avoid supervision. (3-23-98)
- 04. Special Conditions of Parole.** (3-23-98)
- a.** In addition to general conditions of parole, the commission may add special conditions appropriate to the individual case. (3-23-98)
- b.** The commission delegates the authority to the executive director to add **additional** special conditions, before an offender has been released to parole or while on parole, ~~once~~ **after** the offender has signed a statement ~~agreeing to~~ **acknowledging** the special conditions. The commission will establish the special conditions of parole using the offender's most current risk and needs assessment to guide the imposition of necessary conditions. (4-11-15)(    )
- ~~**05. Institutional Parole.** (3-23-98)~~
- ~~**a.** An offender committed to the department of correction, who has a consecutive sentence and one (1) or more commitments do not have a fixed minimum term to serve prior to parole eligibility, may be considered for institutional parole while remaining incarcerated. (4-11-15)~~
- ~~**b.** Institutional parole may be considered at the discretion of the commission. (3-23-98)~~
- ~~**c.** While serving institutional parole, the parolee/offender is subject to all the rules of the housing facility and conditions ordered by the commission, to include, but not be limited to, submitting monthly reports as directed. (4-11-15)~~
- ~~**d.** If rules of the institution or orders of the commission are violated, the executive director or a commissioner will determine when a report of conduct/violation should be submitted. In the case of a report of violation, established rules of the violation/revocation process will apply. (4-11-15)~~
- ~~**e.** Conversion. Upon release from custody on any subsequent parole or upon completion of the~~

~~consecutive sentence, and if any time remains on the institutional parole sentence, there will be an automatic conversion from institutional parole to regular parole, subject to all regular and special conditions of parole.~~  
(4-11-15)

**065. Medical Parole.** The commission may parole an offender for medical reasons during the determinate portion of a sentence. (4-11-15)

**a.** Consideration will occur when the offender is permanently incapacitated or terminally ill and when the commission reasonably believes the offender no longer poses a threat to the safety of society. (4-11-15)

**b.** An offender or designated department of correction personnel may petition the commission to consider medical parole. (4-11-15)

**c.** The commission may conduct an actual hearing or review of the case, or may designate commission staff to provide additional information and will require specific medical information in reference to the condition, the treatment or care plan if released, and any other information deemed necessary. (4-11-15)

**d.** An annual report will be submitted to the house and senate judiciary committees of the legislature and will contain aggregate health information and the names, medical condition, current status, and crime of all persons granted medical parole. (4-11-15)

**076. Discharge from Parole.** (3-23-98)

**a.** When the maximum sentence has expired, a final discharge will be issued by the commission, unless a commission warrant was issued before the full term release date. (4-11-15)

**b.** The commission may issue a final order of discharge prior to completion of the maximum sentence when the commission believes such a discharge is compatible with the parolee's welfare and that of society, and subject to the following requirements. When notification of a discharge is received, the victims will be notified of the request and allowed to respond. The commission may, without a hearing, consider the request. (4-11-15)

**i.** The commission will not consider an early discharge from parole in any case until the parolee has served at least one (1) year on parole as outlined in Section 20-233, Idaho Code. (4-11-15)

**ii.** The commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to the maximum expiration date has been served on parole; or until five (5) years have been served on parole on a life sentence for any crime. (3-23-98)

**iii.** A parole officer or other designated agent can petition the commission to consider an early discharge upon reaching the timelines established in Subsection 250.09.b.i. (4-11-15)

**iv.** Any decision by the commission to grant an early discharge will not be effective until the official discharge document has been signed by the executive director or a commissioner. (3-23-98)

**c.** If a decision has been made by the commission to grant an early discharge, and adverse information is received that was not previously available, the document will not be signed and the discharge will not be effective. The executive director may issue a commission warrant based upon the new information and the discharge grant will automatically be voided without further action by the commission. Such adverse information will be submitted to the commission at the next available hearing session for reconsideration. If the executive director does not issue a warrant, the information will be referred to the commission for reconsideration. (4-11-15)

**d.** If the parolee is incapacitated, the commission may consider or grant, or both, an early discharge after one (1) year for any crime. (4-11-15)

**087. Detainers.** (3-23-98)

**a.** The commission may grant a parole to any county, state, or federal detainer which has been lodged

against an offender. (4-11-15)

i. While in the custody of the detaining jurisdiction, the parolee is serving parole and is subject to all rules of the housing facility and may be required to submit monthly reports to commission staff or the supervising authority. (4-11-15)

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must contact the commission office immediately and must report to the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. The parolee must abide by all regular rules of parole and any special conditions ordered by the commission. (4-11-15)

b. The commission may grant a parole to a federal immigration detainer in order that the offender may be deported to the country of citizenship. (4-11-15)

i. If the parolee is granted a release on bond or is allowed to remain in the United States, the parolee must contact the commission office immediately and must contact the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. (4-11-15)

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States and doing so is considered a violation of the parole contract. (4-11-15)

iii. The commission considers this type of parole grant an unsupervised parole, but the parolee is not obligated to submit monthly reports nor maintain contact with the commission as long as he remains outside of the United States. (4-11-15)

~~098.~~ **Special Progress Reports.** A special progress report may be submitted by the supervising authority to request modification of a special condition of parole or advise of problems that have developed. (4-11-15)

~~402.~~ **Interstate Compact.** The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision outlined in Section 20-301, Idaho Code. (4-11-15)

a. An offender must be eligible for transfer of supervision to another state under the Interstate Compact and the receiving state must accept the transfer before the offender is released on parole. (4-11-15)

i. Any person under state parole who applies for a transfer of supervision to another state shall be required to post an application fee pursuant to Section 20-225A, Idaho Code, payable to Idaho Department of Correction, in addition to the commission's bond. (4-11-15)

b. Any offender granted parole under the Interstate Compact may be required to post a bond prior to release or prior to such acceptance under the Interstate Compact. The amount of the bond set by the commission is five hundred dollars (\$500.) (4-11-15)

i. A bond may be posted by the offender, the offender's family, or other interested party. The bond must be posted at the commission office. A cashier check or money order shall be the only acceptable means of posting bond. (4-11-15)

ii. Failure to successfully complete parole may be grounds for forfeiture of the bond. (4-11-15)

iii. Upon successful completion of parole, the amount of the bond may be returned to payee, less an amount for administrative costs as determined by the commission rule. (4-11-15)

iv. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. (4-11-15)

**251. -- 299. (RESERVED)**

**300. VICTIMS.**

**01. Program Process for Victims.** The commission has established a program process for victims of criminal offenses for which an offender is currently incarcerated and is not serving a court-ordered retained jurisdiction. Victims of non-adjudicated cases may be given courtesy treatment. This includes victims who may not be in the instant offense and those removed from the instant offense as a result of the plea bargain process. The victims may be located in the hearing officer report or from another victim coordinator or the prosecutor. The Victim Witness Coordinator will verify the victims with the prosecutor when not included with the instant offense.

(4-11-15)( )

**a.** The commission will establish a record for victims of offenders who may be considered for parole, early discharge, or commutation, or pardon. To establish a victim record, the commission must receive official written notice from the clerk of the sentencing court or the county prosecutor's office; the commission will use all tools at its disposal and will exercise all due diligence to notify victims of their rights if this official notice has not been received. If the commission has not received official notice of the victim, the commission or staff may be advised of the victim's identity directly by the victim, victim's family or other individual. Commission staff will verify the name or names of the victim(s) with the county prosecutor and a record will be established.

(4-11-15)( )

**b.** The commission will notify legal the victims of offenders of the instant offense of their right to be notified of parole, early discharge, and commutation hearings and the decision of these hearings; Notification will inform victims of their right to submit written statements or information; and; their right to provide testimony.

(4-11-15)( )

**c.** Notice of rights, hearings, decisions, early discharges, and parole releases will be sent to the victim of record to the last known address, and it is the responsibility of the victim to provide any change of address.

(4-11-15)

**d.** A victim may request not be notified or contacted.

(4-11-15)

**e.** Victims will receive notices of releases to parole and offenders who have absconded, but, the commission is not responsible to advise of any other releases such as offender transfers to other facilities, release by completion of the sentence, or escapes from custody as these are not under the authority of the commission.

(4-11-15)( )

**02. Confidentiality of Victim's Address and Written Testimony.** The victim's record maintained by the commission to will include the address contact information and written testimony or information will be maintained in a confidential manner and is not subject to disclosure to anyone for any reason. The commission may only release to the Idaho Department of Corrections the victim's contact information.

(3-23-98)( )

**03. Testimony of Victim.**

(3-23-98)

**a.** The victim is invited to attend any and all hearings, except executive sessions, pertinent to the case and to provide testimony.

(4-11-15)

**b.** The executive director and the commission may consent to allow for the victim's testimony away from the actual hearing process. Testimony may be given to the executive director or commissioner(s) at the commission office or other locations, or the victim may be allowed to testify before the commission during a hearing session, but at a time separate from the actual hearing with the offender. Such testimony will be made a part of the record.

(4-11-15)

**c.** If the commission was not officially notified of the victim and does become aware of the victim's desire to be heard following a hearing, any scheduled release to parole may be held in abeyance until a decision is made by the commission.

(3-23-98)

**i.** The commission may review any written testimony by the victim and may elect to take no further



action, or may schedule another hearing, or may void the release date and reconsider the parole grant. (4-11-15)

ii. The executive director may schedule a hearing without the vote of the commission to allow for the victim's testimony. (3-23-98)

**301. -- 349. (RESERVED)**

**350. PAROLE PLAN AND RELEASE PROCEDURES.**

**01. Parole Plan.** ~~The parole plan needs to provide a positive re-entry of the offender into the community~~ **An IDOC approved parole plan should provide a positive re-entry into the community for the offender.**

~~(4-11-15)~~( )

~~a. The case manager will discuss the parole plan with the offender.~~ (4-11-15)

~~ba.~~ The proposed parole plan ~~must~~ **should** be available at the parole hearing interview and parole consideration hearing and ~~must~~ **should** include a stable residence, employment, or a maintenance and care plan, and treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. This plan will be formulated using the validated risk and needs assessment that is used by the department of correction. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. (4-11-15)( )

~~eb.~~ Educational programs may be considered, but the offender must demonstrate how normal living, treatment, and transportation expenses, etc., will be paid for. (4-11-15)

~~d. In cases where the commission does not approve the proposed parole plan and a tentative parole date is granted, the executive director can approve or deny a subsequent plan.~~ (3-30-01)

~~ec.~~ All parole plans will be investigated by the supervising authority in the area in which the prospective parolee plans to reside, and necessary information will be submitted along with the investigation request. An Idaho plan can take a minimum of six (6) weeks and an out of state plan up to three (3) months to submit, investigate, and plan for release. (4-11-15)

**02. Interstate Compact Parole Plan.** The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision Act, as outlined in Subsection 250.12. (4-11-15)

**03. Tentative Parole Dates.** All parole release dates granted by the commission are tentative. (3-23-98)

a. The parole plan must be approved and received at the commission office before the actual release date can be set to allow time for processing the release. (4-11-15)

b. If the offender should have disciplinary problems following the parole hearing, or the commission receives information that was not available at the time of the hearing, the commission may reconsider the decision, and the tentative parole date may be voided. (4-11-15)

**04. Contract.** Prior to any release to parole, the offender must sign a contract with the commission and must ~~agree to~~ **acknowledge** all general and special conditions of parole. (4-11-15)( )

~~05. Reporting and Release Instructions.~~ (3-23-98)

a. The parolee will be ~~given~~ **issued** reporting instructions that will include the address and the telephone number of the supervising office. (4-11-15)( )

~~b. It is the responsibility of the parolee to arrange for transportation upon release and the parolee must go directly to the destination approved by the commission or executive director. The parolee must request~~

~~permission to deviate from direct travel to the approved location, and such request must be in writing to the commission office at least two (2) weeks in advance of the established release date.~~ (4-11-15)

351. -- 399. (RESERVED)

**400. PAROLE REVOCATION PROCESS.**

**01. Initiated.** The parole revocation process is initiated by a written or verbal report describing the conditions of parole which are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

**02. Warrants.** A warrant may be issued for the offender's arrest. (3-23-98)

**a.** A supervising agency may issue an investigative warrant referred to as an agent's warrant. The agent's warrant authorizes local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the commission. (4-11-15)

**b.** A commission warrant may be signed by the executive director or by a member or members of the commission. Issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. (4-11-15)

**i.** If the location of the offender is unknown, the warrant will be entered into NCIC, I-HOT, or other law enforcement data base and will designate which states the commission will extradite the offender from once arrested. At any time the executive director or designee may change the area of extradition. (4-11-15)

**ii.** If an offender is being held in custody on new charges in a state other than Idaho, the warrant may be placed as a detainer only and written notice of this action will be submitted to the holding facility; if the detainer is officially served on the offender without notice of this action to the commission, the commission will not be held responsible for the time limits prescribed by law for service of charges. (4-11-15)( )

**iii.** If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant; during the time period in which the subject refuses to waive extradition, time incarcerated will not be credited toward the sentence. (3-23-98)

**c.** Parolees who have allegedly absconded from supervision are considered to be a Fugitive from Justice, starting from the day a Fugitive Warrant is issued by the commission and ending upon the day of arrest on that warrant. Per Idaho Code Section 20-228 upon issuance of a Fugitive Warrant parole is suspended and that time that a parolee is considered to be a Fugitive from Justice will not be counted towards the time on parole, or as part of the sentence. ( )

**03. Due Process.** Every parolee arrested on a commission warrant for alleged violation(s) of parole is entitled to pertinent due process including notice of the date, time and location of any and all hearings involved in the revocation process, the right to appear at a hearing and address the allegations, and to confront and cross-examine person(s) who have given adverse information on which the charges have been based. (4-11-15)

**04. Intermediate Sanctions on Technical Parole Violations and Absconding Supervision.** If the violation does not result from a conviction of a new felony or violent misdemeanor, then the parolee will be afforded the opportunity to serve an intermediate sanction rather than proceeding through the formal parole violation process. (4-11-15)( )

**a.** For a first parole violation other than absconding, ~~T~~The commission or hearing officer will cause the parolee to be confined for a period of up to ninety (90) days effective immediately upon entering the decision on the initial violation. upon either: (4-11-15)( )

**i.** The date of waiver document, which indicates the parolee's acknowledgment of guilt and

acceptance of sanctions in lieu of a violation hearing; or ( )

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. ( )

b. For a second parole violation other than absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision; upon either: (4-11-15)( )

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing or entering the decision; or ( )

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. ( )

c. For a third or subsequent parole violation other than by absconding, a dispositional hearing will be convened during a regular session of the commission to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (4-11-15)( )

d. ~~If the member or members or hearing officer, having heard the matter, should conclude that the allegations of violation of parole by absconding supervision have been proven by a preponderance of the evidence~~ For a first violation by absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision; either: (4-11-15)( )

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing or entering the decision; or ( )

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. ( )

e. For a second or subsequent parole violation by absconding supervision, a dispositional hearing during a regular session of the commission will be convened to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (4-11-15)( )

f. During any period of confinement on an intermediate sanction, the commission or hearing officer may reduce the period of confinement by up to thirty (30) days if the commission or hearing officer finds that there has been no instance of misconduct during the period of time the parolee is confined. (4-11-15)( )

g. Upon successful completion of a term of intermediate sanctioning under this section, the parolee will be released to parole supervision unless prior to completing the sanction, the parolee is convicted of a violent misdemeanor or felony crime. If convicted of a violent misdemeanor or felony crime, the parolee will proceed through the formal violation process. (4-11-15)( )

h. The commission or hearing officer will establish criteria use the intermediate sanctions pursuant to Section 20-229B, Idaho Code, to determine the necessary length of confinement up to the allowed periods of time. The criteria may include the parolee's supervision history, stability in the community, severity and type of violation(s), risk and needs assessment score, and the violations report by the parole officer. (4-11-15)

i. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of evidence, or those that have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee will be reinstated on parole on the same or modified conditions of parole. The commission will consider alternatives to revocation for offenders whose violations do not require reincarceration. (4-11-15)( )

**05. Witnesses.** The alleged parole violator or the accusing parole officer may present witnesses in support of the claims of the allegations or in defense of the charges. (3-23-98)

a. The commission has no subpoena power to compel any witness to attend a hearing. The alleged

parole violator may make a timely written request to the commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. (4-11-15)

b. If it is determined by the hearing officer or the executive director that the identification of an informant or the personal appearance of a witness would subject such person to risk or harm, confrontation or cross-examination will not be allowed and the record will reflect such determination. (3-23-98)

c. It is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings. (4-11-15)

**06. Attorney.** The alleged parole violator may utilize the services of an attorney at any hearing conducted during the revocation process. (3-23-98)

a. An attorney will be paid at the alleged parole violator's expense unless it is determined by a hearing officer for the commission, the executive director, or the commission that there is a colorable claim that the alleged violation(s) did not occur, that the alleged parole violator does not understand the proceedings, or is otherwise incapable of representing himself. (3-23-98)

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the commission office of any hearings and if requested in writing, the commission office will provide the attorney with any and all copies of reports and or documents; in addition, the subject's attorney may also obtain copies by making a request to the commission office that are public records according to the public records act. (4-11-15)(    )

**07. Hearings.** The alleged parole violator will be advised of any and all hearing dates and locations within a reasonable time frame. The hearing officer or executive director will determine the location of all hearings. (4-11-15)

a. The subject may request continuance or waiver of any hearing which is subject to the final determination of the hearing officer, executive director, or the commission. (3-23-98)

b. The type of charges addressed in the allegations will determine the kinds of hearings available to the alleged parole violator. (3-23-98)

i. Non-technical Violations. If the alleged parole violator is ~~charged with a conviction for~~ convicted of a ~~violent~~ misdemeanor, or new felony ~~criminal conviction~~, or is charged with absconding ~~from supervision~~, the subject is not entitled to a preliminary or on-site hearing, but is entitled to a hearing to determine guilt or innocence within a reasonable time following service of the charges. (4-11-15)(    )

ii. Technical Violations. If the alleged parole violator is charged with a violation of the conditions of parole other than a ~~violent~~ misdemeanor, or new felony criminal conviction, or absconding ~~from supervision~~, the subject is entitled to a preliminary hearing ~~conducted by the supervising authority~~ within a reasonable amount of time. An on-site hearing will be conducted ~~by a hearing officer. The hearing is~~ to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. (4-11-15)(    )

c. Preliminary Hearing. A technical parole violator is entitled to a preliminary hearing to establish whether or not there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of the supervising authority or as otherwise directed by the executive director. The alleged parole violator is entitled to a verbal or written decision within a reasonable time following the preliminary hearing. (4-11-15)

d. On-Site Hearing. A technical parole violator is entitled to an on-site hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The executive director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the executive director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than

Idaho. (4-11-15)

**e.** Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence and may dismiss some or all allegations. If a hearing officer is unavailable, the executive director will appoint someone to conduct the hearing. The offender is entitled to a verbal or written decision within twenty (20) days of the violation hearing. (4-11-15)

**f.** Revocation. Pursuant to a violation hearing or waiver of such hearing and a finding of guilt was made on one (1) or more of the violations, the commission will consider whether or not parole will be revoked. (5-3-03)

**i.** The commission has full discretion in granting reinstatement on parole or revocation of parole. A hearing with the offender may be conducted or the decision may be made along with deliberation on an Absentia Parole Revocation. (see Subsections [400.06.h.i](#), [400.07.g.i](#), and [400.06.h.ii](#), [400.07.g.ii](#).) The Commission will consider whether the parole will be reinstated or revoked and will state the reasoning if parole is revoked. (4-11-15)(      )

**g.** Absentia Hearing. The commission can revoke parole without the subject's appearance if the subject has signed the proper commission form waiving the right to appear before the commission. The commission will determine if parole will be considered once the revocation decision has been made. (3-23-98)

**i.** If new criminal charges result in a new commitment and incarceration, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

**ii.** If the subject has absconded supervision and is reincarcerated in another state without a new conviction, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

**08. Miscellaneous Revocation Information.** (3-23-98)

**a.** The executive director will determine who will conduct all hearings involved in the revocation process. (3-23-98)

**b.** The commission, through the executive director shall designate the county, state, or other facility where the alleged parole violator shall be held. The commission's order shall be sufficient authority by law to direct any county sheriff or the board of correction to hold an alleged parole violator in custody until such time as the commission directs his removal or transfer. (3-23-98)

**c.** The alleged parole violator can request a continuance of any hearing. The hearing officer, executive director, or the commission will determine if the continuance will be granted. If the alleged parole violator requests a continuance of any hearing, said request will constitute a waiver of any and all time limits involved. (4-11-15)

**09. Inability to Assist in Defense.** (3-23-98)

**a.** Specific time limits pertinent to the case may be waived. (3-23-98)

**b.** At the hearing officer or executive director's discretion, an attorney may be appointed for the offender at commission expense. (4-11-15)

**c.** A psychological evaluation may be requested by the commission and mental health treatment may be deemed appropriate. (4-11-15)

**d.** A status update of the case will be made at regular intervals, and the executive director will determine how the case will proceed. (3-23-98)

**10. Findings/Decisions.** (3-23-98)

**a.** At any time following arrest on a commission warrant, the executive director or the commission

will decide if the parolee will be released to continue parole. (5-3-03)

**b.** If it is determined at the preliminary hearing that there is no probable cause to support the charges, the parolee will be released to continue parole. (3-23-98)

**c.** After a violation hearing, the hearing officer will prepare a report of findings summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. (4-11-15)

**i.** The hearing officer may make a finding of guilt but may recommend to the executive director that the offender be reinstated on parole without further proceedings. (3-23-98)

**ii.** The offender is entitled to receive a copy of all reports of findings of hearings. (3-23-98)

**11. Forfeiture of Time on Parole.** If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on an agent's warrant and/or commission warrant may be forfeited, in whole or in part, and may not be deemed a part of the sentence for which the offender was committed. (4-11-15)

**a.** The time the offender is incarcerated on an agent's warrant and a commission warrant will be credited toward the sentence. (4-11-15)

**b.** If the offender was incarcerated at any time during the parole period and such incarceration was on an agent's warrant and/or commission warrant, this time will be credited toward the sentence; this includes a reinstatement case. (3-23-98)

**c.** The offender will not receive credit for incarceration time if the incarceration was for a new crime and the commission and parole officer did not initiate violation proceedings. (3-23-98)

**d.** The offender must provide the hearing officer or the executive director with dates of incarceration and the location of the incarceration. (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. SELF-INITIATED PROGRESS REPORT.**

An offender may appeal the last parole decision of the commission. (4-11-15)

**01. Petition.** An offender making a request for reconsideration of parole denial must initiate the process by submitting an application. (4-11-15)

**a.** The only acceptable form is the one provided by the commission, and it must be signed by the petitioner. (3-23-98)

**i.** The petition must be the original petition. (4-11-15)

**ii.** The Case Manager is to include with the petition, once signed by the offender and the Case Manger, the disciplinary history, classes history, and the assessments. (4-11-15)

**b.** The petition must be completed correctly per instructions on the form or it may be returned. (3-23-98)

**c.** The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (3-23-98)

**d.** A petition may be filed by any offender who is currently incarcerated. (4-11-15)

- e.** Following the initial submission, the commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (4-11-15)
- i.** A petition may be submitted six (6) months after a qualified hearing. A qualified hearing includes: (4-11-15)
- (a)** Regular parole hearings; (4-11-15)
  - (b)** Parole revocation hearings; (4-11-15)
  - (c)** Hearing officer reviews; and (4-11-15)
  - (d)** SIPR hearings. (4-11-15)
- ii.** A petition may be submitted once every twelve (12) months if a hearing is not granted. (4-11-15)
- f.** Petitions may be considered at any time by the commission. (3-30-01)
- g.** Petitions must be received no later than the first day of the month prior to the next ~~month's~~ hearing session. ~~(4-11-15)~~( )
- h.** Review or deliberation on the petition by the commission will be conducted in executive session. (3-23-98)
- i.** Any petition may be continued for additional information or for further consideration. (3-23-98)
- j.** The petitioner will be sent written notice of the decision. (3-23-98)
- k.** The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (3-23-98)
- l.** The petition must be readable or it may be returned. (5-3-03)
- 02. Hearing.** The scheduling of a hearing is at the complete discretion of the commission. (3-23-98)
- a.** If a ~~special~~ hearing is scheduled, the commission will determine the date of the hearing. ~~(3-23-98)~~( )
  - b.** If a ~~special~~ hearing is scheduled, the previous decision of the commission ~~may be~~ is considered null and void. ~~(3-23-98)~~( )
- 03. Amended Decision.** The commission may elect to amend any decision without conducting another hearing. (3-23-98)
- 501. -- 549. (RESERVED)**
- 550. PARDON.**  
A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. (3-23-98)
- 01. General.** An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. (3-23-98)
    - a.** Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than three (3) years after completion of the sentence. (3-23-98)
    - b.** Applications for pardon for violent or sex crimes or other crimes against a person may be submitted five (5) years after completion of the sentence. (3-23-98)



**02. Application.** A pardon application can be obtained from the commission office or on the commission website. (4-11-15)

- a.** The application must be completed and returned to the commission office. (3-23-98)
- i.** The completed application must include the reasons why the pardon is requested. (3-23-98)
  - ii.** The applicant may attach letters of recommendation or other documents to support the request. (3-23-98)
  - iii.** The applicant must include copies of all court judgment and conviction documents for each crime a pardon is requested for. (4-11-15)
  - iv.** A pardon may be requested only once during a twelve-month (12) period unless otherwise stated by the commission. (4-11-15)

**b.** Following receipt of the completed application, a request for an investigation will be made of correctional field personnel or hearing officer in the area in which the applicant resides, and the report shall include, but shall not be limited to the following: ~~(3-23-98)~~ ( )

- i.** A criminal record check of the applicant. (3-23-98)
  - ii.** The applicant's employment history since completion of sentence. (3-23-98)
  - iii.** The applicant's status as a good citizen. (3-23-98)
  - iv.** An interview with the applicant should be conducted and a summary of the interview provided. (3-23-98)

**v.** Evidence of all restitution and fines as ordered by the sentencing court are paid. ( )

**vi.** Any additional information as deemed necessary or appropriate. (3-23-98)

**c.** If the applicant is residing in a jurisdiction which refuses to conduct an investigation of the case, the applicant may be required to come to Idaho for an interview with a parole officer or hearing officer, or the interview may be conducted by electronic means. A normal investigation will then be completed. (4-11-15)

**03. Report.** Pursuant to the receipt of the completed report, a review may be conducted at the next scheduled hearing session of the commission. Once the report is received, staff may determine if additional information is needed. (4-11-15)

- a.** The commission will conduct such review in executive session. (3-23-98)
- b.** The commission will determine whether a hearing will be granted and the applicant will be advised of the decision. (3-23-98)
- c.** Any application may be continued for further consideration or additional information. (3-23-98)

**04. Hearing.** The scheduling of a hearing is at the complete discretion of the commission. If a pardon hearing is scheduled, the commission will determine the date of the hearing. (4-11-15)

**a.** Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

**b.** A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

- c. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. (3-23-98)
- i. The applicant's appearance at the hearing is not mandatory but is encouraged. (3-23-98)
- ii. The commission may continue the hearing to a later date in order for the applicant to make a personal appearance and such continuance will not require additional publication of the hearing. (3-23-98)
- d. All rules of procedure governing hearings will apply at a pardon hearing. (3-23-98)
- e. The decision and supporting documents regarding the decision to grant or deny a pardon will be filed with the secretary of state. (3-23-98)
- i. Dissenting votes of the commissioners voting are submitted to the office of the secretary of state and become a matter of public record. (3-23-98)
- ii. All written material considered in the decision process, with the exception of the presentence investigation report, ~~and~~ victim information, mental health records, criminal history information, and medical records, will be submitted to the office of the secretary of state and will be a matter of public record. ~~(3-23-98)~~(    )
- f. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-23-98)

**05. Authority to Grant.** The commission has full and final authority to grant pardons, except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances. (3-23-98)

- a. In the cases listed in this section, the commission's decision to grant a pardon shall constitute a recommendation only to the governor. (3-23-98)
- b. Following such hearing, the commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-23-98)
- c. No pardon for the offenses listed in this section will be effective until presented to and approved by the governor, and any pardon recommendations not so approved within thirty (30) days of the pardon hearing shall be deemed denied. (3-23-98)

**d.** The granting of a pardon does not expunge the crime from the Idaho criminal history. (    )

**551. RESTORATION OF FIREARMS RIGHTS UNDER SECTION 18-310, IDAHO CODE.**

**01. General.** An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(3), Idaho Code. This is not a pardon for the conviction of a crime, nor is the Idaho criminal record expunged. ~~(4-11-15)~~(    )

**02. Application.** An application may not be made until five (5) years after the date of final discharge. (4-11-15)

- a. An application may be obtained from the commission office or on the commission website. (4-11-15)
- b. The application must be the original and returned to the commission office. (4-11-15)
- i. The application must request the restoration of the right to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. (4-11-15)

- ii. The application must be in writing and legible. (4-11-15)
- iii. All court conviction and dismissal documents must accompany the application. (4-11-15)
- iv. An application may be submitted once every twelve (12) months, or at the commission's discretion. (4-11-15)
- v. The petition must state the reason for the request. (4-11-15)
- vi. Review or deliberation on the petition will be conducted in executive session. (4-11-15)

c. Following receipt of the completed application, a request for an investigation will be made of correctional field personnel or hearing officer in the area where the applicant resides. The report shall include, but shall not be limited to, the following: ( )

- i. A criminal record check of the applicant. ( )
- ii. The applicant's employment history since completion of sentence. ( )
- iii. The applicant's status as a good citizen. ( )
- iv. An interview with the applicant should be conducted and a summary of the interview provided. ( )
- v. Evidence of all restitution and fines ordered by the sentencing court have been paid. ( )

03. Report. Pursuant to the receipt of the completed report, a review may be conducted at the next scheduled hearing session of the commission. Once the report is received, staff may determine if additional information is needed. ( )

a. The commission will conduct such review in executive session. ( )

b. The commission will determine whether a hearing will be granted and the applicant will be advised of the decision. ( )

c. Any application may be continued for further consideration or additional information. ( )

034. **Hearing.** The scheduling of a hearing is at the complete discretion of the commission or the executive director. (4-11-15)

a. If a hearing is scheduled, the commission will determine the date of the hearing. (4-11-15)

b. Any petition may be continued for additional information. (4-11-15)

045. **Authority to Grant.** The commission has the full and final authority and discretion to grant restoration of civil rights to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. (4-11-15)

056. **Exceptions.** See the exceptions listed in Section 18-310, Idaho Code. (4-11-15)

**552. STAFF PROGRESS REPORT.**

A staff member making a request for parole must initiate the process by submitting an application. (4-11-15)

01- Acceptable Form. The only acceptable form is the one provided by the commission, and it must be signed by the offender and staff member. (4-11-15)

a. The petition must be the original petition. (4-11-15)

- ~~b. The petition must be completed correctly per instructions on the form or it may be returned. (4-11-15)~~
- ~~c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (4-11-15)~~
- ~~d. The application must include progress reports, C notes, and other documents to support the request. (4-11-15)~~
- ~~02. **Time of Consideration.** Petitions may be considered at any time by the commission. (4-11-15)~~
- ~~a. Petitions must be received no later than the first day of the month. (4-11-15)~~
- ~~b. Review or deliberation on the petition by the commission will be conducted in executive session. (4-11-15)~~
- ~~c. The staff member and offender will be sent written notice of the decision. (4-11-15)~~
- ~~d. The petition is limited to no more than four (4) pages. The petition may be returned before submission to the commission if the document exceeds this number. (4-11-15)~~
- ~~e. The petition must be legible or it may be returned. (4-11-15)~~
- ~~03. **Case Manager Guidelines.** (4-11-15)~~
- ~~a. The staff member will identify an offender using the following criteria: (4-11-15)~~
- ~~i. The offender must not have any assaults on staff members in the last twenty-four (24) months. (4-11-15)~~
- ~~ii. The offender must not have been charged with any new crimes during his current incarceration. (4-11-15)~~
- ~~iii. The offender must have been medication compliant for the last six (6) months. (4-11-15)~~
- ~~iv. The offender must not have introduced any contraband in the last eighteen (18) months. (4-11-15)~~
- ~~v. The offender must have a written verified parole plan. (4-11-15)~~
- ~~b. Timeline for consideration of petition for parole. The following timeline is for determining the eligibility of the offender: (4-11-15)~~
- ~~i. The staff member identifies the offender twenty-four (24) to thirty-one (31) months prior to his full term release date. (4-11-15)~~
- ~~ii. The parole hearing officer is notified of the offender to be interviewed when offender is twenty (20) months from full term date. (4-11-15)~~
- ~~iii. When the offender has eighteen (18) months remaining on his sentence, the offender will be interviewed by a parole hearing officer. (4-11-15)~~
- ~~iv. The offender will be scheduled for a hearing before the commission when there are fifteen (15) months until his full term release date. (4-11-15)~~
- ~~v. The commission will grant a release date twelve (12) months prior to offender's full term date. (4-11-15)~~

- ~~04. **Exceptions to the Staff Progress Report.** An offender will not be seen by the commission if the offender has the following on his record: (4-11-15)~~
- ~~a. Class A DOR in the last six (6) months; (4-11-15)~~
  - ~~b. Sexual DORs in the last six (6) months including physical touching; (4-11-15)~~
  - ~~c. Is in segregation status; (4-11-15)~~
  - ~~d. Offender has refused to participate in the hearing/interview process; (4-11-15)~~
  - ~~e. Offender has refused programming and has a tentative parole date; (4-11-15)~~
  - ~~f. The offender has a parole eligibility date; (4-11-15)~~
  - ~~g. The offender is a parole violator; or (4-11-15)~~
  - ~~h. The offender has a violent crime, including injury to a person, has a sexual crime involving statutory rape or a property offense that was pled down, but which had a violent component. (4-11-15)~~
- ~~05. **Hearing.** The scheduling of a hearing is at the complete discretion of the commission. If a special hearing is scheduled, the commission will determine the date of the hearing. (4-11-15)~~
- ~~06. **Amended Decision.** The commission may elect to amend any decision without conducting another hearing. (4-11-15)~~
- 553~~2~~. -- 599. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. FOREIGN NATIONAL TREATY.**

Under Section 20-104, Idaho Code, an offender may be transferred, upon request, to his country of citizenship if a treaty exists between his country and the United States. The commission's decision is only a recommendation to the Governor as the Governor will have final approval of the transfer. ( )

- 01. Request for Transfer.** An offender may request a transfer to his country of citizenship. ( )
- a.** The offender makes an application and a release request to the Idaho Department of Correction's central records. The release shall provide consent to the release of medical, psychological, programming, educational records, and other such information as relevant. The Attorney General will request the PSI. ( )
  - b.** Upon gathering the documentation, central records will forward the application and packet to the commission. ( )
  - i.** The commission will set the matter for consideration at a time and place of its choosing. ( )
  - (1)** The commission has complete discretion and authority to make a recommendation to the Governor. ( )
  - (2)** The commission may request additional information from the parties, the offender making the application, the offender's victim, or any other source the commission deems appropriate. ( )
  - (3)** The offender is not entitled to be present, to have counsel, to present witnesses or evidence, to have any particular evidence considered or to designate the location or time. ( )

ii. Following the commission's consideration, a non-binding recommendation will be issued to the Governor. A copy of the recommendation will be sent to the Department's central records. ( )

(1) The offender is not entitled to appeal the commission's recommendation. ( )

(2) The offender may reapply two (2) years from the date of denial by either the Governor or the commission. ( )

iii. If the Governor approves the transfer and the receiving state accepts the offender for transfer, the packet is sent to the Department of Justice. ( )

**02. Eligibility Requirements for Transfer.** ( )

**a.** The offender must be a citizen of the country to which he is requesting a transfer. ( )

**b.** The offender must not have a life sentence. ( )

**c.** The offender cannot be less than two (2) years from his parole eligibility date. ( )