

PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
Senate Judiciary & Rules Committee
65th Idaho Legislature
Second Regular Session – 2020**



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2020

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

DOCKET NO. 05-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon 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 full force and effect upon adoption of 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), 20-504(12), 20-504(15), 20-520(1)(s), 20-532, 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 05, rules of the Idaho Department of Juvenile Corrections:

IDAPA 05

- 05.01.02, *Rules and Standards for Secure Juvenile Detention Centers*
- 05.01.03, *Rules of the Custody Review Board*
- 05.01.04, *Uniform Standards for Juvenile Probation Services*
- 05.02.01, *Rules for Residential Treatment Providers*

This pending rule vacates the following proposed rules previously promulgated under this docket number as part of the omnibus proposed rulemaking under IDAPA 05, rules of the Idaho Department of Juvenile Corrections:

- **(VACATED)** 05.02.02, *Rules for Staff Secure Providers*
- **(VACATED)** 05.02.03, *Rules for Reintegration Providers*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, **Vol. 19-6SE, pages 652-756**.

These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The pending rules were revised to make housekeeping changes that simplify language for clarity, to reduce restrictions, eliminate outdated rules, and in some cases, update rules to current practice. Relevant parts of rules 05.02.02 and 05.02.03 were incorporated into 05.02.01 to eliminate redundant rules.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Estela Cabrera at (208) 577-5451.

Dated this 16th day of October, 2019.

Monty Prow
Director
Phone: (208) 334-5100
Fax: (208) 334-5120

Idaho Department of Juvenile Corrections
954 W. Jefferson Street
P.O. Box 83720
Boise, ID 83720-0285

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

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 20-504(10), 20-504(12), 20-520(1)(r), 20-532, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 05, rules of the Idaho Department of Juvenile Corrections:

IDAPA 05

- 05.01.02, *Rules and Standards for Secure Juvenile Detention Centers*
- 05.01.03, *Rules of the Custody Review Board*
- 05.01.04, *Uniform Standards for Juvenile Probation Services*
- 05.02.01, *Rules for Residential Treatment Providers*
- 05.02.02, *Rules for Staff Secure Providers*
- 05.02.03, *Rules for Reintegration Providers*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. We are repealing 05.02.04 as this chapter has become redundant and unnecessary. On the few occasions when we have used supported living providers, chapter 05.02.03 has been mostly sufficient to meet these needs. For this purpose, we have carried over a couple of sections to chapter 05.02.03. The changes to chapter 05.01.03 are purely housekeeping corrections that pertain to three sections. The changes are: remove an incorrect Idaho Code citation, replace an incorrect form of a pronoun, and remove words because the Custody Review Board doesn't have the authority to release juveniles from state custody.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Zaine Baird at (208) 577-5451.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0000-1900

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.02 – RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS

000. LEGAL AUTHORITY.

These rules are adopted pursuant to Section 20-504, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 05.01.02, “Rules and Standards for Secure Juvenile Detention Centers,” IDAPA 05, Title 01, Chapter 02. (3-30-07)

02. Scope. These rules are established to ensure that the juvenile corrections system in Idaho will be consistently based on the following principles: accountability; community protection; and competency development. (4-5-00)

002. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. (4-5-00)

003. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. (3-30-07)

004. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the compliance monitoring and certification process of detention centers are subject to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-30-07)

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions in Section 20-502, Idaho Code, the following definitions apply: ()

01. Body Cavity Search. The manual internal examination into the rectal or vaginal cavities to detect contraband, performed only by a medical authority. (3-21-18)

02. Chemical Agent. An active substance, such as oleoresin capsicum, used to deter disturbances that might cause personal injury or property damage. (4-5-00)

03. Classification. A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and/or programs according to their needs and existing resources, while addressing the safety and security of all detained juveniles. (3-20-14)

04. Contact Visiting. A program that permits juvenile offenders to visit with designated person(s). The area is free of obstacles or barriers that prohibit physical contact. (3-30-07)

05. Contraband. Any item not issued or authorized by the detention center. (3-30-07)

06. Corporal Punishment. Any act of inflicting punishment directly on the body, causing pain or injury. (4-5-00)

07. Day Room/Multi-Purpose Room. That portion of the housing unit used for varied juvenile offender activities which is separate and distinct from the sleeping rooms. (3-30-07)

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

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

- 10. Direct Care Staff.** Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. (3-30-07)
- 11. Electroshock Device.** A device which delivers an electric shock designed to temporarily disrupt muscle function. (3-21-18)
- 12. Emergency Care.** Care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call. Emergency care shall be provided to the juvenile offender population by the medical staff, physician, other appropriately trained staff, local ambulance services or outside hospital emergency rooms. (3-30-07)
- 13. Emergency Plans.** Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. (4-5-00)
- 14. Health Appraisal.** An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. (3-30-07)
- 15. Health Authority.** The physician, health administrator, or agency responsible for the provision of health care services at the detention center. (3-30-07)
- 16. Health-Trained Employee.** A person who operates within the limits of any license or certification to provide assistance to a physician, nurse, physician's assistant, or other professional medical staff. Duties may include preparing and reviewing screening forms for needed follow-up; preparing juvenile offenders and their records for sick call; and assisting in the implementation of medical orders regarding diets, housing, and work assignments. (3-29-12)
- 17. Housing Unit.** The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. (3-30-07)
- 18. Incident Report.** A written document reporting any occurrence or event, or an incident which threatens the safety and security of direct care staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (3-21-18)
- 19. Juvenile Detention Records.** Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. (3-30-07)
- 20. Mechanical Restraints.** Devices used to restrict physical activity. (3-30-07)
- 21. Medical Employee.** A certified or licensed person such as a physician, nurse, physician's assistant, or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. (3-29-12)
- 22. Medical Records.** Records maintained by the health authority, to include medical examinations, diagnoses, and any medical care provided. (3-21-18)
- 23. Medical Screening.** A system of structured observation and initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a medical employee or health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. ()
- 24. Pat Search.** The touching or feeling of a subject's clothed body to detect contraband. (4-5-00)
- 25. Perimeter Security.** A system that controls ingress and egress to the interior of a detention center or institution. The system may include electronic devices, walls, fence, patrols or towers. (3-30-07)

- 26. Perimeter Security Check.** Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breach. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas, as designated by detention center policy and procedures. (3-30-07)
- 27. Petition for Exemption.** A formal written document addressed to the Director of the Idaho Department of Juvenile Corrections requesting exception from a detention center standard. (3-21-18)
- 28. Physical Intervention.** Physical contact to guide, restrict, or prevent movement in order to take immediate control of a situation. (3-21-18)
- 29. Policy and Procedures.** Standard operating strategies and processes developed by the administrative authority governing detention center operations. (3-30-07)
- a.** Policy is a course of action that guides and determines present and future decisions and actions. Policies indicate the general course or direction of an organization within which the activities of the direct care staff must operate. (3-30-07)
- b.** Procedure is the detailed and sequential action which must be executed to ensure that policy is implemented. It is the method of performing an operation or a manner of proceeding on a course of action. It differs from a policy in that it directs actions required to perform a specific task within the guidelines of the policy. (4-5-00)
- 30. Prison Rape Elimination Act of 2003 (PREA).** Public Law No. 108-79, including all subsequent amendments thereto as codified in 34 U.S.C. §§ 30301-30309, and all federal rules and standards promulgated thereunder, which promote zero (0) tolerance of sexual abuse of juvenile offenders by staff or by other juvenile offenders. ()
- 31. Rated Capacity.** The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. (3-30-07)
- 32. Renovation.** The alteration of the structure of any existing juvenile detention center, or portion thereof, for the purposes of changing or improving its function. This may include, but not be limited to, altering the physical layout of essential areas within the detention center or reconstruction of the existing structure, areas, or interior features. (3-30-07)
- 33. Rule Infraction.** A violation of detention center rules of conduct or policy and procedures as governed by detention center policy and procedures. (3-30-07)
- 34. Safety Equipment.** Devices primarily used for safety purposes such as but not limited to firefighting equipment, for example, chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms. (4-5-00)
- 35. Secure Perimeter.** The outer portions of a detention center that provide for secure confinement of juvenile offenders. (3-30-07)
- 36. Security Devices.** Equipment used primarily to confine and control detained persons and may include but is not limited to locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers, electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain detention center security. (3-30-07)
- 37. Staffing Plan.** A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. (3-30-07)
- 38. Standards.** Rules for Secure Juvenile Detention Centers, IDAPA 05, Title 01, Chapter 02. (3-30-07)

39. Strip Search. A visual examination of a juvenile offender's naked body for weapons, contraband, injuries, or a medical condition that may require further attention. This also includes a thorough search of the juvenile offender's clothing while such is not being worn. (3-21-18)

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

011. -- 199. (RESERVED)

200. INSPECTION PROVISIONS.

The Department or its designee has the authority to visit and inspect all juvenile detention facilities to assess such facilities' compliance with these rules and any other standards outlined in Title 20, Chapter 5, Section 20-518, Idaho Code. (3-29-12)

01. Annual Visits. Each juvenile detention center shall be subject to announced or unannounced visits by Department representatives on at least an annual basis. (3-30-07)

02. Review of Logs, Records, Policy and Procedure Manuals, Memorandums and Reports. All logs, records, policy and procedures manuals, memorandums, training records, and incident and other reports shall be available for review excluding medical records, personnel records and personnel action reports. Department representatives shall be allowed to observe and privately interview juvenile offenders and staff concerning any matter pertaining to these rules. Department representatives will have access to all parts of the detention center for the purpose of inspecting the physical plant. (3-21-18)

201. DEPARTMENT PREPARED WRITTEN REPORT OR THEIR AGENTS.

Department representatives shall prepare a written report of each inspection within ninety (90) days following such inspection and provide copies to the appropriate detention center administrator with copies to the governing body and the county attorney. The report will additionally be submitted to the Director for consideration and review of the issuance or renewal of a certificate. (3-29-12)

202. COMPLIANCE WITH STANDARDS ENFORCED.

Upon completion of an inspection, the Department will send notice of such compliance or noncompliance to the detention center administrator, governing body responsible for the detention center, and Idaho County Risk Management Program where applicable. (3-30-07)

01. Development of a Plan of Corrective Action. Upon receipt of a notice of noncompliance from the Department, the detention center administrator and governing body shall develop a plan of corrective action to correct the deficiencies cited in the report. The plan shall include a description of the nature of noncompliance for each standard cited, the steps to be taken to correct the deficiency, and a projected completion date. Inspection representatives shall be available to advise and consult concerning an appropriate corrective action. The plan shall be submitted no later than sixty (60) days from receipt of notice to the Department for approval. (3-30-07)

02. Demonstration of Meaningful Progress Toward Achieving Compliance. Meaningful progress toward achieving compliance according to the submitted plan must be demonstrated during the time frame approved by the Department in the corrective action plan. (3-30-07)

203. CONFORMITY WITH APPLICABLE LAWS AND REGULATIONS.

Juvenile detention centers shall conform to laws, rules, and regulations adopted by the federal government, state of Idaho, the county, and the municipality in which such detention center is located including, but not limited to, all applicable public health, safety, fire codes, building regulations, and interstate compact regulations. (3-30-07)

204. STANDARDS COMMITTEE.

A standing committee shall be created for the purpose of reviewing the standards, petitions for exemption from standards and requests for modification of standards. The committee will be made up of three committee members: one (1) representative and one (1) alternate from the detention center administrators, one (1) representative and one

(1) alternate county commissioner, and one (1) representative from the Department. Final appointment of all Standards Committee members and alternates are made by the Director. The detention center representative of detention center administrators and county commissioner representative should not be from the same judicial district. Alternates should not be from the same judicial district as their corresponding representative. Committee members' terms will run two (2) years starting on October 1 of the year in which the member is nominated and approved. If the petition for exemption or request for modification is initiated from the same district as a committee representative, that committee representative will abstain and the alternate will serve in place of said representative. (3-30-07)

01. Standards Committee Meetings. The Standards Committee will meet at least biennially to review the Juvenile Detention Center Standards, requests for modification of standards, or petitions for exemptions. The Standards Committee will also meet when the Director determines that a special meeting is necessary to review the juvenile detention center standards, requests for modification of standards, or petitions for exemptions. (3-21-18)

02. Requests for Modification of Standards. In the event a standard becomes obsolete or unworkable, a request for modification may be filed with the Director. The request letter must represent the views of at least three detention center administrators and contain their signatures. The Director will then make determinations as to the necessity, scheduling and convening of a special meeting of the Standards Committee. If convened, the Standards Committee will review the request, prepare and submit its written recommendations to the Director. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. (3-30-07)

03. Modification of Standards by the Standards Committee. In the event that the Standards Committee determines that a standard is obsolete, unworkable, unclear, or otherwise unreasonable, the committee may submit written recommendations to the Director for changes to the standards, along with explanations regarding the reasons for the requested changes. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. Any modification of the standards must be promulgated as rules in accordance with the Idaho Administrative Procedures Act. (3-30-07)

205. -- 209. (RESERVED)

210. DETENTION CENTER ADMINISTRATION.

01. Legal Entity. The public or private agency operating a detention center is a legal entity, part of a legal entity, or a political subdivision. (3-30-07)

02. Governing Body. Governing body means any public or private entity established or delegated as a source of legislative or administrative authority to provide the fiscal needs of the detention center administrator so that he may carry out the provisions of these rules. (3-30-07)

03. Detention Center Administrator. The detention center shall have a designated administrator who is responsible for all detention center operations. (3-30-07)

04. Mission Statement. The detention center shall have a written mission statement which describes its philosophy and goals. (3-30-07)

05. Policy and Procedures. The detention center administrator shall develop and maintain written policy and procedures which safeguard the basic rights of juvenile offenders and safeguard the juvenile offenders' freedom from discrimination based upon sex, race, creed, religion, national origin, disability, or political belief and establish practices that are consistent with fundamental legal principles, sound correctional practices, and humane treatment. These written policy and procedures shall be reviewed on a regular basis, updated as needed and made available to all detention center employees. The policy and procedures manual shall be submitted to the prosecuting attorney or other legal authority for review and approved by county commissioners or other governing authority. After such approval, a copy of the policy and procedures manual shall be submitted to the Department. (3-21-18)

211. (RESERVED)

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 submit a staffing plan to the Department as requested. 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 need full documentation. ()

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. During the admission process, an employee of the same gender as the juvenile offender should be present. (3-21-18)

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 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” (3-30-07)

b. Direct care volunteers, before starting volunteer services, shall meet the minimum criminal history background requirements as provided in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” (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 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” (3-30-07)

a. All new direct care staff shall be provided orientation training that addresses areas including, but not limited to: (3-21-18)

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; (3-25-16)
 - 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. Key control; (3-30-07)
 - xii. Interpersonal relations; (3-30-07)
 - xiii. Social/cultural life styles of the juvenile population; (3-30-07)
 - xiv. Communication skills; (3-29-12)
 - xv. Mandatory reporting laws and procedures; (3-20-14)
 - xvi. Professional boundaries; and (3-20-14)
 - xvii. 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 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” (3-25-16)
- c.** Ongoing training shall be provided at the minimum rate of twenty-eight (28) hours for each subsequent year of employment, which include, but are not 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 (3-25-16)
 - ii. All ongoing training as outlined in section 115.331 of the PREA Standards; and (3-25-16)
 - 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)
- e.** Each facility shall maintain accurate training documentation. (3-20-14)

213. -- 214. (RESERVED)

215. DETENTION CENTER INFORMATION SYSTEMS.

01. Records. The detention center shall have written policy and procedures to govern the collection, management, and retention of information pertaining to juvenile offenders and the operation of the detention center. Written policy and procedures will address, at a minimum, the following: ()

- a.** Accuracy of information, including procedures for verification; (4-5-00)

- b. Security of information, including access and protection from unauthorized disclosure; (4-5-00)
- c. Content of records; (4-5-00)
- d. Maintenance of records; (4-5-00)
- e. Length of retention; and (4-5-00)
- f. Method of storage or disposal of inactive records. (4-5-00)

02. Release of Information. Prior to release of information to agencies other than criminal justice authorities or other agencies with court orders for access, a written release of information shall be obtained from the juvenile offender's parent, legal guardian or through a court order with a copy of that release placed in the juvenile offender's file folder. (3-30-07)

03. Access to Records. Parents, legal guardians, legal representatives, and staff shall be permitted access to information in the juvenile offender's files and records as authorized by law. Absent a court order to the contrary, the detention center administrator may restrict access to certain information, or provide a summary of the information when its disclosure presents a threat to the safety and security of the detention center or may be detrimental to the best interests of the juvenile offender. If access to records is denied or restricted, documentation that states the reason for the denial or restriction shall be maintained by the detention center administrator. (3-29-12)

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 will contain, at a minimum, the following: ()
- 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. 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)
 - g. Documentation of education as outlined in PREA Standard Section 115.333; (3-20-14)
 - h. Rule infraction reports; (4-5-00)
 - i. Records of disciplinary actions; (4-5-00)
 - j. Grievances filed and their dispositions; (4-5-00)
 - k. Release records; (4-5-00)
 - l. Personal information and emergency contact information; (4-5-00)
 - m. Documentation of a completed intake medical screening; (3-29-12)
 - n. Visitor records; (4-5-00)
 - o. Incident reports; (4-5-00)
 - p. Photographs. (4-5-00)
- 05. Incident Reports.** Any person involved in or witness to an incident shall write an individual incident report. The incident report shall include, at a minimum, who, what, when, where, why, how, and action taken. Incidents reports shall be written for situations including but not limited to the following: (3-21-18)
- a. Any criminal act; (3-21-18)
 - b. Use of force; (3-21-18)
 - c. Use of restraints, except for transfer; (3-21-18)
 - d. Suicide or attempted suicide; (3-21-18)

- e. Escape or attempted escape; (3-21-18)
- f. Emergencies; (3-21-18)
- g. Serious rule violations; (3-21-18)
- h. Cross-gender searches; (3-21-18)
- i. Body cavity searches; (3-21-18)
- j. Seizure and disposition of contraband; and (3-21-18)
- k. Any incident deemed serious enough to disrupt or disturb the security, safety, and orderly operations or well-being of the center, staff, juveniles, or public. (3-21-18)

06. Incident Report Review. All incident reports shall be reviewed by the detention center administrator, or designee, and be maintained as part of the detention center records. (3-21-18)

217. MEDICAL INFORMATION.

01. Medical Files. The health authority shall maintain medical records for each juvenile offender which are kept separate from other records. (3-30-07)

02. Access to Medical Files. The detention center administrator, in conjunction with the health authority, shall establish procedures to determine access to medical files in accordance with privacy laws. (3-30-07)

218. -- 219. (RESERVED)

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

01. Sexual Abuse of Juvenile Offenders. The detention center shall have written policy and procedures mandating zero (0) tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct. The policy and procedures shall contain, at a minimum, the following provisions: (3-20-14)

a. The prohibition of any sexual abuse or sexual harassment as defined by PREA Standards or as defined in Title 18, Chapter 61, Section 18-6110, Idaho Code; (3-20-14)

b. The appointment of a PREA Coordinator, as outlined by PREA Standard Section 115.311(c), to be determined by the detention center administrator; (3-20-14)

c. Procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks as outlined by PREA Standard Section 115.315(d); (3-20-14)

d. The requirement of staff of the opposite gender to announce their presence when entering a resident housing unit or any area where residents are likely to be showering, performing bodily functions, or changing clothing as outlined by PREA Standard Section 115.315(d); (3-20-14)

e. The process that will be in place to provide age appropriate education to juvenile offenders as outlined by PREA Standard Section 115.333; (3-20-14)

f. The provision of multiple avenues for a juvenile offender or a third party to report sexual abuse and sexual harassment, at least one of which must be external to the agency as outlined by PREA Standard Section 115.351; (3-20-14)

- g.** The process for gathering information to make classification and housing decisions to reduce the risk of sexual victimization as outlined by PREA Standard Section 115.342; (3-20-14)
- h.** The handling of all information regarding sexual abuse or sexual harassment with confidentiality as outlined by PREA Standard Section 115.361(c); (3-20-14)
- i.** The process to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior as outlined by PREA Standard Section 115.322; (3-20-14)
- j.** Policies to protect all residents and staff who report sexual abuse or sexual harassment from acts of retaliation as outlined by PREA Standard Section 115.367; (3-20-14)
- k.** The provision of timely and unimpeded access to crisis intervention services, medical, and mental health care to victims as outlined by PREA Standard Section 115.382(a); (3-20-14)
- l.** The provision and documentation of training for staff as outlined by PREA Standard Section 115.331; (3-20-14)
- m.** Within thirty (30) days of the conclusion of every sexual abuse investigation, the facility shall conduct a sexual abuse incident review as outlined in PREA Standard 115.386. (3-20-14)

221. -- 222. (RESERVED)

223. SAFETY AND EMERGENCY PROCEDURES.

- 01. Emergency Plan.** The detention center shall have written policy and procedures that address safety plans for responding to emergency situations. (3-21-18)
- 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 needs to 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 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. (3-25-16)
- 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 with 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)

225. PHYSICAL INTERVENTION.

01. Appropriate Use of Physical Intervention. The detention center shall have written policy and procedures which govern the use of physical intervention. (3-21-18)

a. The use of physical intervention shall be restricted to the following situations, and then only to the degree necessary to restore order: (3-21-18)

i. Instances of justifiable self-protection; (3-21-18)

ii. The protection of others; (3-21-18)

iii. The protection of property; (3-21-18)

iv. The prevention of escapes; and (3-21-18)

v. The suppression of disorder. (3-21-18)

b. Physical intervention shall not be used as punishment. (3-30-07)

02. Use of Chemical Agents. The detention center shall have written policy and procedures which govern the use of chemical agents, if approved for use in the detention center. (3-21-18)

a. The use of chemical agents shall be restricted to the following situations, and then only to the degree necessary to restore order: (3-21-18)

i. Instances of justifiable self-protection; (3-21-18)

ii. The protection of others; (3-21-18)

iii. The prevention of escapes; and (3-21-18)

iv. The suppression of disorder. (3-21-18)

b. Chemical agents shall only be administered by an individual who has been certified in its use by a qualified instructor. (3-21-18)

c. Oleoresin Capsicum shall be the only chemical agent approved for use in juvenile detention centers. (3-29-12)

03. Use of Electroshock Devices. The use of electroshock devices is prohibited in juvenile detention centers unless used by law enforcement officers responding to a call for assistance initiated by detention staff. (3-21-18)

04. Use of Mechanical Restraints. The detention center shall have written policy and procedures which govern the use of mechanical restraints, including notification of medical or mental health professionals. (3-21-18)

a. The use of restraints shall be restricted to: (3-21-18)

i. Instances of transfer; (3-21-18)

ii. Instances of justifiable self-protection; (3-21-18)

- iii. The protection of others; (3-21-18)
- iv. The protection of property; (3-21-18)
- v. Medical reasons under the direction of medical staff; (3-21-18)
- vi. The prevention of escapes; and (3-21-18)
- vii. The suppression of disorder. (3-21-18)
- b.** Restraints shall not be used as punishment or for the convenience of staff. (4-5-00)
- c.** Juvenile offenders in mechanical restraints shall not be left unattended except in documented exigent circumstances. (3-21-18)

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 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. (3-25-16)

227. SEARCH AND SEIZURE.

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

02. Personal Searches. The detention center shall have written policy and procedures governing the personal searches of juvenile offenders, to include pat, strip, visual body cavity, and body cavity searches for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders. Said policies and procedures shall include, at a minimum, requirements that: (3-21-18)

a. All searches be performed under sanitary conditions in a manner which protects the dignity of the juvenile to the greatest extent possible; (3-21-18)

b. All pat searches be performed by direct care personnel of the same sex as the juvenile, except under exigent circumstances; (3-21-18)

c. All strip or visual body cavity searches be performed by direct care personnel of the same sex as the juvenile with the exception of the health authority or medical personnel; (3-21-18)

d. No person of the opposite sex of the juvenile shall be allowed to observe any unclothed search of the juvenile, including strip, visual body cavity, or body cavity searches with the exception of the health authority or medical personnel; (3-21-18)

e. All body cavity searches shall be conducted only by the health authority or by medical personnel; (3-21-18)

f. An initial pat search must be performed at the intake process prior to the removal of any mechanical restraints; and (3-21-18)

g. Any search or physical examination of transgender or intersex residents for the sole purpose of determining genital status is prohibited. (3-21-18)

03. Documentation of Certain Searches. The detention center shall have policies and procedures which govern the documentation of certain searches. Documentation shall be maintained in detention center records and in the juvenile offender's record, and shall include justification and any exigent circumstances surrounding the search. Searches which must be documented include, but are not limited to; (3-21-18)

a. Any search performed by direct care personnel of the opposite sex as the juvenile; (3-21-18)

b. Any strip or visual body cavity search performed or observed by direct care personnel of the opposite sex of the juvenile; (3-21-18)

c. Any body cavity search observed by direct care personnel of the opposite sex of the juvenile; or (3-21-18)

d. Any strip, visual body cavity or body cavity search performed. (3-21-18)

04. Seizure and Disposition of Contraband. The detention center shall have written policy and procedures which explains the chain of custody to govern the handling and/or disposal of contraband. All contraband found during detention center or juvenile offender searches shall be seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband shall be documented. When a crime is suspected to have been committed within the detention center, all evidence shall be maintained and made available to the proper authorities. (3-21-18)

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. The facility shall maintain documentation of proper training. (3-25-16)

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)

229. (RESERVED)

230. FOOD SERVICES.

The detention center shall have written policy and procedures which govern food service. If food is not obtained through a food service contract from an outside source, the detention center's food service operation shall be supervised by a designated employee who has experience and/or training in meal preparation, menu planning, staff supervision, ordering procedures, health and safety policies, theft precautions, and inventory control. If food is obtained through a food service contract from an outside source, provisions shall be made to assure that the contractor complies with the applicable section of these rules. (3-30-07)

231. (RESERVED)

232. SPECIAL DIETS.

The detention center shall have written policy and procedures which govern special diets. (3-30-07)

01. Special Diets, Medical. Special diets prescribed by a physician shall be followed according to the orders of the treating physician or dentist. (4-5-00)

02. Special Diets, Religious. Provisions should be made for special diets when a juvenile offender's religious beliefs require adherence to particular dietary practices. (4-5-00)

233. DIETARY RECORDS.

01. Food Service Records. The detention center shall maintain an accurate record of all meals served to juvenile offenders, including special diets. All menus shall be planned, dated, and available for review at least one (1) week in advance. Notations shall be made of any changes in the menu. Menus shall be kept at least one (1) year after use. (3-30-07)

02. Review of Menus. Menus and records of meals served shall be reviewed on a regular basis at least annually by a licensed dietician, physician or nutritionist to verify nutritional adequacy or shall meet the current guidelines of the National School Lunch Program. The detention center shall maintain documentation of the dietician's, physician's or nutritionist's review and verification. Subsequent menus shall be promptly revised to eliminate any deficiencies noted. (3-30-07)

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. Withholding of Meals as Disciplinary Sanction Prohibited. The detention center shall have written policy and procedures which dictate that meals shall not be withheld from juvenile offenders, nor the menu varied as a disciplinary sanction. (3-25-16)

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)

235. FOOD SERVICE SANITATION.

01. Written Policy and Procedures. The detention center shall have written policy and procedures to govern food service sanitation. Food service and related sanitation practices shall comply with the requirements of the state health department or other appropriate regulatory body. The detention center's food service operation shall be inspected in the manner and frequency mandated by local health authorities. The detention center administrator shall solicit at least an annual sanitation inspection by a qualified entity. The results of such inspections shall be documented and the detention center administrator shall take prompt action to correct any identified problems; (3-21-18)

236. -- 239. (RESERVED)

240. SANITATION AND HYGIENE.

01. Sanitation Inspections. Written policy and procedures shall provide that the detention center be maintained in a clean and healthful condition and that the detention center administrator or designee shall conduct

monthly sanitation and maintenance inspections of all areas of the detention center. (3-30-07)

02. Vermin Control. The detention center shall have a plan for the control of vermin and pests which includes inspections and fumigations, as necessary, by a licensed pest control professional. (3-30-07)

03. Housekeeping Plan. The detention center shall have a written housekeeping plan for all areas of the physical plant which provides for daily housekeeping and maintenance by assigning specific duties to juvenile offenders and staff. All work shall be assigned and supervised by detention center employees. No juvenile offender shall be allowed to assign work to other juvenile offenders. (3-30-07)

04. Maintenance and Repair. The detention center shall have written policy and procedures to provide that all plumbing, lighting, heating and ventilation equipment, furnishings, and security hardware in juvenile offender living areas shall be kept in good working order. Any broken fixture, equipment, furnishings, or hardware shall be promptly repaired or replaced. Painted surfaces shall not be allowed to become scaled or deteriorated. (3-30-07)

05. Water Quality. The water shall meet all current standards set by the applicable state and local authority as to bacteriological, chemical, and physical tests for purity. (3-30-07)

241. -- 244. (RESERVED)

245. PERSONAL HYGIENE.

01. Personal Hygiene Items. The detention center shall have written policy and procedures which 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; (3-21-18)
- 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; (3-25-16)
- c. Fire-retardant mattress; (4-5-00)
- d. Sufficient blankets to provide comfort under existing temperature conditions; and (4-5-00)

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. Health Care. 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: (3-21-18)

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 the physical condition, mental condition, and/or behavior. (3-21-18)

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. Use of a vehicle for emergency transport; (3-25-16)

f. Emergency on-call physician and dental services when the emergency health care facility is not located nearby; (4-5-00)

g. The availability of first-aid supplies; (3-21-18)

h. Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; (3-30-07)

i. Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; (3-30-07)

j. Delousing; (3-29-12)

k. Medical isolation, and proper examination of juvenile offenders suspected of having contagious or infectious diseases; (3-21-18)

l. Management of pharmaceuticals, including storage in a secure location; and (3-30-07)

m. 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. Behavioral Management. The detention center shall have written policy and procedures for maintaining discipline and regulating juvenile offenders' conduct. The following general principle shall apply: (3-21-18)

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. 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)

256. COMMUNICATION AND CORRESPONDENCE.

01. Mail, Visiting, Telephone. The detention center shall have written policy and procedures which shall govern the practices of handling mail, visitation, use of the telephone, and any limitations or restriction on these privileges. Juvenile offenders shall have the opportunity to receive visits and to communicate and correspond with persons, representatives of the media or organizations, subject to the limitations necessary to maintain detention center security and order. (3-21-18)

02. Resident Access to Outside Support Services. The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse as outlined by PREA Standard Section 115.353. (3-20-14)

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

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

a. Telephone calls may be monitored and notification shall be provided to the juvenile. (3-21-18)

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

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

d. Juvenile offenders shall be allowed to make a reasonable number of telephone calls to their attorneys that: ()

i. Are of reasonable duration; ()

ii. Are not monitored; and ()

iii. Are not revoked as a disciplinary measure. ()

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

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

07. Confidential Visits. The detention center shall provide juvenile offenders adequate opportunities for confidential access to courts, attorneys, and their authorized representatives, probation and parole officers, law enforcement, counselors, caseworkers, and the clergy. (3-21-18)

08. Visitation. Attorneys, probation and parole officers, law enforcement, counselors, caseworkers, and clergy shall be permitted to visit juvenile offenders at reasonable hours other than during regularly scheduled visiting hours. (3-21-18)

a. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, and clergy shall not be monitored, except that detention center employees may visually observe the visitation as necessary to maintain appropriate levels of security. (3-21-18)

b. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, or clergy should be of the contact type unless otherwise indicated by the juvenile offender or visitor, or the detention center administrator determines there is a substantial security justification to restrict the visit to a non-contact type. (3-21-18)

257. -- 260. (RESERVED)

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. 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: (3-21-18)

- 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. Any juvenile offender showing signs of impairment should not be admitted to the detention center without documentation from medical personnel or a physician of examination, treatment, and fitness for confinement; (3-21-18)
- d. A complete search of the juvenile offender and possessions; (3-30-07)
- e. Pat searches shall be performed before mechanical restraints are removed at the admissions process; (3-21-18)
- f. The care and disposition of personal property; (3-25-16)
- g. Provision of shower and the issuance of detention clothing and personal hygiene articles; (3-30-07)
- h. The provision of medical, dental and mental health screening; (3-30-07)
- i. Male and female juvenile offenders shall not occupy the same sleeping room; (3-30-07)
- j. The recording of basic personal data and information; (3-30-07)
- k. Providing assistance to juvenile offenders in notifying their families of their admission and the discussion of procedures for mailing and visiting; (3-29-12)
- l. The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; and (3-29-12)
- m. The administration of the MAYSI or other approved assessment tool. ()

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. (3-21-18)

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)

262. RELEASE.

01. Release of Offender. Written policy and procedures shall govern the release of any juvenile offender and the release process including, but not limited to: (3-21-18)

- a. Verification of juvenile offender’s identity; (3-20-14)
- b. Verification of release papers; (3-20-14)
- c. Completion of release arrangements, including the person or agency to whom the juvenile offender is being released: (3-20-14)
- d. Return of personal effects; and (3-20-14)
- e. Completion of any pending action. (3-20-14)

02. Temporary Release. Written policy and procedures shall govern escorted and unsecured day leaves into the community. (3-21-18)

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

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

263. -- 264. (RESERVED)

265. PROGRAMS AND SERVICES AVAILABLE.

01. Programs and Services. The detention center shall have written policy and procedures which govern what programs and services will be available to juvenile offenders. These programs and services shall include, at a minimum, the following: (3-21-18)

- a. Access or referral to counseling; (3-29-12)
- b. Religious services on a voluntary basis; (3-29-12)
- c. One (1) hour per day, five (5) days per week of large muscle exercise; (3-29-12)
- d. Passive recreational activities: (3-29-12)
- e. Regular and systematic access to reading material: (3-29-12)
- f. Work assignments; and (3-29-12)
- g. Educational programs according to the promulgated rules of the Idaho State Department of Education. (3-29-12)

02. Records of Participation in Programs and Services. Records of participation in programs and services must be recorded in daily shift log or juvenile offender’s file or program records. (3-20-14)

03. Limitations and Denial of Services. Access to services and programs will be afforded to all juvenile offenders, subject to the limitations necessary to maintain detention center security and order. Any denial of services must be documented. (3-29-12)

266. -- 274. (RESERVED)

275. DETENTION CENTER DESIGN, RENOVATION, AND CONSTRUCTION.

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

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

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

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

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

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

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

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

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

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

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

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

i. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from any harm including sexual abuse as outlined by PREA Standard Section 115.318. (3-20-14)

05. Admission and Release Area. The detention center shall have an intake and release area which

should be located within the security perimeter, but apart from other living and activity areas. (3-30-07)

- a. Adequate space shall be allocated for, at least but not limited to; (3-30-07)
 - i. Reception; (3-30-07)
 - ii. Booking; (3-30-07)
 - iii. Search; (3-30-07)
 - iv. Shower and clothing exchange; (3-30-07)
 - v. Medical screening; (3-30-07)
 - vi. Storage of juvenile offender’s personal property and detention center clothing; (3-30-07)
 - vii. Telephone calls; (3-30-07)
 - viii. Interviews; and (3-30-07)
 - ix. Release screening and processing. (3-30-07)

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

- c. Temporary holding rooms shall have access to a toilet and wash basin with hot and cold water. (3-30-07)

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

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

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

- a. One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; (3-30-07)
- b. One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and (3-30-07)
- c. Tables and seating sufficient for the maximum number expected to use the room at one (1) time. (3-30-07)

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

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

- b. Individual and group activities; (3-30-07)
- c. Exercise and recreation, indoor and outdoor; (3-30-07)
- d. Visitation; (3-30-07)
- e. Confidential attorney and clergy interviews; and (3-30-07)
- f. Counseling. (3-30-07)

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

12. Medical Service Space. Space shall be provided for routine medical examinations, emergency first-aid, emergency equipment storage, and secure medicine storage. (4-5-00)

13. Food Service. The kitchen or food service area shall have sufficient space for food preparation, serving, disposal, and clean-up to serve the detention center at its projected capacity. The kitchen or food service area shall be properly equipped and have adequate storage space for the quantity of food prepared and served. (3-30-07)

14. Laundry. Where laundry services are provided in-house, there shall be sufficient space available for heavy duty or commercial type washers, dryers, soiled laundry storage, clean laundry storage, and laundry supply storage. (4-5-00)

15. Janitor's Closet. At least one (1) secure janitor's closet containing a mop sink and sufficient space for storage of cleaning supplies and equipment shall be provided within the security perimeter of the detention center. (3-30-07)

16. Security Equipment Storage. A secure storage area shall be provided for all chemical agents, weapons, and security equipment. (4-5-00)

17. Administration Space. Adequate space shall be provided which includes but is not limited to, administrative, security, professional and clerical staff, offices, conference rooms, storage rooms, a public lobby, and toilet facilities. (4-5-00)

18. Public Lobby. A public lobby or waiting area shall be provided which includes sufficient seating and toilets. Public access to security and administrative work areas shall be restricted. All parts of the detention center that are accessible to the public shall be accessible to, and usable by, persons with disabilities in compliance with ADA standards. (3-30-07)

276. -- 999. (RESERVED)

05.01.03 – RULES OF THE CUSTODY REVIEW BOARD

000. LEGAL AUTHORITY.

These rules are adopted pursuant to Title 20, Chapter 5, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 05.01.03, “Rules of the Custody Review Board.” ()

02. **Scope.** These rules are established to ensure that the juvenile corrections system in Idaho and the Custody Review Board are consistently based on the principles of accountability, community protection, and competency development. ()

002. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the determination of the Custody Review Board. (3-5-08)

003. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. (5-3-03)

004. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the Custody Review Board are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-3-03)

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions in Section 20-502, Idaho Code, the following definitions apply: ()

01. **Board.** The Custody Review Board of the Idaho Department of Juvenile Corrections. (5-3-03)

02. **Case Management Team.** A team consisting of juvenile services coordinator (JSC), case manager, and juvenile probation officer (JPO) who provide input in setting and following through with treatment goals. (5-3-03)

03. **Case Manager.** Department staff assigned to directly manage a juvenile’s case, such as a group leader at a state institution; or, if a juvenile is placed at a contract program, the contract provider’s employee assigned to directly manage a juvenile’s case. (5-3-03)

04. **Classification.** A process for determining the treatment needs and requirements of juveniles committed to the Department and for assigning them to housing units or programs according to their needs and existing resources. ()

05. **Extended Time in Custody.** Any period a juvenile remains in custody after age nineteen (19) and not to exceed age twenty-one (21). ()

06. **Juvenile Records.** Information concerning the individual’s delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, personal property receipts, visitors’ lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. (5-3-03)

07. **Juvenile Services Coordinator (JSC).** An employee of the Department assigned to a particular juvenile as the case worker, licensed in social work. (3-5-08)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

01. **Hearings.** All matters and testimony concerning juveniles, before the Board, are confidential and are conducted in accordance with Title 74, Chapters 1 and 2, Idaho Code; and Title 20, Chapter 5, Idaho Code, regarding juvenile records and proceedings. (3-29-17)

02. **Written Record.** A written record of the vote by the Board shall be kept confidential and

privileged from disclosure, to the extent allowed by law, and provided that the record, or portions thereof, is made available upon request for all lawful purposes or as required by the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-29-17)

03. Confidentiality. Distribution of the record by the Board or an employee of the Department to any person not specifically allowed by law to receive or read it may result in disciplinary action. (5-3-03)

04. Records of Hearings and Meetings. Summary minutes of individual hearings and case reviews will be signed by the Board and maintained in the Department office. ()

101. POWERS AND DUTIES.

01. Review. The Board is empowered by Sections 20-520(1)(r) and 20-532, Idaho Code, to review the cases of juveniles in the custody of the Department whose cases have been referred to the Board according to Section 201 of these rules. (3-5-08)

02. Board Determinations. After conducting its review, the Board will advise the Director whether it has determined that the juvenile before it needs an extended time in custody to address accountability, community protection, and competency. (3-5-08)

03. Placement. The Board cannot direct the placement or treatment of a juvenile in the Department's custody. (3-29-17)

04. Release Date for Juveniles. If a juvenile appears before the Board and the Board determines that he not be retained in custody, the Director shall set a release date for the juvenile, as follows: ()

a. If a juvenile appears before the Board prior to his nineteenth birthday, but before a reasonable and appropriate release plan has been finalized, the Department may retain the juvenile long enough to finalize those plans, not to exceed forty-five (45) days after the juvenile's nineteenth birthday. (4-6-05)

b. In all other cases, the Department may retain the juvenile long enough to finalize a reasonable and appropriate release plan, not to exceed forty-five (45) days after the Director signs the Board's determination. ()

102. STRUCTURE AND COMPOSITION OF THE CUSTODY REVIEW BOARD.

01. Board Members. The Board is composed of four (4) members appointed by the Director who represent a variety of juvenile justice experiences and victim perspectives, or who are otherwise qualified. ()

02. Terms of Appointment. The Director shall fill each succeeding vacancy for terms of four (4) years. Board vacancies for unexpired terms are appointed by the Director for the remainder of the term. All appointees may be reappointed. Appointees serve at the pleasure of the Director. ()

03. Compensation of Board Members. Members will be compensated as provided by Section 59-509(b), Idaho Code. They serve without honorarium or compensation but are reimbursed for actual and necessary expenses, subject to the limits provided in Section 67-2008, Idaho Code. (5-3-03)

103. -- 199. (RESERVED)

200. REVIEW PROCESS.

A juvenile in the custody of the Department does not have the legal right or ability to request or demand a case review by the Board. A review by the Board does not create a liberty interest for the juvenile, and cannot be appealed. All cases come before the Board as outlined in Section 201 of these rules ()

201. REFERRAL OF CASES TO THE BOARD.

The Board shall review cases referred to it and will advise the Director whether it has determined that extended time in custody is necessary for a juvenile to address competency, accountability and community protection. (3-5-08)

- 01. Cases Eligible for Referral.** A juvenile's case is eligible for referral to the Board if: ()
- a.** The juvenile is no more than six (6) months from his nineteenth birthday and one (1) or more members of the juvenile's case management team believes that the juvenile needs extended time in custody beyond that juvenile's nineteenth birthday; or (4-6-05)
 - b.** The juvenile, at the time of commitment to the Department, is past age nineteen (19) or will reach age nineteen (19) prior to the next scheduled meeting of the Board. (3-29-17)
- 02. Juvenile Has Not Appeared Before the Board.** Any juvenile who has not appeared before the Board in person or by video conference prior to the date of his nineteenth birthday, excepting those juveniles described in Paragraph 201.01.b. above, shall be released from custody on that date or as soon thereafter as a reasonable release plan can be determined and finalized. The final release date will not exceed forty-five (45) days after the juvenile's nineteenth birthday. (3-29-17)
- 03. Hearing Schedules.** Once a case is referred, the Board will set a date for the review hearing. (3-29-17)
- 04. Written Submissions.** All written documents and letters to be considered at a particular hearing need to be submitted fourteen (14) calendar days in advance of the scheduled hearing in order to ensure that they will be considered. Other documents may be allowed after this deadline by unanimous consent of the Board members present. Documents may include: ()
- a.** Progress reports to the courts pursuant to Sections 20-532 and 20-540, Idaho Code; (5-3-03)
 - b.** Report on original offenses leading to commitment plus order for commitment and orders of judgment; (5-3-03)
 - c.** Written recommendations from each member of the case management team; ()
 - d.** Polygraph results and written conclusions and recommendations from the professionals administering these tests; (5-3-03)
 - e.** Psychosocial or psychosexual evaluations; (5-3-03)
 - f.** Victim's written statement; (5-3-03)
 - g.** Juvenile's written statement; (5-3-03)
 - h.** Initial classification; (5-3-03)
 - i.** Custody level assessment at case review; and (5-3-03)
 - j.** Any other pertinent information. (5-3-03)

202. PERSONS TO ATTEND OR COMMENT.

- 01. Juvenile.** The juvenile who is the subject of a custody review proceeding is required to appear either in person or by videoconference. (5-3-03)
- 02. Witnesses.** The Board allows for the participation of victims, attorneys, members of the case management team, and approved family members or others who have a direct relationship to the specific hearing or subject of the hearing. (5-3-03)
- 03. Participation.** Persons who want to participate in hearings shall notify the Board staff fourteen (14) calendar days in advance of the scheduled hearing. Children, including victims, under the age of fourteen (14),

may not be allowed to attend the hearings without prior approval of the Director or Board. Parents or guardians of child victims in a case may appear and comment. (5-3-03)

04. Time Limited. At its discretion, the Board may limit the time allotted to each participant during the proceeding. (3-29-17)

05. Exclusion. At its discretion, the Board may exclude witnesses or participants for inappropriate or disruptive behavior, or other good cause. (3-29-17)

203. CONFLICT OF INTEREST.

A member of the Board who has personal knowledge of a case, shall notify all other Board members of this fact prior to the meeting where that case is to be considered. The remaining members of the Board will determine whether that member should be disqualified from participating in the review of that case and determination. (5-3-03)

204. -- 299. (RESERVED)

300. BOARD DETERMINATIONS.

All determinations by the Board regarding a juvenile are prepared in writing and given to the Director. (3-5-08)

01. Confidentiality. All determinations, including any written documents from any source regarding the juvenile's case, will be held by the Department in the juvenile's case management file. (3-5-08)

02. Board's Determination to the Director. The Board's written determination concerning the juvenile's need for extended time in custody will be given to the Director no later than thirty (30) calendar days after the date the Board receives the last documents or interviews the last witness pertaining to the case. ()

03. Reconsideration. The Board may reconsider its determination in any case only if the vote based on the reconsideration is made before the written determination is given to the Director. Only the members who heard the case may discuss or vote on any reconsideration of the determination. (3-5-08)

a. Any member of the Board who was present for and heard the juvenile's case may call for a vote to reconsider the Board's determination by making a request through the Board chair. (3-5-08)

b. Any reconsideration may occur by teleconference, in person, by videoconference, or any combination thereof. (3-5-08)

c. The chair will call for a motion to reconsider, and a vote. (3-5-08)

d. The determination is given to the Director in the same manner as is specified in Subsection 300.02, of these rules. ()

04. Indeterminate Sentence Remains. If the Board determines that a juvenile needs to stay for an extended time in custody of the Department, that determination does not create a determinate sentence of any kind, and the Director retains the authority to release the juvenile at any later time deemed appropriate. ()

05. Official Record of Hearing/Review. The signed summary minutes are the official record of a hearing or case review and the original record will be maintained with records of the Department. ()

06. Evaluation of Juvenile Cases. Juvenile cases are evaluated on the individual merits of each case. The Board's evaluation of a case and a juvenile's need for extended time in custody are not based upon any predetermined hearing standard, criteria, or precedent. Factors that may be taken into account by the Board include, but are not limited to: (5-3-03)

a. Seriousness of the crime; (5-3-03)

b. Prior criminal history of the juvenile, as well as prior commitments to the Department; (5-3-03)

- c.** Progress or completion of program, treatment plan, accountability; (5-3-03)
- d.** Institutional history to include conformance to established rules, involvement in programs and overall behavior; (5-3-03)
- e.** Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen; and (5-3-03)
- f.** Information or reports regarding physical, psychological, or other conditions. (5-3-03)

301. -- 399. (RESERVED)

400. VICTIMS.

The Department and the Board will respect the rights of victims of crime in Idaho, pursuant to the Idaho Constitution and statute. When a juvenile's case is referred for review, the Department will provide the Board with a list of crime victims who were officially identified by the adjudicating court or prosecuting attorney. ()

01. Notice to Victims. The Board will notify identified victims of a juvenile's crime that a custody review hearing is scheduled. These victims will also be notified of their right to submit written statements or information and their right to provide testimony. After the review proceeding, the Department shall notify victims of the Board's determination regarding the custody of the juvenile. ()

a. Notices of rights, hearings, the Board's final determinations, and any anticipated release documents will be sent to the victim of record at the last known address. The victim is responsible for providing any change of address. ()

b. Victims may request that they not be notified or contacted. (5-3-03)

02. Victim Testimony. A victim may attend all custody review hearings pertinent to their case and provide testimony. The victim may be allowed to testify before the Board members during a hearing session outside the juvenile's presence. ()

401. -- 999. (RESERVED)

05.01.04 – UNIFORM STANDARDS FOR JUVENILE PROBATION SERVICES

000. LEGAL AUTHORITY.

These rules are adopted pursuant to Title 20, Chapter 5, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 05.01.04, “Uniform Standards for Juvenile Probation Services.” (4-6-05)

02. Scope. These rules are established to ensure that all county juvenile probation services operate under consistent standards based on the principles of accountability, community protection, and competency development. (4-6-05)

002. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. (4-6-05)

003. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. (4-6-05)

004. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the Idaho Department of Juvenile Corrections are subject to these rules and the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (4-6-05)

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions in Section 20-502, Idaho Code, the following definitions apply: ()

01. Balanced Approach. An approach to juvenile justice that gives balanced attention to holding offenders accountable, developing competencies, and protecting the community. ()

02. Case Management Plan. A plan developed in collaboration with those directly involved in a juvenile’s case to address criminogenic risk factors and identified needs. ()

03. Evidence-Based Practices. Practices that are demonstrated to be effective through empirical research. ()

04. Graduated Sanctions. An evidence-based model for juvenile offenders that combines accountability and sanctions with increasingly intensive treatment and rehabilitation services. ()

05. Juvenile Probation Department. Any public or private agency, made up of one (1) or more staff, administered by or contracted with the court or county to provide juvenile probation services to a county at the expense and concurrence of the county commissioners. Services may include intake, diversion, supervision, restitution, and community service work. ()

06. Juvenile Probation Officer. An employee of a juvenile probation department who is responsible for supervision of juvenile offenders’ compliance with court orders. ()

07. Probation. A legal status created by a court order that permits a juvenile offender to remain in the community with conditions and restrictions imposed by the court. ()

08. Recidivism. A measure that counts the number of juvenile offenders who are adjudicated of a new misdemeanor or felony offense within a specified time period. ()

09. Validated Risk/Needs Assessment. A validated instrument that measures a juvenile’s criminal risk factors and specific needs that, if addressed, should reduce the juvenile’s likelihood to reoffend. ()

011. – 099. (RESERVED)

100. REVIEW PROVISIONS.

The Idaho Department of Juvenile Corrections will collaborate with the courts and the counties to visit and review all

juvenile probation departments to assess compliance with these rules. A written report of each review will be prepared by the Department and provided to the appropriate juvenile probation administrator with copies to the county commissioners and the administrative judge. ()

101. – 199. (RESERVED)

200. ADMINISTRATION.

01. Department Mission Statement. Juvenile probation departments should have a department mission statement that incorporates the principles of the balanced approach and guides the operations of the department. ()

02. Policies and Procedures. Juvenile probation departments shall have policies and procedures for the operation of the department that are consistent with existing laws, local rules, and evidence-based practices. All written policies, procedures, rules and regulations should be dated, reviewed at least annually, and made available to department employees. Policies will include administrative procedures for the following: ()

- a. Roles of employees and organizational authority within the department; ()
- b. Communication and dissemination of pertinent information to staff; ()
- c. Records management in accordance with Idaho Court Administrative Rule 32; and ()
- d. Internal case review to ensure the quality of supervision and compliance with standards. ()

03. Fidelity. Juvenile probation departments should demonstrate that practices adhere to department protocols and program models. ()

04. Data. Juvenile probation departments should have policies and procedures to collect and analyze data on at least an annual basis that allows for an analysis of local trends in juvenile justice, measures recidivism, and evaluates any other identified department objectives. ()

201. – 299. (RESERVED)

300. STAFF QUALIFICATIONS AND STAFF DEVELOPMENT.

All juvenile probation departments will have written policy and procedures governing staffing, to include: ()

01. Minimum Qualifications: ()

a. Juvenile probation officers should meet and maintain the minimum standards of employment as provided in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” ()

b. Juvenile probation officers should adhere to the Idaho Juvenile Probation Officer Code of Ethics and the Code of Ethics/Standards of Conduct as provided in IDAPA 11.11.01. ()

02. Training and Staff Development: ()

a. Juvenile probation departments should ensure staff training based on their written policy and procedures. The training should meet staff needs, be reviewed regularly, and address current trends. The training should also ensure that all juvenile probation officers earn the juvenile probation officer certificate as mandated in IDAPA 11.11.01. ()

b. Juvenile probation officers should obtain at least twenty (20) hours of continuing education each year after certification as a juvenile probation officer. At least six (6) hours of annual continuing education should be on evidence-based/best practices in juvenile justice. ()

c. Each juvenile probation department will maintain accurate documentation of continued training

hours for each juvenile probation officer. ()

301. – 399. (RESERVED)

400. JUVENILE PROBATION SERVICES.

All juvenile probation departments shall operate in accordance with IDAPA 05.01.04 and have policies and procedures regarding the following: ()

01. Balanced Approach Model. Supervision of juvenile offenders and services provided to juvenile offenders and their families should be based on the Balanced Approach Model. ()

02. Engaging and Involving Families. Juvenile probation officers should document efforts to engage and involve a juvenile offender’s family and/or other supportive individuals. ()

03. Validated Risk Assessment. A validated risk assessment should be utilized to determine the criminogenic risk factors and needs of the juvenile offender. ()

04. Assessments. Assessments should be utilized when applicable to assist in making recommendations to the Court and in developing individualized case plans. ()

05. Risk and Need Classification. Risk assessment and supplemental assessment results should be used to recommend length of probation and to determine level and type of supervision, frequency of contact, and intensity of services. ()

06. Case Management Plans. Individualized case management plans should focus on the most significant criminogenic risks as identified by the risk assessment and supplemental assessments. The plan should prioritize and address criminogenic risks, needs, and responsivity factors, rated moderate or higher, with special emphasis on addressing anti-social attitudes, values, and beliefs. Case management plans should be reviewed with the juvenile and/or their parent/guardian and updated, as needed, per department policy. ()

07. Collateral Contacts. Juvenile probation officers should conduct collateral contacts and verify information about juvenile offenders that is important to the supervision process. ()

08. Documentation. Juvenile probation officers should maintain timely and accurate records of each juvenile offender under supervision, consistent with the juvenile probation department policies. ()

09. Evidence Based/Best Practices and Programs. Evidence-based/best practices and programs should be utilized to promote a greater likelihood of positive outcomes. ()

10. Collaboration with Community Partners. Juvenile probation officers should collaborate with public and private agencies to assist juveniles and their families to obtain services and utilize community resources. These partners may include treatment providers, employment agencies, law enforcement, school systems, and other government and non-profit organizations. ()

11. Court Reports. Reports should provide the Court pertinent information as well as sufficient detail regarding the risks and needs of the juvenile. ()

a. Any recommendations contained in the report should address the needs of the juvenile including supervision, treatment, and other special conditions applicable based on the juvenile’s risk. ()

b. Information in reports should be verified to ensure accuracy and credibility of the information. ()

c. Juvenile probation departments should have procedures to review and approve reports to ensure quality control and consistency. ()

d. All reports should be filed in a timely manner as determined by the Court and department policies.

()

12. Use of Detention. Policies should reflect the risk/needs principle and the use of graduated sanctions. Alternatives to detention should be sought out for low-risk offenders. ()

13. Physical Intervention. In the event a juvenile probation department authorizes the use of chemical agents or other weapons, juvenile probation officers must be certified for their use by a certified instructor. Physical force used in instances of justifiable protection of the juvenile or others must be documented. ()

14. Reporting of Abuse/Neglect. Physical and sexual abuse and neglect must be reported and documented in accordance with Section 16-1605, Idaho Code. ()

15. Transfer of Cases. Transfer of cases should occur in accordance with chapter 5, Title 20, Idaho Code, and Idaho Juvenile Rule 10. ()

a. Juvenile probation officers should communicate with the county where a juvenile will reside regardless of whether or not supervision will be requested. Such communication should occur as soon as a change in residence is determined. ()

b. The juvenile probation department in the sending county should communicate, in writing, to the juvenile probation department in the receiving county regarding the supervision request. Information provided should include juvenile and guardian name, address, phone, school (if known), criminal history, disposition and terms, and conditions of supervision. ()

c. In the event a juvenile is relocating to or from another state, the juvenile probation officer should comply with the provisions of the Interstate Compact for Juveniles, Chapter 19, Title 16, Idaho Code. ()

16. Absconders. Reasonable steps should be taken to locate juvenile offenders who fail to report for probation supervision and whose whereabouts are unknown. ()

17. Transportation of Juveniles. All juvenile probation officers who transport a juvenile will have a valid driver's license in good standing and valid proof of insurance. ()

18. Release of Information. Information contained in probation files is confidential and may only be released in accordance with state and federal laws. Written policy and procedures should include what information can be provided, who should provide the information, and how it should be provided. ()

19. Additional Policy and Procedures. Juvenile probation departments will establish written policy and procedures in accordance with their county policies regarding the following (if applicable): ()

a. Diversions; ()

b. Victim and community restoration; ()

c. Search and seizure; ()

d. Drug testing; ()

e. Probation violations; ()

f. Medical emergencies; and ()

g. Termination of cases. ()

401. -- 999. (RESERVED)

05.02.01 – RULES FOR RESIDENTIAL TREATMENT PROVIDERS

000. LEGAL AUTHORITY.

These rules are adopted pursuant to Title 20, Chapter 5, and Title 16, Chapter 19, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 05.02.01, “Rules for Residential Treatment Providers.” (4-11-15)

02. Scope. These rules are established to ensure that the juvenile corrections system in Idaho will be consistently based on the following principles: accountability; community protection; and competency development. These rules apply to residential treatment providers (Provider) that coordinate needed treatment services identified in individual service implementation plans. ()

002. – 003. (RESERVED)

004. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the Providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions in Section 20-502, Idaho Code and the following terms apply: ()

01. 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)

02. Body Cavity Search. The examination and possible intrusion into the rectal or vaginal cavities to detect contraband. It is performed only by the medical health professional. (3-25-16)

03. 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)

04. Body Search, Unclothed. Also referred to as a Strip Search. A search conducted by a medical health professional during which a juvenile offender is required to remove all clothing. ()

05. 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)

06. 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 Provider program for damages to the facility or program. ()

07. Community Treatment Team. A team including the juvenile services coordinator, 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. ()

08. Contraband. Any item not issued or authorized by the Provider. ()

09. 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)

10. 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)

11. Education Plan. A written plan for general education students outlining the coursework they will

complete each year towards meeting the Idaho Content 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. ()

12. 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)

13. Facility. The physical plant associated with the operation of residential or nonresidential programs. (4-11-15)

14. Facility Treatment Team. The group of staff employed by the Department or by the 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. ()

15. General Education Student. A student who does not qualify for special education services under the IDEA. ()

16. Health Services. Including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. ()

17. 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)

18. Independent Living Services. Services that increase a juvenile offender's ability to achieve independence in the community. ()

19. Individual Community Pass. Any instance in which a juvenile offender leaves the Provider's facility for a planned activity, without direct supervision by at least one (1) 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: ()

a. Day passes with family or other approved individuals; ()

b. Day or overnight home visits; ()

c. Recreational activities not otherwise approved as a part of a group activity; and ()

d. Funeral leave. ()

20. 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. ()

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

- 23. Juvenile Services Coordinator.** An employee of the Department assigned to a particular juvenile as the case worker, licensed in social work. ()
- 24. Mechanical Restraints.** Mechanical devices used to prevent an uncontrollable juvenile offender from injuring themselves or others. (4-11-15)
- 25. 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. ()
- 26. 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)
- 27. 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. ()
- 28. Mental Health Assessment.** A thorough review to determine a juvenile offender's comprehensive mental health needs. This information is used to develop the mental health terms of a juvenile offender's service plan. ()
- 29. 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)
- 30. 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. ()
- 31. 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)
- 32. Physical Restraint.** Any method of physical control of a juvenile offender that involves staff touching or holding a juvenile offender to limit or control the juvenile offender's actions. (4-11-15)
- 33. Prison Rape Elimination Act of 2003 (PREA).** Public Law No. 108-79, including all subsequent amendments thereto as codified in 34 U.S.C. §§ 30301-30309, and all federal rules and standards promulgated thereunder, which promote zero (0) tolerance of sexual abuse of juvenile offenders by staff or by other juvenile offenders. ()
- 34. 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. ()
- 35. Program Director.** The administrator of the residential treatment provider for juvenile offenders. (4-11-15)
- 36. Progress Report.** A written report summarizing progress toward the goals and objectives set in the service implementation plan. (4-11-15)
- 37. Quality Improvement Services Bureau.** Department employees responsible for overseeing Provider's compliance with contract terms and these rules. ()
- 38. 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)
- 39. 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)

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

41. 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. ()

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 and 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 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. ()

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, that 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 Provider for provision of some portion of work or services. ()

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 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) Provider to another without a release from Department custody. ()

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 Provider rule in a manner other than that specifically prescribed in the rule. ()

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 and 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. ()

63. Waiver. The non-application of one (1) or more of these rules based upon a request by the Provider and a written decision issued by the Department. ()

011. -- 099. (RESERVED)

SUBCHAPTER A – RULES FOR ALL RESIDENTIAL TREATMENT PROVIDERS

100. INITIATION OF SERVICES.
Juveniles are committed to the Department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-547, Idaho Code). (4-11-15)

101. WAIVER AND VARIANCE.
Minimum program standards established herein apply to all services provided by the Provider. A waiver and variance from the standards stated in these rules must receive prior written approval from the Department and must be attached as a formal amendment to the contract. ()

102. APPLICABILITY.
This chapter applies to all Providers that coordinate needed treatment services identified in individual service implementation plans. Providers must also abide by Subchapter B, “Rules for Staff Secure Providers” and Subchapter C, “Rules for Reintegration Providers,” as applicable. ()

103. -- 109. (RESERVED)

110. AUTHORITY TO INSPECT.

01. Inspections. The Department has the authority to conduct reviews of programs, program operations, and facilities to ensure the Provider’s compliance with these rules. The Provider shall cooperate with the

Department's review and provide access to the program or facility and all juvenile records for juveniles in Department custody, as deemed necessary by the Department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available, upon request. ()

02. Notification of Program Changes. Providers must notify the Department as soon as possible, but no later than thirty (30) calendar days, before there is a change in the name of the organization, type of service, characteristics of juveniles being served, changes in the licensed capacity of the program, closure of the program, changes in ownership or in the organizational structure. ()

03. Emergency Closure of Program. In the event of a natural disaster, fire, flood, or other emergency in which the Provider may be closed temporarily, the Provider will immediately notify the regional juvenile correctional center in its respective region. ()

04. Notification of Death of a Juvenile Offender. In the event of the death of a juvenile who is in the Department's custody, the Provider must immediately notify the regional facility, juvenile offender's parent or guardian, and law enforcement. Other notifications will be coordinated between the Provider and the Department. ()

05. Additional Incident Reporting. The Provider must report to the Department all incidents of the type normally requiring immediate notice to the Department, as identified in Subsection 156.01, that occur in their program or facility regardless of whether or not the juveniles involved are in the Department's custody. Any such reports regarding juveniles not in Department custody must include the type and scope of the incident without any information identifying the juvenile, and be made available to the Department's Quality Improvement Services Bureau. ()

a. The Provider must report to the Department all incidents of staff misconduct relating to juvenile care and that result in any type of suspension or termination of employment, revocation or suspension of a professional license, or revocation or suspension of driver's license of any staff who transports juveniles. ()

b. All instances of battery committed on staff must be documented and, whenever appropriate, charges filed with the appropriate authorities. Each such incident must be reported to the juvenile offender's juvenile services coordinator as an incident report according to Subsection 156.01 of these rules. (4-11-15)

06. Additional Reporting Requirements. The Provider shall maintain the overall safety, security, and order of a program for the protection and well-being of the juvenile offenders at all times. Therefore in situations where the Department has determined necessary to ensure compliance, more frequent and more detailed reporting may be required by the Quality Improvement Services Bureau. ()

111. COMPREHENSIVE AND CURRENT PROGRAM DESCRIPTION.

01. Program Description. Providers must provide, and keep current with the Department, a program description detailing the range of services to be provided and the methods for providing these services. ()

02. Minimum Requirements. At a minimum, the program description must include: (4-11-15)

a. Target population and specific admission criteria; (4-11-15)

b. Primary and secondary treatment modalities; (4-11-15)

c. Outline of daily schedules for juvenile offenders and staff; (4-11-15)

d. Description of educational services provided; ()

e. Description of emergency and routine medical and mental health services, including psychotropic medication monitoring, unless this population is specifically excluded from admission to the program; (4-11-15)

f. Description of religious services, recreation services, and other specialized services provided, as

indicated by the needs of the identified target population; (4-11-15)

g. Written criteria for successful completion of the program and written criteria for termination from the program prior to completion; (4-11-15)

h. A thorough description of all services offered as a part of the program, including a description of the frequency of service delivery; (4-11-15)

i. A detailed description of each individual treatment intervention, such as treatment group, psycho-educational group, cognitive restructuring group, and peer group including: (4-11-15)

i. The overall goals of the treatment intervention or service area; (4-11-15)

ii. The average length, total length, and number of sessions in the treatment intervention or service area; (4-11-15)

iii. The facilitator education and training requirements; and (4-11-15)

iv. The specific curriculum used in the treatment intervention or service area. (4-11-15)

j. A detailed description of the behavior management component of the program. (4-11-15)

112. DISPOSITION OF REFERRALS FROM THE DEPARTMENT.

A juvenile offender's admission into the program shall be based on an assessment of the juvenile offender's strengths, risks, needs, and on the anticipated ability of the program to reasonably address those issues. Providers must ensure that the juvenile offender and parent or guardian are provided an opportunity to participate in the admission process and related decisions. ()

01. Accepting Referral. Upon receipt of a complete referral packet from the Department, the Provider has four (4) business days in which to decide whether to accept or decline the referral. Upon acceptance, the Referral Acceptance/Denial Form must be completed, signed, and returned to the regional referral coordinator. By accepting the referral, the Provider agrees to address the identified treatment goals and the anticipated length of stay. Once the acceptance has occurred, the juvenile offender's transportation will be made. ()

02. Declining Referral. If a Provider denies a referral, the specific reason for denial must be documented on the Department's Referral Acceptance/Denial Form and the form returned to the regional referral coordinator. The Provider must then destroy the referral packet. ()

03. Change in Admission Criteria. Any change in the Provider's admission criteria must be reflected in the Provider's admission policy and requires a written amendment to the contract with the Department. Temporary exceptions are covered under Section 101 of these rules. ()

04. Reservation of Program Slots. When a program slot is to be reserved, the Department will contact the Provider and request that the slot be reserved. Unless the Department gives specific approval, the maximum time for which a program slot may be reserved, and the Provider continue to receive payment, is forty-eight (48) consecutive hours. ()

113. SAFETY AND MAINTENANCE OF BUILDINGS AND GROUNDS.

01. Compliance with State and Local Codes and Ordinances. The Provider must maintain compliance with all state and local building, life safety, and zoning requirements and make documentation of compliance available to the Department. ()

02. Accessibility. The program buildings, parking lots, and other structures must provide access as required by the Americans with Disabilities Act, as amended, and other applicable federal and state laws and regulations. (4-11-15)

03. Maintenance. The Provider must ensure that all structures are maintained, are in good repair, and are free from hazards to health and safety. The grounds must also be maintained and be free from any hazard to health and safety. The Provider must have a written plan for preventive and ongoing maintenance of its building and grounds. ()

04. Construction Considerations. When designing or acquiring any new program or facility and in planning any substantial expansion or modification of existing facilities, the Provider shall consider the effect of the design, acquisition, expansion, or modification upon the Provider's ability to protect residents from any harm, including sexual abuse. ()

05. Program Safety. Each Provider must have a designated staff member who is responsible for the safety of the program. This individual must conduct monthly inspections of the program, with copies of the inspections kept on file for review by the Department, to identify: ()

- a. Fire safety; (4-11-15)
- b. Existing hazards; (4-11-15)
- c. Potential hazards; and (4-11-15)
- d. The corrective action that should be taken to address these hazards. (4-11-15)

06. Emergency Procedures. The Provider will utilize and maintain a current emergency procedure manual, which includes, at a minimum, procedures pertaining to: ()

- a. Fire safety and escape; (4-11-15)
- b. Emergency medical care; (4-11-15)
- c. Notification and filing charges on escape; (4-11-15)
- d. Incidents of violence within the program; (4-11-15)
- e. Suicide prevention; (4-11-15)
- f. Child abuse reporting; and (4-11-15)
- g. Sexual abuse disclosures. (4-11-15)

114. VEHICLES.

01. Condition. Vehicles used to transport juveniles must be mechanically sound, in good repair, and meet the Department's requirements for insurance coverage. (4-11-15)

02. Compliance with Applicable Laws. All vehicles must possess current state licenses and comply with all applicable state laws. When in use, all vehicles must carry a standard first aid kit and a fire extinguisher. (4-11-15)

03. Maintenance and Equipment Checklist. The Provider must have a vehicle maintenance and equipment checklist, which includes a listing of all critical operating systems and equipment inspections, the date of the last inspection, and the type of service or action taken. All repairs required to critical operating systems, such as brakes and headlights, must be made immediately. All worn or missing critical equipment such as tires, jacks, and seat belts must be replaced immediately. ()

115. TRANSPORTATION.

01. Transportation for Service Plan. The Provider will 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. ()

02. Transportation for Court Proceedings. The Provider and the juvenile services coordinator will make timely arrangements for transportation related to court appearances, and for transfer or release of juvenile offenders from Department custody. ()

116. DRIVERS.

01. Juvenile Transport. All drivers of vehicles transporting a juvenile offender must possess a valid driver's license from the applicable state and the proper licenses required by state law for the type of motor vehicle operated. All such operators' driving records must be checked through the Department of Motor Vehicles for the preceding three (3) years and annually after date of hire. During that time, the operator must not have had any felony traffic convictions or withheld judgments. Any incidents of suspended licenses during that time must be specifically reviewed by the Provider. Personnel files must contain evidence of training to transport a juvenile offender as well as other appropriate documentation. ()

02. Parent or Guardian Transport. When parents or guardians are allowed to transport a juvenile offender for any reason, the Provider will ensure that the individual possesses a current and valid driver's license and insurance coverage. ()

117. -- 119. (RESERVED)

120. ADMINISTRATIVE RECORDS.

01. Documentation Retention. The Provider must document and retain documentation of all information related to the following items: ()

- a.** Program consultation provided, such as technical assistance on program design and implementation; (4-11-15)
- b.** Training provided to staff; (4-11-15)
- c.** All alleged instances of child abuse; (4-11-15)
- d.** Program audits or reviews, including corrective actions required and taken; (4-11-15)
- e.** Reports of sexual abuse disclosures to the applicable state licensing authority or law enforcement; (4-11-15)
- f.** Juvenile offender and staff grievances; (4-11-15)
- g.** Copies of all completed incident reports; and (4-11-15)
- h.** Copies of background checks for all current employees, contractors, volunteers and interns who may have contact with residents. (4-11-15)

02. Employee Files. Employee personnel files must contain the following: (4-11-15)

- a.** Minimum qualifications for the job held; (4-11-15)
- b.** Hiring information; (4-11-15)
- c.** Copies of all required licenses or certificates related to the job function; (4-11-15)
- d.** Copies of academic credentials, driving record, and background checks, as required by state law;

()

- e. Current training records; and (4-11-15)
- f. Performance evaluations and copies of personnel actions, such as disciplinary action taken and acknowledgments of outstanding performance. (4-11-15)

121. STAFF QUALIFICATIONS.

01. Licenses. All individuals providing services to juveniles in the custody of the Department must possess all licenses or certifications for their particular position as required by statute, rule, or by the applicable state licensing authority. (4-11-15)

02. Education or Experience. All individuals providing services must be qualified to do so, based on knowledge, skills, and abilities. In addition, certain program and professional caregivers must meet specific minimum standards for education or experience. These standards constitute, in part, the basis for determining the adequacy of program and professional services delivered under contractual agreement with the Department. ()

03. Position Descriptions. Providers must maintain written position descriptions for every job class established in the organization. In all cases, the particular job titles used by the Provider to provide counseling, therapy, direct care, and supervision of juvenile offenders, as well as staff supervision and management, must be specifically cross-referenced with the job titles in these rules. ()

122. POSITION DESCRIPTIONS AND QUALIFICATION CRITERIA.

01. Clinician, Counselor, or Therapist. An individual who conducts a comprehensive assessment of the psychological, behavioral, social, or familial deficits or dysfunctions presented by the juvenile offender, then establishes and implements a plan for therapeutic services. The plan must specify diagnosis and treatment of problems to be addressed, an estimate of the time needed, and a schedule of the frequency and intensity of the services to be provided. The individual may also provide individual, group, or family counseling. At a minimum, the individual must have a master's degree and be currently licensed by the applicable state as a Licensed Professional Counselor (LPC), Licensed Marriage and Family Counselor (LMFT), Licensed Master Social Worker (LMSW), or certified school psychologist. (4-11-15)

02. Juvenile Services Coordinator or Social Worker. An individual who is responsible for the assessment of treatment progress, and the provision and monitoring of therapeutic or rehabilitative treatment services to juvenile offenders participating in a treatment program. Individuals providing this function must possess, at a minimum, a bachelor's degree from a fully accredited college or university in social work, psychology, or counseling and must be licensed as a social worker in the applicable state. (4-11-15)

03. Recreational Specialist. An individual who develops and implements an individualized and goal-directed recreational plan for a juvenile offender in connection with the overall service implementation plan. The individual providing this function must possess a bachelor's degree in recreational therapy, health and physical education, or a related field, or have a high school diploma and two (2) years related experience in providing recreational services to juvenile offenders. (4-11-15)

04. Rehabilitation Specialist or Facility Case Manager. An individual, under direct supervision, who assists the juvenile offender in implementing the service implementation plan, evaluates the juvenile offender, and maintains the case record with respect to all nonclinical matters. The rehabilitation specialist or facility case manager also assists in presenting the case in staffings, communicates with appropriate individuals, including community interests, regarding the juvenile offender, and prepares written communications, under supervision, including final progress reports. The rehabilitation specialist or facility case manager may also serve as the social worker if properly licensed in the applicable state. Individuals providing this function must possess a bachelor's degree from a fully accredited college or university in the social sciences or a related field, or have a high school diploma and four (4) years related experience in providing services to juvenile offenders. (4-11-15)

05. Rehabilitation Technician or Direct Care Worker. An individual who is responsible for

providing individual or group rehabilitative therapeutic services, supervising juvenile offender's day-to-day living activities and performing such duties as preparing nutritious meals, supervising and training juvenile offenders in basic living skills, and providing some community transportation. Such individual must have a high school diploma or its equivalent. (4-11-15)

06. Special Education Teacher. An individual who provides a modified curriculum for those students who are eligible for services under the IDEA. This individual must hold a valid standard exceptional child certificate with an endorsement as a generalist. (4-11-15)

07. Teacher. An individual who provides basic educational services as required by state and federal statutes. This individual must hold a valid teaching credential in the appropriate instructional field. (4-11-15)

123. PROGRAM STAFFING REQUIREMENTS.

01. General Staffing Ratios. The Provider must ensure that an adequate number of qualified staff are present at all times to provide rehabilitation and treatment services, supervise juvenile offenders, and provide for their health, safety, and treatment needs. Staffing patterns must ensure that professional staff is available to juvenile offenders at all times when they are in the program. The Provider staff should provide consistency and stability so that the juvenile offenders know the roles of each staff member. Specific staffing ratios shall be determined in each contract and must be based on the level of intervention of the program and the risk level of the juvenile offender population. ()

02. Emergency Staffing Ratios. At all times, at least one (1) staff member on duty per twenty (20) juvenile offenders in the program must be currently certified to administer first aid and cardiopulmonary resuscitation (CPR). (4-11-15)

124. GENERAL REQUIREMENTS FOR TRAINING.

01. Training Plan. Training for staff must be conducted in accordance with a written plan approved by management and coordinated by a designated staff member that includes: ()

- a.** Annual in-service training for all staff to include, but not be limited to: (4-11-15)
 - i.** Identifying and responding to suicide risk; (4-11-15)
 - ii.** Infectious diseases, blood borne pathogens, and universal precautions; ()
 - iii.** All training as outlined in section 115.331 of the PREA standards; (4-11-15)
 - iv.** Prohibition of abuse and mandatory reporting of abuse; (4-11-15)
 - v.** De-escalation of juvenile behavior and appropriate physical restraint techniques; and (4-11-15)
 - vi.** Incident reporting. (4-11-15)
- b.** Those areas of practice and operations requiring a current certification; (4-11-15)
- c.** Prior to being assigned sole responsibility for supervision of juvenile offenders, rehabilitation technicians or direct care staff must have training in the following areas: (4-11-15)
 - i.** Principles and practices of juvenile care and supervision; (4-11-15)
 - ii.** Program goals and objectives; (4-11-15)
 - iii.** Juvenile offender rights and grievance procedures; (4-11-15)
 - iv.** Procedures and legal requirements concerning the reporting of abuse and critical incidents and

compliance with the PREA as outlined in these rules;	(4-11-15)
v. Infectious diseases, blood borne pathogens, and universal precautions;	()
vi. Handling of violent juvenile offenders (use of force or crisis intervention);	(4-11-15)
vii. Security procedures (key control, searches, contraband);	(4-11-15)
viii. Medical emergency procedures, first aid, and CPR;	(4-11-15)
ix. Incident reporting;	(4-11-15)
x. How to recognize and respond to suicidal behavior;	(4-11-15)
xi. How to access emergency medical and mental health care;	()
xii. Proper storage and dispensing of medications, as well as general signs and symptoms of adverse reactions, including identification of the individual who will dispense medications in the facility;	(4-11-15)
xiii. Appropriate response to health-related emergencies;	(4-11-15)
xiv. Ethics and professional boundaries; and	(4-11-15)
xv. Appropriate and safe transportation of all juvenile offenders.	(4-11-15)
d. In-service training for all first-year staff must include:	(4-11-15)
i. Program policies and procedures;	(4-11-15)
ii. Job responsibilities;	(4-11-15)
iii. Juvenile offender supervision;	(4-11-15)
iv. Safety and security emergency procedures (fire, disaster, etc.);	(4-11-15)
v. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA);	(4-11-15)
vi. Behavioral observation, adolescent psychology, and child growth and development;	(4-11-15)
vii. Effective interventions with juvenile offenders including criminogenic risk and need factors;	(4-11-15)
viii. Juvenile Corrections Act, balanced and restorative justice and this chapter, as applicable;	()
ix. Basic security procedures;	(4-11-15)
x. Signs and symptoms of chemical use or dependency;	(4-11-15)
xi. Drug-free workplace;	(4-11-15)
xii. Diversity training to include cultural awareness; and	(4-11-15)
xiii. Juvenile offender searches for contraband.	(4-11-15)
02. Trainer Qualifications.	(4-11-15)

a. Individuals who provide instruction in areas of life, health, and safety, including but not limited to first aid, CPR, and physical intervention techniques, will have appropriate certification, which must be documented in their personnel or training file. (4-11-15)

b. Individuals who provide instruction in treatment must have appropriate training, education, and experience documented in their personnel or training file. ()

03. Documentation of Training. Staff and volunteer training records must be maintained by a designated staff member and include: ()

a. Name; (4-11-15)

b. Job title; (4-11-15)

c. Employment beginning date; (4-11-15)

d. Annual training hours required; and (4-11-15)

e. A current chronological listing of all training completed. (4-11-15)

04. Training Records. Training records may be kept separately within each individual personnel file or in a separate training file. Access to curriculum materials must be made available. (4-11-15)

125. SUBCONTRACTORS, VOLUNTEERS, AND INTERNS.

The Provider will identify the intended use of the subcontractor, volunteer, or intern. If the subcontractor, volunteer, or intern is providing direct services to juveniles, the Provider must adhere to the rules in this Section. The Provider must notify the Department's Quality Improvement Services Bureau promptly, in writing, of any proposed changes in the use of subcontractors, volunteers, or interns providing direct services to juveniles. ()

01. Subcontractors. The Provider will ensure that any subcontractor providing direct services to juveniles meets at least the minimum staff qualifications and terms of the original contract and these rules. The Provider must maintain a list of all subcontracted service providers and their qualifications. Documentation of services provided by subcontractors must include the scope and frequency of services. ()

02. Volunteers and Interns. Programs should consider soliciting the involvement of volunteers and interns to enhance and expand their services. However, volunteers and interns recruited to supplement and enrich a program may not be substituted for the activities and functions of program staff. Volunteers and interns must not be assigned sole supervision of juvenile offenders. (4-11-15)

a. Programs that utilize volunteers and interns regularly must have a written plan that includes stipulations for their use and training, and training of program staff on the role of volunteers and interns. Training provided must include all of the information necessary for the volunteers and interns to successfully perform their roles within the program. (4-11-15)

b. Recruiting of volunteers is conducted by the program director or designee. Recruitment is encouraged from all cultural and socio-economic segments of the community. (4-11-15)

c. Volunteers and interns must complete an application for the position and be suited for the position to which they are assigned. (4-11-15)

d. Written job descriptions must be provided for each volunteer and intern position. (4-11-15)

e. Interns must be documented to be enrolled in an accredited school or program for the profession. (4-11-15)

f. Interns must have a fully developed internship or practicum agreement that details their activities for the period, and relates these to learning objectives developed with the academic institution and program in which

they are enrolled. The internship agreement must include the signatures of the intern, supervising residential treatment provider staff, and a representative of the academic institution in which the intern is enrolled. (4-11-15)

g. Interns must agree in writing to abide by all policies and standards of conduct, and agree to meet the ethical standards for the profession for which they are training. (4-11-15)

h. Volunteers and interns must be at least twenty-one (21) years of age, of good character, and sufficiently mature to handle the responsibilities involved in the position. (4-11-15)

i. Volunteers and interns must agree in writing to abide by all program policies. (4-11-15)

03. Subcontractor, Volunteer, and Intern Requirements. Subcontractors, volunteers, and interns who perform professional services must be licensed or certified as required by state law or rule, or be documented to be supervised directly by staff meeting those credentials. (4-11-15)

a. Subcontractors, volunteers, and interns must have background and record checks as prescribed by state law. ()

b. Minimum training for subcontractors, volunteers, and interns must include: (4-11-15)

i. Program goals and objectives; (4-11-15)

ii. The role of the subcontractor, volunteer, or intern and job duties or duties related to the learning plan; (4-11-15)

iii. Subcontractor, volunteer, or intern's role in reporting incidents of sexual abuse under PREA, as outlined in these rules; (4-11-15)

iv. Basic security procedures; (4-11-15)

v. Recognizing suicidal behaviors; (4-11-15)

vi. Confidentiality issues including the HIPAA; and ()

vii. Ethics and mandatory reporting of juvenile abuse. (4-11-15)

04. Volunteers of Minimal Use. Volunteers who meet all of the following criteria may be excluded from Subsection 125.03.a. and Subsection 125.03.b.: (4-11-15)

i. Use of the volunteer by the Provider does not exceed four visits per year; ()

ii. Use of the volunteer by the Provider does not exceed four hours per visit; and ()

iii. The volunteer is under constant personal supervision of at least one staff member of the Provider during their visit. ()

05. Documentation. The Provider must maintain individual personnel files for each volunteer and intern working in the program. The files must contain all documentation of meeting requirements, as described in Subsection 125.03 of these rules. ()

06. Supervision of Volunteers. Volunteers will be supervised at all times by a staff member of the Provider who coordinates and directs the activities of the volunteer and evaluates their performance periodically. ()

07. Supervision of Interns. An intern will be supervised by a paid employee of the Provider who has the licenses and credentials required by state law and who has been accepted by the intern's school as an appropriate supervisor for the discipline of instruction. This individual shall coordinate and direct the activities of the intern and

evaluate their performance periodically. ()

08. Termination. The Provider must establish a procedure for the termination of volunteers and interns. Termination of interns shall be in collaboration with the academic institution and program in which they are enrolled. ()

126. BACKGROUND CHECKS.

The Provider must ensure that all employees, subcontractors, interns, and volunteers, with the exception of those listed in Subsection 125.04 of these rules, have undergone a criminal background check every five (5) years in the manner and form required by IDAPA 16.05.06, "Criminal History and Background Checks." In addition to the crimes listed resulting in unconditional denial, any crime not specified there that requires registration on the sex offender registry in Idaho, or any other state, will also result in an unconditional denial of employment for direct care or services, or assignment where the employee would have any opportunity to have contact with a juvenile offender in the Provider's care, including as a volunteer or intern. Documentation of background checks must be kept in confidential employee personnel files. ()

127. -- 129. (RESERVED)

130. JUVENILE RECORDS.

01. Case Management Documents. The Provider must maintain individual files on all juvenile offenders, which include: ()

- a. Observation and assessment evaluation provided by the Department; (4-11-15)
- b. Additional assessments; (4-11-15)
- c. Service implementation plans; (4-11-15)
- d. Progress reports; (4-11-15)
- e. Incident reports; (4-11-15)
- f. Court documents and dispositions; (4-11-15)
- g. Professional correspondence; (4-11-15)
- h. Restricted clinical information, kept separately; ()
- i. Medical records, kept separately; ()
- j. Educational records and school history, kept separately; ()
- k. Relapse prevention plan; (4-11-15)
- l. Identifying information and physical descriptions; (4-11-15)
- m. Last known parent or guardian address and telephone number; (4-11-15)
- n. Date of admittance and projected release from the Provider; and ()
- o. Records of juvenile offender's earnings, restitution payments, and community service hours earned. (4-11-15)

02. Confidentiality. (4-11-15)

- a. Sections 20-525 and 9-340(2)(b), Idaho Code, and Idaho Court Administrative Rule 32 provide for

confidentiality, under certain conditions, of records that contain information about juvenile offenders. (4-11-15)

b. All matters relating to confidentiality of juvenile offender files must also comply with the federal HIPAA and 42 CFR Chapter 1, Sub-Chapter A, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records." (4-11-15)

c. Restricted clinical information, as defined, and education and medical records must each be filed separately and stored in a secured area. (4-11-15)

d. For Providers that serve sex offenders, individual treatment assignments, such as journals and detailed sexual histories, must be destroyed at the time the juvenile offender is transferred or released from the program. ()

e. The Provider must have written policies and procedures to address the confidentiality of juvenile offender records. In compliance with HIPAA's privacy regulations, written procedures shall designate a privacy officer who will: ()

i. Supervise the maintenance of identifiable personal health care information; (4-11-15)

ii. Serve as custodian of all confidential juvenile offender records; and (4-11-15)

iii. Determine to whom records may be released. (4-11-15)

03. Automated Records. Automated records must include a procedure to ensure confidentiality and be in compliance with any state or federal privacy laws pertaining to those records including provisions for backing up automated records. ()

04. Restrictions to Records Access. (4-11-15)

a. Access to personal health information must be limited to: (4-11-15)

i. Employees of the Department and the Provider to the extent necessary to perform normal business functions including health treatment and other functions designed to maintain the good order, safety, and security of the juvenile offenders or the program; ()

ii. Individuals participating in a staffing for a juvenile offender, who have a direct need to know the information, and who are obligated to or promise to maintain the confidentiality of information disclosed. These individuals may include employees or representatives of law enforcement, the Department, the Provider, probation officer, medical or mental health professionals, and other appropriate individuals; and ()

iii. Law enforcement members, emergency medical personnel, the Idaho Department of Health and Welfare or the applicable state licensing authority, and similar court or government officials, as necessary to perform their duties, and only if not otherwise prohibited by state or federal law or rule. (4-11-15)

b. Access to all other confidential juvenile offender records must be limited to the following authorized persons: (4-11-15)

i. Staff authorized by the Provider and members of the administrative staff of the Provider's parent agency; ()

ii. A parent or guardian or the juvenile offender, to the extent that disclosure is not privileged and is clinically appropriate; (4-11-15)

iii. Appropriate staff of the Department; (4-11-15)

iv. Counsel for the juvenile offender with signed consent form; (4-11-15)

v. Judges, prosecutors, juvenile probation officers, and law enforcement officers, when essential for

- official business; (4-11-15)
- vi. Other individuals and agencies approved by the Department; and (4-11-15)
 - vii. Schools, as appropriate. (4-11-15)

05. Withholding of Information. If the Department or the Provider believes that information contained in the record would be damaging to the juvenile offender's treatment or rehabilitation, that information may be withheld from the juvenile offender, parent or guardian, or others, except under court order. ()

06. Retention of Juvenile Records. At the time of transfer or release from Department custody, any records not previously submitted are provided to the Department within two (2) business days. ()

07. Requests for Information. Requests for information of any kind about juvenile offenders in Department custody, following their release or transfer from a Provider's program must be directed to the Department. ()

08. Document Reproduction. The Provider agrees that documents provided by the Department will not be distributed without written permission from the Department. ()

131. RELEASE FORMS.

01. Release of Non-medical Information. The juvenile offender, parent or guardian, and Department representative must sign a release of information and consent form before information about the juvenile offender is released to any non-juvenile justice entity. A copy of the consent form must be maintained in the juvenile offender's file at the program and in the case management file maintained by the Department. (4-11-15)

02. Release of Medical Information. Release of medical information requires more specific authorization. The Provider must abide by Subchapters B and C of these rules, as applicable. ()

03. Minimum Information. The release of information and consent form must, at a minimum, include the following: (4-11-15)

- a. Name of person, agency, or organization requesting information; (4-11-15)
- b. Name of person, agency, or organization releasing information; (4-11-15)
- c. The specific information to be disclosed; (4-11-15)
- d. The date consent form is signed; (4-11-15)
- e. Signature of the juvenile offender and the parent or guardian, if the juvenile offender is under the age of 18; (4-11-15)
- f. The signature of the person witnessing the juvenile offender's signature; and (4-11-15)
- g. Effective and expiration dates. (4-11-15)

132. JUVENILE OFFENDER PHOTOGRAPHS.

01. Limitations. No juvenile offender in the custody of the Department may be used in person or by photograph or any other visual image for the express purpose of any fund raising efforts. (4-11-15)

02. Department Authorization. Permission to release or use the photographs and any other visual image of juvenile offenders in the custody of the Department must require written authorization from the Department Director or designee. (4-11-15)

133. RESEARCH PROJECTS.

01. Written Policy. The Provider must have a written policy regarding the participation of juvenile offenders in research projects that prohibits participation in medical or pharmaceutical testing for experimental or research purposes. ()

02. Voluntary Participation. Policies must govern voluntary participation in non-medical and non-pharmaceutical research programs. However, juvenile offenders may not participate in any research program without prior written approval from the Director or designee. ()

134. PROHIBITED CONTACT AND PREA COMPLIANCE.

01. Sexual Abuse of Juvenile Offenders. The Provider must have written policies and procedures mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct. These policies and procedures must contain, at a minimum, the following: ()

a. The prohibition of any sexual abuse or sexual harassment as defined in PREA Standards or as defined in Section 18-6110, Idaho Code; ()

b. The appointment of a PREA Coordinator, as outlined in PREA Standards 28 C.F.R. 115.311(c), to be determined by the program director; (4-11-15)

c. Procedures that enable juvenile offenders to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine well-being checks, as outlined in PREA Standards 28 C.F.R. 115.315(d); (4-11-15)

d. The requirement of staff of the opposite gender to announce their presence when entering a housing unit or any area where juvenile offenders are likely to be showering, performing bodily functions, or changing clothing, as outlined in PREA Standards 28 C.F.R. 115.315(d); (4-11-15)

e. The provision of multiple avenues for a juvenile offender or a third party to report sexual abuse and sexual harassment, at least one of which must be external to the agency, as outlined in PREA Standards 28 C.F.R. 115.351; (4-11-15)

f. The process for gathering information to make classification and housing decisions to reduce the risk of sexual victimization, as outlined in PREA Standards 28 C.F.R. 115.342; (4-11-15)

g. The handling of all information regarding sexual abuse or sexual harassment with confidentiality, as outlined in PREA Standards 28 C.F.R. 115.361(c); (4-11-15)

h. The process to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior, as outlined in PREA Standards 28 C.F.R. 115.322; (4-11-15)

i. Policies to protect all residents and staff who report sexual abuse or sexual harassment from acts of retaliation as outlined in PREA Standards 28 C.F.R. 115.367; (4-11-15)

j. The provision of timely and unimpeded access to crisis intervention services, medical, and mental health care to victims, as outlined in PREA Standards 28 C.F.R. 115.382(a); (4-11-15)

k. The provision for and documentation of training to staff, as outlined in PREA Standards 28 C.F.R. 115.331; (4-11-15)

l. The provision for and documentation of age-appropriate education to juvenile offenders, as outlined in PREA Standards 28 C.F.R. 115.333; (4-11-15)

m. Within 30 days of the conclusion of every sexual abuse investigation the Provider must conduct a sexual abuse incident review, as outlined in PREA Standards 28 C.F.R. 115.386; ()

n. A process that requires reporting and documentation of any instance of sexual abuse among juvenile offenders or between juvenile offenders and staff or volunteers, according to Subsection 156.01 and Subsection 156.05 of these rules. These must be reported on a form provided by the Department; (4-11-15)

o. A process for an initial internal investigation when sexual abuse is reported; (4-11-15)

p. An expected first response practice of separating the alleged perpetrator from the alleged victim until the investigation is complete; (4-11-15)

q. In addition to completing the form supplied by the Department, the Provider must document all steps taken to ensure the juvenile offender's safety; and ()

r. The Provider must report all sexual abuse to appropriate licensing authority or law enforcement when sexual abuse is suspected. ()

02. Resident Access to Outside Support Services. The facility must provide residents with access to outside victim advocates for emotional support services related to sexual abuse, as outlined in PREA Standards 28 C.F.R. 115.353. (4-11-15)

03. Sexual Victimization Survey. Providers must participate in all state and federal surveys, and complete and submit the survey and supply the Department with copies. ()

135. SUICIDE PRECAUTIONS.

01. Policy Requirements. All Providers must have a written policy for responding to juvenile offenders who present a risk of suicide requiring, at a minimum, that: ()

a. Staff are regularly trained to identify, document, and appropriately respond to behavior that may indicate a risk of suicide; (4-11-15)

b. The Provider utilizes medical or other staff trained by a mental health professional to review history, interview, and observe juvenile offenders new to the program in order to complete a suicide risk screening within two (2) hours of admission. The screening is done to identify any immediate threat of suicide or self-harm and the need for a suicide risk assessment; ()

c. The Provider utilizes a mental health professional to complete a suicide risk assessment on a juvenile offender who has been identified by staff as presenting a risk of suicide. A suicide risk assessment is a system of structured and documented observation, interview, and review of behavioral and mental health information. It comprises a thorough review of recent behavioral and mental health information and interviews of staff and the juvenile offender concerning the behavior that seems to present the threat of self-harm or suicide. A suicide risk assessment typically involves an assessment of the juvenile offender's determination to act on intentions of self-harm, a determination of the depth of planning for making the attempt, the availability of the items or situations necessary for the juvenile to act on that plan, and the lethality of the plan, as expressed; (4-11-15)

d. The Provider utilizes a mental health professional to develop and disseminate a safety plan for each juvenile offender identified as presenting a risk for suicide. The safety plan includes a detailed supervision plan for the juvenile offender; (4-11-15)

e. Reassessment of suicide risk and whether it is reduced enough to reduce or terminate suicide precautions is made at a time determined by the mental health professional completing the assessment and is ideally completed by that same mental health professional; and (4-11-15)

f. The Provider prohibits the use of separation and isolation of juvenile offenders identified as

presenting a suicide risk, unless constant one-on-one (1 on 1) staff supervision is provided. (4-11-15)

02. Separation or Isolation. All juvenile offenders in separation or isolation are closely monitored to reduce the risk of suicidal behaviors. (4-11-15)

03. Reporting to the Department. All incidents of suicide, attempted suicide, or threat of suicide must be reported to the Department in the manner described in Subsection 156.01 of these rules. (4-11-15)

136. -- 139. (RESERVED)

140. JUVENILE OFFENDER RIGHTS AND RESPONSIBILITIES.

01. Residential Treatment Provider Obligations. The Provider must respect, and not infringe upon, the rights of each juvenile offender in its program. The Provider must also be responsible for understanding the rights and responsibilities of juveniles in custody, and knowing which rights have been forfeited as a result of being placed in custody. (4-11-15)

02. Juvenile Offender Program Responsibilities. The Provider must inform each juvenile offender, upon admission to its program, of each juvenile offender's responsibilities during the program. Additionally, each juvenile offender must have an understanding of the following program expectations: (4-11-15)

- a. Requirements needed to complete program; (4-11-15)
- b. How to access medical services; (4-11-15)
- c. How to file a grievance; (4-11-15)
- d. How to report incidents of sexual abuse between juvenile offenders or between staff and juvenile offenders; and (4-11-15)
- e. How to contact the juvenile services coordinator and juvenile probation officer. (4-11-15)

141. DISCIPLINE OF JUVENILE OFFENDERS.

01. Written Policies and Procedures. All providers offering treatment services must have comprehensive written discipline policies and procedures, which are explained to all juvenile offenders, families, and staff. These policies must include positive responses for appropriate behavior. They must include a provision for written notice to the juvenile offender being disciplined, a mechanism for a fair and impartial hearing to include at least one staff member not involved in the disciplinary action, and a process for appeal. (4-11-15)

02. Administration of Discipline. Discipline will be administered in a way to create a learning experience for the juvenile offender, and never in a way that degrades or humiliates the juvenile offender. Staff will make every effort to maintain control of juvenile offenders through positive methods. No juvenile offender will supervise nor carry out disciplinary actions over another juvenile offender. (4-11-15)

a. Prior to and upon initiating a disciplinary action, careful attention should be given to ensure the disciplinary sanctions are proportionate with the nature and circumstances of the behavior and the program rules to determine the seriousness of the misbehavior and the appropriate type of discipline. (4-11-15)

b. Disciplinary actions are not the same as the consequences that are spelled out as a part of a service implementation plan for the juvenile offender. A Provider must make every effort to resolve problems with the least amount of formal disciplinary activity possible. Efforts should be made first to instruct and counsel the juvenile offender. (4-11-15)

c. Any restriction of a juvenile offender's participation in a program resulting from a formal disciplinary action must be reported in an incident report. (4-11-15)

03. Prohibited Actions. The Provider is prohibited from using certain actions as disciplinary

responses, as listed in the child care licensing rules of the Idaho Department of Health and Welfare. (4-11-15)

04. Denial of Services. Denial of the following are prohibited as disciplinary responses: (4-11-15)

a. Educational and vocational services; (4-11-15)

b. Employment; (4-11-15)

c. Medical or mental health services; (4-11-15)

d. Food; (4-11-15)

e. Access to family, juvenile services coordinator, juvenile probation officer, and legal counsel; and (4-11-15)

f. Religious services. (4-11-15)

05. Appeal of Formal Disciplinary Penalties. Each Provider must have a formal written process through which a juvenile offender can appeal a disciplinary action and receive a review of the case. The Provider shall explain to the juvenile offender how to use the appeal process. The juvenile offender must be informed that the juvenile services coordinator may be included in the disciplinary process at the juvenile's choice. (4-11-15)

142. GRIEVANCE PROCEDURES.

01. Written Procedures. The Provider must have a written grievance procedure for juvenile offenders, which includes the right to appeal disciplinary actions against them if a separate disciplinary grievance procedure is not available. It must be written in a clear and simple manner and allow juvenile offenders to make complaints without fear of retaliation. The grievance procedure must be explained to the juvenile offender by a staff member and such documented in the juvenile's file. ()

02. Grievance Process. ()

a. Grievance forms must be in a location accessible to juvenile offenders without having to request such a form from staff. Completed forms should be placed in a secure area and collected daily. ()

b. The provider must complete a review and discuss findings with the juvenile offender within three (3) business days of receipt of the grievance form. ()

c. If the juvenile offender lives independently, the Provider must have a process for the juvenile to submit grievance forms to the program director without having to request such a form from staff. ()

143. JUVENILE OFFENDER SAFETY.

Every juvenile offender has the fundamental right to feel safe. Residential treatment providers have the responsibility to ensure that a juvenile offender is safe while in their care. Every juvenile offender must be informed of procedures whereby a professional staff person can be contacted on a twenty-four (24) hour basis if the juvenile offender does not feel safe. The Provider's administration must make periodic contact with juvenile offenders in the program to determine if they feel safe and are comfortable when interacting with peers and staff. (4-11-15)

144. 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. ()

02. Policies and Procedures Governing Consequences. The Provider must have written policies and procedures establishing the consequences for juvenile offenders found with contraband. ()

03. Clothed Body Searches. ()

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. ()

b. Clothed body searches must be conducted in the manner required 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. The staff member must have had appropriate training in conducting clothed body searches. ()

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 Section 156. ()

05. Body Cavity Searches. Body cavity searches of juvenile offenders may only be conducted in a medical facility outside of the 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 Section 156. ()

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 the incident reported according to Section 156. If necessary, the appropriate law enforcement agency should be notified. ()

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 is the responsibility of the program director, in consultation with the Department, to dispose of all contraband not confiscated by police. ()

145. RELIGIOUS SERVICES.

The Provider must ensure that attendance at religious services is voluntary. No juvenile offender is required to attend religious services, and no juvenile offender may be penalized for not attending nor given privileges for certain attendance. The Provider's staff schedule must not encourage or discourage participation in general or specific religious services or activities. ()

01. Voluntary Practice. All juvenile offenders must be provided the opportunity to voluntarily practice their respective religions in a manner and to the extent that will not compromise the safety, security, emotional, or physical well-being of the juvenile offenders in the program. ()

02. Attendance. Juvenile offenders may be permitted to attend religious services of their choice in the community, as long as community safety is ensured. ()

03. Transportation. Programs must, when reasonably possible, arrange transportation for those

juvenile offenders who desire to take part in religious activities of their choice in the community. ()

04. Risk to Community. If the juvenile offender cannot attend religious services in the community because staff has determined that the juvenile is an escape risk, or otherwise presents a risk to the safety of the community, the Provider must make reasonable efforts to ensure that the juvenile offender has the opportunity to participate in religious services of the juvenile's choice at the program. ()

05. Visits. Juvenile offenders must be permitted to receive visits from representatives of their respective faiths. ()

146. DRUG SCREENS OF JUVENILE OFFENDERS.

Drug screens may be done randomly or on an as needed basis, at the Provider's expense, with the approval of the Provider's program director. A record must be kept of all drug screens and results with positive drug screenings immediately reported to the juvenile services coordinator. ()

147. – 149. (RESERVED)

150. EMPLOYMENT OF JUVENILE OFFENDERS.

01. Employment. If juvenile employment away from the program site is a part of the program, written policy and procedure must provide that program resources and staff time are devoted to helping employable juvenile offenders locate employment. Programs must ensure that each employment opportunity meets all legal and regulatory requirements for juvenile employment. The juvenile offender's employer must be consulted at least twice monthly by the Provider concerning the juvenile offender's work abilities and performance on the job site. Additionally, the Provider must perform checks on the job-site at least monthly to ensure the juvenile offender is working under acceptable conditions. Under no circumstances should staff or the families of staff benefit financially, or otherwise, from work done by juvenile offenders in the program. ()

02. Employment Opportunities. Every reasonable effort must be made to select employment opportunities that are consistent with the individual interests of the juvenile offender to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training, and may be suitable for continuing post-release employment. ()

151. COMMUNITY SERVICES AND RESTITUTION.

01. Community Service. Juvenile offenders may have court-ordered community service hours. The Provider must obtain prior approval from the juvenile probation officer to complete any court-ordered community service hours while at the Provider. The Provider will document approved community service hours and report the accumulation of completed hours in the juvenile offender's progress report. ()

02. Court Ordered Restitution. The Provider must work with the juvenile probation officer and juvenile services coordinator to determine the amount of restitution owed. The Provider must create a plan for the juvenile offender to submit a portion of a juvenile offender's personal funds or earned income for the payment. When juvenile personal funds are available, the Provider will submit payment to the county until the restitution amount is satisfied. Documentation of the payment is provided to the juvenile services coordinator. ()

03. Restitution for Program Damages. Monetary restitution may only be sought through a court order when a juvenile offender has damaged or destroyed property, or has caused or attempted to cause injury to other juvenile offenders or staff. The Provider must not access the juvenile offender's personal funds for program damages. Restitution for damages must begin with a plan for repair by the juvenile offender. ()

152. PROGRAMMING.

01. Basic Program Requirements. Providers must provide opportunities and services for juvenile offenders to improve their educational and vocational competence, to effectively address underlying behavior problems, and to prepare them for responsible lives in the community. Programs provided must be gender equitable, gender specific, and culturally competent. The ultimate treatment goal for juvenile offenders involved in these

programs is the successful return of juvenile offenders to the community without committing further crimes. ()

02. General Requirements. ()

a. Providers must provide a range of program services specifically designed to address the characteristics of the target population identified in the comprehensive program description and in the admission policy. ()

b. Programs that serve a special needs population, such as developmentally delayed or seriously emotionally disturbed juvenile offenders, and those programs serving sexually abusive juvenile offenders, must be able to demonstrate that the program services offered are supported by research. ()

c. Programs providing reintegration services for individual juvenile offenders must target behaviors, needs, or circumstances stated in their final progress report from the sending facility or program. These services must be clearly identified and described within the program description. ()

d. Programs serving female juvenile offenders must be able to demonstrate that the services provided include elements of a program specifically designed to address the unique situations and circumstances facing female juvenile offenders. These elements must be clearly identified and described within the program description. ()

e. Programs designed to serve juvenile offenders with gang involvement must be able to demonstrate that the services provided include elements of a program specifically designed to address gang involvement. These elements must be clearly identified and described within the program description. ()

f. Program services for individual juvenile offenders must be designed based upon the juvenile's service plan, and must target those behaviors or circumstances which have contributed to the juvenile's delinquency and which can reasonably be changed (criminogenic needs). These services must be clearly identified and described within the program description. ()

g. Juvenile offenders must always be aware of the status of their progress within the program and what remains to be done to complete the program. Providers must assure that the basic norms and expectations of the program, including any points, levels, or phases that are a fundamental part of a program, are clearly presented to the juvenile offender and that they are understood. ()

h. Programs that contract with the Department to serve juvenile offenders and their families must: ()

i. Provide humane, disciplined care and supervision; ()

ii. Provide opportunities for juvenile offenders' development of competency and life skills; ()

iii. Hold juvenile offenders accountable for their delinquent behavior through means such as victim-offender mediation, restorative conferencing, restitution, and community service; ()

iv. Seek to involve juvenile offenders' families in treatment, unless otherwise indicated for the safety and benefit of the juvenile offenders or other family members; ()

v. Address the principles of accountability to victims and to the community, competency development, and community protection in case planning and reporting; ()

vi. To the fullest extent possible, provide balance in addressing the interests of the victim, community, and the juvenile offender. ()

vii. Participate fully with the Department and the community treatment team in developing and implementing service plans for juvenile offenders they serve; and ()

viii. Provide juvenile offenders with educational services based upon their documented needs and

abilities. ()

i. Reintegration services include all aspects of case planning and service delivery designed to facilitate successful return of the juvenile offender to the community. ()

153. JUVENILE OFFENDER AND PARENT OR GUARDIAN HANDBOOK.

The Provider must provide each juvenile offender and their parent or guardian with program handbooks that are written in an age-appropriate manner. ()

01. Required Content. Handbooks must address, at a minimum, the following: (4-11-15)

a. Requirements needed to complete program; (4-11-15)

b. Juvenile offender rights and responsibilities; (4-11-15)

c. The means available to safely report sexual abuse and harassment; (4-11-15)

d. Grievance procedures; (4-11-15)

e. Religious services; (4-11-15)

f. Search procedures, including a list of what constitutes as contraband and the consequences for its possession; ()

g. The Provider's disciplinary process; ()

h. Visitation, mail, and phone correspondence; (4-11-15)

i. The Provider's obligation to make reasonable accommodations for any disabilities, language barriers, or other special needs; (4-11-15)

j. The daily schedule for juvenile offenders; and (4-11-15)

k. A description of services or items for which a juvenile offender may be charged by the Provider. (4-11-15)

02. Receipt of Handbook. The juvenile offender and their parent or guardian acknowledge in writing their receipt of the juvenile offender and parent or guardian handbook. (4-11-15)

154. PROGRAM OPERATIONAL REQUIREMENTS.

01. General Requirements. (4-11-15)

a. Providers shall provide vigorous programming that minimizes periods of idle time, addresses behavioral problems of juvenile offenders, and teaches and promotes healthy life choices. Programs should specifically address those factors in juvenile offender's lives that contribute to delinquency and that can be realistically changed. ()

b. Providers shall encourage appropriate telephone contact, mail contact, and visitation between juvenile offenders and their families. (4-11-15)

c. Providers must structure and document services offered in the program so that continuity in case planning is obvious. Medical health, mental health, substance abuse, social skills, educational, vocational, independent living, and other special needs identified in the assessment must be clearly addressed in the service implementation plan. Services provided to address those needs must be documented regularly. ()

d. Service needs remaining at the time of release from Department custody or transfer must be

accounted for in the reintegration plan for each juvenile offender. (4-11-15)

e. The Provider will not admit more juveniles into care than the number specified on the Provider's license. Providers wishing to increase capacity are responsible for contacting the applicable licensing agency. A copy of the written confirmation to the Provider from the applicable licensing agency for verbal approval to exceed the licensed capacity must be forwarded to the Department's Quality Improvement Services Bureau. ()

f. The Provider must have and strictly follow a comprehensive policy covering the supervision of juvenile offenders, including a plan for monitoring all movement of those juvenile offenders both in the facility and, as appropriate, within the community. Staff at the facility must be aware of the location of every juvenile offender assigned to that program at all times. ()

g. Programs may not, under any circumstances, involve juvenile offenders in plethysmographic assessments. (4-11-15)

02. Use of Polygraphs. (4-11-15)

a. The use of polygraphs for juvenile offenders adjudicated for or documented to have demonstrated sexually abusive behavior, must only be undertaken by court order or under the following circumstances: (4-11-15)

i. With the specific written authorization of the Department's regional clinical supervisor; (4-11-15)

ii. Only with the full, informed consent of the juvenile offender; and (4-11-15)

iii. If the juvenile offender is a minor, only with the full, informed consent of the parent or guardian. (4-11-15)

b. Polygraphers used in this process must be able to provide documentation of certification by the Sexual Offender Management Board in the use of polygraphy with juvenile offenders. (4-11-15)

c. Providers must not make treatment decisions solely on the results of a polygraph. ()

d. Polygraph reports must be sent to the juvenile services coordinator by the Provider. ()

155. PLANNING FOR RELEASE OR TRANSFER.

01. Aftercare Planning. Programs must promote continuity in programming and services for juvenile offenders after they leave the program by assuring that essential information is forwarded to those agencies that may be providing services to the juvenile offenders, and working closely with Department staff throughout placement to plan for reintegration. ()

02. Approval. Reintegration, by release from Department custody or transfer, must not take place without the involvement of the Department's assigned juvenile services coordinator, and the written approval of the regional clinical supervisor and regional superintendent. ()

03. Department Concurrence. Preparation for reintegration of a juvenile offender begins with the initial development of a service plan and is an ongoing process throughout the juvenile offender's program. Criteria for the juvenile offender's release from Department custody or transfer must be explained to the juvenile as soon as possible after admission to a program. ()

04. Reintegration Staffing. The juvenile services coordinator shall convene a reintegration staffing, which will include the juvenile offender's probation officer, the Provider, the juvenile offender's parent or guardian, an education representative, and the juvenile offender. At a minimum, a review of the plans to address any ongoing medical or mental health, substance abuse, social skills, education, vocation, independent living, and other special needs will be conducted. The juvenile offender's relapse prevention plan will be reviewed by the juvenile probation officer, the juvenile's parent or guardian, the education representative, and juvenile services coordinator. Based upon the results of that staffing and pending juvenile services coordinator approval of the relapse prevention plan, the

Department will make the final decision regarding transfer or release from Department custody. ()

05. Check-Out Procedures. Prior to the release from Department custody or transfer, the Provider must have completed a Provider Juvenile Check-Out Form (DJC-180) supplied by the Department. The form must be dated, signed by the juvenile offender, and forwarded to the juvenile services coordinator and any designees on the actual date that the juvenile offender leaves the program. ()

a. The Provider must provide the juvenile's Medicaid card and a thirty (30) day supply of all medications or a thirty (30) day prescription signed by the physician to the individual or agency authorized to transport the juvenile offender. ()

06. Termination Prior to Completion. ()

a. When a Provider believes a juvenile offender is at risk for transfer prior to program completion, the juvenile services coordinator must be notified as far in advance as possible so that a staffing may be held. The purpose of this staffing is to consider the circumstances which may require the transfer, and to make every effort to address the concerns with the Provider to avoid the necessity of making another placement. The Provider must document these efforts at problem solving. The Department will make a decision about transfer based upon the results of this staffing and any subsequent work agreed upon with the Provider. The Provider can request transfer of a juvenile offender in the following circumstances: ()

i. A pattern of documented behavior clearly indicating a lack of progress; or ()

ii. Commission of one (1) or more serious or violent incidents that jeopardize the safety and security of individuals or the program. ()

b. In matters involving life, health, and safety of any juvenile in Department custody, the Department shall remove the juvenile offender immediately. ()

c. A final progress report must include, at a minimum, a report on progress or lack of progress on all service implementation plan areas and recommendations for follow-up. The report must be forwarded to the juvenile services coordinator within twenty-four (24) hours of transfer prior to program completion. ()

156. INCIDENT REPORTING REQUIREMENTS.

01. Incidents Requiring Immediate Notice to Parent or Guardian and Department. All notifications under this section must be made to the regional facility in the region where the Provider is located. Out-of-state Providers must notify the juvenile correctional center in Nampa. Providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. If any of the following events occur, the Provider must immediately notify the juvenile offender's parent or guardian, juvenile services coordinator, juvenile probation officer, and the Department's regional facility by telephone (not by facsimile or electronically). The Department's regional R.N. must also be notified immediately in the event of all medical and mental health incidents. ()

a. Medical and mental health emergencies including, but not limited to: (4-11-15)

i. Every instance of emergency room access; (4-11-15)

ii. Refusal of medications, treatment recommended by a physician, or food for three (3) consecutive days; ()

b. Major incidents such as: (4-11-15)

i. Death of a juvenile offender; (4-11-15)

ii. Suicide, attempted suicide, or threat of suicide; (4-11-15)

- iii. Attempted escape; (4-11-15)
- iv. Sexual abuse among juvenile offenders or by staff including, but not limited to, incidents reportable under PREA; (4-11-15)
- v. Criminal activity resulting in arrest, detention, or filing a report with local law enforcement; (4-11-15)
- vi. Any other relevant report made to the Idaho Department of Health and Welfare or applicable state agency; (4-11-15)
- c. Any incident of restraint that involves the use of medications, chemicals, or mechanical devices of any kind; (4-11-15)
- d. Incidents of alleged or suspected abuse or neglect of juvenile offenders; (4-11-15)
- e. Incidents involving major disasters affecting location or well-being of the juveniles; and (4-11-15)
- f. Any restriction of a juvenile offender's family visitation due to the juvenile's behavior. (4-11-15)
- g. A written incident report must also be transmitted within twenty-four (24) hours to the juvenile services coordinator and the juvenile probation officer. Written notification is sent within twenty-four (24) hours to the juvenile offender's parent or guardian unless notification would endanger the juvenile. Transmission of all written incident reports may be electronic or by facsimile. ()

02. Escapes Also Require Immediate Notice to Parent or Guardian and Department. In all instances of escape, the Provider must immediately notify the juvenile correctional center in Nampa first, followed by the regional facility, juvenile offender's parent or guardian, juvenile services coordinator, and juvenile probation officer by telephone (not by facsimile or electronically). A written incident report must also be transmitted within twenty-four (24) hours to the juvenile services coordinator and the juvenile probation officer. Written notification is sent within twenty-four (24) hours to the juvenile offender's parent or guardian unless notification would endanger the juvenile offender. Transmission of all written incident reports may be electronic or by facsimile. Upon apprehension, all of the same parties must be notified immediately. ()

a. Clothing and other personal belongings must be secured immediately and maintained in a secure place until returned to the Department. (4-11-15)

b. The juvenile offender shall continue to be assigned to the program, although not physically present, for up to forty-eight (48) hours. The program will be reimbursed for the days the juvenile offender was on escape status up to forty-eight (48) hours. Should the program, in consultation with the juvenile offender's treatment team, choose to transfer the juvenile offender after returning, the relevant procedures outlined in Subchapters B and C of these rules apply. ()

03. Incidents Requiring Immediate Notice to Department and Three Day Notice to Parent or Guardian. The following incidents require immediate notice to the juvenile services coordinator in the manner described in Subsection 156.01, and require notice within three (3) business days to parent or guardian of the juveniles involved. (4-11-15)

- a. Any use of separation or isolation for more than two (2) hours; (4-11-15)
- b. Incidents involving the disclosure of criminal behavior by juvenile offenders; (4-11-15)
- c. Instances of physical assault or fighting; (4-11-15)
- d. Major misconduct by one (1) or more staff against a juvenile offender; (4-11-15)
- e. Discovery of contraband that represents an immediate threat to safety and security such as weapons

or drugs; (4-11-15)

f. Any instance of an unclothed body search or a body cavity search of a juvenile offender; (4-11-15)

g. Other than incidents described in Paragraph 156.01.e., significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters; and (4-11-15)

h. Any pattern of restraint of a juvenile, which is defined as three (3) or more restraints within a twenty-four (24) hour period. (4-11-15)

04. Incidents Requiring Notice Within Three Days to the Department. (4-11-15)

a. Providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. A copy of the completed incident report must be submitted to the juvenile services coordinator no later than three (3) business days after the incident. ()

b. A detailed incident report is also required for each incident of juvenile offender misconduct that is not reportable under Subsection 156.03 and results in any type of: (4-11-15)

i. Instances of lost keys, equipment, or tools; (4-11-15)

ii. Discovery of contraband not posing an immediate risk; or (4-11-15)

iii. A pattern of refusal of program participation that rises to the point of raising questions about the appropriateness of the placement. (4-11-15)

c. A detailed incident report is also required for each incident of staff misconduct relating to juvenile care that is not reportable under Subsection 156.03 and results in: ()

i. Any physical restraint that does not involve the use of medications, chemicals, or mechanical devices of any kind; or (4-11-15)

ii. Separation, isolation, or room confinement for more than fifteen (15) minutes but less than two (2) hours. (4-11-15)

05. Incident Report Content. Providers may elect to use the Department's standard incident report form or may use another form that includes the following information: ()

a. Juvenile offender's assigned unit or location; (4-11-15)

b. Date, location, and time of the incident; (4-11-15)

c. Witnesses and other staff and juvenile offenders involved; (4-11-15)

d. Persons notified with date and time of notice; (4-11-15)

g. Brief narrative description of the incident; (4-11-15)

e. Type of incident by category, such as assault against staff or juvenile offender, behavioral and psychiatric emergency, contraband, escape, injury or illness, self-harm or suicidal behavior, or sexual abuse; (4-11-15)

f. Action taken by category, such as restraint, separation, isolation, or room confinement with times in and out, visitation restrictions due to juvenile offender behavior, suicide precautions initiated, or escape precautions initiated; (4-11-15)

h. Signature of staff and reviewing supervisor, which may be affixed electronically; (4-11-15)

- to:
- i. Documentation of injury and medical attention provided; and (4-11-15)
 - j. If the incident involves sexual abuse, the incident report must include a description of action taken (4-11-15)
- i. Keep the alleged victim(s) safe from intimidation of further abuse and maintain confidentiality; (4-11-15)
- ii. Address any immediate trauma, either physical or emotional; (4-11-15)
- iii. Address long-term medical or mental health needs related to the alleged abuse; (4-11-15)
- iv. Notify responsible licensing, regulatory, and law enforcement agencies and preserve evidence; (4-11-15)
- v. Conduct an initial internal investigation of the incident and as necessary request that an external investigation be completed; and (4-11-15)
- vi. Prevent repetition of the abusive situation. (4-11-15)

157. OUT-OF-STATE TRAVEL.

When a Provider is planning an out-of-state trip for any of its juvenile offenders, the facility administrator must obtain prior written authorization from the regional clinical supervisor or designee. The necessary sequence of action and approval is as follows: ()

01. Notification. The Provider must notify the juvenile services coordinator in writing fourteen (14) business days in advance of the scheduled trip with the following: ()

- a. Dates of the scheduled trip; ()
- b. Location of the trip; ()
- c. Purpose of the trip; ()
- d. Transportation arrangements; ()
- e. Where the juvenile offender will be staying if overnight accommodations are required (address and phone number); and ()
- f. Who is going, such as juvenile offender, and name and position of staff. ()

02. Prior Approval. The program director must obtain all necessary approvals prior to authorizing travel. ()

03. Interstate Compact for Juveniles. Any out-of-state travel for more than twenty-four (24) hours requires a travel permit and compliance with the Interstate Compact for Juveniles. ()

158. ADDITIONAL PROGRAM POLICY REQUIREMENTS.

01. Written Policies. In addition to other policy requirements listed in these rules, Providers must have, at a minimum, the following written policies concerning program operations available at the program site: ()

- a. Program elements and implementation; (4-11-15)
- b. Admission policy describing the target population and criteria for admission, and identifying

- sources of referrals to the program; (4-11-15)
- c. Criteria for assigning juvenile offenders to different units within the program, if applicable; (4-11-15)
 - d. The provision of (or referral for) emergency and routine medical and mental health services for the population; (4-11-15)
 - e. Behavior management within the program, including use of points and levels, restraints, separation, detention, and other types of special management; (4-11-15)
 - f. Supervision of juvenile offenders policy that includes managing juvenile offender movement within the program, including the timely transfer of behavioral information about juvenile offenders from staff during shift changes; (4-11-15)
 - g. Juvenile offender's access to the community policy that includes use of community schools or job sites, and individual or group activities away from the program site. This also includes individual community passes; (4-11-15)
 - h. Administrative coverage in emergency situations arising after regular work hours; ()
 - i. Documentation and reporting of critical incidents to program administrators, the Department and others on the community treatment team; (4-11-15)
 - j. Treatment planning and progress reporting to the Department, juvenile offender, family, and others on the community treatment team; (4-11-15)
 - k. Reintegration policy that describes criteria for successful completion of program, termination from program prior to completion, and the involvement of the Department and community treatment team; and (4-11-15)
 - l. Emergency procedures in the event of a natural disaster. (4-11-15)
- 02. Documented Staff Training.** Documented staff training on these policies must also be available for review by the Department. (4-11-15)

159. FIRST AID KITS.

Each Provider must maintain first aid kits. Basic first aid kits that do not include medications or sharp tools may be kept unlocked. Any complete first aid kit with medications, wound rinses, scissors, tweezers, or other such objects must be kept locked and placed in areas of the program or facility readily accessible to staff. ()

160. – 199. (RESERVED)

SUBCHAPTER B – RULES FOR STAFF SECURE PROVIDERS

200. INITIATION OF SERVICES.

Juveniles are committed to the Department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-547, Idaho Code). ()

201. WAIVER AND VARIANCE.

Minimum program standards established herein apply to all services provided by the Provider. Any waiver and variance from the standards stated in these rules must receive prior written approval from the Department and be attached as a formal amendment to the contract. ()

202. APPLICABILITY.

This subchapter applies to Providers of treatment services identified in individual service implementation plans. Staff secure Provider must also abide by Subchapter A of these rules. ()

203. AUTHORITY TO INSPECT.

The Department has the authority to conduct reviews of programs, program operations, juvenile offender placements, and facilities to ensure the Provider's compliance with these rules. The Provider shall cooperate with the Department's review, and must provide access to the facility and all juvenile records for juveniles in Department custody, as deemed necessary by the Department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available, upon request. ()

204. COMPLIANCE WITH RULES REQUIREMENTS.

The Provider must comply with all relevant child care licensing rules of the Idaho Department of Health and Welfare, IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," as well as the rules of the Idaho Department of Juvenile Corrections. Providers located outside of the state of Idaho must comply with their state's relevant child care licensing rules as well as the rules of the Idaho Department of Juvenile Corrections. If a conflict exists between Department rules, the more restrictive rule applies. Subcontractors and consultants of the Provider are also subject to these rules. ()

205. MINIMUM MANDATORY STAFF TRAINING REQUIREMENTS.

Good professional practice in the area of juvenile offender treatment requires staff to be competently trained. The Provider will ensure all training requirements are met according to Subchapter A of these rules, regardless of the number of training hours required. ()

01. Staff Working More Than 24 Hours a Week. Staff who works more than twenty-four (24) hours per week are required to complete: ()

a. Eighty (80) hours of training during first year of employment. Up to twenty-five percent (25%) of the eighty (80) hours may be fulfilled by working with an experienced staff mentor, who must verify and document basic competencies for new staff; and ()

b. Forty (40) hours of training per year following the first year of employment. ()

02. Staff Working 24 Hours or Less a Week. Staff who works fewer than or equal to twenty-four (24) hours per week are required to complete: ()

a. Forty (40) hours of training during the first year of employment, and ()

b. Twenty (20) hours of training per year following the first year of employment. ()

206. CLOTHING AND PERSONAL ITEMS.

01. Clothing Management. Juvenile offenders must have sufficient and appropriate clothing to participate in activities included in their service implementation plan. Juvenile offenders may arrive at the facility with their own clothing and personal items, which shall be inventoried. If the juvenile offender does not have sufficient or appropriate clothing, the Provider must provide or purchase adequate and appropriate clothing for the juvenile offender. The Provider will ensure the proper care and cleaning of clothing in the juvenile offender's possession. Providers shall not request nor require that the juvenile offender, parent, or guardian pay for or purchase clothing. ()

02. Release from Facility. All clothing and incidentals become the property of the juvenile offender upon release from the facility. ()

03. Replacement Clothing. Clothing provided or purchased as replacement will be at the expense of the Provider. Unique items of clothing not required for program participation may be purchased at the expense of the juvenile offender. ()

207. FOOD SERVICE.

Juvenile offenders must be served a varied and nutritional diet with menus approved or developed by a qualified nutritionist or dietitian and which meet the recommended dietary allowances of the National Research Council or its equivalent. Juvenile offenders must be provided three (3) meals daily in accordance with the child care licensing rules

of the Idaho Department of Health and Welfare, or the applicable state's licensing authority. ()

208. PERSONAL FUNDS.

01. Funds Handled by a Provider. The Provider will follow generally accepted accounting practices in managing personal funds of juvenile offenders. ()

a. The Provider may deposit personal funds collected for the juvenile offender in a public banking institution in an account specifically designated "Juvenile Personal Funds." The Provider must maintain a reconciled ledger showing each juvenile offender's deposits and withdrawals within the "Juvenile Personal Funds" account. If the funds are collected in an interest bearing account, the interest accrued must be credited to the juvenile offender for whom the funds are collected. ()

b. If the amount of personal funds maintained for the juvenile offender does not exceed fifty (50) dollars, the Provider may secure the funds locally if the following conditions are met: ()

i. The juvenile offender's personal funds are kept in a fire-resistant, combination or digital lock-style safe that is permanently affixed to the floor or wall, or weighs at least 200 (two-hundred) pounds. ()

ii. The Provider has a process to clearly separate each juvenile offender's personal funds from one another. ()

iii. Access to juvenile offender personal funds is limited to the Program Director or designee. ()

c. All withdrawals by a juvenile offender, or expenditures made on behalf of a juvenile offender by the Provider, must be documented, signed, and dated by the juvenile offender and reconciled to the juvenile offender's ledger monthly. ()

d. The Provider must develop written procedures governing any limits to the amount of funds a juvenile offender may withdraw from their personal funds. ()

e. The Provider shall not require juvenile offenders, parents, or guardians to pay for services and supplies that, by contract, are to be provided by the Provider. ()

02. Reporting Requirements. A personal funds report must be submitted every other month to the juvenile services coordinator. The report must show a list of all juvenile offender account balances. The personal fund account is subject to review and audit by the Department or its representatives at any time. Any discrepancies in juvenile offender accounts must be resolved by the Provider within five (5) business days of completion of review. ()

03. Juvenile Offenders with Earned Income. The provider is responsible for maintaining and accounting for any money earned by a juvenile offender. There must be a plan for the priority use of the juvenile offender's earned income to pay court ordered restitution and a specific allocation for daily incidental expenses. The Provider must establish a written plan for the juvenile offender to save the funds necessary to be used upon program completion, for purposes such as paying deposits on utilities and housing or the purchasing of resources necessary for employment. ()

04. Transfer of Personal Funds. If a juvenile offender is transferred to another program, the balance of the juvenile offender's funds must be given or mailed to the Department's fiscal services within ten (10) business days and documented on the Provider Juvenile Check-Out Form (DJC-180) supplied by the Department, and on the final progress report. ()

209. JUVENILE OFFENDER MAIL.

01. Restrictions. Juvenile offenders shall be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the Department or by court order. All other restrictions of mail must be discussed with the community treatment team and

approved in writing by the juvenile services coordinator. There must be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. Juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence, and for at least two (2) personal letters each week. ()

02. Inspection of Outgoing Letters. ()

a. Outgoing letters are to be posted unsealed and inspected for contraband. ()

b. Exception: Outgoing “privileged” mail may be posted, sealed, and may not be opened, except with a search warrant, as long as it can be confirmed to be to an identifiable source. For purposes of this rule, “an identifiable source” means that the official or legal capacity of the addressee is listed on the envelope and that the name, official or legal capacity, and address of the addressee have been verified. ()

c. Upon the determination that the mail is not identifiable as privileged mail, said mail will be opened and inspected for contraband. ()

03. Inspection of Incoming Letters. All incoming letters must be opened by the juvenile offender to whom it is addressed and may be inspected for contraband by staff and only in the juvenile offender's presence. ()

04. Reading of Letters. Routine reading of letters by staff is prohibited. The Department or court may determine that reading of a juvenile offender's mail is in the best interest of the juvenile offender, and is necessary to maintain security, order, or program integrity. However, such reading of mail must be documented and, unless court ordered, be specifically justified and approved by the juvenile services coordinator. ()

05. Privileged Mail. Under no circumstances shall a juvenile offender's privileged mail be read. ()

06. Packages. All packages must be inspected for contraband. ()

07. Publications. Books, magazines, newspapers, and printed matter, which may be legally sent to juvenile offenders through the postal system, may be approved, unless deemed to constitute a threat to the security, integrity, or order of the programs. Juvenile offenders shall not be allowed to enter into subscription agreements while in Department custody. ()

08. Distribution of Mail. The collection and distribution of mail must never be delegated to a juvenile offender. Staff must deliver mail within twenty-four (24) hours, excluding weekends and holidays, to the juvenile offender to whom it is addressed. ()

210. VISITATION.

01. Visitor Approval. The Provider must develop a written policy governing visitation, which protects the safety of visitors, staff, and juvenile offenders. This policy may restrict visitors below an established age to the program or facility. The Provider must provide a copy of the visitation policy to each juvenile offender, his parent or guardian, and the juvenile services coordinator. If there is reason to believe a visitor is under the influence of alcohol or drugs or possesses illegal contraband, admission into the residence shall be denied. In all cases, the Provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors. ()

02. Visitor Searches. ()

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 the statement placed in the Provider's file. ()

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. ()

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. ()

211. SMOKING AND SALE OF CIGARETTES.

Juvenile offenders, regardless of age, are strictly prohibited from purchasing or using tobacco and nicotine products. Staff secure Providers must establish written policies and procedures banning the use of cigarettes and other tobacco and nicotine products by juvenile offenders at the facility. ()

212. ROOM RESTRICTIONS.

01. Policy and Procedure. The Provider must have written policies and procedures regulating the use of the juvenile offender's room for room restriction. The Provider's room restriction policy must, at a minimum, address the following: ()

- a. Procedures for recording each incident involving the use of restriction; ()
- b. The reason for the room restriction must be explained to the juvenile offender and allow the juvenile offender to have an opportunity to explain their behavior; ()
- c. Other less restrictive measures must have been applied prior to the room restriction; ()
- d. A juvenile offender on room restriction must have access to the bathroom; and ()
- e. Room restriction must not exceed a total of eight (8) hours within a twenty-four (24) hour period. ()

02. Monitoring During Room Restriction. Staff must check on a juvenile offender in room restriction a minimum of once every fifteen (15) minutes. Providers must ensure that a juvenile offender with a history of depression or suicidal ideation and those who have exhibited these behaviors while in care, are checked at least every five (5) minutes in order to ensure safety. Even more frequent or constant observation must be maintained if any level of suicide risk is determined to be present at any time during room restriction. All items in the area that might be used to attempt self-harm should be restricted or removed. ()

213. USE OF FORCE OR PHYSICAL RESTRAINTS.

Providers licensed by the Idaho Department of Health and Welfare or the applicable state licensing authority, must ensure that all terms of the licensing rules are strictly followed and additionally ensure that: ()

01. Minimal Use of Force. Only the minimum level of force necessary to control a juvenile offender's destructive behavior shall be used. ()

02. Physical Force. Physical force, at any level, may only be used to prevent injury to the juvenile offender or to others and to prevent serious damage to property or escape. Physical force must never be used as punishment. ()

03. Reporting Requirement. All instances of use of force must be documented in an incident report and submitted according to the terms of Section 156. Incidents of inappropriate use of force must be reported to the state's applicable licensing authority or law enforcement, as required by law. ()

214. – 219. (RESERVED)

220. GUIDELINES FOR SPECIFIC SERVICES.

- 01. Counseling Services.** ()
- a.** All counseling services provided to juvenile offenders, whether individual, group, or family must be performed by a clinician, counselor, or therapist, as defined in these rules. ()
 - b.** Counseling should be planned and goal directed. ()
 - c.** Notes must be written for each service provided and include documentation of who provided the service. The notes must be dated and clearly labeled either individual, group, or family counseling. ()
 - d.** The methods and techniques applied in counseling and the frequency and intensity of the sessions should be determined by assessment. ()
 - e.** Counseling should be reality-oriented and directed toward helping juvenile offenders understand and solve specific problems; discontinue inappropriate, damaging, destructive, or dangerous behaviors; and fulfill individual needs. ()
 - f.** The minimum standard for the frequency of counseling services must be specified in the comprehensive program description attached to the contract with the Department. ()
 - g.** There should be a mechanism developed to monitor and record incremental progress toward the desired outcome of counseling services. ()
 - h.** Programs should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. ()
 - i.** Programs must provide crisis intervention counseling, if warranted by the assessment and circumstances. ()
 - j.** The Provider must furnish adequate space for conducting private interviews and counseling sessions at the facility. ()
 - k.** Family counseling services must be available as a part of the juvenile offender's service implementation plan, to the extent that this is supported by the assessment. If the assessment indicates a need for these services, family counseling should specifically address issues that, directly or indirectly, resulted in the juvenile offender's removal from the home and the issue of eventual reintegration back into the family unit. A statement of goals to be achieved or worked toward by the juvenile offender and the family should be part of the service implementation plan. ()
- 02. Substance Abuse Services.** As a minimum standard, programs must provide substance abuse services, as determined by assessment and indicated in the service implementation plan. Substance abuse services must have direct oversight by a certified alcohol and drug counselor, or master's level clinician with three (3) years' experience in the substance abuse field. Substance abuse services must be fully described in the detailed program description and have a written curriculum containing a description of each session offered. Juvenile offenders receiving substance abuse services must have an introduction to a community intervention program. Relapse prevention plans must be a component of the substance abuse services provided and be specifically based on the individual needs of the juvenile offender. Notes documenting the service provided must be dated, clearly labeled "substance abuse services," with each entry signed by the counselor performing the service. ()
- 03. Social Skills Training Including Relapse Prevention Skills.** Programs must assess each juvenile offender's social skills and document specific services provided to improve functioning in this area. Additionally, every juvenile offender must have developed a written relapse prevention plan prior to successfully completing the program. ()
- 04. Life Skills and Independent Living.** Programs must be able to demonstrate that juvenile offenders are taught basic life skills and that age-appropriate juvenile offenders are involved in independent living skills

consistent with their age and needs. This program should include, at a minimum, instruction in: ()

- a. Hygiene and grooming skills; ()
- b. Laundry and maintenance of clothing; ()
- c. Appropriate social skills; ()
- d. Housekeeping; ()
- e. Use of recreation and leisure time; ()
- f. Use of community resources; ()
- g. Money management; ()
- h. Use of public transportation, where available; ()
- i. Budgeting and shopping; ()
- j. Cooking; ()
- k. Punctuality, attendance, and other employment-related matters; ()
- l. Vocational planning and job finding skills; and ()
- m. Basic health education. ()

05. Recreational Services. Programs should have a written plan for providing recreational services based on individual needs, interests, and functional levels of the population served. ()

a. The recreational program should include indoor and outdoor activities. Activities should minimize television and make use of a full array of activities that encourage both individual entertainment and small group interaction. An appropriately furnished area should be designated inside the facility for leisure activities. ()

b. Programs should have staff educated and experienced in recreational programs to ensure good planning, organizing, supervision, use of facility, and community activities. Recreational activities considered part of the service implementation plan must be funded by the Provider. The use of community recreational resources should be maximized, as long as community safety is assured. The Provider must arrange for the transportation and provide the supervision required for any usage of community recreational resources. No juvenile offender may be required to pay to participate in recreational activities made available through the program. ()

06. Transportation Services. In all transport situations there must be at least one (1) assigned staff of the same gender, or two (2) assigned staff of the opposite gender, as the juvenile offender being transported. ()

07. Transport in Personal Vehicles. Juveniles in the custody of the Department will not be transported in Provider employee personal vehicles unless an emergency exists and is substantiated by documentation. ()

221. CASE MANAGEMENT REPORTING REQUIREMENTS.

Each juvenile offender's progress, or lack of progress, must be clearly documented and be related to documented behavior. Recommendations for release from Department custody or transfer should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident which threatens the safety of others or the stability of the overall program. ()

01. Service Implementation Plan. Within thirty (30) calendar days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation

plan must address the specific goals identified in the service plan from the observation and assessment report. The service implementation plan should, at a minimum, address the following areas as indicated by need: ()

- a. Education and employment; ()
- b. Personality and behavior; ()
- c. Substance abuse; ()
- d. Attitudes, values, and delinquent orientation; ()
- e. Family circumstances and parenting; ()
- f. Peer relations; ()
- g. Leisure and recreation; ()
- h. Sexual misconduct; and ()
- i. Specialized needs. ()

02. Juvenile Offender and Family Involvement. Each juvenile offender and, to the fullest extent possible, the family, should be involved in developing the service implementation plan and in adjusting that plan throughout the course of commitment. ()

03. Service Implementation Plan Adjustments. The service implementation plan should be adjusted throughout placement with the concurrence of the juvenile services coordinator following communication with the community treatment team. Specifically, the service implementation plan should be adjusted as new needs are identified, as goals are achieved, and as plans for reintegration are finalized. ()

04. Department Assessments. Assessments provided by the Department shall not be repeated by the Provider at the time of admission into the program without specific justification provided to the regional clinical supervisor. ()

05. Participation in Staffings. The Provider must participate in staffings with Department staff to discuss the juvenile offender's service implementation plan development and progress in treatment. ()

06. Participation in the Progress Assessment/Reclassification. The Provider may be asked by the juvenile services coordinator to provide input necessary for periodic reassessments of the juvenile offender's progress and current risk level. In all cases, the Provider must participate to the fullest extent possible. ()

07. Progress Report. A written progress report must be submitted to the juvenile services coordinator and any designees at least every two (2) months. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). Areas of need that were included in the service implementation plan and identified in Subsection 221.01 of these rules should also be referenced in the progress report. Each progress report should also detail the level of involvement of the parent or guardian in the juvenile's treatment. ()

08. Relapse Prevention Plan. Prior to completing the program, the Provider shall supply the juvenile with the relapse prevention plan form (DJC-271) provided by the Department. The plan must address areas of risk identified in the juvenile's service implementation plan, as well as interventions the juvenile will use to prevent future problems. While in treatment, the Provider will solicit feedback from the juvenile services coordinator every thirty (30) calendar days regarding the development of the juvenile's relapse prevention plan. The final relapse prevention plan is due to the juvenile services coordinator, or designee, no earlier than the date of the juvenile offender's reintegration staffing. ()

09. Final Progress Report. A final progress report must be submitted to the juvenile services coordinator and any designees no earlier than fourteen (14) calendar days and no later than ten (10) calendar days prior to the juvenile offender's anticipated completion of the program. This report must include: ()

- a. A current summary of the juvenile offender's progress; ()
- b. A summary of the efforts to reach the juvenile offender's goals and objectives, including education; ()
- c. Any unresolved goals or objectives; ()
- d. Recommendation for continuing services, including education, in the home community; and ()
- e. The current address of the juvenile. ()

10. Report Distribution. Copies of the service implementation plan, progress reports, relapse prevention plan, and final progress report must be distributed by the Provider to the juvenile offender and the juvenile services coordinator and any designees. The juvenile services coordinator will review and forward the progress report to the juvenile probation officer, appropriate court, and parent or guardian, unless the juvenile offender's family has been excluded from treatment by the juvenile services coordinator and the respective clinical supervisor for a well-documented reason. ()

222. INDIVIDUAL COMMUNITY PASSES.

Prior to granting any individual community pass to a juvenile offender, the Provider must contact the juvenile probation officer and the juvenile services coordinator, to ensure that neither the court nor the Department has placed restrictions on the juvenile offender's pass privileges. All requests for passes must be approved by the juvenile services coordinator. Any pass involving an overnight stay away from the facility, or involving special circumstances such as a sexual abuse victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an individual community pass, the Provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and returns. ()

01. Potential Risk to Public Safety. Individual passes for juvenile offenders assigned to residential facilities should be considered as an integral part of the service implementation plan. However, in all cases, the potential risk to public safety and adequacy of home supervision must be considered prior to allowing a juvenile offender to return home. It is also important that passes not interfere with the ongoing treatment and supervision needed by juvenile offenders. Providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The Department's pass form may be used for this purpose. If the Department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision must contain at least the following information: ()

- a. The juvenile offender's name and date of birth; ()
- b. The name, address, and telephone number of the individual assuming responsibility; ()
- c. Authorized days, dates, and times for the pass, including the specific date and time of departure and of return; ()
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; ()
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; ()
- f. A complete listing of the activities required during the pass; ()

- g.** Specific stipulations prohibiting: ()
 - i.** The use of alcohol, tobacco, and drugs; ()
 - ii.** Involvement in any illegal activity or association with others who may be or have been involved in illegal behavior; ()
 - iii.** Participation in sexual relations of any kind; ()
 - iv.** Possession of any kind of firearm or weapon; and ()
 - v.** Any violation of the terms of probation. ()
- h.** Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. ()

02. Eligibility. A juvenile offender must be in placement a minimum of thirty (30) calendar days to be eligible for any pass. Any exceptions due to extenuating circumstances must be approved by the juvenile services coordinator. ()

03. Frequency. Frequency of passes must be consistent with the terms of the juvenile offender's service implementation plan and Provider's contract with the Department. ()

04. Documentation. Documentation of the exact date and time of the juvenile offender's departure from the program for a pass, and return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. ()

223. GROUP ACTIVITIES OFF FACILITY GROUNDS.

An activity plan and itinerary covering activities to be engaged in, when and where the group is going, how they will travel, how long they will stay, and why the activity is being planned must be submitted to the juvenile services coordinator at least five (5) business days prior to the activity. The activity plan must identify the specific risk elements associated with the activity and provide a safety plan for each of those risk elements. Routine, low risk activities within the local community adjacent to the facility do not require prior notice, and are to be conducted at the discretion of and under the responsibility of the Provider. ()

01. Recreational Activities. A pass authorizing the participation of juvenile offenders in outdoor recreational or work activities with an increased risk, such as overnight trips, must be signed by the juvenile services coordinator and juvenile probation officer prior to the activity. Any proposed activity that involves horseback riding, boating, rappelling, rock climbing, or higher risk activity must also have the prior approval, in writing, of the Department's regional superintendent. ()

02. Staff Requirements. ()

a. A basic first aid kit will be taken with the group. At least one (1) person certified in first aid and CPR must accompany the group. ()

b. Swimming, boating, or rafting will only be allowed when a staff in attendance has certification in rescue and water safety, or if a lifeguard is on duty. All juvenile offenders involved in boating or rafting activities must wear an approved personal flotation device. ()

c. A staff to juvenile offender ratio of one to six (1:6) will be adhered to as a minimum unless there is a reason to require more staff. The risk level of the activity, as well as any physical disabilities, high client irresponsibility, mental deficiencies, or inclusion of groups of juvenile offenders under age twelve (12), are some reasons to consider additional staff. ()

d. All participants will be recorded in the activity plan and identified as program clients, staff, or volunteers. The individual staff or volunteer satisfying the above first aid and CPR requirements must be identified in the plan. ()

e. There will be no consumption of alcoholic beverages or illicit drugs by staff or juvenile offenders, interns, or volunteers while engaged in any agency-sponsored trip or activity. ()

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 223.01 of these rules. Each juvenile offender must have prior written consent from a parent or guardian, if available, and the Department's regional superintendent, including: ()

a. Permission for the juvenile offender's participation; ()

b. Acknowledgment of planned activities; and ()

c. Permission for the Provider to seek or administer necessary medical attention in an emergency. ()

04. Activity Reports. At the conclusion of each overnight or high risk recreational activity pass, the Provider must document in the juvenile offender's file and include in the progress report, any significant positive or negative events that transpired while the juvenile offender was on pass. Any unusual occurrences must be reported to the juvenile services coordinator and documented on an incident report as identified in Subchapter A. A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the Provider, and the results of that exam reported to the juvenile services coordinator. ()

224. EDUCATION SERVICES.

01. Appropriate Services. The Provider must ensure that each juvenile offender is given appropriate educational and vocational services that are consistent with the juvenile offender's abilities and needs, taking into consideration age, level of functioning, and any educational requirements specified by state or federal law. Providers must assure that educational services provided as a part of an overall program play an integral part in the process of reclaiming juvenile offenders to responsible roles in society. Educational services must strive to facilitate positive behavior change by helping juvenile offenders to develop abilities in academic, workplace, and technological areas; to restructure harmful or limiting cognitive patterns; and, to adopt appropriate social interactions skills. Educational services provided must use whatever combination of approaches and motivations that will best facilitate the learning process in conjunction with the service implementation plan. All educational services provided must meet all mandates of the Elementary Secondary Education Act (ESEA), the IDEA, the Family Educational Rights and Privacy Act (FERPA), and the Rehabilitation Act of 1973 (Section 504). ()

02. Mandatory Enrollment. Providers must ensure that all juvenile offenders involved in their programs who are of mandatory school age in the applicable state, or who have not yet obtained a General Educational Development (GED) or high school diploma, are enrolled in a school system or in a program approved and certified by the applicable state's Department of Education to provide both special education and other services. For those who have obtained a GED or high school diploma, an appropriate educational and vocational service must be provided in accordance with the service implementation plan. ()

03. Cooperative Relationships. Providers may provide educational services through a cooperative agreement with the local education agency or through an in-house educational program administered by the Provider. If a local education agency provides the services, it is expected that the Provider will have a written agreement with a local education agency that clearly defines the services that will be provided in the contract facility. The written agreement must include, at a minimum, all of the following: ()

a. Level of participation in reintegration planning for each juvenile offender; ()

b. That grades will be submitted to the Department within two (2) business days of transfer or release from Department custody; ()

c. Curriculum for special education services, if appropriate; ()

d. A plan for the provision of state required testing; and ()

e. Types of services that will be provided beyond the established limits of the regular school year for that school district. ()

04. Costs of Educational Services. If a local education agency agreement is developed, the Idaho Department of Education will flow education funds to the local education agency in a manner consistent with current legislative funding mandates. A copy of the memorandum of understanding between the Provider and the local education agency must be provided to the Department, and the source of funds to cover the costs for educational services clearly accounted for in the budget. If the Provider elects to provide the services in-house, the cost of educational services will be included in the daily contract rate. The Provider will not be eligible to receive educational funding through both of these sources. ()

05. Accreditation Requirements. Each Provider serving juvenile offenders, who have been committed to the Department, will have, or contract with, an education program that will meet the accreditation standards of a Department-approved accreditation agency or the applicable state's Department of Education. ()

06. Educational Assessment. Federal and state laws mandate that juvenile offenders be provided with an appropriate education. Providers are responsible for providing an educational track that will best serve the needs of each juvenile offender, as determined by the assessment provided by the Department through the observation and assessment process, or as determined by an assessment completed by a local school district. A copy of the relevant assessment and related current and valid education plan, as well as all supporting documentation for each juvenile offender, must be maintained in a separate file and be available to the Department and to the Idaho Department of Education. A copy of the IEP and all supporting documentation must be sent to the Department within ten (10) business days or less of its completion for inclusion in the juvenile offender's permanent school records that are maintained by the Department. ()

a. Providers are responsible for ongoing, yearly reassessment of each juvenile offender's progress within the education program as well as documenting and reporting that progress. This responsibility extends to completing a reassessment just prior to release from Department custody or transfer, and reporting academic gain both for individual juvenile offenders as well as composite data for the education program overall. ()

b. Consistent with statewide educational standards, Providers are responsible for assuring that each juvenile offender is tested in accordance with the applicable state's assessment schedule and all required measures. Any fees associated with the testing services are paid by the Provider. Results of testing must be submitted to the Department within ten (10) business days after the Provider's receipt of the scores. ()

07. GED Eligibility. Providers must assure that GED tests are administered to juvenile offenders meeting the criteria established in the administrative rules of the applicable state's Board of Education for school districts. All GED testing application fees will be paid by the Provider. Test results must be submitted to the Department within ten (10) business days after the receipt of the scores. ()

08. Special Education Services. ()

a. The Provider must ensure that the special educational needs of juvenile offenders are addressed. The Provider's in-house program or cooperating local education agency program must comply with Section 504 and the IDEA, as well as any other applicable state or federal laws. Under no circumstances will the Provider or its teaching staff make modifications in the juvenile offender's Section 504 or the IDEA educational program without conducting a Child Study Team meeting in consultation with the Department's educational coordinator, or designee. ()

b. Providers must make every reasonable effort and thoroughly document all efforts to contact parents or guardians of juvenile offenders identified as eligible for special education. If it is not possible to involve the natural parents or guardians, a surrogate parent must be appointed by the agency providing special educational services. This surrogate cannot be the director or other employee of an agency, institution, or community-based residential facility who is involved in providing care or education to a juvenile offender, or an employee of a state agency or agency volunteer, such as caseworker, social worker, or court-appointed special advocate who has been appointed by the state to provide for the welfare of the student. A surrogate parent is used only for special educational requirements

and has no other legal authority.

(4-11-15)

09. Standards for Instructional Time. Providers must assure that the school day is consistent with at least the minimum standard established for high schools by a Department-approved accreditation agency. The length of the school day will further meet all requirements established by state and federal laws, regulations, and accreditation standards. Providers must provide an appropriate educational or vocational program for each juvenile offender for twelve (12) months of the year. At a minimum, this involves four (4) hours per day, five (5) days per week throughout the full calendar year. Juvenile offenders involved in any disciplinary process must not be denied their right to education and other related services. If security or other related concerns are present that may prohibit a juvenile offender's participation in educational programming, an education plan review will be completed and documented in an incident report. If the juvenile offender is eligible for services under the IDEA or Section 504, a Child Study Team will meet to make a determination as to whether or not the behavior is a result of the juvenile offender's handicap. All due process procedures will be followed according to the administrative rules for special education. ()

10. Educational Records and Confidentiality. ()

a. Educational records must be maintained by the Provider at all times in accordance with FERPA with, at a minimum, the following information included in the record: ()

i. Subjects taken; ()

ii. Grades by subject and explanation of the grading system; ()

iii. Units of credit with explanation; ()

iv. Attendance records; and ()

v. Any standardized test scores. ()

b. Reports of the juvenile offender's educational progress (report cards) must be provided to the Department within ten (10) business days after the end of the school's grading periods (midterm, semester, trimester, etc.). ()

c. Providers must ensure that juvenile offender educational files are consistently maintained to ensure compliance with FERPA. ()

d. The Provider will provide final withdrawal grades and credits within twenty-four (24) hours or next business day after the juvenile offender is released from Department custody or transferred. The Provider must notify the Department that the final grades have been entered into the software program. Working educational files must be returned to the Department within ten (10) business days of the juvenile offender's release from Department custody or transfer. ()

225. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender must be provided with medical, dental, optical, mental health, emergency or any other related health services while in the Provider's care. Each Provider must have access, on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified physical or mental health services, including medications. Medical and mental health screenings must be provided within two (2) hours of a juvenile offender's admission to a program. Comprehensive and professional medical and mental health assessments must be provided by the Provider within thirty (30) calendar days of admission, unless these are provided by the Department. A copy of these assessments must be forwarded to the Department's regional R.N. ()

02. Medical Consent. As part of the admission process, the Provider must have a copy of the Department's Release of Information and Consent form signed by a juvenile offender's parent, guardian, or committing authority. The consent form must be filed in the juvenile offender's medical file maintained by the Provider. ()

03. Emergency Medical Treatment. In cases of emergency medical treatment requiring signed authorization for juveniles in the custody of the Department, reasonable efforts must be made to obtain the consent of the parent or guardian. The signature of only one (1) parent or guardian is sufficient to form consent or authorization. Should the parent or guardian not be available or refuse to sign, the authorization may be signed by the Department's regional R.N., or designee. This does not restrict the Provider from taking action in life and death situations. ()

04. Reimbursement Sources. The Provider must utilize private insurance or Medicaid, if available, for funding medical, dental, optical, mental health, or related services, and pharmaceutical products for any juvenile offender. The Provider cannot seek reimbursement from private insurance or Medicaid for health services that are the fiscal responsibility of the Provider pursuant to its contract with the Department. Any health services not listed in these rules, other than emergency treatment, which was not approved in advance by the Department's regional R.N., or designee, will be at the expense of the Provider. ()

226. ADMISSION AND ANNUAL HEALTH SERVICES AND TREATMENT RECORDS.

01. Compliance with Child Care Licensing Rules. Admission and annual health services must be provided to juvenile offenders in accordance with the child-care licensing rules of the Idaho Department of Health and Welfare, unless otherwise provided in these rules. ()

02. Prior Approval. No prior approval or review from the Department's regional R.N. is required for admission and annual health services. Examples of admission and annual health services for which no prior approval or review is required are: ()

- a. Admission physical exams, including STD exams and treatment; ()
- b. Admission dental exams, including x-rays and cleanings (no panoramic x-rays or sealants); ()
- c. Admission eye exams and glasses, if needed; ()
- d. Annual physical exams, including STD exams and treatment; ()
- e. Annual dental exams with x-rays and cleanings (no panoramic x-rays or sealants); and ()
- f. Annual eye exams, if needed, and new glasses, only if needed. ()

03. Medical Records. Any time a juvenile offender receives treatment under this section or for any similar service, the Provider must retain the original medical record regarding treatment and immediately send a copy to the Department's regional R.N. ()

227. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

01. Confidentiality. Confidentiality of personal health information of each juvenile offender must be maintained in accordance with the Privacy Regulations promulgated under HIPAA or, if more stringent, the laws of the applicable state. Compliance with these regulations is the responsibility of the Provider. Staff may be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the performance of their job duties. ()

02. Privacy Officer. The Provider must appoint a privacy officer to oversee that the control and maintenance of all juvenile offender health and medical records is in compliance with the federal Privacy Regulations, 45 Code of Federal Regulations Sections 160 and 164. ()

03. Separate Records. All juvenile offender medical and health records must be kept in files that are physically separated from other juvenile offender files and information, and under a system of security against unauthorized access. ()

228. NOTIFICATION OF CRITICAL HEALTH INCIDENTS.

The Provider must immediately report critical medical and mental health incidents according to Subchapter A of these rules. ()

229. INFECTIOUS DISEASES.

01. Policies. ()

a. The Provider must establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of infectious diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures should be updated as new information becomes available. Individual health information or counseling will be made available by a medical health professional for juvenile offenders diagnosed with an infectious disease. ()

b. The Provider must comply with the child-care licensing rules of the Idaho Department of Health and Welfare, or applicable state's licensing authority, regarding universal precautions. ()

02. HIV Testing. In accordance with law, a juvenile offender over age fourteen (14) may request to be tested for the presence of HIV. Any such juvenile offender requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test. ()

03. Examinations. Examinations must be performed by medical professionals on any juvenile offender for all symptomatic cases of infectious diseases such as tuberculosis, ova and parasites, infectious hepatitis, and sexually transmitted diseases. Juvenile offenders will be tested and, if indicated, treated. ()

04. Notifications. The Provider must notify the Department's regional R.N. within three (3) business days of any positive test results, treatment recommendations, and follow up care. ()

230. PREGNANCY.

01. Individual Medical Plan. Within the individual medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan must be based on the orders of the juvenile offender's licensed healthcare provider and include special care, location for delivery, a plan for infant care after delivery, regular medical check-ups, and special dietary and recreational needs. At no time may the infant remain in the Provider's facility. A copy of the individual medical plan will be sent to the Department's regional R.N. ()

02. Parenting Classes. Parenting classes must be an integral part of the individual medical plan for all pregnant female juvenile offenders. This service should also be offered as a priority to male juvenile offenders in Department custody who are already fathers or whose spouse or girlfriend is expecting a child. ()

03. Medicaid Reimbursement. Medical services relating to pregnancy must be provided by a licensed healthcare provider and facility accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. ()

231. REFUSAL OF TREATMENT.

Refusal of medications or treatment recommended by a physician for three (3) consecutive days requires immediate notification to the Department's regional R.N. according to Subchapter A of these rules. ()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. A Provider staff member must witness the juvenile offender's signature. This refusal form will be filed in the juvenile offender's medical record and a copy sent to the Department's regional R.N. within twenty-four (24) hours. ()

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition that poses a significant risk of death or permanent physical impairment, the Provider must ensure the juvenile receives immediate medical attention. The Provider will notify the Department's regional R.N. by phone as soon as possible. ()

232. USE OF MEDICATIONS.

01. Written Policy. The Provider must have written policies and procedures governing the use and administration of medication to juvenile offenders that conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare or the applicable state's licensing authority. ()

02. Notification. If initiating or modifying any medication, the Department's regional R.N. must be notified of the following: ()

- a. The name of the prescribed medication; ()
- b. The name and phone number of the prescribing doctor, nurse practitioner, or physician's assistant; and ()
- c. The reason the medication is being prescribed. ()

233. – 299. (RESERVED)

SUBCHAPTER C – RULES FOR REINTEGRATION PROVIDERS

300. INITIATION OF SERVICES.

Juveniles are committed to the Department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-549, Idaho Code). ()

301. WAIVER OR VARIANCE.

Minimum program standards established herein apply to all services provided by the Provider. Any waiver or variance from the standards stated in these rules must receive prior written approval from the Department and be attached as a formal amendment to the contract. ()

302. APPLICABILITY.

This subchapter applies to Providers of reintegration and independent living skills that coordinate needed treatment services identified in individual service implementation plans. Reintegration Providers must also abide by Subchapter A of these rules. ()

303. AUTHORITY TO INSPECT.

01. Inspections. The Department has the authority to conduct reviews of programs, program operations, juvenile offender placements, and facilities to ensure the Provider's compliance with these rules. The Provider shall cooperate with the Department's review, and provide access to the facility and all juvenile records for juveniles in Department custody, as deemed necessary by the Department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available, upon request. ()

02. Site Visit. If the juvenile offender is living independently, the juvenile services coordinator, or designee, shall conduct site visits of the residence prior to occupancy. ()

304. CLOTHING AND PERSONAL ITEMS.

The Provider must ensure that the juvenile offender has sufficient clothing. The Provider shall not require the juvenile offender to purchase clothing with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the Provider. Any clothing purchased with the juvenile offender's personal funds must be documented. The Provider will ensure the juvenile is provided education and resources needed for proper care and cleaning of clothing in the juvenile offender's possession. All clothing and incidentals become the property of the juvenile offender upon release. ()

305. FOOD SERVICE.

The Provider must ensure that the juvenile has sufficient food at all times. The Provider may not require the juvenile offender to purchase food with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the Provider. Shopping, meal preparation, planning, and proper nutrition must be part of the independent living skills. ()

306. PERSONAL FUNDS.

01. Funds Handled by a Provider. The Provider will follow generally accepted accounting practices in managing personal funds of juvenile offenders and must be able to demonstrate appropriate measures of internal fiscal controls related to the juvenile's personal funds. ()

a. The Provider must establish a written budget for a juvenile, as part of the service implementation plan, for the use of the juvenile offender's personal funds. There must be a specific allocation for daily incidental expenses. ()

b. If the amount of personal funds maintained for the juvenile offender does not exceed one hundred (100) dollars, the Provider may secure the funds locally, if the following conditions are met: ()

i. The juvenile offender's personal funds are kept in a fire resistant combination or digital lock-style safe that is permanently affixed to the floor or wall, or weighs at least 200 (two-hundred) pounds. ()

ii. The Provider has a process to clearly separate each juvenile offender's personal funds from one another. ()

iii. Access to juvenile offender personal funds is limited to the Program Director, or designee. ()

c. Upon the juvenile offender's personal funds exceeding one hundred (100) dollars, the reintegration Provider will assist the juvenile offender in opening an account in the juvenile's name at a public banking institution. Supported living Providers are required to deposit all personal funds collected for the juvenile offender in a public banking institution in an account in the juvenile's name. ()

d. The Provider must ensure that the juvenile offender saves at least thirty percent (30%) of income to be used at program completion for purchasing the resources for independent living and employment. ()

e. All withdrawals by a juvenile offender, or expenditures made on behalf of a juvenile offender by the Provider, must be documented, signed, and dated by the juvenile offender and reconciled to the juvenile offender's ledger monthly. ()

f. The Provider must develop written procedures governing any limits to the amount of funds a juvenile offender may withdraw from their personal funds. ()

g. The Provider may not require juvenile offenders, parents, or guardians to pay for services and supplies that, by contract, are to be provided by the Provider. ()

h. There must be no commingling of juvenile personal funds with Provider funds. Borrowing or moving funds between juvenile personal accounts is prohibited. ()

02. Reporting Requirements. A personal funds report that shows a list of all juvenile offender account balances must be submitted monthly to the juvenile services coordinator. The personal fund account is subject to review and audit by the Department or its representatives at any time. Any discrepancies in juvenile offender accounts must be resolved by the Provider within five (5) business days of completion of the review. ()

03. Transfer of Personal Funds. If a juvenile offender is transferred to another program, the balance of the juvenile offender's locally secured funds must be given or mailed to the Department's fiscal services within ten (10) business days and documented on the Provider Juvenile Check-Out Form (DJC-180) supplied by the Department, and on the final progress report. ()

307. JUVENILE OFFENDER MAIL.

01. Restrictions. Juvenile offenders must be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the Department or by court order. All other restrictions of mail must be discussed with the community treatment team, approved in writing by the juvenile services coordinator, and documented in the juvenile offender's service implementation plan. There must be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. Juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence. ()

02. Reading of Letters. Routine reading of letters by staff is prohibited. The Department or court may determine that reading of a juvenile offender's mail is in the best interest of the juvenile offender, and is necessary to maintain security, order, or program integrity. However, such reading of mail must be documented and, unless court ordered, must be specifically justified and approved by the juvenile services coordinator. ()

03. Privileged Mail. Under no circumstances shall a juvenile offender's privileged mail be read. ()

04. Packages. Packages may be inspected for contraband but only in the presence of the juvenile offender. ()

05. Publications. Books, magazines, newspapers, and printed matter which may be legally sent to juvenile offenders through the postal system may be approved by the Provider, unless deemed to constitute a threat to the security, integrity, or order of the programs. ()

06. Distribution of Mail. The collection and distribution of mail must never be delegated to a juvenile offender. Staff must deliver mail within twenty-four (24) hours, excluding weekends and holidays, to the juvenile offender to whom it is addressed, unless the juvenile is living independently. ()

308. VISITATION.

01. Visitation Policy. The Provider must develop a written policy governing visitation, which protects the safety of visitors, staff, and juvenile offenders. This policy may restrict visitation to the residence of visitors below an established age or provide for higher levels of supervision in circumstances where safety of visitors, staff, and juvenile offenders may be at risk. The Provider must provide a copy of the visitation policy to each juvenile offender, his parent or guardian, and the juvenile services coordinator. In all cases, the Provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors in accordance with the Provider's criteria. ()

02. Visitor Admission. If there is reason to believe a visitor is under the influence of alcohol or drugs or possesses illegal contraband, admission into the residence must be denied. Visitors who bring in items that are unauthorized, but not illegal, must either be denied admission into the program or residence or 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 program or residence. All visitors denied access to the program or residence, and the reason for their denial, must be documented. ()

309. GUIDELINES FOR SPECIFIC SERVICES.

01. Counseling and Other Outpatient Services. The Provider must schedule all initial outpatient appointments, such as drug and alcohol counseling, for the juvenile offender within five (5) business days of arrival into the program. The Provider should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. ()

02. Behavior Assessment. Supported living Providers must use a current assessment of independent behavior capacity to determine the levels of service needed. ()

03. Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders

- are taught basic life skills. This program should include, at a minimum, instruction in: ()
- a. Hygiene and grooming skills; ()
 - b. Laundry and maintenance of clothing; ()
 - c. Appropriate social skills; ()
 - d. Housekeeping; ()
 - e. Use of recreation and leisure time; ()
 - f. Use of community resources, such as identifying medical and mental health providers; ()
 - g. Handling personal finances and issues such as leases, contracts, cell phone usage and agreements, insurance, banking, and credit management with some support and intervention; ()
 - h. Use of public transportation, where available; ()
 - i. Budgeting and shopping; ()
 - j. Cooking; ()
 - k. Punctuality, attendance, and other employment-related matters; ()
 - l. Vocational planning and job finding skills; ()
 - m. Wears clothing appropriate for the weather and activity; ()
 - n. Takes own medication, as prescribed; ()
 - o. Obtains and produces identification, as needed; and ()
 - p. Travels to and from necessary destinations. ()

310. CASE MANAGEMENT REPORTING REQUIREMENTS.

Each juvenile offender's progress or lack of progress must be clearly documented and be related to documented behavior. Recommendations for release from Department custody or transfer should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident, which threatens the safety of others or the stability of the overall program. ()

01. Service Implementation Plan. Within ten (10) business days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the most recent progress report and reintegration plan from the sending facility or program. The service implementation plan must address the needs and areas in the reintegration plan. ()

02. Juvenile Offender and Family Involvement. Each juvenile offender and, to the fullest extent possible, the family, should be involved in developing the service implementation plan and in adjusting that plan throughout the course of commitment. ()

03. Service Implementation Plan Adjustments. The service implementation plan should be adjusted throughout placement with the concurrence of the juvenile services coordinator following communication with the community treatment team. Specifically, the service implementation plan should be adjusted as new needs are identified, as goals are achieved, and as plans for reintegration are finalized. ()

04. Participation in Staffings. The Provider must participate in staffings with Department staff to discuss the juvenile offender's service implementation plan development and progress in treatment. ()

05. Participation in the Progress Assessment/Reclassification. The Provider may be asked by the juvenile services coordinator to provide input necessary for periodic reassessments of the juvenile offender's progress

and current risk level. In all cases, the Provider must participate to the fullest extent possible. ()

06. Progress Report. A written progress report must be submitted to the juvenile services coordinator and any designees at least every month, and include current bank statements and reconciled monthly budget. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). Each progress report should also note any changes or further development of the service implementation plan and should detail the level of involvement of the parent or guardian in the juvenile's treatment. ()

07. Relapse Prevention Plan. The Provider will receive a working copy of the juvenile offender's relapse prevention plan from the Department. The Provider must work with the juvenile to continue developing the relapse prevention plan provided, as the juvenile experiences increased exposure to the community. The Provider must send the final relapse prevention plan to the juvenile services coordinator and any designees prior to the juvenile offender's release from Department custody. ()

08. Final Progress Report. A final progress report must be submitted to the juvenile services coordinator and any designees no earlier than fourteen (14) calendar days and no later than ten (10) calendar days prior to the juvenile offender's anticipated completion of the program. This report must include: ()

- a. A current summary of the juvenile offender's progress; ()
- b. A summary of the efforts to reach the juvenile offender's goals and objectives, including education; ()
- c. Any unresolved goals or objectives; ()
- d. Recommendation for continuing services, including education, in the home community; and ()
- e. The current address of the juvenile. ()

09. Report Distribution. Copies of the service implementation plan, progress reports, relapse prevention plan, and final progress report must be distributed by the Provider to the juvenile offender and the juvenile services coordinator and any designees. The juvenile services coordinator will review and forward the progress report to the juvenile probation officer, appropriate court, and parent or guardian, unless the juvenile offender's family has been excluded from treatment by the juvenile services coordinator and the respective clinical supervisor for a well-documented reason. ()

311. OVERNIGHT COMMUNITY PASSES.

Any pass involving an overnight stay away from the program or residence, or involving special circumstances such as a sexual abuse victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an overnight community pass, the Provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and at the time he returns. ()

01. Potential Risk to Public Safety. If the pass is to the home of a parent or guardian, reintegration Providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The Department's pass form may be used for this purpose. If the Department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision must contain at least the following information: ()

- a. The juvenile offender's name and date of birth; ()
- b. The name, address, and telephone number of the individual assuming responsibility; ()
- c. Authorized days, dates, and times for the pass, including the specific date and time of departure and of return; ()

- d.** A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; ()
- e.** Specific plans for supervision and telephone checks to verify compliance with the pass conditions; ()
- f.** A complete listing of the activities required during the pass; ()
- g.** Specific stipulations prohibiting: ()

 - i.** The use of alcohol and drugs; ()
 - ii.** Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; ()
 - iii.** Participation in sexual relations of any kind; ()
 - iv.** Possession of any kind of firearm or weapon; ()
 - v.** Any violation of the terms of probation; and ()
- h.** Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. ()

02. Frequency. Frequency of passes must be consistent with the terms of the juvenile offender's reintegration plan and reintegration Provider's contract with the Department. ()

03. Documentation. Documentation of the exact date and time of the juvenile offender's departure from the program for a pass, and his return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. ()

312. ACTIVITIES.

01. Recreational Activities. A pass authorizing the participation of juvenile offenders in outdoor recreational or work activities with an increased risk or overnight trips must be signed by the juvenile services coordinator and juvenile probation officer prior to the activity. Any proposed activity that involves boating, rappelling, rock climbing, or higher risk activity must also have the prior approval, in writing, of the Department's regional superintendent. ()

02. Staff Requirements for Group Activities. ()

a. A basic first aid kit will be taken with the group. At least one (1) person certified in first aid and CPR must accompany the group. ()

b. Swimming, boating, or rafting will only be allowed when a staff in attendance has certification in rescue and water safety or if a lifeguard is on duty. All juvenile offenders involved in boating or rafting activities must wear an approved personal flotation device. ()

c. A staff to juvenile offender ratio of one to six (1:6) will be adhered to as a minimum unless there is a reason to require more staff. The risk level of the activity, as well as any physical disabilities, high client irresponsibility, or mental deficiencies are some reasons to consider additional staff. ()

d. All participants will be recorded in the activity plan and identified as program clients, staff, or volunteers. The individual staff or volunteer satisfying the above first aid and CPR requirements must be identified in the plan. ()

e. There will be no consumption of alcoholic beverages or illicit drugs by juvenile offenders, staff, volunteers, or interns. ()

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subchapter A of these rules. Each juvenile offender must have prior written consent from the Department's regional superintendent including: ()

- a. Permission for the juvenile offender's participation; ()
- b. Acknowledgment of planned activities; and ()
- c. Permission for the provider to seek or administer necessary medical attention in an emergency. ()

04. Activity Reports. At the conclusion of each overnight or high-risk recreational activity pass, the Provider must document in the juvenile offender's file and include in the progress report, any significant positive or negative events that transpired while the juvenile offender was on pass. Any unusual occurrences must be reported to the juvenile services coordinator and documented on an incident report as identified in Subchapter A of these rules. A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the Provider, and the results of that exam reported to the juvenile services coordinator. ()

313. EDUCATION SERVICES.

01. Appropriate Services. The Provider must ensure that each juvenile offender is given appropriate educational and vocational services that are consistent with the juvenile offender's abilities and needs, taking into consideration age, level of functioning, and any educational requirements specified by state or federal law. Providers must assure that educational services provided as a part of an overall program play an integral part in the process of reclaiming juvenile offenders to responsible roles in society. Educational services must strive to facilitate positive behavior change by helping juvenile offenders to develop abilities in academic, workplace, and technological areas; to restructure harmful or limiting cognitive patterns; and, to adopt appropriate social interactions skills. Educational services provided must use whatever combination of approaches and motivations that will best facilitate the learning process in conjunction with the service implementation plan. All educational services provided must meet all mandates of the Elementary Secondary Education Act (ESEA), the IDEA, the Family Educational Rights and Privacy Act (FERPA), and the Rehabilitation Act of 1973 (Section 504). ()

02. Mandatory Enrollment. Providers must ensure that all juvenile offenders involved in their programs who are of mandatory school age in the applicable state, or who have not yet obtained a General Educational Development (GED) or high school diploma, are enrolled in a school system or in a program approved and certified by the applicable state's Department of Education to provide both special education and other services. For those who have obtained a GED or high school diploma, an appropriate educational and vocational service must be provided in accordance with the service implementation plan. ()

314. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender must be provided with medical, dental, optical, mental health, emergency or any other related health services while in the Provider's care. Each Provider must have access, on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified medical or mental health services, including medications. The Provider must coordinate services and assist juvenile offenders in interpreting and complying with any follow up care as requested by healthcare provider. Any time a juvenile offender receives treatment under this section or for any health related service, a copy of any medical or dental assessments, treatments, test results, and follow up care must be forwarded to the Department's regional R.N. ()

02. Medical Consent. As part of the admission process, the Provider must have a copy of the Department's Release of Information and Consent form signed by a juvenile offender over eighteen (18) years of age. The consent form must be filed in the juvenile offender's case file maintained by the Provider. ()

03. Emergency Medical Treatment. In cases of emergency medical treatment requiring signed authorization for juveniles in the custody of the Department, the authorization may be signed by the Department's regional R.N., or designee. This does not restrict the Provider from taking action in life and death situations. ()

04. Reimbursement Sources. The Provider must utilize private insurance or Medicaid, if available, for funding medical, dental, optical, mental health, or related services, and pharmaceutical products for any juvenile offender. The Provider may not seek reimbursement from private insurance or Medicaid for health services that are the fiscal responsibility of the Provider pursuant to its contract with the Department. Any health services not listed in these rules, other than emergency treatment, which was not approved in advance by the Department's regional R.N., or designee, will be at the expense of the Provider. ()

315. ADMISSION HEALTH SERVICES AND TREATMENT RECORDS.

01. Prior Approval. Prior approval or review from the Department's regional R.N. is required for all non-routine health services, other than emergency services. Prior approval may be given for up to five (5) routine, pre-scheduled medical appointments. ()

02. Medical Records. The Provider must assist the juvenile offender in organizing medical information, instructions, prescriptions, and any necessary follow up papers in a designated medical folder. Any time a juvenile offender receives treatment under this section or for any health related service, the Provider must retain the original medical record and immediately send a copy to the Department's regional R.N. ()

03. Medical Billing. For uninsured juveniles, the Provider will notify the health care provider to submit medical bills directly to the Department's regional R.N. that approved the provision of services. ()

316. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

To the extent the Provider has medical information, confidentiality of personal health information of each juvenile offender must be maintained in accordance with the Privacy Regulations promulgated under HIPAA or, if more stringent, the laws of the applicable state. Compliance with these regulations is the responsibility of the Provider. Staff may be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the performance of their job duties. ()

01. Privacy Officer. The Provider must appoint a privacy officer to oversee that the control and maintenance of all juvenile offender health and medical records is in compliance with the federal Privacy Regulations, 45 Code of Federal Regulations Sections 160 and 164. ()

02. Separate Records. All juvenile offender medical and health records must be kept in files that are physically separated from other juvenile offender files and information, and under a system of security against unauthorized access. ()

317. NOTIFICATION OF CRITICAL HEALTH INCIDENTS.

The Provider must immediately report critical medical and mental health incidents according to Subchapter A of these rules. ()

318. INFECTIOUS DISEASES.

01. Policies. The Provider must establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of infectious diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures should be updated as new information becomes available. Individual health information or counseling will be made available by a medical health professional for juvenile offenders diagnosed with an infectious disease. ()

02. HIV Testing. In accordance with law, a juvenile offender over age fourteen (14) may request that he be tested for the presence of HIV. Any such juvenile offender requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test. ()

03. Examinations. Examinations must be performed by medical professionals on any juvenile offender for all symptomatic cases of communicable diseases such as tuberculosis, ova and parasites, infectious hepatitis, and sexually transmitted diseases. Juvenile offenders will be tested and, if indicated, treated. ()

04. Notifications. The Provider must notify the Department's regional R.N. within three (3) business days of any positive test results, treatment recommendations, and follow up care. ()

319. PREGNANCY.

01. Individual Medical Plan. Within the individual medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan must be based on the orders of the juvenile offender's licensed healthcare provider and include special care, location for delivery, a plan for infant care upon delivery, regular medical check-ups, and special dietary and recreational needs. At no time may the infant remain in the Provider's facility. A copy of the individual medical plan will be sent to the Department's regional R.N. ()

02. Parenting Classes. Parenting classes must be an integral part of the individual medical plan for all pregnant female juvenile offenders. This service should also be offered as a priority to male juvenile offenders in Department custody who are already fathers or whose spouse or girlfriend is expecting a child. ()

03. Medicaid Reimbursement. Medical services relating to pregnancy must be provided by a licensed healthcare provider and facility accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. ()

320. REFUSAL OF TREATMENT.

Refusal of medications or treatment recommended by a physician for three (3) consecutive days requires immediate notification to the Department's regional R.N. according to Subchapter A of these rules. ()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. A Provider staff member must witness the juvenile offender's signature. This refusal form will be filed in the juvenile offender's medical record and a copy sent to the Department's regional R.N. within twenty-four (24) hours. ()

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition that poses a significant risk of death or permanent physical impairment, the Provider must ensure the juvenile receives immediate medical attention. The Provider will notify the Department's regional R.N. by phone as soon as possible. ()

321. USE OF MEDICATIONS.

The Provider must have written policies and procedures governing the use and administration of medication to juvenile offenders that conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare or the applicable state's licensing authority. ()

01. Medication Management Upon Arrival. If the juvenile offender is taking medication, the Provider must schedule an initial medication management appointment for the juvenile offender within five (5) business days of arrival into the program. ()

02. Notification. If initiating or modifying any medication, the Department's regional R.N. must be notified of the following: ()

a. The name of the prescribed medication; ()

b. The name and phone number of the prescribing doctor, nurse practitioner, or physician's assistant;
and ()

c. The reason the medication is being prescribed. ()

322. – 999. (RESERVED)

IDAPA 11 – IDAHO STATE POLICE

DOCKET NO. 11-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon 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 full force and effect upon adoption of 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 (Forensics) 67-2901, 18-8002A, 18-8004, 19-5504, 67-2919; (Forfeitures) 67-2901, 37-2744; (Motor Vehicles) 67-2901, 49-901; (Sex Offender Registry) 18-8304, 18-8305; (Commercial Vehicle Safety) 67-2901A, 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 11, rules of the Idaho State Police:

IDAPA 11

- 11.03.01, *Rules Governing Alcohol Testing*
- 11.06.01, *Rules Governing Civil Asset Forfeiture Reporting*
- 11.07.01, *Rules Governing Motor Vehicles-General Rules*
- 11.07.02, *Rules Governing Safety Glazing Material*
- 11.07.03, *Rules Governing Emergency Vehicles/Authorized Emergency Vehicles*
- 11.10.03, *Rules Governing the Sex Offender Registry*
- 11.13.01, *The Motor Carrier Rules*

The adoption of these rules is necessary to allow the Idaho State Police to carry out the statutory duties of providing public safety services to law enforcement, prosecuting attorneys, the judicial system, and everyone who travels through or resides in the State of Idaho. The changes to these rules were clean up in nature, which in some instances consolidated and/or eliminated definitions; combined, re-ordered and re-numbered similar sections; and removed office hours and other information included on the coversheet. All the changes maintain the intent, scope, and purpose intended and previously approved.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 1273 - 1305](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact:

- 11.03.01 Forensics — Lab Director Matthew Gamette, Phone: (208) 884-7217, Fax: (208) 884-7290, E-mail: matthew.gamette@isp.idaho.gov
- 11.06.01 Forfeitures — Captain Russ Wheatley, Phone: (208) 884-7202, Fax: (208) 884-7290, E-mail: russ.wheatley@isp.idaho.gov

- 11.07.01, 11.07.02, 11.07.03 Motor Vehicles — Major Bill Gardiner, Phone: (208) 884-7206, Fax (208) 884-7290, E-mail: bill.gardiner@isp.idaho.gov
- 11.10.03 Sex Offender Registry — Bureau Chief Leila McNeill, Phone: (208) 884-7136, Fax: (208) 884-7193, E-mail leila.mcneill@isp.idaho.gov
- 11.13.01 Commercial Vehicle Safety — Captain Scott Hanson, Phone: (208) 884-7222, Fax: 208-884-7192, E-mail scott.hanson@isp.idaho.gov

Dated this 3rd day of October, 2019.

Charlie Spencer
Police Services Major
Rules Review Officer
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
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Phone: (208) 884-7203
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections (Forensics) 67-2901, 18-8002A, 18-8004, 19-5504, 67-2919, (Forfeitures) 67-2901, 37-2744, (Motor Vehicles) 67-2901, 49-901, (Sex Offender Registry) 18-8304, 18-8305, (Commercial Vehicle Safety) 67-2901A, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 11, rules of the Idaho State Police:

IDAPA 11

- 11.03.01, *Rules Governing Alcohol Testing*
- 11.06.01, *Rules Governing Civil Asset Forfeiture Reporting*
- 11.07.01, *Rules Governing Motor Vehicles-General Rules*
- 11.07.02, *Rules Governing Safety Glazing Material*

- 11.07.03, *Rules Governing Emergency Vehicles/Authorized Emergency Vehicles*
- 11.10.03, *Rules Governing the Sex Offender Registry*
- 11.13.01, *The Motor Carrier Rules*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Idaho State Police provides public safety through various programs on a vast array of topics including forensics services, coordinating civil asset forfeiture reporting, public safety while operating motor vehicles on roadways for both passenger and commercial vehicles, and processing, storing, and disseminating accurate information concerning persons convicted of crimes including convicted sex offenders. Failure to reauthorize these rules would eliminate the ability of the Idaho State Police to carry out the statutory duties of providing public safety services to law enforcement, prosecuting attorneys, the judicial system, and everyone who travels through or resides in the State of Idaho.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact:

- 11.03.01 Forensics — Lab Director Matthew Gamette, Phone: (208) 884-7217, Fax: (208) 884-7290, E-mail: matthew.gamette@isp.idaho.gov
- 11.06.01 Forfeitures — Captain Russ Wheatley, Phone: (208) 884-7202, Fax: (208) 884-7290, E-mail: russ.wheatley@isp.idaho.gov
- 11.07.01, 11.07.02, 11.07.03 Motor Vehicles — Major Bill Gardiner, Phone: (208) 884-7206, Fax (208) 884-7290, E-mail: bill.gardiner@isp.idaho.gov
- 11.10.03 Sex Offender Registry — Bureau Chief Leila McNeill, Phone: (208) 884-7136, Fax: (208) 884-7193, E-mail leila.mcneill@isp.idaho.gov
- 11.13.01 Commercial Vehicle Safety — Captain Scott Hanson, Phone: (208) 884-7222, Fax: 208-884-7192, E-mail scott.hanson@isp.idaho.gov

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2),

Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 10th day of May, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0000-1900

IDAHO STATE FORENSIC LABORATORY
11.03.01 – RULES GOVERNING ALCOHOL TESTING

000. LEGAL AUTHORITY.

The Director of the Idaho State Police has general rulemaking authority to prescribe rules and regulations for alcohol testing, pursuant to Section 67-2901, Idaho Code. (4-7-11)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 11.03.01, “Rules Governing Alcohol Testing.” (4-7-11)

02. Scope. The rules relate to the governance and operation of the Alcohol Testing Program. (4-7-11)

002. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: (4-7-11)

01. Conforming Products List of Evidential Breath Measurement Devices (revised 11/2/2017). This document is available on the Internet at <https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23869.pdf>. ()

003. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. Alcohol. “Alcohol” means the chemical compounds of ethyl alcohol, methyl alcohol, or isopropyl alcohol. (4-11-15)

02. Approved Vendor. “Approved vendor” means a source/provider/manufacturer of an approved standard. (4-11-15)

03. Blood Alcohol Analysis. “Blood alcohol analysis” means an analysis of blood to determine the concentration of alcohol present. (7-1-93)

04. Breath Alcohol Analysis. “Breath alcohol analysis” means an analysis of breath to determine the concentration of alcohol present. (7-1-93)

05. Breath Alcohol Test. “Breath alcohol test” means a breath sample or series of separate breath samples provided during a breath testing sequence. (4-11-15)

06. Breath Alcohol Testing Sequence. “Breath alcohol testing sequence” means a sequence of events as determined by the Idaho State Police Forensic Services, which may be directed by the instrument, the Operator, or both, and may consist of air blanks, performance verification, internal standard checks, and breath samples. (4-11-15)

07. Breath Testing Certification Class. “Breath testing certification class” means a department approved training class for prospective or uncertified breath alcohol Operators/Breath Testing Specialists. (4-11-15)

08. Breath Testing Specialist (BTS). “Breath Testing Specialist” means an operator who has completed advanced training approved by the department and are certified to perform routine instrument maintenance, teach instrument operation skills, proctor proficiency tests for instrument Operators, and testifying as an expert on alcohol physiology and instrument function in court. (4-11-15)

09. Calibration. “Calibration” means a set of laboratory operations which establish under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement. (4-11-15)

10. Certificate of Analysis. “Certificate of analysis” means a certificate stating the standards used for performance verification have been tested and approved for use by the ISPFS or are manufactured by an ISO 17025:2005 vendor and are traceable to N.I.S.T. standards. (4-11-15)

11. Certificate of Instrument Calibration. “Certificate of instrument calibration” means a certificate stating that an individual breath alcohol testing instrument has been evaluated by the ISPFS and found to be suitable for forensic alcohol testing. The certificate bears the signature of the calibration analyst at Idaho State Police Forensic

Services, and the effective date of the instrument approval. (4-11-15)

12. Changeover Class. “Changeover class” means a training class for currently certified Operators during which the Operator is taught theory, operation, and proper testing procedure for a new make or model of instrument being adopted by their agency. Breath Testing Specialists complete BTS training that qualifies them to perform BTS duties related to the new make or model instrument. (4-11-15)

13. Department. “Department” means the Idaho State Police. (7-1-93)

14. Deprivation Period. “Deprivation period” means a minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject/individual shall not be allowed to smoke, drink, or eat substances containing alcohol. (4-11-15)

15. Evidentiary Test. “Evidentiary test” means a blood, breath, or urine test performed on a subject/individual for potential evidentiary or legal purposes. A distinction is made between evidentiary testing and non-quantitative screening/monitoring. (4-11-15)

16. Idaho State Police Forensic Services (ISPFS). “Idaho State Police Forensic Services” means a division of the Idaho State Police. ISPFS is dedicated to providing forensic science services to the criminal justice system of Idaho. ISPFS is the administrative body for the alcohol testing programs in Idaho. (4-11-15)

17. Laboratory. “Laboratory” means the place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, vitreous humor, urine, or beverages for law enforcement purposes. (4-11-15)

18. MIP/MIC. “MIP/MIC” means an abbreviation used to designate minor in possession or minor in consumption of alcohol. (4-11-15)

19. Monitoring Period. “Monitoring Period” means a minimum deprivation period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject/individual should be observed by the officer and any belch/burp/vomit/regurgitation should be noted by the operator. (4-11-15)

20. Operator Certification. “Operator certification” means the condition of having satisfied the training requirements for administering breath alcohol tests as established by the department. (4-11-15)

21. Operator. “Operator” means an individual certified by the department as qualified by training to administer breath alcohol tests. (4-11-15)

22. Performance Verification. “Performance verification” means a verification of the accuracy of the breath testing instrument utilizing a performance verification standard. Performance verification should be reported to three decimal places. While ISPFS uses the term performance verification, manufacturers and others may use a term such as “calibration check” or “simulator check.” (4-11-15)

23. Performance Verification Standard. “Performance verification standard” means an ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. (4-11-15)

24. Proficiency Testing. “Proficiency testing” means a periodic analysis of blood, urine, or other liquid specimen(s) whose alcohol content is unknown to the testing laboratory, to evaluate the capability of that laboratory to perform accurate analysis for alcohol concentration. (4-11-15)

25. Quality Control. “Quality control” means an analysis of referenced samples whose alcohol content is known, which is performed with each batch of blood, vitreous humor, urine or beverage analysis to ensure that the laboratory’s determination of alcohol concentration is reproducible and accurate. (4-11-15)

26. Recertification Class. “Recertification class” means a training class offered by the department for currently certified personnel, completion of which results in uninterrupted continuation of their BTO or BTS status

for an additional 2 years. (4-11-15)

27. Urine Alcohol Analysis. “Urine alcohol analysis” means an analysis of urine to determine the concentration of alcohol present. (7-1-93)

011. (RESERVED)

012. GENERAL PROVISIONS.

Continuation of Policies. All policies, training manuals, approvals of instruments, and/or certifications of officers in effect when the alcohol program was managed by the Department of Health and Welfare shall continue to be in effect in the Idaho State Police until the policy, training manual, approval and/or certification is changed or deleted by the Idaho State Police. (7-1-93)

013. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

01. Laboratory. Any laboratory desiring to perform urine alcohol, vitreous humor, blood alcohol, or beverage analysis shall meet the following standards: (4-11-15)

a. The laboratory shall prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing. A copy of the procedure shall be provided to ISPFPS for initial approval. Whenever procedure, protocol, or method changes (however named) are adopted by a laboratory, a copy of the update with the changes clearly indicated shall be approved by ISPFPS before implementation; (4-11-15)

b. The laboratory shall provide adequate facilities and space for the procedure used. The laboratory alcohol related functions shall be subject to an assessment by either an accrediting body or the department each calendar year, and the results from the annual audit shall be submitted to the department. The assessment shall be at the expense of the laboratory; (4-11-15)

c. Specimens shall be maintained in a limited access and secure storage area prior to analysis. A chain of custody shall be maintained while the evidence is in the laboratory; (4-11-15)

d. All instrumentation, equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises. Instrument maintenance documentation shall be available for review by the department; (4-11-15)

e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Laboratories must participate in proficiency testing from a department approved provider at least once a calendar year. Approved providers include National Highway Traffic Safety Administration (NHTSA) and Collaborative Testing Services (CTS). Each test consists of at least four (4) blood samples spiked with an unknown concentration of ethyl alcohol, and possibly other volatiles, for qualitative determination. Participating laboratories must obtain proficiency tests from approved providers and are responsible for all costs associated with obtaining and analyzing such tests. Results from proficiency tests must be submitted by the due date to the test provider and ISPFPS. Results not submitted to a test provider within the allowed time do not qualify as a proficiency test. An alcohol concentration range is determined from the target value and ± 3.0 standard deviations as provided by the proficiency test provider. Reported values must fall within this range. If a laboratory determines more than one (1) alcohol value for a given sample, the mean value of results will be submitted and evaluated. Upon satisfactory completion of an approved proficiency test, a certificate of approval will be issued by the department to the participating laboratory. Approval to perform legal blood alcohol determinations is continued until the results of the next proficiency test are reviewed and notification is sent to the respective laboratory by ISPFPS. Failure to pass a proficiency test shall result in immediate suspension of testing by an analyst or laboratory in the form of a written inquiry from the department. The test is graded as unsuccessful when the mean results are outside the tolerance range established from the accepted mean values. The laboratory shall have thirty (30) calendar days to respond to the department inquiry. The department shall notify the laboratory within fourteen (14) calendar days regarding corrective action steps necessary to lift the testing suspension, or the department may issue a written revocation. The department shall not lift a proficiency testing related suspension or revocation until a successful proficiency test has been completed by the individual analyst or laboratory. (4-11-15)

f. For a laboratory performing blood, urine, vitreous humor, or beverage analysis for alcohol, approval shall be awarded to the laboratory director or primary analyst responsible for that laboratory. The responsibility for the correct performance of tests in that laboratory rests with that person; however, the duty of performing such tests may be delegated to any person designated by such director or primary analyst. The department may temporarily suspend or permanently revoke the approval of a laboratory or analyst if the listed requirements are not met. The department will issue the suspension or revocation in writing to the laboratory director or primary analyst responsible; (4-11-15)

g. Reinstatement after revocation requires completed corrective action of any items listed on the revocation documentation issued by the department. Documentation of corrective actions taken to address the nonconformities shall be submitted to the department for review. Once the department is satisfied that the laboratory is in compliance with all requirements, the department will issue written approval for the resumption of testing by that laboratory or analyst. A laboratory may appeal a suspension or revocation to the Director of the department. (4-11-15)

02. Blood Collection. Blood collection shall be accomplished according to the following requirements: (7-1-93)

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-93)

b. The skin at the area of puncture shall be cleansed thoroughly and disinfected with an aqueous solution of a nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (7-1-93)

c. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. (4-4-13)

03. Blood Reported. The results of analysis on blood for alcohol concentration shall be reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. (4-11-15)

04. Urine Collection. Urine samples shall be collected in clean, dry containers. (4-11-15)

05. Urine Reported. The results of analysis on urine for alcohol concentration shall be reported in units of grams of alcohol per sixty-seven (67) milliliters of urine. Results of alcohol analysis of urine specimens shall be accompanied by a warning statement about the questionable value of urine alcohol results. (4-11-15)

06. Records. All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-93)

014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

01. Instruments. Each breath testing instrument model shall be approved by the department and shall be listed in the “Conforming Products List of Evidential Breath Measurement Devices” published in the Federal Register by the United States Department of Transportation as incorporated by reference in Section 004 of this rule. The department will maintain a list of benchtop and portable instruments approved for evidentiary testing use in Idaho. Each individual breath testing instrument must be certified by the department. The department may, for cause, remove a specific instrument by serial number from evidential testing and suspend or withdraw certification thereof. (4-11-15)

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-93)

03. Administration. Breath tests shall be administered in conformity with standards established by the department. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of Idaho administrative rules, ISPFs analytical methods, and ISPFs standard operating procedures. (4-11-15)

a. The breath alcohol test must be administered by an operator (BTO or BTS) currently certified in the use of the instrument. (4-11-15)

b. Prior to administering the monitoring period, any foreign objects/materials which have the potential to enter the instrument/breath tube or may present a choking hazard (e.g. gum, chewing tobacco, food) should be removed. (4-11-15)

c. The operator shall administer a monitoring period prior to evidentiary testing. (4-11-15)

d. If mouth alcohol is suspected or indicated by the testing instrument, the operator shall begin another fifteen (15) minute monitoring period if repeating the testing sequence. If during the monitoring period the subject/individual vomits or regurgitates material from the stomach into the breath pathway, the monitoring period should start over. If there is doubt as to the events occurring during the monitoring period (e.g. silent burp, belch, vomit, regurgitation), the operator should evaluate the instrument results for any indication of mouth alcohol. (4-11-15)

e. A complete breath alcohol test includes two (2) valid breath samples taken during the testing procedure and preceded by air blanks. The subsequent breath samples performed with a portable breath testing instrument should be approximately two (2) minutes apart or more. If the subject/individual fails or refuses to provide a subsequent, adequate sample as requested by the operator, the single test result shall be considered valid. If a single test result is used, then the subject must have been observed during the fifteen (15) minute monitoring period. For hygienic reasons, the operator should use a new mouthpiece for each subject/individual tested. (4-11-15)

f. The operator has the discretion to end breath testing, repeat breath testing, or request a blood draw at any point during the testing process as the circumstances require (including but not limited to lack of sample correlation, lack of subject participation or cooperation, subject is incoherent or incapable of following instructions, subject incapacitation). If a subject/individual fails or refuses to provide a subsequent, adequate sample as requested by the operator, the results obtained are still considered valid, provided the failure to supply the requested samples was the fault of the subject/individual and not the operator. (4-11-15)

g. A third breath sample shall, when possible, be collected if the first two (2) results differ by more than 0.02 g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the monitoring period prior to obtaining a third breath sample. (4-11-15)

h. The results for subsequent breath samples should correlate within 0.02 g/210L alcohol to show consistent sample delivery, indicate the absence of RFI, and to indicate the absence of alcohol contamination in the subject/individual's breath pathway as a contributing factor to the breath results. (4-11-15)

i. In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn. (4-11-15)

04. Training. Each individual operator (BTO or BTS) shall demonstrate sufficient training to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department on each instrument model utilized by the operator. Operator certifications issued after July 1, 2013 are valid for two (2) calendar years from the course completion date. The department may revoke individual operator (BTO/BTS) certification for cause. (4-11-15)

05. Performance Verification Checks. Each breath testing instrument shall be checked for accuracy with a performance verification standard approved by the department. Performance verification checks shall be performed according to a procedure established by the department and shall be documented. The official time and date of the performance verification is the time and date recorded on the printout, or the time and date recorded in the log. (4-11-15)

a. A performance verification check shall occur within twenty-four (24) hours before or after an evidentiary test. The benchtop instrument requires a performance verification check as part of the testing sequence. On the portable instrument, multiple breath alcohol tests may be covered by a single performance verification. (4-11-15)

b. A performance verification on a portable instrument consists of two (2) samples at either the 0.08 or 0.20 level. Both samples must be run with the same performance verification standard. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument shall be taken out of service. The instrument shall not be returned to service until it has been calibrated and certified by ISPFS. (4-11-15)

c. A performance verification acquired during a breath testing sequence on an approved benchtop instrument consists of one (1) sample at either the 0.08 or 0.20 level. A performance verification acquired outside the breath testing sequence on an approved benchtop instrument consists of two (2) samples at either the 0.08 or 0.20 level. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument must be taken out of service. The instrument must not be returned to service until it has been calibrated and certified by ISPFS. (4-11-15)

d. Performance verification checks must be within +/- 10% of the performance verification standard target value. (4-11-15)

e. A wet bath 0.08 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications or every calendar month, whichever comes first. For a closed loop, recirculating system (e.g. the Intox 5000 series), the 0.08 performance verification standard should be replaced with fresh standard approximately every one hundred (100) verifications or every calendar month, whichever comes first. (4-11-15)

f. A wet bath 0.20 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications. (4-11-15)

g. Dry gas performance verification standards may be used continuously without replacement until the canister is spent or the expiration date is reached. (4-11-15)

h. Performance verification standards should not be used beyond the expiration date. (4-11-15)

i. If Section 18-8004C, Idaho Code, (excessive alcohol concentration) is applicable, then a 0.20 performance verification must be run and results documented once per calendar month. Failure to perform a 0.20 performance verification will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A performance verification with a 0.20 standard does not need to be performed within twenty-four (24) hours of an evidentiary breath test in excess of 0.20 g/210L alcohol. (4-11-15)

j. Temperature of the wet bath simulator shall be between thirty-three point five degrees Celsius (33.5°C) and thirty-four point five degrees Celsius (34.5°C) in order for the performance verification results to be valid. (4-11-15)

k. An agency may run additional performance verification standard levels at their discretion. (4-11-15)

06. Records. Operators must document and retain test results (i.e. written log, printout, or electronic database). All records regarding maintenance and results shall be retained for three (3) years. ISPFS is not responsible for storage of documentation not generated by ISPFS. (4-11-15)

07. Deficiencies. Failure to meet any of the conditions listed in Sections 013 and 014. Any laboratory or breath testing instrument may be disapproved for failure to meet one (1) or more of the requirements listed in Sections 013 and 014, and approval may be withheld until the deficiency is corrected. (4-7-11)

08. Standards. Premixed alcohol simulator solutions shall be from an approved vendor and explicitly approved in writing by the department before distribution within Idaho. Dry gas standards from ISO 17025:2005 certified providers are explicitly approved by the department for use in Idaho without evaluation by the department. (4-11-15)

09. MIP/MIC. The presence or absence of alcohol is the determining factor in the evidence in an MIP/MIC case. The instrumentation used in obtaining the breath sample is often the same instrumentation utilized for acquiring DUI evidence. The different standard of evidence requires different standards for the procedure. (4-11-15)

a. Fifteen (15) minute monitoring period: The monitoring period is not required for the MIP/MIC procedure. (4-11-15)

b. The breath alcohol test must be administered by an operator currently certified in the use of that instrument. (4-11-15)

c. The instrument used must be certified by ISPFs. The instrument only needs to be initially certified by ISPFs. Initial certification shows that the instrument responds to alcohols and not to acetone. The instrument does not need to be checked regularly or periodically with any of the 0.08 or 0.20 standard. (4-11-15)

d. The officer should have the individual being tested remove all loose foreign material from their mouth before testing. False teeth, partial plates, or bridges installed or prescribed by a dentist or physician do not need to be removed to obtain a valid test. The officer may allow the individual to briefly rinse their mouth out with water prior to the breath testing. Any alcohol containing material left in the mouth during the entirety of the breath test sampling could contribute to the results in the breath testing sequence. (4-11-15)

e. A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The subsequent breath samples do not need to be consecutive samples from the same subject. The individual breath samples should be approximately two (2) minutes apart or more. A deficient or insufficient sample does not automatically invalidate a test sample. The operator should use a new mouthpiece for each individual. (4-11-15)

f. A third breath sample is required if the first two (2) results differ by more than 0.02 g/210L alcohol. In the event that all three (3) samples fall outside the 0.02 g/210L alcohol correlation, and testing indicates or the officer suspects mouth alcohol, they must administer a fifteen (15) minute monitoring period and then retest the subject. If mouth alcohol is not suspected or indicated by the test results, then the officer may retest the subject without administering a monitoring period. (4-11-15)

g. The operator should manually log test results and/or retain printouts for possible use in court. (4-11-15)

h. The instrument must not be in passive mode for the testing of subjects for evidential purposes. (4-11-15)

i. The passive mode of testing using the Lifeloc FC20 or ASIII should be used for testing liquids or containers of liquid for the presence or absence of alcohol. (4-11-15)

015. -- 999. (RESERVED)

11.06.01 – RULES GOVERNING CIVIL ASSET FORFEITURE REPORTING

000. LEGAL AUTHORITY.

01. General. The Director of the Idaho State Police has general rulemaking authority to prescribe rules for civil asset forfeiture reporting, pursuant to Section 67-2901, Idaho Code. ()

02. Specific. In accordance with Section 37-2744 (Chapter 27, Article V), Idaho Code, the Idaho State Police is authorized to promulgate such rules and forms it deems necessary to carry out the provisions and mandate of said Section 37-2744, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 11.06.01, “Rules Governing Civil Asset Forfeiture Reporting,” IDAPA 11, Title 06, Chapter 01. ()

02. Scope. These rules concern the civil asset forfeiture reporting form that the Idaho State Police is charged with promulgating pursuant to Section 37-2744, Idaho Code. ()

002. INCORPORATION BY REFERENCE.

The following is incorporated by reference in this chapter of rules: ()

01. Idaho Civil Asset Forfeiture Reporting Form. As adopted February 7, 2019, this document is available on the Internet at <https://www.isp.idaho.gov>. ()

003. – 009. (RESERVED)

010. DEFINITIONS.

01. Civil Asset Forfeiture Reporting Form. A form promulgated by and available from the Idaho State Police, to be used by each state and local law enforcement agency. ()

011. CONTENTS OF CIVIL ASSET FORFEITURE REPORTING FORM.

01. Asset Forfeiture Reporting Form. The Asset Forfeiture Reporting Form shall contain fields for entry of the following information: ()

- a.** The name of the law enforcement agency that seized the property; ()
- b.** The date of seizure; ()
- c.** The type and description of property seized, including make, model, year, and serial number, if applicable; ()
- d.** The crime(s), if any, for which the suspect has been charged, including whether such crime is a violation of state or federal law; ()
- e.** The criminal case number, if any; ()
- f.** The outcome, if any, of the suspect’s case; ()
- g.** If the forfeiture was not processed under state law, the reason for the federal transfer, if known; ()
- h.** The forfeiture case number; ()
- i.** The date of the forfeiture decision; ()
- j.** Whether there was a forfeiture settlement; ()
- k.** The date and outcome of property disposition as described by one (1) or more of the following: returned to owner; partially returned to owner; sold; destroyed; or retained by law enforcement; and ()
- l.** The value of the property forfeited based on the value realized, if sold, or a reasonable good faith estimate of the value, if possible. ()

012. – 999. (RESERVED)

11.07.01 – RULES GOVERNING MOTOR VEHICLES – GENERAL RULES

000. LEGAL AUTHORITY.

These rules adopting national safety codes and standards are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67- 2901 and 49-901, Idaho Code. (4-2-08)

001. TITLE AND SCOPE.

01. Title. The name of this chapter is IDAPA 11.07.01, “Rules Governing Motor Vehicles – General Rules.” (4-2-08)

02. Scope. All owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with these rules to the extent the rules are applicable. (4-2-08)

002. DEFINITIONS.

The definitions in Title 49, Chapter 1, Idaho Code apply to this chapter. ()

003. INCORPORATED BY REFERENCE.

Rules 20, 30, and 40 incorporate by reference various state and national safety codes and federal regulations. Each applicable rule identifies the issuing entity for each code or regulation and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the Headquarters Office of the Idaho State Police, listed in Rule 004. The following codes and standards are incorporated: (4-2-08)

01. Society of Automotive Engineers (SAE). The SAE Ground Vehicle Lighting Standards Manual, 2009 edition, and SAE standards J586, J588, and J639 are published by the Society of Automotive Engineers and are available from SAE World Headquarters, 400 Commonwealth Drive, Warrendale, PA 15096-0001 and may be ordered by calling 1-877-606-7323 or on the worldwide web at <http://store.sae.org/>. (4-2-08)

02. Idaho State Department of Education, Standards for Idaho School Buses and Operations Manual. The Standards for Idaho School Buses and Operations Manual, effective July 1, 2018, is published by the Idaho Department of Education, 650 West State Street, P.O. Box 83720, Boise, ID 83720-0027 and may be ordered by calling 1-208-332-6800 or downloaded from the worldwide web at <http://www.sde.idaho.gov/student-transportation/files/forms-lists/regulations/SISBO-Manual-2018.pdf>. (4-2-08)

03. Federal Regulations – 49 C.F.R. Parts 392, 393, and 571 (June 3, 2019). These regulations are found in the Code of Federal Regulations, available from the U.S. Government Printing Office, Superintendent of Documents, Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954. The incorporated parts are also available on the worldwide web at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>. (4-2-08)

004. -- 019. (RESERVED)

020. SOCIETY OF AUTOMOTIVE ENGINEERS (SAE).

In accordance with the SAE Ground Vehicle Lighting Standards Manual, and SAE standards J586, J588, and J639, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable provisions incorporated by reference in Subsection 008.01. (3-29-10)

01. Standards and Specifications for Lighting Devices. Pursuant to Section 49-901(1), Idaho Code, the standards and specifications set forth by the Society of American Engineers in the SAE Ground Vehicle Lighting Standards Manual, as incorporated by reference in Subsection 008.01. (3-29-10)

02. Standards for Rear Mounted Acceleration and Deceleration Lighting Systems (Use Optional). The current standards found in “Supplemental High Mounted Stop and Rear Turn Signal Lamps for Use on Vehicles Less Than 2032 MM Overall Width -- SAE J586 and J588,” is found in Section 49-921, Idaho Code, as incorporated by reference in Subsection 008.01. (4-2-08)

03. Safety Practices and Standards for Automotive Air Conditioning Devices, Standards and Specifications. Pursuant to Section 49-901(7), Idaho Code, the current standards set forth in “Safety Practices For Mechanical Vapor Compression Refrigeration Equipment of Systems Used to Cool Passenger Compartment of Motor Vehicles -- SAE J639,” as incorporated by reference in Subsection 008.01. (4-2-08)

021. -- 029. (RESERVED)

030. IDAHO STATE DEPARTMENT OF EDUCATION, STANDARDS FOR IDAHO SCHOOL BUSES AND OPERATIONS MANUAL.

In accordance with the “Standards for Idaho School Buses and Operations” manual, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable standards incorporated by reference in Subsection 006.02. ()

01. General Rules. Pursuant to Section 49-901(8), Idaho Code, the standards found in the “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education incorporated by reference in Subsection 006.02. ()

02. Lighting Equipment. Pursuant to Section 49-901(2), Idaho Code, the standards found in the “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education incorporated by reference in Subsection 006.02. ()

031. -- 039. (RESERVED)

040. FEDERAL REGULATIONS - 49 C.F.R. PARTS 392, 393, AND 571.

In accordance with Title 49 of the Code of Federal Regulations, Parts 392, 393, and 571, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable Parts found in Title 49 of the Code of Federal Regulations. (3-29-10)

01. Certain Vehicles Required to Stop at All Railroad Crossings. Pursuant to Section 49-648, Idaho Code, the Director hereby incorporates by reference the requirements found in Title 49 (49 C.F.R.) of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) Part 392, Subpart B, Section 392.10, as if set forth herein in full. (4-2-08)

02. Devices With Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to Requirements for fusees and liquid burning flares found in 49 C.F.R., Part 393, Subpart H, Section 393.95. Warning devices with self-contained energy sources permissible, under this chapter are limited to liquid burning emergency flares, and fusees. (4-2-08)

03. Modulating Headlights for Motorcycles. Pursuant to Section 49-925, 49-901(3), 49-901(4), Idaho Code, the Director hereby approves modulating headlights for use on motorcycles. Such headlights shall conform to the standards and specifications with regard to modulating headlights found in 49 C.F.R. Section 571.108, Standard 108, S7.9.4, which is hereby adopted by reference as if set forth herein in full. (4-2-08)

04. Standards for Safety Helmets. Pursuant to Section 49-666, Idaho Code, the Director hereby incorporates by reference the standards found in 49 C.F.R. Section 571.218, Standard No. 218, as if set forth herein in full. (4-2-08)

05. Standards for Devices Without Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to reflex reflective and fluorescent material warning devices found in 49 C.F.R. Section 571.125, Standard 125, as if set forth herein in full. (3-29-10)

041. -- 999. (RESERVED)

11.07.02 – RULES GOVERNING SAFETY GLAZING MATERIAL

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901(4), Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 11.07.02, “Rules Governing Safety Glazing Material.” (5-3-03)

02. **Scope.** The rules apply to safety glazing material on motor vehicles under the jurisdiction of the Idaho State Police (5-3-03)

002. INCORPORATION BY REFERENCE.

01. **Incorporated Document.** Pursuant to Section 49-901, Idaho Code, the director hereby adopts by reference the standards and specifications set forth in 49 C.F.R. Sections 571.1 through 571.500, revised as of June 3, 2019. ()

02. **Availability of Reference Material.** The federal regulations adopted by reference in these rules are maintained at the following locations: (7-2-97)

a. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174; and (5-3-03)

b. Idaho State Police, 700 S. Stratford Drive, Meridian, Idaho 83642. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Light Transmission.** The ratio of the amount of total light, expressed in percentages, that is allowed to pass through the product or material to the amount of total light falling on the product or material and the glazing. ()

02. **Luminous Reflectance.** The ratio of the amount of total light, expressed in percentages, that reflected outward by the product or material to the amount of total light falling on the product or material. ()

03. **Own or Owning.** Having the property in or title to a motor vehicle. These terms include persons, other than lienholders, who are entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security. ()

04. **Person.** Every natural person, firm, fiduciary, co-partnership, association, corporation, trustee, receiver or assignee for the benefit of creditors, political subdivision, state or federal governmental department, agency, or instrumentality. ()

05. **Window Tinting Films or Sunscreening Devices.** Designed to be used in conjunction with approved vehicle glazing materials for the purpose of reducing the effects of the sun. ()

011. STANDARDS FOR SAFETY GLAZING MATERIAL.

01. **General.** It is unlawful for any person to place, install, affix or apply any window tinting film or sunscreening device to the windows of any motor vehicle, except as follows: (7-1-93)

a. Non-reflective window tinting film or sunscreening devices shall not be applied to the windshield below the AS-1 line; if no AS-1 line is identifiable on the windshield, non-reflective window tinting film or sunscreening devices shall not be applied to the windshield below a line extending six (6) inches below and parallel to the roof line; (7-1-93)

b. Non-reflective window tinting film or sunscreening devices that have a light transmission of not less than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) may be applied to the front side vents, front side windows to the immediate right and left of the driver, and the rear

window;

(7-1-93)

c. Non-reflective window tinting film or sunscreening devices that have a light transmission of not less than twenty percent (20%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) may be applied to the side windows to the rear of the driver. (7-1-93)

02. Restriction. No person may operate on the public highways, sell or offer to sell any motor vehicle with a windshield or windows which are not in compliance with the provisions of this rule and the standards of Section 40-944, Idaho Code. (7-1-93)

03. Limitation. Nothing in this section may be construed to make illegal the operation or sale of any motor vehicle, the windshield or windows of which are composed of, covered by, or treated with, any material, substance, system, or component with which such motor vehicle was sold when new or could have been equipped for sale when new as standard or optional equipment under any United States government statute or regulation governing such sale at the time of manufacture. (7-1-93)

012. -- 999. (RESERVED)

11.07.03 – RULES GOVERNING EMERGENCY VEHICLES/AUTHORIZED EMERGENCY VEHICLES

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901(4), Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 11.07.03, “Rules Governing Emergency Vehicles/Authorized Emergency Vehicles.” (5-3-03)

02. Scope. The rules apply to emergency vehicles/authorized emergency vehicles under the jurisdiction of the Idaho State Police. (5-3-03)

002. -- 009. (RESERVED)

010. DEFINITIONS.

Unless specifically defined in this chapter, the definitions in Title 49, Chapter 1, Idaho Code apply to this chapter. ()

01. Limited Authorized Vehicle. A vehicle to which a limited authorization is issued by the Director for limited emergency uses as defined by the Director upon agreement with an applicant under terms specified therein. ()

02. Driver. Every person who is in actual physical control of an authorized emergency vehicle. ()

011. PURPOSE.

01. General. The purpose of this chapter is to specify a procedure to be followed to obtain approval for authorized emergency vehicles. Pursuant to Section 49-218, Idaho Code, the Director may designate any particular vehicle as an authorized emergency vehicle upon a finding that designation of that vehicle is necessary to the preservation of life or property or to the execution of an emergency governmental function. (5-3-03)

02. Emergency Vehicles. This chapter will not pertain to emergency vehicles as defined by Section 49-123, Idaho Code, i.e., vehicles operated by any fire department or law enforcement agency of the state of Idaho or political subdivision thereof, and ambulances of any public utility or public service corporation. (5-3-03)

012. AUTHORIZATION REQUIREMENTS.

01. General. Any person, firm, corporation, or municipal corporation, desiring to have a vehicle registered as an authorized emergency vehicle, pursuant to Section 49-218, Idaho Code, must apply for authorization to the Director on forms provided by the department and: ()

- a.** Provide a description of: ()
 - i.** The specific geographic area in which the vehicle will be used as an authorized emergency vehicle. (7-1-93)
 - ii.** The specific purposes for which the vehicle will be used as an emergency vehicle. (7-1-93)
 - iii.** The emergency vehicle listing year, make, model, vehicle identification number and license plate number. (7-1-93)
 - iv.** The emergency lighting equipment to be used on the emergency vehicle. (7-1-93)
 - v.** The emergency horns or warning devices to be used on the emergency vehicle. (7-1-93)
- b.** Provide written documentation indicating the emergency vehicle will have radio communications between a central dispatch location and, when applicable, between other emergency vehicles. ()
- c.** Maintain a certificate or liability and property damage insurance executed by an insurer authorized

to transact insurance business with the state and have a copy on file in the Director's office and must be updated upon each renewal period, with notice of renewal being filed with the Director. The certificate must show expiration date, liability (single event and aggregate) and property damage coverage. ()

d. Provide an explanation of the nature and the scope of the duties, responsibilities and the authority of the vehicle driver which necessitates the vehicle's registration as an authorized emergency vehicle. ()

e. Provide a list of the names, addresses, birthdates, social security numbers of all persons who use the vehicle as an authorized emergency vehicle. ()

f. Provide written documentation as to the emergency vehicle driving courses and hours of instruction completed by each driver. ()

g. Provide a recommendation by the chief law enforcement officer or fire chief, if the vehicle is to be used for firefighting purposes, of each jurisdiction in which the vehicle is to be used as an authorized emergency vehicle stating that a need exists in such jurisdiction for the vehicle to be used as described in the application. The Director may issue emergency vehicle authorization to vehicles which operate throughout the state. ()

013. LIMITED AUTHORIZED EMERGENCY VEHICLE.

01. General. Any person, firm, corporation, or municipal corporation, desiring to have a vehicle registered as a limited authorized emergency vehicle must apply for authorization to the Director on forms provided by the department that provides the following information: ()

a. A description of the emergency vehicle listing year, make, model, vehicle identification number and license plate number. (7-1-93)

b. A description of the emergency lighting equipment to be used on the emergency vehicle. (7-1-93)

02. Requirements. Each driver of an authorized emergency vehicle must: (7-1-93)

a. Be eighteen (18) years of age or older. (7-1-93)

b. Not have been convicted in any court within three (3) years of an offense of driving under the influence of alcohol, drugs, or any other intoxicating substance, reckless driving, failure to stop or report an accident, or any other conviction which the Director may deem a disqualifier to drive an authorized emergency vehicle. (7-1-93)

c. Not have had driving privileges suspended for any reason within the last three (3) years. (7-1-93)

014. AUTHORIZATION LIMITATIONS.

01. Durations. The authorization proved by the Director will be for one (1) year. The application for continued emergency vehicle authorization or limited emergency vehicle authorization must be renewed prior to the expiration date. (7-1-93)

02. Restrictions. An authorized emergency vehicle may not be used except as follows: (7-1-93)

a. Only by the drivers named on the original or amended application. (7-1-93)

b. Only with the equipment described in the original or amended application. (7-1-93)

c. Only within the geographical area described in the original or amended application. (7-1-93)

d. Only for the purposes set forth in the original or amended application. (7-1-93)

03. Limited Restriction. A limited authorized emergency vehicle may not be used except as follows:

(7-1-93)

a. Where a lane of traffic is obstructed or at the discretion of a peace officer, it may display a red, flashing light. (7-1-93)

b. To gain access to accident or emergency scenes, it may use interstate system emergency crossovers, provided such usage is done in a safe manner. (7-1-93)

c. It is unlawful and cause for immediate revocation of the limited authorization if red lights are used while traveling to or from an incident or an emergency or for any reason not described herein. (7-1-93)

015. -- 020. (RESERVED)

021. EQUIPMENT REQUIRED.

01. Authority. Pursuant to Section 49-901, Idaho Code, the Director has authority to approve and disapprove warning lighting devices on emergency vehicles and to issue and enforce regulations for such emergency warning lighting devices. (5-3-03)

02. Equipment. Every authorized emergency vehicle must be equipped in conformance with Section 49-623(3), Idaho Code, with at least one (1) red light visible in a three hundred and sixty (360) degree arc at a distance of one thousand feet (1000') under normal atmospheric conditions and/or an audible signaling device having a decibel rating of at least one hundred (100) decibels at a distance of ten feet (10'). (5-3-03)

022. PROCEDURE.

01. Approval. If the Director approves the application, he may issue a certificate of approval which is valid for thirty (30) days, during which time the emergency equipment may be installed. After installation of the emergency equipment, the applicant must bring the vehicle to a district office of the Idaho State Police to be examined to determine if the equipment is of an approved type and is properly mounted. An Idaho State Police officer must certify the results of this examination on a form prescribed and provided by the department, and the applicant must file the form with the Idaho State Police. ()

02. Carried. The certificate of approval, and when issued the agreement or copies thereof, including all endorsements for changes of conditions, must be carried in the authorized emergency vehicle or limited authorized emergency vehicle at all times and must be displayed upon request of any law enforcement officer. (7-1-93)

03. Violation. Violation of any of the Rules is grounds for suspension or revocation of the authorized emergency vehicle agreement or limited authorized emergency vehicle agreement without prior written notice or opportunity for hearing. (7-1-93)

04. Authorization. Any authorization may be terminated at any time without cause or prior written notice or opportunity for hearing by the Director or his designated representative. (7-1-93)

05. Copy. A copy of the authorized emergency vehicle certificate approved by the Director or limited authorization certificate approved by the Director must be carried in each authorized vehicle and shown to any peace officer upon request. (7-1-93)

06. Valid. Any renewals or new applications expire on June 30 of each subsequent year following. (7-1-93)

023. -- 999. (RESERVED)

11.10.03 – RULES GOVERNING THE SEX OFFENDER REGISTRY

000. LEGAL AUTHORITY.

The Idaho State Police has authority to make rules to implement the sex offender central registry pursuant to Title 18, Chapter 83, Idaho Code, Sections 18-8301 through 18-8331. (3-29-12)

001. TITLE AND SCOPE.

These rules are titled IDAPA 11.10.03, “Rules Governing the Sex Offender Registry.” The rules relate to the administration of the state’s sex offender central registry, which includes both adult and juvenile offenders. (3-18-99)

002. -- 009. (RESERVED)

010. DEFINITIONS.

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

01. Central Registry. 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. ()

02. Substantially Equivalent. 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. ()

03. Working Days. Each day except Saturday, Sunday, or a legal state holiday. ()

011. (RESERVED)

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. Photographs and Fingerprints. ()

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 and palmprints for each registrant, in a manner prescribed by the department, either by manual card or electronic submission each registration. ()

04. Notification to Local Law Enforcement. Lists of all offenders registered within a county are available on the sex offender registry web site. 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. ()

05. 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)

06. 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)

07. 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. (3-25-16)

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 police report (of the incident related to the sex offense), indictment or information or other lawful charging document, judgment or order (of sex offense conviction), psychosexual evaluation report, and 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. ()

e. The bureau shall issue a substantially equivalent determination within sixty (60) days upon receipt of a completed application and the required documents. (3-25-16)

f. The bureau's determination is a declaratory ruling as defined by Chapter 52, Title 67, Idaho Code. (3-25-16)

g. Judicial review of the bureau's determination shall be made in accordance with Chapter 52, Title 67, Idaho Code. (3-25-16)

013. -- 999. (RESERVED)

11.13.01 – THE MOTOR CARRIER RULES

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901A, Idaho Code. (4-5-00)

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 11.13.01, “The Motor Carrier Rules.” (4-5-00)

02. Scope. These rules apply to intrastate motor carriers under the jurisdiction of the Idaho State Police and, when provided in the rule, to interstate or foreign carriers providing transportation of persons or property over highways of the state of Idaho by motor vehicles in the furtherance of their business or for hire. ()

002. INCORPORATION BY REFERENCE.

In accordance with Section 67-5229, Idaho Code, the following sections of the Code of Federal Regulations, specifically 49 CFR, and 40 CFR are herein incorporated by reference: (3-25-16)

01. Safety Fitness Procedures (See Section 012). Adoption of Federal Regulations, 49 CFR subtitle, chapter III. subchapter B - Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I. subchapter C- Hazardous Materials Regulations. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. Whenever a federal regulation is adopted by reference in these rules, subsequent recom compilations are also adopted by reference, but subsequent amendments are not. (3-25-16)

02. Transportation of Hazardous Materials, Substances, and Wastes (See Section 018). Adoption of Federal Regulations. 40 CFR Part 262 and 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 are hereby adopted by reference. All interstate and foreign carriers and all intrastate carriers subject to the safety authority of the Idaho State Police while operating in Idaho that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must comply with 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 applicable to motor carriers and their shippers, and the laws and rules of the state of Idaho. Whenever any of these federal regulations exempt intrastate carriers from any of their requirements, Section 018 removes that exemption and subjects intrastate carriers to the same requirements. The Department asserts its authority under Section 018, to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-670 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. ()

a. Version of Federal Regulations Adopted. Per Section 49-2212, Idaho Code, the federal regulations adopted by reference in Section 018 of these rules, are those contained in the compilations of 40 CFR Part 262 published in the Code of Federal Regulations volume dated July 1, 1998, and as subsequently recompiled, and those contained in the compilations of 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 published in the Code of Federal Regulations volume dated October 1, 1998, and as subsequently recompiled, and all amendments to these rules appearing in the Federal Registers. Amendments to the annual volumes are published in the Federal Register pending their incorporation in the next annual volumes. ()

03. Carrier Safety Requirements (See Rule 19). Adoption of Federal Regulations 49 CFR Parts 356, 365, 380, 382, 383, 385, 386, 387, 388 and 390 through 399 are hereby adopted by reference. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, the rule at Section 019, removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under Section 019 of these rules to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. ()

a. Version of Federal Regulations Adopted. The federal regulations adopted by reference in Section 019 of these rules, are those contained in the compilation of 49 CFR Parts 356, 365, 380, 382, 383, 385, 386, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated October 21, 2015. (3-29-17)

04. Availability of Incorporated Documents. The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at www.fmcsa.dot.gov. ()

003. -- 007. (RESERVED)

008. FORMS.

The Idaho State Police Commercial Vehicle Safety Program Manager is authorized to produce and distribute forms and reports to carry out these rules. (3-29-10)

009. RELIEF FROM REGULATIONS.

The Department may issue a declaration of emergency relieving intrastate carriers from the requirements of 49 CFR Parts 390 through 399 adopted by reference in Section 019 of these rules following the declaration of an emergency. The maximum duration of the declaration of emergency, the particular rules in 49 CFR Parts 390 through 399 from which the carrier is relieved from complying, and all other aspects relieved from regulation are the same as provided in those Federal regulations. (3-29-10)

010. DEFINITIONS.

Whenever any term used in these rules is defined or referred to in the Idaho Code, that term takes its statutory definition in these rules. (4-5-00)

01. Commercial Motor Vehicle (CMV). Any self-propelled or towed motor vehicle used on a highway in interstate or intrastate commerce to transport passengers or property when the vehicle: (3-29-10)

a. Has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight (GVW) or gross combination weight (GCW), of four thousand, five hundred thirty-six kilograms (4,536 kg.), (ten thousand, one pounds (10,001 lbs.)) or more, whichever is greater; or (3-29-10)

b. Is designed or used to transport more than eight (8) passengers, including the driver, for compensation; or (3-29-10)

c. Is designed or used to transport more than fifteen (15) passengers, including the driver, and is not used to transport passengers for compensation; or (3-29-10)

d. Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, Subtitle B, Chapter I, Subchapter C. (3-29-10)

02. Department. The Idaho State Police. (4-5-00)

03. Highway. Public roads, highways, and streets of the State. (4-5-00)

04. Interstate Carrier. Any person owning or operating any motor vehicle in the state of Idaho or on the highways of the state of Idaho, in commerce between the States, or between the States and a foreign Nation, used or maintained for the transportation of persons or property. (4-5-00)

05. Motor Carrier. An individual, partnership, corporation or other legal entity engaged in the transportation by motor vehicle of persons or property in the furtherance of a business or for hire. (4-5-00)

06. Motor Vehicle. Any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highway in the transportation of passengers and/or property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. (4-5-00)

07. Person. Any individual, firm, co-partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof. (4-5-00)

08. Transportation. Includes all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or contract, express or implied, together with all services, facilities and property furnished, operated or controlled by any such carrier or carriers and used in the transportation of passengers and/or property in commerce in the state of Idaho. (3-29-10)

011. (RESERVED)

012. SAFETY FITNESS PROCEDURES.

01. Purpose and Scope. (4-5-00)

a. This section establishes procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial action when required and prohibit motor carriers receiving a safety rating of “unsatisfactory” from operating a commercial motor vehicle: ()

i. To provide transportation of hazardous materials for which vehicle placarding is required in accordance with 49 CFR Part 172, subpart F; or (4-5-00)

ii. To transport more than fifteen (15) passengers, including the driver. (4-5-00)

b. All provisions of Section 012 apply to all motor carriers subject to the requirement of this subchapter. (4-5-00)

02. Definitions. The following definitions apply to Section 012. (4-5-00)

a. Applicable safety regulations or requirements. Means 49 CFR subtitle, chapter III. subchapter B- Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I. subchapter C- Hazardous Materials Regulations. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. Whenever a federal regulation is adopted by reference in these rules, subsequent recom compilations are also adopted by reference, but subsequent amendments are not. ()

b. Preventable accident on the part of a motor carrier. Means an accident that: (4-5-00)

i. Involved a commercial motor vehicle, and (4-5-00)

ii. Could have been averted but for an act, or failure to act, by the motor carrier or the driver. (4-5-00)

c. Reviews: ()

i. Compliance review. An onsite examination of motor carrier operations, which may be at the carrier’s place of business, including driver’s hours of service, vehicle maintenance and inspection, driver qualifications, commercial driver’s license requirements, financial responsibility, accidents, hazardous materials, and such other related safety and transportation records to determine safety fitness. (4-5-00)

(1) A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. (4-5-00)

(2) A compliance review may result in the initiation of an enforcement action. (4-5-00)

ii. Safety management controls. The systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage. (4-5-00)

d. Safety ratings: ()

i. Satisfactory safety rating. A motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Subsection 012.03 of this rule. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier. (4-5-00)

ii. Conditional safety rating. A motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in Subsection 012.03 of this rule. (4-5-00)

iii. Unsatisfactory safety rating. A motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Subsection

012.03 of this rule. (4-5-00)

- iv. Unrated carrier. A safety rating has not been assigned to the motor carrier. (4-5-00)

03. Safety Fitness Standard. The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier must demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with: (4-5-00)

- a. Commercial driver's license standards violations. (4-5-00)
- b. Inadequate levels of financial responsibility. (4-5-00)
- c. The use of unqualified drivers. (4-5-00)
- d. Improper use and driving of motor vehicles. (4-5-00)
- e. Unsafe vehicles operating on the highways. (4-5-00)
- f. Failure to maintain accident register and copies of accident reports. (4-5-00)
- g. The use of fatigued drivers. (4-5-00)
- h. Inadequate inspection, repair, and maintenance of vehicles. (4-5-00)
- i. Transportation of hazardous materials, driving and parking rule violations. (4-5-00)
- j. Violation of hazardous materials regulations. (4-5-00)
- k. Motor vehicle accidents and hazardous materials incidents. (4-5-00)

04. Factors to Be Considered in Determining a Safety Rating. The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following: (4-5-00)

- a. Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization or automation is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly. (4-5-00)
- b. Frequency and severity of regulatory violations. (4-5-00)
- c. Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections. (4-5-00)
- d. Number and frequency of out-of-service driver/vehicle violations. (4-5-00)
- e. Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews. (4-5-00)
- f. Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time. (4-5-00)
- g. The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards and orders. (4-5-00)

05. Determination of Safety Fitness. Following a compliance review of a motor carrier operation, the Idaho State Police Commercial Vehicle Safety Program Manager, using the factors prescribed in Subsection 012.04 of this rule, will determine whether the present operations of the motor carrier are consistent with the safety fitness standards set forth in Subsection 012.03 of this rule. (3-29-10)

06. Notification of a Safety Fitness Rating. Following a compliance review, the Idaho State Police Commercial Vehicle Safety Program Manager will determine the safety fitness of a motor carrier and notify the motor carrier and the Department in writing. Notification will include a list of those items for which immediate corrective actions must be taken. (3-29-10)

07. Motor Carrier Certification. Upon notification of violations cited in the compliance review and recommendations made to correct violations a motor carrier must certify to the Idaho State Police Commercial Vehicle Safety Program Manager, within thirty (30) days, whether all corrective actions identified by the safety review have been taken. Failure to certify or falsely certifying under Section 012 of this Chapter will be considered a reporting violation under Section 67-2901B(3), Idaho Code. ()

013. -- 017. (RESERVED)

018. TRANSPORTATION OF HAZARDOUS MATERIALS, SUBSTANCES, AND WASTES.

01. Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate carriers subject to Section 018 that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must obtain copies of these federal regulations and make them available to their drivers and other personnel handling hazardous materials, substances or wastes and must familiarize their drivers and other personnel handling hazardous materials, substances or wastes with any regulation pertaining to the particular material, substance or waste that is transported. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. Failure to be familiar with these federal regulations adopted by reference is a violation of Section 018 of this Chapter for any carrier transporting such cargoes. The federal regulations adopted by reference in this Section 018 have the following subject matter: ()

- a.** Part 107. Hazardous Materials Program Procedures. (4-5-00)
- b.** Part 171. General Information, Regulations and Definitions. (4-5-00)
- c.** Part 172. Hazardous Materials Table, special provisions, hazardous materials communications, emergency response information, and training requirements. (3-29-10)
- d.** Part 173. Shippers-General Requirements for Shipments and Packaging. (4-5-00)
- e.** Parts 174-176. (Not adopted regulations for railroads, aircraft and vessels). (4-5-00)
- f.** Part 177. Carriage by Public Highway. (4-5-00)
- g.** Part 178. Specifications for packagings. (3-29-10)
- h.** Part 179. (Not adopted regulations for rail tanker cars). (4-5-00)
- i.** Part 180. Continuing Qualification and Maintenance of Packagings. (3-29-10)

02. Recognition of Federal Waivers. Whenever a carrier has applied to a federal agency and been granted a waiver of the packaging requirements of the federal regulations adopted in Subsection 018.01, the federal waiver will also be recognized under these rules. The Department will not administer a program to duplicate consideration or approval of federal waivers on the state level. (4-5-00)

03. Hazardous Materials. Means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under section 5103 of the Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in Part 173 of Subchapter C of Title 49 of the Code of Federal Regulations. ()

04. Hazardous Substances. Means a material, its mixtures or solutions, that is listed in the Appendix A to 49 CFR 172.101 and that is in a quantity in one (1) package that equals or exceeds the reportable quantity (RQ) listed in the Appendix A to 49 CFR 172.101. ()

05. Hazardous Waste. Means any material that is subject to the Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency. See 40 CFR Part 262. ()

019. CARRIER SAFETY REQUIREMENTS.

01. Adoption of Federal Regulations - Exceptions. (3-25-16)

a. All interstate and foreign carriers and intrastate carriers, except those carriers listed in Subsection 019.01.b. of this rule, subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

b. Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49 CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

c. The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. (3-30-07)

02. Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate carriers subject to Section 019, must obtain copies of the federal regulations adopted by reference in Subsection 019.01 of this rule, and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Subsection 019.02 of this rule, for any carrier subject to those regulations. The federal regulations adopted by reference address the following subject matter: ()

- a.** Part 356. Motor Carrier Routing Regulations. (3-29-10)
- b.** Part 365. Rules Governing Application for Operating Authority. (3-29-10)
- c.** Part 380. Longer Combination Vehicle (LCV) Driver-Training and Driver-Instructor Requirements. (3-29-17)
- d.** Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)
- e.** Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)
- f.** Part 385. Safety Fitness Procedures. (3-29-10)

- g.** Part 386.71-84. Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. (4-11-15)
- h.** Part 387. Minimum Levels of Financial Responsibility. (3-29-10)
- i.** Part 388. Cooperative Agreements with States. (4-5-00)
- j.** Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)
- k.** Part 391. Qualifications of Drivers. (4-5-00)
- l.** Part 392. Driving of Commercial Motor Vehicles. (3-29-10)
- m.** Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)
- n.** Part 395. Hours of Service of Drivers. (4-5-00)
- o.** Part 396. Inspection, Repair and Maintenance. (4-5-00)
- p.** Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- q.** Part 398. Transportation of Migrant Workers. (4-5-00)
- r.** Part 399. Employee Safety and Health Standards. (4-5-00)

03. Recognition of Federal Waivers. Whenever a driver or carrier has applied to a federal agency and been granted a waiver from any of the requirements of the federal regulations adopted in Subsection 019.01 of these rules, the federal waiver will also be recognized under these rules. The Department reserves the authority to implement a waiver program and grant waivers on the state level for intrastate commercial motor vehicle drivers. (4-5-00)

020. -- 029. (RESERVED)

030. INTERSTATE AND FOREIGN COMMERCE.

Section 018 and 019 of these rules apply to motor carriers when engaged in interstate or foreign commerce in Idaho: ()

031. OBEDIENCE AND COMPLIANCE WITH RULES AND REGULATIONS.

01. Proof of Compliance Required. Whenever requested by an employee of this Department whose duties include enforcement of any of these rules and regulations, all motor carriers and their agents or employees are required to demonstrate proof of compliance with these rules. ()

02. Sanctions. The failure of any motor carrier to obey and comply with these rules is just and sufficient cause for imposition of the sanctions authorized by Title 67, Chapter 29, Idaho Code. ()

032. -- 999. (RESERVED)

**IDAPA 11 – IDAHO STATE POLICE
FORENSIC SERVICES**

11.03.01– RULES GOVERNING ALCOHOL TESTING

DOCKET NO. 11-0301-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 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 Sections 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.

Upon legislative approval of this pending rule the amendments made in this docket will overwrite those sections of the reauthorized rule promulgated under docket no. 11-0000-1900, which will also be filed for review for final approval during the upcoming legislative session.

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(s) 67-2901, 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 November 6, 2019 Idaho Administrative Bulletin, [Vol. 19-11, pages 296-302](#).

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 is created by these changes.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lab Director Matthew Gamette, phone (208) 884-7217, fax (208) 884-7290, e-mail matthew.gamette@isp.idaho.gov.

Dated this 13th day of December, 2019.

Charlie Spencer
Police Services Major
Rules Review Officer
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
charlie.spencer@isp.idaho.gov
Phone: (208) 884-7203
Fax: (208) 884-7290

THE FOLLOWING NOTICE 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 67-2901, 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 November 20, 2019.

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:

Removes obsolete definitions and unnecessary words from the definitions. Deletes sections that are historical in nature and are no longer needed. Clarifies sections regarding the number and types of breath alcohol samples required to be considered a valid test for court purposes.

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

There is no fee imposed in this rule.

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

No fiscal impact is created by these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule contains information on how to conduct evidentiary blood and breath alcohol testing in Idaho. It sets out the rules for laboratory analysis, calibration of breath testing instruments, operator training requirements, performance specifications for the tests themselves, and quality control measures. These rules are used for criminal prosecution in cases involving potential alcohol impairment.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lab Director Matthew Gamette, phone (208) 884-7217, Fax (208) 884-7290, email matthew.gamette@isp.idaho.gov.

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 November 27th, 2019.

Dated this 18th day of October, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0301-1901

002. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: (4-7-11)

01. Conforming Products List of Evidential Breath Measurement Devices (revised 11/2/2017).
This document is available on the Internet at <https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23869.pdf>.
()

003. -- 009. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS.

- 01. Alcohol.** The chemical compounds of ethyl alcohol, methyl alcohol, or isopropyl alcohol. ()
- 02. Approved Vendor.** A source/provider/manufacture of an approved standard. ()
- 03. Blood Alcohol Analysis.** An analysis of blood to determine the concentration of alcohol present. ()
- 04. Breath Alcohol Analysis.** An analysis of breath to determine the concentration of alcohol present. ()
- 05. Breath Alcohol Test.** A breath sample or series of separate breath samples provided during a breath testing sequence(s). ()
- 06. Breath Alcohol Testing Sequence.** A sequence of events as determined by the Idaho State Police Forensic Services, which may be directed by the instrument, the Operator, or both, and may consist of air blanks, performance verification, internal standard checks, and breath samples. ()
- 07. Breath Testing Specialist (BTS).** An operator who has completed advanced training approved by the department and are certified to perform routine instrument maintenance, teach instrument operation skills, proctor proficiency tests for instrument Operators, and testifying as an expert on alcohol physiology and instrument function in court. ()
- 08. Calibration.** A set of laboratory operations which establish under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement. ()
- 09. Certificate of Analysis.** A certificate stating the standards used for performance verification have been tested and approved for use by the ISPFS or are manufactured by an ISO 17025:2005, 17025:2017, (or equivalent standard) vendor and are traceable to N.I.S.T. standards. ()
- 10. Certificate of Instrument Calibration.** A certificate stating that an individual breath alcohol testing instrument has been evaluated by the ISPFS and found to be suitable for forensic alcohol testing. The certificate bears the signature of the calibration analyst at Idaho State Police Forensic Services, and the effective date of the instrument approval. ()
- 11. Department.** The Idaho State Police. ()
- 12. Deprivation Period.** A minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject/individual is not to be allowed to smoke, drink, or eat substances containing alcohol. ()

13. Evidentiary Test. A blood, breath, or urine test performed on a subject/individual for potential evidentiary or legal purposes. A distinction is made between evidentiary testing and non-quantitative screening/monitoring. ()

14. Idaho State Police Forensic Services (ISPFS). A division of the Idaho State Police. ISPFS is dedicated to providing forensic science services to the criminal justice system of Idaho. ISPFS is the administrative body for the alcohol testing programs in Idaho. ()

15. Laboratory. The place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, vitreous humor, urine, or beverages for law enforcement purposes. ()

16. MIP/MIC. An abbreviation used to designate minor in possession or minor in consumption of alcohol. ()

17. Monitoring Period. A minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing. The monitoring period consists of a mandatory deprivation period and discretionary observation period. The observation period becomes mandatory if the numeric results from only a single breath sample are used. ()

18. Observation Period. The time period running concurrently with the deprivation period in which the officer(s) should be observing the subject/individual, and any belch/burp/vomit/regurgitation should be noted by the operator(s). The officer(s) should be in a position, either physically or remotely, to be able to use their available senses to detect the aforementioned events. ()

19. Operator Certification. The condition of having satisfied the training requirements for administering breath alcohol tests as established by the department. ()

20. Operator. An individual certified by the department as qualified by training to administer breath alcohol tests. ()

21. Performance Verification. A verification of the accuracy of the breath testing instrument utilizing a performance verification standard. Performance verification should be reported to three decimal places. While ISPFS uses the term performance verification, manufacturers and others may use a term such as “calibration check” or “simulator check.” ()

22. Performance Verification Standard. An ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. ()

23. Proficiency Testing. A periodic analysis of blood, urine, or other liquid specimen(s) whose alcohol content is unknown to the testing laboratory, to evaluate the capability of that laboratory to perform accurate analysis for alcohol concentration. ()

24. Quality Control. An analysis of referenced samples whose alcohol content is known, which is performed with each batch of blood, vitreous humor, urine or beverage analysis to ensure that the laboratory’s determination of alcohol concentration is reproducible and accurate. ()

25. Urine Alcohol Analysis. An analysis of urine to determine the concentration of alcohol present. ()

011. – 012. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

01. Instruments. Each breath testing instrument model shall be approved by the department and be listed in the “Conforming Products List of Evidential Breath Measurement Devices” published in the Federal Register by the United States Department of Transportation as incorporated by reference in Section 004 of this rule. The department will maintain a list of benchtop and portable instruments approved for evidentiary testing use in Idaho. Each individual breath testing instrument must be certified by the department. The department may, for cause, remove a specific instrument by serial number from evidential testing and suspend or withdraw certification thereof. (4-11-15)

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-93)

03. Administration. Breath tests shall be administered in conformity with standards established by the department. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of Idaho administrative rules, ISPFS analytical methods, and ISPFS standard operating procedures. (4-11-15)

a. The breath alcohol test must be administered by an operator (BTO or BTS) currently certified in the use of the instrument. (4-11-15)

b. Prior to administering the monitoring period, any foreign objects/materials which have the potential to enter the instrument/breath tube or may present a choking hazard (e.g. gum, chewing tobacco, food) should be removed. (4-11-15)

c. The operator shall administer a monitoring period prior to evidentiary testing. (4-11-15)

d. If mouth alcohol is suspected or indicated by the testing instrument, the operator shall begin another fifteen (15) minute monitoring period if repeating the testing sequence. If during the monitoring period the subject/individual vomits or regurgitates material from the stomach into the breath pathway, the monitoring period should start over. If there is doubt as to the events occurring during the monitoring period (e.g. silent burp, belch, vomit, regurgitation), the operator should evaluate the instrument results for any indication of mouth alcohol. (4-11-15)

e. A complete breath alcohol test includes two (2) valid breath samples taken during the testing procedure and preceded by air blanks. The breath samples performed with a portable breath testing instrument should be approximately two (2) minutes apart or more. If the subject/individual fails or refuses to provide two (2) adequate samples as requested by the operator, the test result of a single adequate sample shall be considered valid. If a single test result is used, then the observation criteria of the monitoring period (observation period) is mandatory. For hygienic reasons, the operator should use a new mouthpiece for each subject/individual tested. ()

f. The operator has the discretion to end breath testing, repeat breath testing, or request a blood draw at any point during the testing process as the circumstances require (including but not limited to lack of sample correlation, lack of subject participation or cooperation, subject is incoherent or incapable of following instructions, subject incapacitation). If a subject/individual fails or refuses to provide adequate samples as requested by the operator, the results obtained are still considered valid, provided the failure to supply the requested samples was the fault of the subject/individual and not the operator. ()

g. A third breath sample shall, when possible, be collected if the first two (2) results differ by more than 0.02 g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the monitoring period prior to obtaining a third breath sample. (4-11-15)

h. The results for breath samples should correlate within 0.02 g/210L alcohol to show consistent sample delivery, indicate the absence of RFI, and to indicate the absence of alcohol contamination in the subject/individual’s breath pathway as a contributing factor to the breath results. ()

i. In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn. (4-11-15)

04. Training. Each individual operator (BTO or BTS) shall demonstrate sufficient training to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department on each instrument model utilized by the operator. Operator certifications issued after July 1, 2013 are valid for two (2) calendar years from the course completion date. The department may revoke individual operator (BTO/BTS) certification for cause. (4-11-15)

05. Performance Verification Checks. Each breath testing instrument shall be checked for accuracy with a performance verification standard approved by the department. Performance verification checks shall be performed according to a procedure established by the department and be documented. The official time and date of the performance verification is the time and date recorded on the printout, or the time and date recorded in the log. (4-11-15)

a. A performance verification check shall occur within twenty-four (24) hours before or after an evidentiary test. The benchtop instrument requires a performance verification check as part of the testing sequence. On the portable instrument, multiple breath alcohol tests may be covered by a single performance verification. (4-11-15)

b. A performance verification on a portable instrument consists of two (2) samples at either the 0.08 or 0.20 level. Both samples must be run with the same performance verification standard. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument shall be taken out of service and not be returned to service until it has been calibrated and certified by ISPFS. ()

c. A performance verification acquired during a breath testing sequence on an approved benchtop instrument consists of one (1) sample at either the 0.08 or 0.20 level. A performance verification acquired outside the breath testing sequence on an approved benchtop instrument consists of two (2) samples at either the 0.08 or 0.20 level. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument must be taken out of service and not be returned to service until it has been calibrated and certified by ISPFS. ()

d. Performance verification checks must be within +/- 10% of the performance verification standard target value. (4-11-15)

e. A wet bath 0.08 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications or every calendar month, whichever comes first. For a closed loop, recirculating system (e.g. the Intox 5000 series), the 0.08 performance verification standard should be replaced with fresh standard approximately every one hundred (100) verifications or every calendar month, whichever comes first. (4-11-15)

f. A wet bath 0.20 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications. (4-11-15)

g. Dry gas performance verification standards may be used continuously without replacement until the canister is spent or the expiration date is reached. (4-11-15)

h. Performance verification standards should not be used beyond the expiration date. (4-11-15)

i. If Section 18-8004C, Idaho Code, (excessive alcohol concentration) is applicable, then a 0.20 performance verification must be run and results documented once per calendar month. Failure to perform a 0.20 performance verification will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A performance verification with a 0.20 standard does not need to be performed within twenty-four (24) hours of an evidentiary breath test in excess of 0.20 g/210L alcohol. (4-11-15)

j. Temperature of the wet bath simulator shall be between thirty-three point five degrees Celsius (33.5°C) and thirty-four point five degrees Celsius (34.5°C) in order for the performance verification results to be valid. (4-11-15)

- k.** An agency may run additional performance verification standard levels at their discretion. (4-11-15)
- 06. Records.** Operators must document and retain test results (i.e. written log, printout, or electronic database). All records regarding maintenance and results shall be retained for three (3) years. ISPFS is not responsible for storage of documentation not generated by ISPFS. (4-11-15)
- 07. Deficiencies.** Failure to meet any of the conditions listed in Sections 013 and 014. Any laboratory or breath testing instrument may be disapproved for failure to meet one (1) or more of the requirements listed in Sections 013 and 014, and approval may be withheld until the deficiency is corrected. (4-7-11)
- 08. Standards.** Premixed alcohol simulator solutions shall be from an approved vendor and explicitly approved in writing by the department before distribution within Idaho. Dry gas standards from ISO 17025:2005 certified providers are explicitly approved by the department for use in Idaho without evaluation by the department. (4-11-15)
- 09. MIP/MIC.** The presence or absence of alcohol is the determining factor in the evidence in an MIP/MIC case. The instrumentation used in obtaining the breath sample is often the same instrumentation utilized for acquiring DUI evidence. The different standard of evidence requires different standards for the procedure. (4-11-15)
- a.** Fifteen (15) minute monitoring period: The monitoring period is not required for the MIP/MIC procedure. (4-11-15)
- b.** The breath alcohol test must be administered by an operator currently certified in the use of that instrument. (4-11-15)
- c.** The instrument used must be certified by ISPFS. The instrument only needs to be initially certified by ISPFS. Initial certification shows that the instrument responds to alcohols and not to acetone. The instrument does not need to be checked regularly or periodically with any of the 0.08 or 0.20 standard. (4-11-15)
- d.** The officer should have the individual being tested remove all loose foreign material from their mouth before testing. False teeth, partial plates, or bridges installed or prescribed by a dentist or physician do not need to be removed to obtain a valid test. The officer may allow the individual to briefly rinse their mouth out with water prior to the breath testing. Any alcohol containing material left in the mouth during the entirety of the breath test sampling could contribute to the results in the breath testing sequence. (4-11-15)
- e.** A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The breath samples do not need to be consecutive samples from the same subject. The individual breath samples should be approximately two (2) minutes apart or more. A deficient or insufficient sample does not automatically invalidate a test sample. The operator should use a new mouthpiece for each individual. ()
- f.** A third breath sample is required if the first two (2) results differ by more than 0.02 g/210L alcohol. In the event that all three (3) samples fall outside the 0.02 g/210L alcohol correlation, and testing indicates or the officer suspects mouth alcohol, they must administer a fifteen (15) minute monitoring period and then retest the subject. If mouth alcohol is not suspected or indicated by the test results, then the officer may retest the subject without administering a monitoring period. (4-11-15)
- g.** The operator should manually log test results and/or retain printouts for possible use in court. (4-11-15)
- h.** The instrument must not be in passive mode for the testing of subjects for evidential purposes. (4-11-15)
- i.** The passive mode of testing using the Lifeloc FC20 or ASIII should be used for testing liquids or containers of liquid for the presence or absence of alcohol. (4-11-15)

IDAPA 21 – IDAHO DIVISION OF VETERANS SERVICES

DOCKET NO. 21-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon 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 full force and effect upon adoption of 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 65-202; 65-204; 65-506, 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter promulgated as proposed rules under this docket number under IDAPA 21, rules of the Idaho Division of Veterans Services:

IDAPA 21

- 21.01.06, *Rules for the Enforcement of the Veteran's Preference in Public Employment*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, **Vol. 19-6SE, pages 4376 – 4383**. These rules provide guidance for the enforcement of Veteran's preference in public employment. These rules provide recourse for an applicant who has reason to believe his/her Veteran's status wasn't considered during the hiring process. It provides a clear path for both public employers and applicants to follow for the resolution of a Veteran's Preference complaint prior to the court system becoming involved. Minor technical corrections were made for clarity.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kevin Wallior (208) 780-1308.

Dated this 10th day of October, 2019.

Kevin Wallior
Management Assistant
Idaho Division of Veterans Services
351 Collins Road
Boise, ID 83702
Phone: (208) 780-1308
Fax: (208) 780-1301

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

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-202, 65-204, and 65-506, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 21, rules of the Idaho Division of Veterans Services:

IDAPA 21

- 21.01.06, *Rules for the Enforcement of the Veteran's Preference in Public Employment*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules provide guidance for the enforcement of Veteran's preference in public employment. These rules provide recourse for an applicant who has reason to believe his/her Veteran's status wasn't considered during the hiring process. It provides a clear path for both public employers and applicants to follow for the resolution of a Veteran's Preference complaint prior to the court system becoming involved.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kevin Wallior (208) 780-1308.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0000-1900

**21.01.06 – RULES FOR THE ENFORCEMENT OF THE VETERAN’S PREFERENCE
IN PUBLIC EMPLOYMENT**

000. LEGAL AUTHORITY.

Section 65-506, Idaho Code, authorizes and directs the Idaho Division of Veterans Services to issue rules for the enforcement of Title 65, Chapter 5, Idaho Code. (3-30-07)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 21.01.06, “Rules for the Enforcement of the Veteran’s Preference in Public Employment.” (3-30-07)

02. Scope. These rules contain procedures public employers may implement for an internal process which must be exhausted prior to a petitioner gaining access to the courts to contest a public employer’s application of the veteran’s preference in public employment. (3-30-07)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Definitions Generally. Except where supplemented by the definitions in Section 010 of these rules, the definitions in Section 65-502, Idaho Code, apply to terms used in these rules. (3-30-07)

02. Petitioner. Petitioner means a person who alleges the denial of a preference. (3-30-07)

03. Preference. Preference means a right or benefit granted to the petitioner under Title 65, Chapter 5, Idaho Code. (3-30-07)

04. Presiding Officer. The individual or individuals, as more particularly described in Subsection 103.01 of these rules, appointed by the public employer executive to preside at a hearing. (3-30-07)

05. Public Employer Executive. Public employer executive means the individual or body of individuals in whom the ultimate legal authority of the public employer is vested by any provision of law. (3-30-07)

011. -- 099. (RESERVED)

100. HEARING REQUESTS.

01. Written Requests. A petitioner must make a hearing request in writing to the public employer executive. A written hearing request must be hand delivered to the public employer executive or deposited in the United States mail. Hearing requests must contain the following information: ()

a. The petitioner’s full name and complete mailing address. (3-30-07)

b. A request for either a telephonic or a face-to-face hearing. The petitioner shall provide the telephone number where a telephonic hearing may be conducted. (3-30-07)

c. The position for which the petitioner applied for appointment. (3-30-07)

d. A brief statement of the petitioner’s basis of eligibility for a preference, as set forth in Section 65-503, Idaho Code. (3-30-07)

e. A brief statement of the issues petitioner proposes to raise at the hearing. (3-30-07)

f. Any dates or times that the petitioner or the petitioner’s attorney cannot be available for a hearing. (3-30-07)

02. Timely Requests. The public employer executive must receive hearing requests by 5 p.m. at the offices of the public employer executive no later than thirty-five (35) days following the date of the alleged denial of a preference. The date of the alleged denial of a preference for the purpose of calculation of time under Subsection 100.02 of these rules, shall be the date of issuance of a notice to the petitioner that the petitioner was not awarded a position or, if no notice is issued, the date petitioner becomes aware that he was not awarded a position. (3-30-07)

03. Request Withdrawal. A petitioner may withdraw a hearing request at any time. (3-30-07)

04. Disposition of Case Without a Hearing. Any hearing request may be resolved without a hearing on the merits of the request by stipulation, settlement, motion to dismiss, summary judgment, default, or for lack of jurisdiction. The public employer executive must dismiss an appeal that is not timely filed for lack of jurisdiction. (3-30-07)

101. HEARING NOTICES.

01. Notification of Hearing. Upon timely receipt of a hearing request, the public employer executive shall notify petitioners of the time and date of the hearing and the presiding officer at the hearing not less than seven (7) days prior to the hearing. The hearing notice shall specify whether the hearing will be conducted by telephone or face-to-face. If the hearing is to be face-to-face, the hearing notice shall specify the location of the hearing. The hearing notice shall stipulate an address for the filing of documents with the presiding officer. ()

02. Location of Hearings. Hearings may be conducted by telephone or face-to-face in the discretion of the public employer executive, except that where the petitioner or another participant in the hearing would be denied the opportunity to participate in the hearing if held by telephone, the hearing will be face-to-face. Face-to-face hearings will be held in the city in which the position the petitioner applied for appointment is located, unless otherwise agreed upon by the parties. (3-30-07)

03. Hearing Date. The public employer executive shall conduct hearings within thirty-five (35) days of receipt of the hearing request. The public employer executive may extend the hearing date for an additional thirty-five (35) days for good cause shown by the public employer executive or the petitioner. (3-30-07)

102. PREHEARING PROCEDURE.

01. Discovery. Prehearing discovery is limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The presiding officer at the hearing may order production of the names of witnesses and copies of documents after receiving a written request for an order of production. The presiding officer shall issue an order of production as needed to ensure the orderly conduct of the hearing. (3-30-07)

02. Subpoenas. If the public employer executive holds statutory subpoena power applicable to hearings under these rules, the presiding officer may issue subpoenas for witnesses or documents. (3-30-07)

03. Briefing. The presiding officer may require briefs to be filed by the parties and establish a reasonable briefing schedule. (3-30-07)

04. Filing of Documents. All documents requested by a party to be entered as exhibits shall be filed with the presiding officer in person or by first class mail with a copy provided to the opposing party. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States mail. A certificate showing delivery to all parties must accompany all documents when they are filed with the presiding officer. (3-30-07)

103. PROCEDURE AT HEARING.

01. Presiding Officer at Hearing. In the discretion of the public employer executive, the public employer executive, one (1) or more members of the public employer executive, or one (1) or more hearing officers will be the presiding officer at the hearing. (3-30-07)

02. Representation. The petitioner may represent himself. Either party may be represented by legal counsel, at the party's own expense. Persons not authorized to practice law in the state of Idaho shall not represent parties. (3-30-07)

03. Evidence. The presiding officer may exclude evidence that is irrelevant, immaterial, incompetent, unduly repetitious, excludable on constitutional or statutory grounds, or protected by legal privilege. Hearsay

evidence may be admitted if it is relevant to the grant or denial of the preference and is sufficiently reliable that prudent persons would commonly rely on it in the conduct of their affairs or if the hearsay evidence corroborates competent evidence. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Notice may be taken of judicially cognizable facts or general, technical, or scientific facts by the presiding officer on its own motion or on motion of a party. (3-30-07)

04. Hearing Record. The presiding officer shall make a record of the hearing consisting of: an audio recording of the hearing, except in instances where the presiding officer requires a different method of recording the hearing; and, exhibits and other items of evidence presented at the hearing. A party may request a copy of the hearing record, at the party's own expense. ()

104. FINAL ORDER.

01. Order of the Presiding Officer. The presiding officer must issue a written order not more than thirty-five (35) days from the date of the hearing that includes: ()

- a. Specific findings on all major facts at issue; (3-30-07)
- b. A reasoned statement in support of the decision; (3-30-07)
- c. All other findings and recommendations of the presiding officer; (3-30-07)
- d. A preliminary decision finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code; and (3-30-07)
- e. The procedure and time limits for filing a request for a review by the public employer executive, if available. (3-30-07)

02. Review by the Public Employer Executive.

- a. If the presiding officer at the hearing was a hearing officer or less than a quorum of the public employer executive, either party may request a review by a quorum of the public employer executive not later than seven (7) days from the date the presiding officer mailed the order of the presiding officer. The request must identify all legal and factual bases of disagreement with the order of the presiding officer. (3-30-07)
- b. Upon receipt of the request for a review hearing, the public employer executive may: (3-30-07)
 - i. Issue a written order affirming the decision of the public employer executive without a hearing; or, (3-30-07)
 - ii. Issue a notice for a review hearing complying with the provisions of Section 101 of these rules. (3-30-07)
- c. If the public employer executive issues a notice for a review hearing, the notice will establish a schedule for briefing, if allowed, and specify whether oral argument will be heard on the review. (3-30-07)
- d. The public employer executive shall conduct review hearings within thirty-five (35) days of receipt of the review request. (3-30-07)
- e. The public employer executive shall issue a written order not more than thirty-five (35) days from the date of the review hearing containing: ()
 - i. Specific findings on all major facts at issue; (3-30-07)
 - ii. A reasoned statement in support of the decision; (3-30-07)

- iii. All other findings and recommendations of the public employer executive; and (3-30-07)
- iv. A finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code. (3-30-07)

03. Order of the Public Employer Executive.

- a. The following shall be orders of the public employer executive: (3-30-07)
 - i. The order of the presiding officer if the presiding officer is an individual serving as the public employer executive or a quorum of the public employer executive. The date of exhaustion of the appeal process shall be the date such order of the presiding officer is issued. (3-30-07)
 - ii. The order of the presiding officer if the presiding officer is a hearing officer or less than a quorum of the public employer executive and the public employer executive fails to hold a review hearing after a timely request or fails to issue an order within the required time after holding a review hearing. The date of exhaustion of the appeal process shall be the last day the public employer executive was required by these rules to hold a hearing or to issue an order. (3-30-07)
 - iii. The written order of the public employer executive following a review hearing. The date of exhaustion of the appeal process shall be the date such order of the public employer executive is issued. (3-30-07)
 - iv. The initial hiring determination of the public employer executive if the public employer executive fails to hold a hearing as required by these rules or if the presiding officer fails to issue an order after holding a hearing. The date of exhaustion of the appeal process shall be the last day the public employer executive was required by these rules to hold a hearing or to issue an order. (3-30-07)

- b. Orders of the public employer executive shall set forth the procedure and time limits for filing an appeal to the district court under Section 65-506, Idaho Code. (3-30-07)

105. -- 200. (RESERVED)

201. ALTERNATIVE PROCESSES.

A public employer may publish an alternative internal review process for challenges to the application of Title 65, Chapter 5, Idaho Code, if such process: (3-30-07)

- 01. Appeal Deadline.** Establishes a deadline of thirty-five (35) days for the filing of appeals alleging the denial of a preference. (3-30-07)
- 02. Notice of Process.** Includes written notice to applicants for employment of the existence of the process and how to obtain a copy of the process. Publication of the process in a rule or ordinance of the public employer shall be written notice to applicants for employment. (3-30-07)
- 03. Opportunity to Be Heard.** Provides an opportunity in the internal review for the petitioner to submit argument, evidence, and witnesses and to cross-examine the public employer executive's witnesses. (3-30-07)
- 04. Record of Process.** Produces a record of the internal review process that is available to the district court. (3-30-07)
- 05. Written Final Order.** Requires a written final order of the public employer containing: (3-30-07)
 - a. Specific findings on all major facts at issue; (3-30-07)
 - b. A reasoned statement in support of the decision; and (3-30-07)
 - c. A finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code. (3-30-07)

06. Notice of Appeal Rights. Includes written notice to petitioners at the conclusion of the internal review of the procedure and time limits for filing an appeal to the district court under Section 65-506, Idaho Code. (3-30-07)

202. -- 300. (RESERVED)

301. APPEAL TO DISTRICT COURT.

Petitioners must exhaust an appeal process implemented under these rules prior to appeal to district court. If a public employer implements an appeal process under these rules, petitioner may appeal the order of the public employer executive to a district court of the state of Idaho within one hundred eighty (180) days of the exhaustion of the appeal process. If a public employer has not implemented an appeal process under these rules, the petitioner may file an action directly in a district court of the state of Idaho within thirty-five (35) days of the alleged denial of a preference. (3-30-07)

302. TRANSFER OF HEARING RECORD TO DISTRICT COURT.

The public employer shall submit a complete copy of the hearing record to a district court of the state of Idaho following the filing of an appeal and payment by the appealing party of the costs of duplicating and preparing the hearing record for submission, including labor costs. The opposing party may obtain a copy of the transcript at a cost not exceeding the cost of duplicating the hearing record submitted to the district court. (3-30-07)

303. -- 999. (RESERVED)

IDAPA 50 – COMMISSION OF PARDONS AND PAROLE

DOCKET NO. 50-0101-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon 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 full force and effect upon adoption of 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 50 rules of the Idaho Commission of Pardons and Parole.

IDAPA 50

- IDAPA 50.01.01, *Rules of the Commission of Pardons and Parole.*

The Commission has identified additional outdated definitions, outdated rules and duplicative statutory language under the Red Tape Reduction Act. The removal of the outdated language is to strive for continued public safety and provides further clarification for offenders, offenders families, victims, and the Idaho Department of Correction.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 6580 - 6609](#).

FISCAL IMPACT: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact mschoele@idoc.idaho.gov.

Dated this 11th day of October, 2019.

Ashley Dowell
Executive Director
Commission of Pardons and Parole
3056 Elder St.
P.O. Box 83720
Boise, Idaho 83709
208-334-2520 phone
208-334-3501 fax

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

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 20-223, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 50 rules of the Commission of Pardons and Parole.

IDAPA 50

- IDAPA 50.01.01, *Rules of the Commission of Pardons and Parole – All rules except portions of Sections 010, 101, 102, 107, 150, and 250.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

The Commission will be removing outdated definitions and duplicative statutory language from Sections 18-310 Imprisonment-Effect on Civil Rights, 20-101A Commission of pardons and parole-Duties and powers, 20-223 Paroles and rules governing -Restrictions-Psychiatric or psychological examination and 20-240 Respites, reprieves, commutations and pardons-Treason or Impeachment.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 50-0101-1900

50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 20-223(a), Idaho Code, which provides that the Commission has the power to establish rules, policies, or procedures in compliance with Title 67, Chapter 52, Idaho Code. (4-11-15)

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 50.01.01, “Rules of the Commission of Pardons and Parole.” (5-3-03)

02. **Scope.** The rules govern parole, pardons, firearm rights restoration, and commutations for the state of Idaho; and other matters within the authority of the Commission. (3-21-18)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Absconder.** 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. (3-21-18)

02. **Case Manager.** For purposes of reference, the case manager is an Idaho Department of Correction employee who is involved with assisting offenders regarding their problems, needs, and adjustments. Such case manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician. ()

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. **Commissioner.** A member of the Commission who is appointed by the Governor to carry out decision-making functions regarding parole, parole revocations, pardons, commutations, remission of fines, and firearm rights restoration. (3-21-18)

06. **Commutation.** Clemency powers granted to the Commission, or the Governor, or both, which allow for a sentence to be modified, including a final discharge from the remaining period of parole. ()

07. **Concurrent Sentence.** Sentence served at the same time as another. (3-23-98)

08. **Conditions of Parole.** Conditions under which an offender is released to parole supervision. (4-11-15)

09. **Confidential.** Privileged from disclosure. (3-23-98)

10. **Consecutive Sentence.** Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)

11. **Decision.** A determination arrived at after consideration, a conclusion. (3-23-98)

12. **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)

13. **Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (4-11-15)

14. **Dispositional Hearing.** A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. ()

15. **DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)

16. **Escape.** Flight from confinement. (3-23-98)
17. **Executive Session.** Any meeting or part of a meeting of the Commission that is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. (4-11-15)
18. **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)
19. **Full Term Release Date.** The date an offender completes the term of sentence. ()
20. **Hearing.** The opportunity to be interviewed by the Commission, a Commissioner, or other designated Commission staff. (4-11-15)
21. **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)
22. **Hearing Session.** A series of hearings conducted by the Commission. (3-23-98)
23. **Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (4-11-15)
24. **Member or Members.** A member of the Commission, Commissioner, or Commissioners. (3-21-18)
25. **NCIC.** National Crime Information Center. (3-23-98)
26. **Non-Technical Violation.** Violation of parole by absconding or the commission of, and conviction for, a felony or misdemeanor offense. ()
27. **Offender.** A person under the legal care, custody, supervision, or authority of the board of correction, including a person within or outside Idaho pursuant to agreement with another state or contractor. ()
28. **On-Site Parole Violation Hearing.** Parole violation hearing to determine guilt or innocence of the alleged parole violator, which must be held reasonably near the site of the alleged violation(s). (3-21-18)
29. **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)
30. **Pardon.** Clemency powers granted to the Commission or the Governor that allows the applicant to be released from the consequences of conviction of a crime and restores the applicant's civil rights. (3-21-18)
31. **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)
32. **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)
33. **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)

- 34. Parole Violation Hearing.** A fact-finding hearing conducted by a hearing officer to determine a parolee'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. (3-21-18)
- 35. Parolee.** Offender being supervised on parole. (4-11-15)
- 36. Preliminary Hearing.** A hearing conducted by an objective representative of the supervising authority or an individual appointed by the Executive Director to determine if there is probable cause to believe the alleged violations of the parole contract occurred. (3-21-18)
- 37. Reprieve.** Temporary suspension of the execution of sentence; delay a punishment. (3-23-98)
- 38. Risk Assessment.** Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)
- 39. Self-Initiated Parole Reconsideration (SIPR).** A process in which an offender may request reconsideration of the last decision of the Commission. ()
- 40. Session.** See "Hearing Session." (4-11-15)
- 41. Supervising Authority.** The agency responsible for community supervision of parolees which is Idaho Department of Correction. (3-21-18)
- 42. Technical Violation.** Violation of parole by not conforming to conditions of parole, but not to include absconding or a new criminal conviction. (3-8-16)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

The rules contained herein govern practice and procedure of the Idaho Commission of Pardons and Parole, hereafter referred to as the commission. The commission reserves the right to deviate from established rules whenever special circumstances warrant, and to act, at its discretion, in circumstances not specifically outlined but within confines established by the constitution and Idaho Code. (4-11-15)

101. HEARINGS.

01. Conduct of Hearings. All hearings of the Commission will be conducted in accordance with the open meeting law as provided in Chapter 2, Title 74, Idaho Code, and as modified by Section 20-213A, Idaho Code. The Commission will conduct each hearing assigned and scheduled before them. Each Commissioner will have an opportunity to ask questions or provide comments, or both. The Executive Director or Commission staff may provide information during the hearing or ask questions. (4-11-15)

02. Deliberations. Receipt and exchange of information or opinion relating to a decision concerning the granting, revoking, reinstating, or denial of parole, or related decisions, to include commutations, pardons, and restoration of firearm rights. Deliberations will be made in executive session. Votes of individual members will not be made public. A written record of the vote by each Commission member will be kept confidential and privileged from disclosure and, provided, for all lawful purposes as outlined by Section 20-213A, Idaho Code. ()

102. HEARING SESSIONS.

The executive director or designee will schedule hearing sessions according to the number of hearings required for the specific month. ()

103. BUSINESS MEETINGS.

The commission schedules a business meeting at least quarterly or at the call of the executive director and notice of such meetings must comply with the open meeting law requirements. Such meeting may be cancelled at the vote of a majority of the commission or by the executive director if the scheduled business cannot be conducted. (4-11-15)

104. RECORD OF HEARINGS AND BUSINESS MEETINGS.

01. Minutes of Hearings and Case Reviews. (3-21-18)

a. Summary minutes of individual hearings and case reviews shall be maintained in the Commission office and will be approved and signed by the Executive Director, or a Commissioner, or designee of the Executive Director. (4-11-15)

b. Audio recordings of open hearings may be made and may be maintained by Commission office in digital format. The recordings will be subject to disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. Executive sessions will not be recorded. ()

02. Minutes of Business Meetings. Summary minutes of business meetings are reviewed by Commissioners who are present at the next business meeting. The summary minutes as approved by the Commissioners shall be signed by the Executive Director or designee. Summary minutes of business meetings are maintained in the Commission office and published on the Commission’s website when the summary minutes are approved. (3-21-18)

03. Official Record of Parole Hearing or Case Review. The official record of a parole hearing or case review will be the summary minutes, once signed, of that hearing or review. The official record will be maintained in the Commission office and subject to public disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-21-18)

105. PREVIOUS DECISIONS.

The commission reserves the right to review or reconsider any previous decision for any reason and to take whatever action is agreed upon. The executive director may bring forward any case determined to need review before the next hearing session. Information may be sent by electronic mail if considered an emergency. (4-11-15)

106. INDIVIDUAL POLLING OF THE COMMISSION.

The executive director may conduct an individual poll of the commission to obtain a majority vote regarding a case or business matter in which a decision must be made prior to the next session or meeting. (3-23-98)

107. APA APPLICABILITY.

The commission has the authority to establish rules under Chapter 52, Title 67, Idaho Code (Administrative Procedures Act). No other provision or requirement of the Administrative Procedures Act applies to the commission. (3-23-98)

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

01. Decision to Release to Parole. The Commission has the authority to decide whether or not any offender eligible for parole may be released to parole. (4-11-15)

02. 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(2), Idaho Code, and other applicable provisions of Idaho law. (4-11-15)

109. -- 149. (RESERVED)

150. COMMISSION AND STAFF.

01. Commission Members. The Commission is composed of seven (7) members. ()

02. Commission Staff. 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,

firearms rights restoration, and remissions of fines. (3-21-18)

a. The Executive Director assumes 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)

151. -- 199. (RESERVED)

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 or on the commission website at www.pardons.idaho.gov. ()

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. (3-21-18)

a. 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)

b. 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 hearings, commutation hearings, pardon hearings, remission of fines hearings, and restoration of firearm rights hearings, an interview may be conducted 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. (3-21-18)

a. 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. (3-8-16)

b. The Commission will determine if it will conduct another hearing or make a decision based upon the report. (3-21-18)

04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), Substance Abuse Evaluation, or Other. (3-8-16)

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, SORA, substance abuse evaluations, and mental health reports will be maintained in a confidential manner. (3-8-16)

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. (3-8-16)

b. Parole Violation Hearing. The parolee is required to be present at the violation hearing, unless waived by the offender as explained in Subsection 400.07.g. ()

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 Commission may make such appearance mandatory or may make a final decision based upon the information that is available. ()

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 Firearm Rights. 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 participation of attorneys, families of the offender, parolee, victims, and others who have a direct relationship to the specific hearing or offender/parolee. (3-21-18)

a. Persons who want to participate in a hearing must notify the Commission staff five (5) days in advance of the scheduled hearing. Minors will not be allowed to attend the hearings without prior approval of the Executive Director. ()

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. Any communication outside the hearing process directed to a commissioner is prohibited. Communication from any person concerning a hearing, a decision, Commission practice, or to relay a concern, must be forwarded to the executive director. ()

07. Recusal by Commissioner. It is the responsibility of a Commissioner who has personal knowledge of a case to decide whether to recuse himself from participating in deliberations and voting. The Commissioner must inform the executive director of the potential conflict and recusal. ()

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. (3-8-16)

08. Decisions. (3-23-98)

a. Unless otherwise specified below, any decision of the Commission requires a majority vote of four (4) Commissioners. ()

i. Two (2) members of the Commission may meet to make decisions on the disposition of parole violations. Such decisions must be unanimous. In the event they are not unanimous, then the parole violation disposition decision will be made by a majority of the full Commission at the next quarterly meeting, pursuant to Section 20-210, Idaho Code. ()

ii. Three (3) members of the Commission may meet to make decisions to grant or deny parole. Such decisions must be unanimous. In the event they are not unanimous, then the decision to grant or deny parole will be made by a majority of the full Commission at the next quarterly meeting, pursuant to Section 20-210, Idaho Code. (3-21-18)

b. Decisions will be given orally following the hearing and deliberation of a case by the Commission. The decision may be sent to the offender in writing with specific information/conditions. (3-21-18)

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 without a Commission hearing, the decision will be published within a reasonable time on the Commission website. (3-21-18)

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. (3-8-16)

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

a. All persons attending any hearing will conduct themselves in a manner that 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. The number of witnesses allowed in the hearing room will follow the security policies of the institution; and all persons may be screened through metal detectors or similar technology and will be subject to search. (3-21-18)

c. Audio recording or video recording of any hearing or any hearing session may only 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. ()

d. The media is invited to attend any open hearing of the Commission. (3-21-18)

i. Interviews with offenders or witnesses will not be allowed during the hearing process and neither the Commission nor its staff will be responsible for arranging such interviews. (3-21-18)

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)

201. -- 249. (RESERVED)

250. PAROLE.

01. Parole Consideration. The Commission will use clear, evidence-based parole guidelines in making parole decisions, while still maintaining discretion in individual cases. (3-21-18)

a. The Commission may release an offender to parole on or after the date of parole eligibility, or not at all. ()

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

c. Parole guidelines will include the use of a validated risk and needs assessment. Other factors to be considered include, but are not limited to: ()

i. Seriousness of and aggravating factors involved in the crime. (3-21-18)

ii. Mitigating factors involved in the crime or related to the offender's circumstances. (3-21-18)

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

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

v. Institutional history to include conformance to established rules, involvement in programs, jobs, and custody level at time of the hearing, and overall behavior. (3-21-18)

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

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

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

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

x. Compliance with any order of restitution entered pursuant to Section 19-5304, Idaho Code. (3-21-18)

02. Primary Review. For all offenders eligible for parole, a review for the purpose of setting the initial parole hearing will be conducted. (3-21-18)

a. The Executive Director or a designee will conduct the primary review following receipt of the sentence calculation from the Department of Correction's central records unit. The month and year of the initial parole hearing will be established based upon the sentence calculation. The Commission is responsible for conducting the primary review to set the initial hearing once an official sentence calculation document has been received from the Department of Correction (3-21-18)

i. In cases where an offender is serving both a court-ordered retained jurisdiction period and a current sentence of imprisonment, the primary review will not be conducted on the imprisonment case until the court-retained jurisdiction case has been concluded. (3-21-18)

ii. In cases where the offender has a death sentence, or a life without parole sentence, a primary review will not be conducted. (3-21-18)

iii. In cases with specified fixed terms, the initial hearing will be scheduled approximately six (6) months prior to the offender's parole eligibility date based on the sentence calculation. An initial hearing will not be scheduled until all fixed terms (consecutive and concurrent) the offender is currently serving are within six (6) months of completion. (3-21-18)

iv. 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)

v. 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. (3-8-16)

vi. Initial parole hearings will be scheduled based on the sentence calculation prepared by Idaho Department of Correction. (3-21-18)

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: (3-8-16)

a. The parolee is required to enter into and comply with an agreement of supervision with the Idaho Department 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. (3-21-18)

b. The 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. (3-21-18)

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)

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. Not engage in conduct that is, or is intended to be, harmful to himself or others. (3-21-18)

iii. 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)

iv. Not have in the parolee's control any dangerous weapons used, or intended to be used, for other than normal purposes, such as knives for household use. (3-21-18)

g. The parolee will: (4-11-15)

i. Abstain from use of alcoholic beverages. (3-8-16)

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. A parolee will submit to a search of person or property, or both, to include residence and vehicle, at any time and place by the supervisory authority or at the direction of the Commission, and the parolee waives the constitutional right to be free from such searches. ()

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; or (3-21-18)

iii. Leave the assigned district. (3-23-98)

j. The parolee will be available for supervision and will not actively avoid supervision. (3-21-18)

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, after the offender has signed a statement acknowledging the special conditions. ()

05. Medical Parole. The Commission may parole an offender for medical reasons pursuant to Section 20-223(8), Idaho Code. (3-21-18)

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, which will require specific medical information in reference to the offender's condition, as well as a treatment or care plan if released, and any other information deemed necessary. (3-21-18)

06. Discharge from Parole. 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. ()

07. Detainers. (3-23-98)

a. The Commission may grant a parole to any county, state, or federal detainer that 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)

08. 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 the Commission of problems that have developed. (3-21-18)

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. Notice of Victim Rights. The Commission will advise the victims of their constitutional and statutory rights to be notified of Parole Commission proceedings. 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. ()

02. Testimony. ()

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 allow for the victim's testimony away from the actual hearing process. ()

301. -- 349. (RESERVED)

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. A parole plan approved by Department of Correction probation and parole staff should provide a positive re-entry into the community for the offender. (3-21-18)

a. The proposed parole plan should be available at the parole hearing interview and parole consideration hearing and should include a stable residence, employment or maintenance and care plan, as well as treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. ()

b. 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)

c. All parole plans will be investigated by the supervising authority in the area in which the prospective parolee plans to reside. ()

02. 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. Should the offender 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 or changed. (3-21-18)

03. Contract. Prior to any release to parole, the offender must sign a contract with the Commission and acknowledge all general and special conditions of parole. (3-8-16)

a. The parolee will be issued reporting instructions that will include the address and the telephone number of the supervising office. (3-8-16)

351. -- 399. (RESERVED)

400. PAROLE DISPOSITION PROCESS.

01. Initiated. The parole disposition process is initiated by a written or verbal report describing the conditions of parole that are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender. ()

02. Warrants. A warrant may be issued for the offender's arrest. (3-23-98)

a. A supervising authority may issue an agent's warrant to authorize local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the Commission, pursuant to Section 20-227, Idaho Code. ()

b. After receipt of a report of violation, a Commission warrant may be issued 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. ()

i. If the location of the offender is unknown, the warrant will be entered into NCIC or other law

enforcement database and will designate from which states the Commission will extradite the offender once arrested. At any time the Executive Director or designee may change the area of extradition. (3-21-18)

ii. If an offender is being held in custody on new charges in a state outside of Idaho, the warrant may be placed as a detainer only, and written notice of this action will be submitted to the holding facility. The time limits prescribed by law for service of the factual allegations of the violation of the conditions of parole will begin on the date the holding facility notifies the Commission either the warrant has been served or is notified the offender is available for return to Idaho, whichever is earlier. ()

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. ()

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. The 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. (3-21-18)

03. Notice of Hearing Rights. ()

a. Every parolee arrested on a Commission warrant for alleged violation(s) of parole is entitled to a fair and impartial hearing of the factual allegations of violation of the conditions of parole. (3-21-18)

b. The parolee shall be provided written, pertinent due process including notice of the date, time and location of any and all public hearings involved in the disposition process. ()

04. Witnesses. The accusing parole officer or alleged parole violator may present witnesses in support of the allegations of parole violation or in defense of the charges. ()

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 potential risk or harm, confrontation or cross-examination will not be allowed, and the record will reflect such determination. (3-21-18)

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)

05. Attorney. The alleged parole violator may utilize the services of an attorney at any public hearing conducted during the disposition process. ()

a. An attorney will be paid at the alleged parole violator's expense. (3-21-18)

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 to be notified of any hearings and if requested in writing, the Commission office will provide the attorney with copies of reports or documents that are subject to disclosure according to the public records act. ()

c. Commission Provided Attorney. Prior to a hearing, the alleged parole violator may request legal representation be provided by the Commission. The Executive Director or designee will determine if the facts presented by the alleged parole violation or the circumstances of the alleged parole violator demonstrate that alleged parole violator does not understand the proceedings and is otherwise incapable of representing himself. ()

i. If a hearing officer, after meeting with the alleged parole violator, believes that the individual is not

able to fully understand the hearing proceedings or is otherwise incapable of representing himself, the hearing officer shall notify the Executive Director. Upon receipt of such notification, the Executive Director or the Commission will make an attorney available to assist the alleged parole violator at the Commission's expense if the facts presented demonstrate that the alleged parole violator meets the criteria for Commission-provided attorney. In reaching this decision, the Executive Director or Commission shall: (3-21-18)

(1) Review the case file and documents regarding the alleged parole violator's personal history, including his physical and mental health status. (3-21-18)

(2) Consider the alleged parole violator's ability and capacity to understand the proceedings. (3-21-18)

(3) Order a current or competency assessment if such would be helpful in making a decision regarding the request for counsel. (3-21-18)

ii. Specific time limits provided for in these rules may be waived at the discretion of the Executive Director when an attorney is requested or provided, or both, at Commission expense. (3-21-18)

06. Violation and Disposition Hearings. The alleged parole violator will be notified of any and all hearing dates and locations reasonably in advance of any public hearings. The hearing officer or Executive Director will determine the location of all hearings. ()

a. The alleged parole violator may request a continuance of, or waive any hearing, subject to the final determination of the hearing officer, Executive Director, or the Commission. (3-21-18)

b. The type of violations raised in the allegations will determine the type of disposition hearing available to the alleged parole violator. ()

i. Non-technical violations. If the alleged parole violator is accused of violation of parole by absconding supervision or the commission of and conviction for a felony or misdemeanor offense, the subject is not entitled to a preliminary hearing, but is entitled to a hearing to determine guilt or innocence of the alleged parole violation within a reasonable time following service of a copy of the report of violation. ()

ii. Technical violations. If the alleged parole violator is accused of a violation of parole other than by absconding supervision or the commission of, and conviction for, a felony or misdemeanor offense the subject is entitled to a preliminary hearing by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a Commission hearing officer to determine guilt or innocence within thirty (30) days from the date the accused was served with the copy of the report of violation. ()

c. Preliminary hearing. A technical parole violator is entitled to a preliminary hearing to establish whether 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. ()

d. On-Site Violation Hearing. A technical parole violator is entitled to an on-site fact-finding 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. (3-21-18)

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 of the alleged parole violator and may dismiss some or all allegations. If a hearing officer is unavailable, the Executive Director will appoint someone to conduct the hearing. ()

i. The parolee shall have the right to appear at a violation hearing and personally address the allegations of violation of the conditions of parole at said violation hearing, including the right to present witnesses

and evidence. ()

ii. The parolee may confront and cross-examine adverse witnesses who have given information on which the charges have been based. ()

iii. The alleged parole violator is entitled to a verbal or written decision. When a verbal decision is rendered, such finding will be noted in the hearing officer's report. If the allegations have been proven by a preponderance of the evidence, the report will be submitted to the Commission for a disposition hearing. When a written decision is rendered, such decision will be issued within twenty (20) days of the violation hearing. ()

f. Disposition Hearing. If finding of guilt was made on one (1) or more of the violations, the Commission will consider whether to reinstate the offender on parole on the same or modified conditions, or to revoke parole. The Commission will consider all options available and will state its reasoning if parole is revoked. ()

g. Absentia Hearing. The Commission can hold a disposition hearing without the alleged parole violator's appearance if the alleged parole violator has signed the proper document waiving the right to appear before the Commission, and the Commission accepts such a waiver. The Commission will accept waivers in cases where new criminal charges result in a new commitment or incarceration or if the alleged parole violator has absconded supervision and is re-incarcerated in another state. ()

07. Miscellaneous Hearing Information. (3-23-98)

a. 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)

b. 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 a continuance is granted at the alleged parole violator's request, said request will constitute a waiver of any and all time limits involved. ()

08. Findings/Decisions. (3-23-98)

a. Following arrest on a Commission warrant, the Executive Director or the Commission will decide if the parolee will be released to continue parole. ()

b. If it is determined at the preliminary hearing that there is no probable cause to support the allegations of violation of the conditions of parole, the parolee will be released to continue parole. ()

c. Prior to a disposition 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. ()

09. 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 or Commission warrant may be forfeited, in whole or in part. ()

a. Any time the offender is incarcerated on an agent's warrant and a Commission warrant will be credited toward the sentence, including discretionary jail time. (3-21-18)

b. 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)

c. The offender must provide the hearing officer or the Executive Director with dates of incarceration and the location of the incarceration. (3-23-98)

401. -- 449. (RESERVED)

450. COMMUTATION PURSUANT TO SECTIONS 20-233 AND 20-240, IDAHO CODE.

Commutation is a process whereby clemency may be considered and granted to modify a sentence imposed by the sentencing jurisdiction. (3-21-18)

01. Petition. A petition must be submitted to initiate the process. Only forms approved by the Commission will be accepted and must be completed correctly per the instructions on the form. ()

a. The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. (3-23-98)

i. Change a consecutive sentence to concurrent. (3-23-98)

ii. Reduce the maximum length of sentence. (3-23-98)

iii. Reduce the minimum fixed term of a sentence. (3-30-01)

iv. Change a fixed sentence to indeterminate. (3-23-98)

v. Change a sentence in any other manner not described. (3-23-98)

b. The Commission may consider one (1) application from any one (1) person in any twelve (12) month period from the date of denial. ()

c. Petitions may be considered at any time by the Commission but are usually scheduled for consideration in the quarterly sessions in January, April, July, and October. (3-21-18)

d. Petitions must be received no later than the first day of the month prior to the next designated quarterly hearing session for which the offender is applying. (3-21-18)

e. Review or deliberation on the petition by the Commission will be conducted in executive session. (3-23-98)

f. Any petition may be continued for additional information or for further consideration. (3-23-98)

g. The petitioner will be sent written notice of the decision. (3-23-98)

h. The petition is limited to no more than six (6) pages; the petition will not be considered if the document exceeds this number. (3-21-18)

i. A parole violator is not eligible to file a petition until the violation has been adjudicated. (3-21-18)

j. The Commission will not consider a commutation for 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. ()

k. 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 full term release date has been served on parole; or until ten (10) years have been served on parole on a life sentence for any crime. ()

l. A parole officer, parole officer designee, or parole officer supervisor can petition the Commission to consider an early discharge upon reaching the timelines established in this section. ()

m. If the parolee is permanently incapacitated or terminally ill, the Commission may consider and grant an early discharge from parole after one (1) year for any crime. ()

02. Commutation Hearing. The scheduling of a hearing is at the complete discretion of the

Commission; if a commutation hearing is scheduled, the Commission will determine the date of the hearing. (3-21-18)

a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. (3-23-98)

c. Victims of the offender will be notified in writing when a hearing is scheduled. ()

d. All rules of procedure governing hearings will apply to a commutation hearing. (3-23-98)

e. The decision and supporting documents regarding a commutation will be filed with the Secretary of State. (3-21-18)

03. Death Sentence. (3-23-98)

a. An individual file of each offender under sentence of death may be maintained in the Commission office. (4-11-15)

b. At any time, the Commission may review a file, information, or interview an offender without activating the commutation process. (4-11-15)

c. Commutation petitions must be initiated by the petitioner or his legal counsel. Legal counsel must provide verification that he has been retained by the petitioner or his family to prepare and submit the petition. ()

d. The Commission may elect to receive and consider a petition for a death penalty modification at any time. (3-23-98)

451. -- 499. (RESERVED)

500. SELF-INITIATED PAROLE RECONSIDERATION.

01. Petition. An incarcerated offender making a request for reconsideration of parole denial must initiate the process by submitting an application. ()

a. The only acceptable form is the one provided by the Commission, and it must be signed by the offender and case manager. ()

b. The petition must be typed and completed correctly, per the instructions on the form, or it will not be considered. (3-21-18)

c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. The offender must have had no disciplinary issues in the year prior to submitted the petition. ()

d. The Commission will consider one (1) application from the offender who was denied parole one (1) year after the denial of parole. After the initial SIPR is heard, the Commission will consider applications once per year from the date of the initial SIPR denial unless otherwise stated by the Commission. The Commission will not consider SIPR petition for offenders with a scheduled hearing in the next three (3) years. ()

e. Petitions must be received no later than the first day of the month prior to the next month's hearing session. (3-8-16)

f. Review or deliberation on the petition by the Commission will be conducted in executive session. (3-23-98)

- g.** Any petition may be continued for additional information or for further consideration. (3-23-98)
- h.** The petitioner will be sent written notice of the decision. (3-23-98)
- i.** The petition is limited to four (4) pages; the petition will not be considered if the petition exceeds this number. (3-21-18)
- 02. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. (3-23-98)

501. -- 549. (RESERVED)

550. PARDON PURSUANT TO SECTION 20-240, IDAHO CODE.

A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. A pardon does not expunge or remove the crime from the applicant's criminal history. (3-21-18)

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 five (5) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. ()

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted for consideration no sooner than ten (10) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. ()

c. A pardon application will not be considered while an offender is incarcerated or on supervision. ()

d. The Commission will determine whether a hearing will be granted and the applicant will be advised notified of the decision in writing. (3-21-18)

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 judgments and conviction documents, as well as police reports for each crime for which a pardon is requested. (3-21-18)

iv. A pardon may be requested only once during a twelve-month (12) period from the date of denial unless otherwise stated by the Commission. ()

v. An application may not be considered if there is significant law enforcement contact since sentence or discharge. (3-21-18)

b. Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report will contain the following: (3-21-18)

i. A criminal records check will be conducted to include any law enforcement contact since the

release from supervision or incarceration. ()

- ii. The applicant’s employment history since discharge from supervision or incarceration. (3-21-18)
- iii. The applicant’s willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. (3-21-18)
- iv. The applicant’s employment and education status, including any professional or vocational achievements, training, and any additional information as deemed necessary or appropriate. (3-21-18)
- v. Confirmation that all restitution and fines as ordered by the sentencing court are paid. (3-21-18)
- vi. An interview with the applicant may be conducted and a summary of the interview provided. Said interview may be conducted in person or by electronic means. (3-21-18)

03. 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. Victims of the offender will be notified in writing when a hearing is scheduled. ()
- d. 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 Commission may make such appearance mandatory or may make a final decision based upon the information available. ()
 - ii. Upon request, the Commission may decide whether to continue the hearing to a later date in order for the applicant to attend. ()
- e. All rules of procedure governing hearings will apply at a pardon hearing. (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)
- g. The granting of a pardon does not expunge the crime from the applicant's criminal history. (3-21-18)

551. RESTORATION OF FIREARMS RIGHTS PURSUANT TO 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(2), Idaho Code. This is not a pardon for the conviction of a crime, nor is the applicant’s criminal record expunged. (3-21-18)

02. Application. An application may not be made until five (5) years after the date of final discharge of the crime for which they are requesting restoration of firearm rights. ()

- 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 convictions, judgment orders, including any dismissal documents, as well as police reports related to said convictions must accompany the application. (3-21-18)
 - iv. An application may be submitted once every twelve (12) months from the date of denial. ()
 - 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)
 - vii. The Commission will determine whether a hearing will be granted and the applicant will be advised of the decision. (3-21-18)
 - viii. No applications will be considered for individuals who are incarcerated or on supervision. ()
- c.** Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report shall include, but shall not be limited to, the following: (3-21-18)
- i. A criminal records check will be conducted to include any law enforcement contact since release from supervision or incarceration. ()
 - ii. The applicant's employment history since the date of final discharge of the crime for which they are requesting restoration of firearm rights. ()
 - iii. The applicant's willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. (3-21-18)
 - iv. The applicant's employment and education status, including any professional or vocational achievements, training and any additional information as deemed necessary or appropriate. (3-21-18)
 - v. Confirmation that all restitution and fines as ordered by the sentencing court have been paid. (3-21-18)
 - vi. An interview with the applicant may be conducted and a summary of the interview provided. The interview may be conducted in person or by electronic means. (3-21-18)
- 03. 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 hearing may be continued for additional information. (3-21-18)
 - 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. (3-21-18)
 - i. The Commission may make such appearance mandatory or may make a final decision based upon the information available. ()
 - d.** The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-21-18)

04. 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, except as provided therein. ()

552. -- 599. (RESERVED)

600. REMISSION OF FINE OR PENALTY PURSUANT TO SECTION 20-210A, IDAHO CODE.

- 01. Request.** An application for remission of fine or penalty must be made to the Commission. (3-23-98)
- a.** The application must be in writing. (3-23-98)
- b.** The application must outline the reasons action is requested to remit such fine or penalty. (3-23-98)
- c.** The applicant must submit a certified copy of the judgment or order assessing said fine or penalty ()
- 02. Review.** The Commission will review the request to remit a fine or penalty. (3-23-98)
- a.** The Commission will usually review such application on a month designated as a quarterly session, but may make such review during any session. The review will be conducted by the full Commission. (4-11-15)
- b.** The Commission will conduct such review in executive session. (3-23-98)
- c.** Any application may be continued for further consideration or additional information. (3-23-98)
- d.** The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. (3-21-18)
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. (3-23-98)
- a.** If a hearing is scheduled, the Commission will determine the date of the hearing. (3-23-98)
- b.** If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)
- c.** A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)
- d.** All rules of procedure governing hearings will apply to such scheduled hearing. (3-23-98)
- e.** Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. (3-23-98)
- i.** The Commission may make such appearance mandatory or may make a final decision based upon the information which is available. ()
- ii.** The Commission may continue the hearing to a later date for any reason. ()
- 04. Satisfaction of Judgment.** If the Commission determines that such fine or penalty is to be remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. (3-23-98)

601. -- 799. (RESERVED)

800. FOREIGN NATIONAL TREATY TRANSFER PURSUANT TO SECTION 20-104, IDAHO CODE.

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. (3-8-16)

01. Request for Transfer. An offender may request a transfer to his country of citizenship. The Commission will receive the application and relevant documents from the Department of Correction. The Commission may request additional information from the applicant, the victim, the Department, or any other source the Commission deems appropriate. (3-21-18)

- a.** The offender must be a citizen of the country to which he is requesting a transfer. (3-21-18)
- b.** The United States and the foreign country must be parties to a treaty that provides for the transfer or exchange of convicted offenders. (3-21-18)
- c.** The offender must not be serving a life sentence. (3-21-18)
- d.** The offender cannot be less than two (2) years from his parole eligibility date. (3-21-18)
- e.** The offender must meet the Department of Justice's guidelines for international transfer applications. ()

02. Schedule for Review of Application. The Commission will schedule the application for review during a scheduled hearing session at a time and place of its choosing. (3-21-18)

- a.** The Commission has complete discretion and authority to make a recommendation to the Governor. (3-8-16)
- b.** The offender is not entitled to be personally present, to have counsel, to present witnesses or evidence, to have any particular evidence considered or to designate the location or time. (3-21-18)

03. Issuance of Written Recommendation. Following the Commission's consideration, a non-binding written recommendation will be issued to the Governor for his consideration. A copy of the recommendation will be sent to the Department's central records. (3-21-18)

- a.** The offender is not entitled to appeal the Commission's recommendation or the Governor's decision. (3-21-18)
- b.** The offender may reapply two (2) years from the date of denial by either the Governor or the Commission. (3-8-16)

04. Approval of Transfer Request. If the Governor approves the transfer request, and the receiving country accepts the offender for transfer, the request packet is sent to the Department of Justice for consideration and approval. Once the Department of Justice approves the transfer, the offender is under the jurisdiction of the Department of Justice. (3-21-18)

801. -- 999. (RESERVED)

IDAPA 61 – PUBLIC DEFENSE COMMISSION

DOCKET NO. 61-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon 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 full force and effect upon adoption of 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 19-850(1)(a), 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 61, rules of the Public Defense Commission:

IDAPA 61

- 61.01.01, *Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds*
- 61.01.02, *Rules Governing Standards for Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports*
- 61.01.03, *Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services*
- 61.01.04, *Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants*
- 61.01.06, *Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards*
- 61.01.07, *Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Delivery System*
- 61.01.08, *Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems-Rule Definitions*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 7505 - 7539](#). The pending rule changes are intended to simplify the agency's rules and include elimination of non-substantive and redundant or unnecessary text.

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

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kathleen J. Elliott, (208) 332-1735.

Dated this 13th day of September, 2019.

Kathleen J. Elliott, Executive Director
Public Defense Commission
816 W. Bannock Street, Suite 201
Boise, Idaho 83702

Phone: (208) 332-1735 /Fax: (208) 364-6147

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

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 19-850(1)(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 61, rules of the Public Defense Commission:

IDAPA 61

- 61.01.01, *Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds*
- 61.01.02, *Rules Governing Standards for Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports*
- 61.01.03, *Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services*
- 61.01.04, *Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants*
- 61.01.06, *Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards*
- 61.01.07, *Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Delivery System*
- 61.01.08, *Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems-Rule Definitions*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. Specifically, the Public Defense Commission's rules govern indigent defense training, funds disbursement to counties, oversight and standards for defending attorneys. The rules are necessary for the continued delivery and improvement of Idaho's indigent defense services.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathleen J. Elliott, (208) 332-1735.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0000-1900

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

61.01.01 – RULES GOVERNING TRAINING REQUIREMENTS FOR DEFENDING ATTORNEYS AND THE ADMINISTRATION OF TRAINING FUNDS

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(i), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding the training and continuing legal education requirements for defending attorneys. Further, Section 19-850(2)(d), Idaho Code, gives the PDC the authority to provide training and continuing legal education for indigent defense providers and defending attorneys in order to assist them in satisfying requirements promulgated pursuant to subsection (1)(a)(i) of 19-850, Idaho Code, and use moneys received from financial assistance or a trust or otherwise received and appropriated to provide such training and continuing legal education. (3-29-17)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 01, “Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds.” (3-29-17)

02. Scope. These rules contain the provision for the allocation of funding designated for training of defending attorneys and staff. (3-29-17)

002. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” for definitions of the terms and abbreviations used in this Rule. ()

011. -- 019. (RESERVED)

020. RECIPIENTS OF TRAINING FUNDS.

01. Intended Recipients. Training funds shall be used to train defending attorneys, and those under their regular employ or supervision. With the approval of the PDC, non-attorney staff of defending attorneys or other persons engaged in work related to the representation of indigent defendants, may qualify to attend training programs or for scholarships. (3-29-17)

02. Presumptive Qualification. It is presumed that any attorney who is included on the Public Defense Roster maintained by the PDC qualifies as an intended recipient of training funds for the purposes of these rules. (3-29-17)

021. PUBLIC DEFENSE ROSTER.

01. Roster Membership. The PDC will create and maintain a roster of all indigent defense providers, defending attorneys and non-attorney staff under their regular employ or supervision. (3-29-17)

a. Maintenance of Roster. The roster will be updated in May of each year, but may be updated more frequently in order to accurately reflect staff changes at the county level. (3-29-17)

b. Roster Contents. The roster will include the name of each defending attorney or non-attorney staff, along with their professional contact information, including email address, physical address, and telephone number. (3-29-17)

02. Application for Roster Inclusion. Any attorney who is not employed by an indigent defense provider, or who does not work under an existing indigent defense services contract may apply to the PDC for inclusion on the Public Defense Roster. (3-29-17)

a. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. (3-29-17)

022. -- 029. (RESERVED)

030. PDC TRAINING PROGRAMS.

01. Use of Training Funds. The PDC may choose to spend training funds to host its own training programs for the benefit of defending attorneys and their staff. (3-29-17)

a. Equal Access to Training Funds. Where the PDC chooses to host a training program, when determining the allocation of training funds no distinction will be made as to whether the attorney is an employee of an institutional defender, a contract attorney, or an attorney who has qualified for training funds by application. (3-29-17)

i. Registration Fees and Tuition. Where the PDC provides training programs without a registration fee or tuition, the PDC will provide the same discount to all qualifying attendees. (3-29-17)

ii. Travel, Lodging, and Per Diem. Where the PDC agrees to provide travel subsidies to attendees, the PDC will establish a minimum travel distance. All those attendees whose residential or office address is located at a distance over the minimum travel distance from the location of the conference will qualify for the same travel subsidies as set forth in the training program announcement. (3-29-17)

iii. Reimbursement of Expenses. The PDC may determine to provide services, lodging or food in lieu of reimbursement of the same. In the event the PDC determines that any expenses will be provided directly by the PDC, and notifies all registrants at the time of registration, subsequent application of expense reimbursements for the same may be denied. Reimbursement guidelines established by the state of Idaho will apply to all in-state travel. (3-29-17)

02. Types of Training Programs. PDC Training Programs may be designated as open enrollment, restricted enrollment, targeted enrollment, or application enrollment. Notification will be by email for all training programs. (3-29-17)

a. Open Enrollment Training Programs. The PDC may host a training program with an open enrollment. All those who qualify and register in advance will be allowed to attend. (3-29-17)

i. Announcement. The PDC will post available open enrollment training programs on its website, and will notify members of the Public Defense Roster of the training location, dates, and any details regarding the applicability of training funds. (3-29-17)

ii. Registration. The PDC will honor the registration of any qualifying recipient who registers prior to the deadline. The PDC will impose a registration deadline and may require advance registration. Any registration received by the PDC after the deadline may be rejected by the PDC. (3-29-17)

b. Restricted Enrollment. The PDC may host a training program open to all qualifying defending attorney or staff, but impose a registration limit. Targeted invitations may be extended prior to the notification of members of the Public Defense Roster. (3-29-17)

i. Announcement. The PDC will post available restricted enrollment training programs on its website, and will notify members of the Public Defense Roster of the training location, dates, and any details regarding the applicability of training funds. (3-29-17)

ii. Registration. The PDC will impose a registration deadline and may require advance registration. The PDC will honor the registration of any qualifying recipient in the order received until the enrollment limit is reached. Any registration received by the PDC, either after the deadline or after the enrollment limit is reached, may be declined. (3-29-17)

c. Targeted Enrollment. The PDC may host a training program that is open to qualifying recipients by email invitation only. The PDC may identify specific individuals for targeted invitations where the PDC believes that such a training program would be of particular benefit to the individual or where there is a specific desire to obtain broad geographic representation at the training program. (3-29-17)

i. Invitation. The PDC may identify specific individuals for invitation to attend the training program due to the person's length or time of service, experience, the particular area of law or representation to be covered, the

geographic location of the qualifying recipient, or because the individual has been designated as a representative of an institutional defender office. The PDC will inform the invited individual of the time and location of the training program, along with the availability of any training funds. Invitees will be notified of a registration deadline.

(3-29-17)

ii. Registration. Where an individual accepts an invitation to attend and registration materials are received by the registration deadline, that individual will be guaranteed a place in the training program. (3-29-17)

iii. Announcement. If the registration deadline passes and the PDC determines that there is additional space, the PDC will treat the training program as a restricted enrollment program under Subsection 030.02.b.

(3-29-17)

d. Application Enrollment. The PDC may host a training program that is open only to those selected by the PDC after application materials are submitted. (3-29-17)

i. Announcement. Where applications are sought for qualifying recipients, the PDC will post the training program on its website and will notify members of the Public Defense Roster of the training subject, location and dates, and the availability of any training funds. The PDC will also make available the application materials, establish an application deadline, decision deadline and notify applicants of how many places are available and whether non-attorney staff will be considered. (3-29-17)

ii. Decisions. The PDC will evaluate all completed applications that are received by the deadline. The PDC will notify all applicants within fourteen (14) days of the application deadline as to its decision. The PDC will fill all available training program places as long as a sufficient number of completed applications are received. (3-29-17)

iii. Registration. Where an individual accepts an invitation to attend and registration materials are received by the registration deadline, that individual will be guaranteed a place in the training program. (3-29-17)

iv. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. (3-29-17)

03. Non-Attorney Staff. Staff and others employed or supervised by a defending attorney may qualify as a recipient of a scholarship. Where a person is not on the Public Defense Roster, that person may still either be identified as a targeted recipient of training funds or apply to attend a training program. (3-29-17)

a. Application Necessary. If training funds are desired, the non-attorney individual must make an application to the PDC for a scholarship, in addition to other enrollment requirements in Subsection 030.03.b. (3-29-17)

b. Application criteria. The PDC will consider (1) whether the individual is full-time staff, (2) the position they hold and the type of assistance they provide in the representation of indigent clients, and (3) the relevance of the materials presented at the training program to their ability to fulfill their duties. (3-29-17)

i. Open Enrollment. Where a non-attorney's application for a scholarship is approved by the PDC in advance of the registration deadline, a completed registration will be treated if the registration was for an attorney. (3-29-17)

ii. Restricted Enrollment. Where a non-attorney's application for a scholarship is approved by the PDC in advance of the registration deadline, a completed registration of an attorney will be given priority over a non-attorney. (3-29-17)

iii. Targeted Enrollment. Where a non-attorney has been identified by the PDC as an individual to be invited to a specific training, their acceptance of the invitation will be honored. (3-29-17)

iv. Application Enrollment. Where applications from non-attorneys is permitted by the PDC, and an application is received by the deadline, the PDC will consider the individual's position in determining whether to accept the application. (3-29-17)

c. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. (3-29-17)

031. JOINT TRAINING PROGRAMS.

01. Joint Training Programs Permitted. The PDC may choose to partner with other organizations or agencies (hereinafter referred to as “partner”) in hosting and providing training programs to qualifying individuals. The nature of these designated training programs may result in non-qualifying individuals being in attendance. (3-29-17)

a. Qualifying Individuals. In determining whether training funds can be used, the qualification for receipt of benefits will be the same as established in Sections 020 and 021. (3-29-17)

b. Application of training funds. Qualified recipients will be treated in accordance with Subsection 030.01. (3-29-17)

02. Exclusive Use of Training Funds. Where non-qualifying individuals register to attend a Joint Training Program, the PDC shall not use training funds to subsidize the cost of registration, travel, lodging or per diem, other than unavoidable costs of operation. (3-29-17)

a. Training Program Fees and Costs. The PDC will negotiate a reasonable approximate cost per individual of the training program with the partner and agree to pay that cost for all qualifying individuals to attend. If the PDC is responsible for collecting registration fees, each non-qualifying individual will be assessed the negotiated cost of attendance at the time of registration. If the partner is responsible for collecting registration fees, the partner organization may set the cost of attendance for non-qualifying individuals. (3-29-17)

03. Registration. No priority will be given to defending attorneys over non-qualifying individuals in determining which registrants fill the spaces available. (3-29-17)

032. SCHOLARSHIPS.

01. Availability. The PDC may expend training funds on qualifying individuals to pay the cost to attend non-PDC training programs, in whole or in part. (3-29-17)

a. Contingent on Funds. Scholarships in any given fiscal year will depend on the availability of training funds allocated outside of existing training programs. (3-29-17)

b. Effect of scholarship. Any individual who receives a scholarship will not be eligible to receive a PDC scholarship in the same fiscal year. Preference given to applicants not receiving PDC scholarship in previous fiscal year. (3-29-17)

02. Application. The PDC will post on its website an application for scholarship funding. (3-29-17)

a. Deadline. All applications must be received by the PDC thirty (30) days before the end of the fiscal year in which funding is sought. All other scholarships will be considered in the following fiscal year. (3-29-17)

b. Notification. All applications for scholarships will be reviewed by the PDC according to available funding. The PDC will notify applicants of any scholarship reward at least sixty (60) days before the date of the training program. In the event an application is submitted less than sixty (60) days prior to the training program, the PDC will notify the applicant within ten (10) days of the final application submission. (3-29-17)

c. Non-Attorney Persons. Applications for scholarship will be accepted for non-attorneys in accordance with Subsections 030.03.a. and b. (3-29-17)

d. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. (3-29-17)

033. – 999. (RESERVED)

**61.01.02 – RULES GOVERNING UNIFORM DATA REPORTING REQUIREMENTS AND
FORMS FOR DEFENDING ATTORNEY ANNUAL REPORTS**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(ii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing uniform data reporting requirements and model forms for the Annual Reports submitted pursuant to section 19-864, Idaho Code. (5-1-19)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA, Title 01, Chapter 02, “Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports.” (5-1-19)

02. Scope. These rules contain the provisions of uniform data collection of Idaho’s defending attorneys and establish the procedures by which defending attorneys shall report data to the PDC. Data collected by the PDC shall be detailed enough to provide information about Idaho’s public defense system, however, shall be redacted in such a manner so as to protect attorney-client confidentiality. (5-1-19)

002. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” for definitions of the terms and abbreviations used in this Rule. (5-1-19)

011 – 019. (RESERVED)

020. APPLICATION OF REPORTING REQUIREMENTS.

In accordance with section 19-864, Idaho Code, Indigent Defense Providers and any defending attorney whose information is not otherwise included in a report from an Indigent Service Provider shall submit an Annual Report to the PDC, the board of county commissioners, and the appropriate administrative district judge in conformance with the rules promulgated pursuant to section 19-850(1)(a)(ii), Idaho Code. (5-1-19)

01. Entities Required to Report. All Indigent Defense Providers and defending attorneys shall be included in an Annual Report, but not all defending attorneys must submit a report. The following entities or individuals must submit an Annual Report: (5-1-19)

- a. Each Chief Defender for an institutional public defense office. (5-1-19)
- b. Each Chief Defender for a joint institutional public defense office. (5-1-19)
- c. Each Indigent Defense Provider under contract to provide indigent defense services. (5-1-19)
- d. Each attorney appointed at public expense to represent an indigent person. (5-1-19)

02. Exceptions to Reporting Requirements. The following are exceptions to the entities required to report: (5-1-19)

- a. If an Indigent Defense Provider is a law firm, only one Annual Report is required for the firm. (5-1-19)
- b. An attorney, appointed at public expense by the court and not under contract to provide indigent defense services for the county in which she was appointed, who handles fewer than ten (10) indigent defense cases in a fiscal year, may receive an exception to the reporting requirement. The attorney must contact the PDC, who may waive the reporting requirement if an alternative method of fulfilling the reporting requirements can be established. (5-1-19)

021. REPORTING REQUIREMENTS.

Information to be included in the Annual Report. (5-1-19)

01. Case Information. Each Annual Report for the previous fiscal year shall include for each defending attorney the following: (5-1-19)

- a. The number of cases handled; (5-1-19)

- b. The types of cases handled; (5-1-19)
- c. The method of resolution of each case handled (i.e., plea, dismissal, found guilty at trial, etc.); and (5-1-19)
- d. Case outcomes. (5-1-19)

02. Continuing Legal Education Information. Each Annual Report shall contain each defending attorney's Mandatory Continuing Legal Education (MCLE) hours as reported to the Idaho State Bar (ISB) for the previous fiscal year. The Annual Report shall be accompanied by one MCLE report from the ISB for each defending attorney. If the reporting period began during the previous fiscal year, an MCLE report for the entirety of the previous fiscal year must be sent. An attorney may have to request this information from the ISB. (5-1-19)

03. Expenditure Information. Being mindful of attorney-client confidentiality, each Annual Report shall contain expenditures related to indigent defense services. The reports shall not contain expenditure information related to specific cases. Expenditures related to indigent defense services include, but are not limited to: (5-1-19)

- a. Investigations; (5-1-19)
- b. Expert witnesses; (5-1-19)
- c. Interpreters; (5-1-19)
- d. Mental and physical health examinations; (5-1-19)
- e. Medical records; (5-1-19)
- f. Polygraph examinations; (5-1-19)
- g. Exhibits for trial demonstrations; (5-1-19)
- h. Scientific tests; (5-1-19)
- i. Extraordinary travel expenses; (5-1-19)
- j. Transcripts; (5-1-19)
- k. Discovery costs; and (5-1-19)
- l. Costs related to compliance with this rule. (5-1-19)

04. Support Staff. Each Annual Report shall contain a comprehensive listing of support staff, including investigators, employed by an Indigent Defense Provider or a Defending Attorney. Only staff who provide services related to indigent defense services must be included in the report. (5-1-19)

05. Method of Data Collection. Each Annual Report shall contain the method of data collection utilized by the Reporter to obtain the requested information, such as the name of a Case Management System or software program. (5-1-19)

06. Attorney Experience. Each Annual Report shall contain a brief description of each defending attorney's experience, including years of experience. (5-1-19)

022. REPORTING CYCLE.

The PDC shall conduct the reporting cycle in accordance with Section 19-864, Idaho Code, and the following schedule so far as it does not conflict with Idaho Code: (5-1-19)

01. Form Availability. The PDC shall make the Annual Report form available by July 1 each year for the subsequent fiscal year (i.e., July 1, 2019 for the Annual Report due November 1, 2020). (5-1-19)

02. Purpose. The data collected will inform the PDC on how to improve client representation, justify budget and resources, and recommend changes to indigent defense system practices and policies. (5-1-19)

03. Reporting Period. The Annual Report shall reflect the fiscal year immediately prior to the due date. (5-1-19)

023. REPORTING PROCEDURE.

The Annual Report shall be completed and submitted according to these rules. (5-1-19)

01. Forms. A Reporter shall file the appropriate fiscal year form supplied by the PDC and any other requested documents, both of which shall have original or digital signatures. (5-1-19)

02. Method of Delivery. The Annual Report shall be submitted to the PDC via mail, email, or facsimile. (5-1-19)

03. Review. A Reporter may review the Annual Report with PDC staff prior to submitting the Annual Report to ensure it meets the PDC's criteria. (5-1-19)

04. Incomplete Annual Report. Incomplete Annual Reports will be rejected by the PDC unless the Reporter can provide a reasonable explanation as to why the Annual Report is incomplete. Incomplete reports will be considered not submitted to the satisfaction of the Commission, which could prohibit the disbursement of the county's Indigent Defense Financial Assistance Funds. (5-1-19)

05. Due Date. The Annual Report shall be delivered to the PDC on or before November 1 of each year. (5-1-19)

024. EXPLANATION OF DATA NOT TRACKED.

Any data which should be included in the Annual Report but was not tracked during the fiscal year must be reported to the PDC along with an explanation addressing why the data was not tracked. If the PDC determines a failure to track data is justifiable (i.e. non-willful), the disbursement of the county's Indigent Defense Financial Assistance Funds will not necessarily be prohibited. Examples of a justifiable reason include, but are not limited to, the data would violate attorney-client confidentiality, or the data is/was too cumbersome to track. A satisfactory explanation must be provided to support the inability to track such data. (5-1-19)

025. FAILURE TO SUBMIT AN ANNUAL REPORT.

Any defending attorney who fails to submit an Annual Report or fails to be included in an Annual Report may be removed from the public defense roster, as outlined in IDAPA 61.01.06.026. (5-1-19)

026. FRAUDULENT INFORMATION.

Any Reporter who includes fraudulent information in the Annual Report is subject to enforcement as outlined in IDAPA 61.01.06.026. (5-1-19)

027. – 999. (RESERVED)

**61.01.03 – RULES GOVERNING CONTRACTS AND CORE REQUIREMENTS
FOR CONTRACTS BETWEEN COUNTIES AND PRIVATE ATTORNEYS
FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

000. LEGAL AUTHORITY.

Section 19-850(1)(a)(iii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services. (5-1-19)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services.” (5-1-19)

02. Scope. These rules establish the standards and guidelines for contracts between counties and private attorneys for the provision of indigent defense services. (5-1-19)

002. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems — Rule Definitions” for definitions of the terms and abbreviations used in this Rule. (5-1-19)

011. – 019. (RESERVED)

020. CORE TERMS.

If a Contracting Authority elects to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense by contracting with a defending attorney, as provided under Section 19-859(4), Idaho Code, each contract between the parties shall be in writing and include Subsections 01, 02, 03, and 04. Each contract should also include Subsections 05 through 10. (5-1-19)

01. Underlying Bases. The contract shall include a term explaining: (5-1-19)

a. The Contracting Authority’s statutorily mandated responsibility to provide public defender services; and (5-1-19)

b. The Contracting Authority’s desire to have legal services performed for individuals entitled to representation at public expense, provided by the Contractor. (5-1-19)

02. Parties. The contract shall identify the Contracting Authority and the Contractor. (5-1-19)

03. Term of the Contract. The contract shall specify the term of the contract, including a provision for renewal and for termination by either party. The contract should have a clear start date and end date. (5-1-19)

04. Compensation. The contract shall have a term setting the monetary rate at which the Contractor will be compensated for legal services rendered. (5-1-19)

05. Independent Contractor. The contract shall have a term explaining that the Contractor is an independent contractor for all services rendered pursuant to the contract. (5-1-19)

06. Scope of the Contract. The contract shall establish the case types to be handled pursuant to the contract. (5-1-19)

07. Conflicts of Interest. The contract shall include a provision ensuring the contractor does not provide representation to defendants when doing so would involve a conflict of interest. (5-1-19)

08. Training Requirements. The contract shall require each defending attorney providing services pursuant to the contract to participate in regular training programs on criminal defense law, including a minimum of seven (7) hours of continuing legal education annually in areas relating to their public defense practice, as required by the most recent edition of “Standards for Defending Attorneys.” (5-1-19)

09. Experience Requirements. Each Defending Attorney providing services pursuant to the contract shall: (5-1-19)

a. Meet the qualification and training requirements set forth in the most recent edition of “Standards for Defending Attorneys” incorporated by reference in IDAPA 61.01.08; and (5-1-19)

b. Satisfy the minimum requirements for practicing law in Idaho as determined by the Idaho Supreme Court. (5-1-19)

10. Performance Requirements. The contract shall require the contractor to do the following: (5-1-19)

a. Make reasonable efforts to provide the services and comply with the requirements of the Contract; (5-1-19)

b. Utilize adequate support staff to render the necessary competent assistance of counsel required under the contract; (5-1-19)

c. Contact all clients within a specified amount of time from notification of case assignment. The amount of time should take into account the requirements of providing constitutional representation and the ability of the contractor to meet such requirement considering factors like travel time and the ability to engage in such communication; and (5-1-19)

d. Abide by PDC standards as set forth in the most recent edition of “Standards for Defending Attorneys.” (5-1-19)

021. ESTABLISHMENT AND MAINTENANCE OF RECORDS.

01. Costs of Services Records. The contract shall require the Contractor to maintain records, including personnel, property, financial, and programmatic records, which reflect costs of services performed under the contract. (5-1-19)

02. Costs of Subcontract and Personal Service Contract Records. The contract shall require the Contractor to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. (5-1-19)

03. Duration of Record Keeping. The contract shall require the Contractor to maintain records for a specified period of time after termination of the contract, unless permission to destroy records before that time period is granted by the Contracting Authority. (5-1-19)

04. Copies. A copy of every signed contract between a Contracting Authority and an Indigent Defense Provider shall be sent to the PDC by the Contracting Authority within thirty (30) days of ratification. (5-1-19)

022. REPORTS AND INSPECTIONS.

Each contract shall require the Contractor to submit to the Contracting Authority the following: (5-1-19)

01. Written Notification. Immediate written notification in the case that a complaint is lodged with the Idaho State Bar, which has resulted in reprimand, suspension, or disbarment of the Indigent Defense Provider, or any attorney who is a member of the Indigent Defense Provider’s staff or working for the Indigent Defense Provider. (5-1-19)

02. Materials. If requested, materials necessary to verify compliance with all terms of the contract. (5-1-19)

023. – 999. (RESERVED)

**61.01.04 – RULES GOVERNING PROCEDURES AND FORMS FOR THE APPLICATION
AND DISBURSEMENT OF INDIGENT DEFENSE FINANCIAL ASSISTANCE**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(iv), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding procedures and forms by which counties may apply to the commission, pursuant to Section 19-862A, Idaho Code, for funds to be used to bring their delivery of indigent defense services into compliance with applicable indigent defense standards. (4-11-19)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Financial Assistance.” (4-11-19)

02. Scope. These rules establish the procedures by which counties may apply for Indigent Defense Financial Assistance to improve the delivery of indigent defense services and come into compliance with Indigent Defense Standards. (4-11-19)

002. -- 009. (RESERVED)

010. DEFINITIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” for definitions of the terms and abbreviations used in this Rule. (4-11-19)

011. -- 019. (RESERVED)

020. GENERAL PROVISIONS OF THE INDIGENT DEFENSE FINANCIAL ASSISTANCE PROGRAM.

It is the intent of the PDC, through the Indigent Defense Financial Assistance Program, to provide funds and planning assistance to counties of Idaho for the improvement of their trial-level indigent defense delivery systems to promote and meet the mandates of the Sixth Amendment to the U.S. Constitution and Article I, sec. 13 of the Idaho Constitution. Indigent Defense Financial Assistance funds are subject to availability, as appropriated by the Idaho Legislature. (4-11-19)

021. APPLICATION OF INDIGENT DEFENSE STANDARDS.

The established standards apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who represents at least one indigent defendant or an adult or juvenile at public expense in state courts in a fiscal year. Additionally, as section 19-859, Idaho Code, establishes that the board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney, these standards also apply to the delivery of such services by the county, Section 19-862A(9), Idaho Code. (4-11-19)

022. FINANCIAL ASSISTANCE CYCLE.

The PDC shall conduct the financial assistance process in accordance to Section 19-862A, Idaho Code and the following schedule so far as it does not conflict with Idaho Code: (4-11-19)

01. Application Availability. The PDC shall make an application and guidance available no later than February 28 of each year, which initiates the financial assistance cycle. (4-11-19)

02. Application Purpose. The financial assistance application and any attachments submitted by the applicant shall be the primary source of information for awarding financial assistance. The PDC may review prior financial assistance applications submitted by the County, as well as other relevant information related to the provision of indigent defense services. The PDC may also review reports of county indigent defense services provided by staff, including a county’s assigned Regional Coordinator. (4-11-19)

03. Application Period. The applicant shall have through May 1 of that financial assistance cycle to complete and submit the application to the PDC. (4-11-19)

04. Award Notification. The PDC shall issue notification to every applicant regarding the disposition of their financial assistance request within sixty (60) days of submission. (4-11-19)

05. Financial Assistance Approval. Financial assistance disbursement shall occur on or about October 1 of that financial assistance cycle. (4-11-19)

06. Financial Assistance Disapproval. If the PDC disapproves an application, the county shall consult with the PDC and submit a revised application within thirty (30) days of the mailing date of the official notification of the PDC's disapproval. A county may submit two (2) revisions. (4-11-19)

a. If after two (2) revisions, an application is not approved by the PDC, a resolution shall be pursued through the Idaho Administrative Procedure Act, pursuant to Section 67-5201 et seq., Idaho Code. (4-11-19)

b. The PDC will review and issue notification of the disposition of a revised application within thirty (30) days of submission. (4-11-19)

07. Award Amount. Based upon the criteria in Section 026 of this chapter, the PDC shall determine the amount that is needed by the Applicant to meet or improve upon indigent defense standards. The PDC shall award that amount to an eligible Applicant, subject to the availability of funds and the priority rating of the Applicant. (4-11-19)

08. Priority Rating. If funds are not available to fund all of the approved applications, the PDC shall prioritize the disbursement of funds to: (4-11-19)

a. Eligible Applicants not in compliance with any indigent defense standards; (4-11-19)

b. Eligible Applicants in compliance with some indigent defense standards; then (4-11-19)

c. Eligible Applicants in compliance who submit a compliance proposal with a plan to use their IDFA award to improve its indigent defense delivery system in other ways pursuant to Section 19-862A, Idaho Code. (4-11-19)

023. APPLICATION PROCEDURE.

All forms and documents required by these rules and the PDC shall be completed and submitted according to these rules in order for an IDFA application to be considered for approval. (4-11-19)

01. Forms. To be considered for financial assistance, an applicant must file with the PDC a completed IDFA application form, compliance checklist and other documentation requested in the application, all of which shall have original or digital signatures. An applicant must file with the PDC a completed financial assistance agreement form, with original or digital signatures, within sixty (60) days of written notification of financial assistance approval. The application and financial assistance agreement forms shall be provided to the applicant by the PDC. (4-11-19)

02. Review. The applicant or applicant's representative may review the compliance proposal and all associated documentation with the PDC staff prior to submitting the application to ensure it meets the criteria for the Indigent Defense Financial Assistance program. When possible, PDC staff may perform an on-site visit to the county for preliminary fact finding regarding compliance with indigent defense standards. (4-11-19)

03. Incomplete Application. An application which is missing required information shall be excluded from consideration for an award. (4-11-19)

04. Deadline. The deadline for financial assistance applications shall be established pursuant to Section 19-862A, Idaho Code. Applications for the upcoming fiscal year are due by May 1. The PDC shall announce the availability of funds to potential applicants as soon as practically reasonable after appropriated by the Idaho Legislature. (4-11-19)

024. AWARD ELIGIBILITY REQUIREMENTS.

To be considered for an award, an Applicant must meet all of the following requirements: (4-11-19)

01. Compliance with Indigent Defense Standards. To be eligible for any financial assistance award from the PDC, a county must comply with indigent defense standards or provide a suitable plan to comply in their IDFA application. Pursuant to Section 19-862A, Idaho Code, compliance must occur by March 31 of each year for any standards in place by May 1 of the prior year. (4-11-19)

02. Annual Report(s) Submitted. Each defending attorney within an applicant's county must have submitted an annual report pursuant to Section 19-864, Idaho Code, in order for a county to be eligible to receive any financial assistance award from the PDC. (4-11-19)

03. Completed Application. To be eligible, the county must file, to the satisfaction of the PDC, a completed application for an Indigent Defense Financial Assistance. (4-11-19)

04. Curing of Deficiencies. To be eligible, the Applicant must have cured, to the satisfaction of the PDC, any material breach of the terms of a previously approved state IDFA. The PDC may approve an application for an IDFA, even if deficiencies have not been cured, if the application includes a compliance proposal showing how an IDFA is necessary to meet or improve upon indigent defense standards and that the requested amount is imperative to such compliance proposal. (4-11-19)

05. Use of Funds. The Applicant must agree to use any financial assistance funds towards compliance with the applicable indigent defense standards and/or for the improvement of the Applicant indigent defense delivery system pursuant to Section 19-862A, Idaho Code. (4-11-19)

025. AWARD RECOMMENDATION.

If the PDC uses a financial assistance subcommittee, the PDC shall request a recommendation from the financial assistance subcommittee regarding the distribution of financial assistance funds. (4-11-19)

01. Assessment and Validation of Need. The financial assistance subcommittee, if used, shall review financial assistance applications prior to making a recommendation about awards. The subcommittee shall carefully review the compliance proposal and cost analysis to determine eligibility and the amount needed for the applicant to meet the plan contained within the compliance proposal. (4-11-19)

02. Commission Approval. Whether or not a financial assistance subcommittee is used, all awards must be approved by the PDC. If no financial assistance subcommittee is used, the PDC shall review the applications as set forth above. (4-11-19)

026. CRITERIA.

The following criteria shall be used to evaluate applications for IDFA awards: (4-11-19)

01. IDFA Award Eligibility. The PDC shall review the information provided in the application to determine the maximum allowable IDFA award pursuant to Section 19-862A(3), Idaho Code. (4-11-19)

02. Compliance Proposal Provided. The PDC shall approve an application if it includes a plan that is necessary to meet or improve upon indigent defense standards. (4-11-19)

03. Cost Analysis Provided. The PDC shall approve an application if it demonstrates that the amount of the requested state indigent defense financial assistance is necessary to meet or improve upon indigent defense standards. (4-11-19)

04. Annual Report(s) Submitted. Disbursement of IDFA award funds will occur if each defending attorney has submitted, to the satisfaction of the PDC, an annual report pursuant to Section 19-864, Idaho Code. (4-11-19)

05. Deficiencies Cured. The PDC shall determine whether the Applicant has cured, to the satisfaction of the PDC, any material breach of the terms of a previously approved IDFA. In the event the PDC determines that a county has failed to materially comply with indigent defense standards, the PDC shall require that the application specifically address how the noncompliance will be cured in the upcoming fiscal year with the IDFA award. In these cases, the PDC may approve an application for an IDFA award if, to the satisfaction of the PDC, the application compliance proposal includes a plan to cure such deficiencies. (4-11-19)

06. IDFA Funds Accounting. The PDC may review the use, misuse or non-use of prior IDFA awards by an Applicant and consider such use when determining how much an eligible applicant should receive upon

approval of an IDFA application. (4-11-19)

027. UNUSED IDFA FUNDS.

All funds not expended for costs associated with the applicant's award shall be maintained in the Applicant's fund for indigent defense and be specifically earmarked to meet or improve upon indigent defense standards that are in place or might be in place in the future. Unused financial assistance funds may be taken into consideration by the PDC in future IDFA award requests by the applicant. (4-11-19)

028. WITHDRAWAL OF FINANCIAL ASSISTANCE APPLICATION.

01. Withdrawal. Any applicant may withdraw or forfeit an application at any time. (4-11-19)

02. Ability to Apply. The withdrawal of an application does not affect the applicant's ability to reapply in a subsequent financial assistance cycle. (4-11-19)

029. FRAUDULENT INFORMATION ON FINANCIAL ASSISTANCE APPLICATION.

Providing false information on any application or document submitted under these rules is grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the PDC. (4-11-19)

030. -- 999. (RESERVED)

**61.01.06 – RULES GOVERNING PROCEDURES FOR THE OVERSIGHT, IMPLEMENTATION,
ENFORCEMENT, AND MODIFICATION OF INDIGENT DEFENSE STANDARDS**

000. LEGAL AUTHORITY.

Section 19-850(1)(a)(vi), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding procedures for the oversight, implementation, enforcement and modification of indigent defense standards so that the right to counsel of indigent persons is constitutionally delivered to all indigent persons in Idaho. Additionally, Section 19-850(1)(c), Idaho Code, directs the PDC to review indigent defense providers and defending attorneys to evaluate compliance with indigent defense standards and the terms of state indigent defense financial assistance. (5-1-18)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards.” (5-1-18)

02. Scope. These rules establish the procedures by which the PDC will oversee, implement, enforce and modify indigent defense standards. (5-1-18)

002. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” for definitions of the terms and abbreviations used in this Rule. (5-1-18)

011. – 019. (RESERVED)

020. OVERSIGHT PROGRAM.

The PDC shall oversee compliance with Indigent Defense Standards by Idaho’s counties and defending attorneys. PDC staff shall act as advisors to the PDC, to oversee and monitor the public defense delivery systems provided by the counties to assure compliance with Indigent Defense Standards. (5-1-18)

021. PARTICIPANTS AND ROLES.

01. The PDC. It is the responsibility of the PDC to oversee compliance with Indigent Defense Standards. The PDC is required to develop and adopt such standards to establish an indigent defense delivery system in Idaho that ensures constitutional representation. Other responsibilities of the PDC include, but are not limited to the following: (5-1-18)

a. Assess county and defending attorney compliance with Indigent Defense Standards; and (5-1-18)

b. File compliance report with state. (5-1-18)

02. PDC Staff. PDC staff shall: (5-1-18)

a. Review Indigent Defense Providers, defending attorneys and counties for compliance with Indigent Defense Standards; (5-1-18)

b. Identify and investigate reports of non-compliance; (5-1-18)

c. Prepare and assist in the implementation of corrective action plans; (5-1-18)

d. Report to the PDC with respect to oversight activities; (5-1-18)

e. Review Indigent Defense Financial Assistance Applications and prepare recommendations for PDC; (5-1-18)

f. Review Defending Attorney Annual Reports and prepare recommendations for PDC; (5-1-18)

g. At the request of county commissioners or indigent defense providers, review and assist with the creation of county indigent defense budgets; and (5-1-18)

h. Prepare recommendations to the PDC based upon review of the above. (5-1-18)

03. Indigent Defense Providers and Defending Attorneys. Indigent Defense Providers and defending attorneys are subject to the oversight program described herein. It is the responsibility of indigent defense providers and defending attorneys to cooperate and participate in compliance review. See Section 19-862A(1), Idaho Code. Other responsibilities of indigent defense providers and defending attorneys include but are not limited to the following: (5-1-18)

- a.** Participate meaningfully in the PDC oversight review process; (5-1-18)
- b.** Report to the PDC all compliance issues as soon as reasonably practicable and without violating any attorney-client privilege; (5-1-18)
- c.** Report to the PDC all barriers to compliance despite efforts to comply; and (5-1-18)
- d.** Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. (5-1-18)

04. Counties. Counties, through each board of county commissioners, and other county staff necessary for the administration of indigent defense services, including but not limited to elected county clerks, are subject to the oversight program described herein. It is the responsibility of counties to cooperate and participate in compliance review. See Section 19-862A(1), Idaho Code. Other responsibilities of the counties include but are not limited to: (5-1-18)

- a.** Anticipate review and be prepared to enable reviewer to issue a report within thirty (30) days of the review date; (5-1-18)
- b.** Report to the PDC all compliance issues as soon as reasonably practicable; (5-1-18)
- c.** Report to the PDC all barriers to compliance despite efforts to comply; and (5-1-18)
- d.** Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. (5-1-18)

022. MINIMUM STANDARDS.

The minimum standards for review are Indigent Defense Standards, promulgated pursuant to Section 19-850(1)(a), Idaho Code, and contained in IDAPA 61.01.01 through IDAPA 61.01.08 and all documents incorporated by reference. The PDC does not have the authority to enforce compliance with any standard other than current Indigent Defense Standards. (5-1-18)

023. OVERSIGHT PROGRAM MANAGEMENT.

At a minimum, the oversight program must determine if Indigent Defense Standards are being met, determine if deficiencies are being identified in a timely manner, and determine if deficiencies are being cured in a timely manner or by a schedule implemented by the PDC. (5-1-18)

01. Applicability of Oversight Program. The PDC shall monitor the provision of indigent defense services in Idaho. Pursuant to Section 19-850(1)(a), Idaho Code, the PDC has the duty and authority to monitor the following entities: counties, indigent defense providers and defending attorneys, and other stakeholders, as allowed by law. Such monitoring shall include, but is not limited to a review of indigent defense contracts, Compliance Proposals, indigent defense budgets, annual reports of defending attorneys, court proceedings, court and defending attorney meeting facilities, defending attorney compliance with membership in the Idaho State Bar and “Standards for Defending Attorneys,” current edition, to ensure compliance with Indigent Defense Standards. (5-1-18)

- a.** The PDC delegates such duty and authority to PDC staff, however, the ultimate determination of compliance is solely the responsibility of the PDC. (5-1-18)

02. Ongoing Coordination with Counties, Indigent Defense Providers, and Defending Attorneys. PDC staff will conduct meetings and correspond with counties, indigent defense providers, defending attorneys and

other indigent defense stakeholders as needed. PDC staff will conduct formal status meetings with counties once each quarter (every three months) and defending attorneys once a year (every twelve months). More frequent meetings may be conducted if needed. (5-1-18)

a. Institutional Public Defender Office meetings: If a defending attorney is an employee of an institutional public defender office, a formal status meeting with the chief public defender of that office satisfies the formal status meeting requirement as to that defending attorney. (5-1-18)

b. Contract Public Defender meetings: If a county contracts with a law firm or more than one defending attorney on a single contract, a formal status meeting with one of the defending attorneys working under that contract satisfies the formal status meeting requirement as to every defending attorney working under that contract. (5-1-18)

c. Meetings and correspondence are intended to ensure ongoing communications between the PDC and Stakeholders to ensure the best possible Indigent Defense Delivery System is in place to ensure constitutional representation. (5-1-18)

03. PDC Staff Reporting to PDC. PDC staff must make regular reports to the PDC. All reports must be submitted electronically using a reporting system specified by the executive director, as approved by the PDC. The objective of these reporting requirements is to provide the PDC with information regarding the compliance status of each of Idaho's Indigent Defense Delivery Systems. (5-1-18)

a. Periodic Reviews. (5-1-18)

i. Initial Review. PDC staff shall conduct an initial review of each Indigent Defense Delivery System. Subsequent initial reviews shall occur upon a policy change that modifies the method of delivery in a county. An initial review should be submitted to the PDC within ninety (90) days of the implementation of this rule or when a change in delivery method is instituted, and must include: (5-1-18)

- (1) A description of the review process; (5-1-18)
- (2) A list of documents reviewed; (5-1-18)
- (3) Persons interviewed, observations made, and facilities inspected; (5-1-18)
- (4) Completed compliance checklists; (5-1-18)
- (5) Findings of Non-compliance if any; and (5-1-18)
- (6) Findings of Compliance with Recommendations, if any. (5-1-18)

ii. Other periodic reviews. If significant compliance issues arise within a county or upon request of the PDC, PDC staff shall conduct a review. A periodic review report should be submitted to the PDC within thirty (30) days of notice of the compliance issue or of request and must include: (5-1-18)

- review;
- (1) Date the PDC became aware of the compliance issue, or date request was made by the PDC for the review; (5-1-18)
 - (2) Parties contacted during the review; (5-1-18)
 - (3) Reason the review was conducted; (5-1-18)
 - (4) Steps taken to resolve the issue; (5-1-18)
 - (5) The corrective action plan, if one was created; (5-1-18)
 - (6) Date of next review or follow-up. (5-1-18)

b. Annual Reviews. On or before April 15 of each year, PDC staff must submit to the PDC a report for each county that must include: (5-1-18)

i. A summary of oversight activities for the immediately preceding compliance period, including a description of the provision of indigent defense services; (5-1-18)

ii. A summary of compliance successes, deficiencies and issues; (5-1-18)

iii. Review of implementation of prior year's Compliance Proposal; and (5-1-18)

iv. Any changes to the provision of indigent defense services during the immediately preceding compliance period. (5-1-18)

c. Ongoing Consultation with the PDC. PDC staff shall consult with the PDC regarding appropriate handling of issues within counties that have remained unresolved after the review process or with counties which have not complied with or have disregarded Indigent Defense Standards. At a minimum, PDC staff shall notify the PDC within ten (10) business days of compliance issues that affect the provision of indigent defense services. (5-1-18)

i. PDC staff must ensure that an effective process is in place to identify and record compliance issues. PDC staff should assess the implementation of this identification in an ongoing manner and during oversight review. The executive director will informally assess this identification in the ongoing review of reports provided to the PDC. (5-1-18)

04. PDC Reporting to Executive and Legislative Branches. PDC provides annual reports to the governor of the state of Idaho and the Idaho Legislature. These presentations include updates on the provision of indigent defense delivery in Idaho and makes recommendations for legislation on indigent defense system issues. See Section 19-850(1)(b), Idaho Code. (5-1-18)

05. PDC Reporting to Counties. The PDC will provide ongoing feedback to counties through PDC staff regarding information collected during reviews, compliance issues or concerns discussed by the PDC, or other relevant items related to county provision of indigent defense services. All reports created by PDC staff and submitted as the result of a review of the county or a defending attorney providing services within that county, shall also be issued to an authorized official of the county that is the subject of the report. (5-1-18)

06. PDC Reporting to Indigent Defense Providers and Defending Attorneys. The PDC will provide ongoing feedback to indigent defense providers and defending attorneys individually or through communication via the public defense roster. Such feedback could include, but is not limited to, information collected during reviews, compliance issues or concerns discussed by the PDC, or other relevant items related to the provision of indigent defense services. All reports created by PDC staff and submitted as the result of a review shall also be issued to the subject(s) of the report. (5-1-18)

07. Indigent Defense Providers and Defending Attorneys Reporting to PDC Staff. On an ongoing basis, indigent defense providers and defending attorneys shall report to PDC staff any compliance issues that relate to Indigent Defense Standards. PDC staff shall review such reports and may forward such reports to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. Additionally, indigent defense providers and defending attorneys shall follow requirements of Section 025: Corrective Action Plans and Compliance Verification. (5-1-18)

08. Counties Reporting to PDC Staff. On an ongoing basis, counties shall report to PDC staff any compliance issues or observed deficiencies that relate to indigent defense standards. PDC staff shall review such reports and may forward such reports to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. Additionally, counties shall follow requirements of Section 025: Corrective Action Plans and Compliance Verification. (5-1-18)

09. Other Stakeholders Reporting to PDC Staff. The PDC and PDC staff will seek and accept

reports of compliance issues from stakeholders, though the PDC has no authority to mandate such reporting. Stakeholders may report whether or not a county, indigent defense provider or defending attorney are in compliance with Indigent Defense Standards. PDC staff shall review such reports and may pass such reports on to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. (5-1-18)

024. PROCEDURES FOR OVERSIGHT PROGRAM.

The procedure outlined below applies to all oversight activities performed by PDC staff. On-site review will generally be structured as follows: (5-1-18)

01. Time and Place. PDC staff will work with stakeholders to identify a convenient period of time for on-site oversight activities. (5-1-18)

02. Notification. PDC staff will notify the subject of a review at least thirty (30) days before the review is to take place. (5-1-18)

03. Extension. PDC staff may grant an extension for the conduct of a review, provided the PDC is notified by the party being reviewed within fifteen (15) days of the original notification date of the compliance review. (5-1-18)

04. Items Subject to Review. PDC staff will request and review the most recent Compliance Proposals, Indigent Defense Financial Assistance applications, indigent defense contracts, indigent defense budgets, annual reports, and other items relevant to the provision of indigent defense and compliance with indigent defense standards. (5-1-18)

05. Items Subject to Observation. PDC staff will conduct field observation of courtroom activities and facilities available to and used by indigent defense providers, defending attorneys, and their staff in the course of the representation of indigent defendants. In this section, “staff” refers to non-attorneys employed or contracted by an indigent defense provider or defending attorney as such employment or contract relates to the provision of indigent defense services. (5-1-18)

06. Persons Subject to Interview. PDC staff will interview county officials, indigent defense providers, defending attorneys and other stakeholders who are involved in the administration of Indigent Defense Services or could be in positions to observe compliance with Indigent Defense Standards. (5-1-18)

07. Timing of Report. PDC staff will issue a report within thirty (30) days of completion of oversight review or by April 15 of each year if an annual review. (5-1-18)

025. CORRECTIVE ACTION PLANS AND COMPLIANCE VERIFICATION.

Corrective Action Plans and Compliance Verification forms are to address how Indigent Defense Standards are to be met and how any deficiencies will be cured. (5-1-18)

01. Corrective Action Plans. Upon report of compliance issue by PDC staff or PDC finding of non-compliance, a county or defending attorney shall describe a proposed corrective action to be taken. The plan shall be submitted to the PDC electronically using a reporting system specified by the executive director, as approved by the PDC. (5-1-18)

a. County Response. Within sixty (60) days of the date of a report issued by PDC staff in which the county is the subject, the county shall respond in writing to each finding of non-compliance or finding of compliance with recommendation. The county shall describe a corrective action to be taken by the county. The county may request from the PDC an extension of up to sixty (60) days in which to describe a corrective action and submit it to the PDC. (5-1-18)

b. Indigent Defense Provider and Defending Attorney Response. Within sixty (60) days of the date of a report issued by a PDC Staff in which an attorney is the subject, the indigent defense provider or defending attorney shall respond in writing to each finding of non-compliance or finding of compliance with recommendation. The attorney shall describe a corrective action to be taken. The attorney may request from the PDC an extension of up to

sixty (60) days in which to describe a corrective action and submit it to the PDC. (5-1-18)

c. Follow-up Reviews. PDC staff shall conduct follow-up reviews of counties, indigent defense providers and defending attorneys when a report included findings of non-compliance. The follow-up review shall occur within a reasonable time, but not more than sixty (60) days following receipt of a response to the report. Such reviews shall occur monthly until complete implementation of the corrective action has occurred. PDC staff shall provide monthly updates to the PDC regarding the subject of the report. Monthly updates by PDC staff to the PDC must include all issues that have not yet been corrected. (5-1-18)

d. Annual Follow-up Review. If implementation of a Corrective Action Plan will take longer than three hundred sixty-five (365) days, PDC staff shall provide a formal yearly report regarding the status of the corrective actions to the PDC and the subject of the report. Within thirty (30) days of the date of the annual follow-up review, the subject of the report shall respond in writing to each continued finding of non-compliance and describe the proposed corrective action to be taken. (5-1-18)

02. Compliance Verification. If in any given fiscal year, a county does not apply for an Indigent Defense Financial Assistance, the county shall submit a compliance verification form. See IDAPA 61.01.04 for further guidance. (5-1-18)

026. ENFORCEMENT.

Pursuant to Section 19-862A(1), Idaho Code, all counties, indigent defense providers and defending attorneys shall cooperate and participate with the PDC in the review of their indigent defense services. (5-1-18)

01. Failure to Submit to a Review. If a county, indigent defense provider or defending attorney fails to cooperate with a review by PDC staff, the following actions will be taken: (5-1-18)

a. Review by the PDC executive director as described in Subsection 023.03.a. and Section 024 of this chapter. (5-1-18)

b. Continued failure to submit to a review will result in a certified letter designating a deficiency and the PDC may take action under Section 19-862A, Idaho Code, as allowed by law. (5-1-18)

02. Failure to Respond to Report. If a county, indigent defense provider, or defending attorney fails to respond to a report within the required time, the PDC will be notified. If the PDC finds no just cause for the failure to respond to the report, a certified letter will be sent to the subject of the report indicating the subject has failed to comply. The PDC may then take action pursuant to Section 19-862A(11), Idaho Code. (5-1-18)

03. County Non-compliance. If a county fails to take steps to correct a finding of non-compliance, the PDC may act pursuant to Section 19-862A(11), Idaho Code. (5-1-18)

04. Defending Attorney Non-compliance. If a defending attorney fails to take steps to correct a Finding of Non-compliance, the following actions will be taken: (5-1-18)

a. The county or counties for which the defending attorney provides indigent defense services will be notified via certified letter as to the non-compliance. (5-1-18)

b. The defending attorney will be removed from the Public Defense Roster. The defending attorney may re-apply for inclusion on the public defense roster after the finding of non-compliance is corrected. The defending attorney may still provide indigent defense services during this time. (5-1-18)

c. If the defending attorney continues to be deemed non-compliant after a period of six (6) months, the defending attorney will be prohibited from accepting any additional indigent defense cases in any county in which said attorney has been deemed non-compliant. Such prohibition shall remain in place until the PDC makes a finding that the defending attorney is compliant. (5-1-18)

05. Designation of a Deficiency. The designation of a deficiency is a formal finding made by the PDC that a county or defending attorney has failed to comply with Indigent Defense Standards within the timeline as

required by Section 19-862A(9), Idaho Code. The PDC will maintain a list of designated deficiencies that will be made available upon request. When a deficiency exists for a period of more than six (6) months or persists through the IDFA application process without a compliance proposal that sufficiently addresses such deficiency, the PDC will assess whether the party responsible has willfully and materially failed to comply. Upon such a finding, the PDC will take action pursuant to Section 19-862A(11), Idaho Code, which may include the withholding of Indigent Defense Financial Assistance funds or the PDC takeover of an indigent defense delivery system. (5-1-18)

06. Material Non-compliance. Established standards are deemed crucial to the constitutional representation of indigent defendants and the effective provision of indigent defense services. A violation of an established standard is material non-compliance. (5-1-18)

07. Willful Non-compliance. The violation of an established standard that is done voluntarily with either an intentional disregard of, or indifference to, the requirements of these rules will be deemed willful non-compliance. (5-1-18)

08. Final Determination of Non-compliance. The PDC is ultimately responsible for the determination that a county or defending attorney has willfully and materially failed to comply with Indigent Defense Standards. Pursuant to Section 19-862A(11), Idaho Code, the PDC may upon review of PDC staff reports, stakeholder reports, Indigent Defense Financial Assistance applications, Compliance Verification reports, information received relevant to the provision of indigent defense services, or observation by PDC staff or the PDC, deem a county or defending attorney has willfully and materially failed to comply. Upon such determination, the PDC will take action pursuant to Section 19-862A, Idaho Code, as allowed by law. (5-1-18)

027 – 999. (RESERVED)

**61.01.07 – RULES GOVERNING STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE
IDAHO’S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(vii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing the standards for defending attorneys that utilize, to the extent reasonably practicable taking into consideration factors such as case complexity, support services and travel, Idaho’s Principles of an Indigent Defense Delivery System (IPIDDS) as referenced in the same section. (5-1-17)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 07, “Rules Governing Standards for Defending Attorneys That Utilize Idaho’s Principles of an Indigent Defense Delivery System.” (5-1-17)

02. Scope. These rules establish the standards and guidelines for Indigent Defense Providers and defending attorneys practicing in the State of Idaho. As section 19-859, Idaho Code, establishes that the board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney, these rules also apply to the delivery of such services by the county, section 19-862A(9), Idaho Code. (5-1-17)

002. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” for definitions of the terms and abbreviations used in this Rule. (5-1-18)

011. – 019. (RESERVED)

020. PUBLIC DEFENSE ROSTERS.

01. Public Defense Roster Membership. The PDC will create and maintain a roster of all indigent defense providers, defending attorneys and non-attorney staff under their regular employ or supervision who are compliant with current Indigent Defense Standards. (5-1-18)

a. Maintenance of Public Defense Roster. The public defense roster will be updated in November of each year or whenever there is a change requiring an update. (5-1-18)

b. Public Defense Roster Contents. The public defense roster will include the name of each compliant defending attorney or non-attorney staff, their Idaho State Bar Number, and professional contact information, including email address, physical address, and telephone number. The roster will also indicate the county or counties within which the defending attorney provides indigent defense services. (5-1-18)

c. Secondary Roster. The PDC will create and maintain a secondary roster of all non-compliant indigent defense providers and defending attorneys who continue to provide indigent defense services. The contents of the secondary roster will be the same as the Public Defense Roster but will include information as to how the attorney is not meeting established standards and the date on which the attorney was removed from the Public Defense Roster for such non-compliance. (5-1-18)

d. Availability of Public Defense Roster. The rosters are available from the PDC office upon request. (5-1-18)

02. Application for Public Defense Roster Inclusion. Any attorney who is not employed by an indigent defense provider, who does not work under an existing indigent defense services contract, or who has become compliant after a period of non-compliance with Indigent Defense Standards, may apply to the PDC for inclusion on the Public Defense Roster. The application is available on the PDC website: <https://pdc.idaho.gov/forms>. (5-1-18)

a. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. (5-1-17)

03. Membership Benefits. Membership on the public defense roster ensures access to PDC trainings and scholarships as outlined in IDAPA 61.01.01. (5-1-18)

04. Capital Counsel Roster Membership. The PDC will create and maintain a roster of all qualified capital defending attorneys. Inclusion on the capital counsel roster requires compliance with Standards for Defending Attorneys and current Indigent Defense Standards. (5-1-18)

a. Maintenance of Capital Counsel Roster. The capital counsel roster will be updated in November of each year, but may be updated more frequently in order to accurately reflect changes made throughout the year. (5-1-18)

b. Capital Counsel Roster Contents. The capital counsel roster will include the name of each qualified capital counsel who meets the Standards for Defending Attorneys: Capital Counsel Qualifications and Roster, their Idaho State Bar number and professional contact information including email address, physical address, and telephone number. (5-1-18)

05. Application for Capital Counsel Roster Inclusion. Any defending attorney who represents indigent defendants at public expense in defense of a capital crime shall apply for inclusion on the capital counsel roster. The application is available on the PDC website: <https://pdc.idaho.gov/forms>. (5-1-18)

a. Approval. The PDC must approve inclusion on the capital counsel roster. (5-1-18)

021. APPLICATION OF ESTABLISHED STANDARDS.

The established standards detailed in the incorporated document, “Standards for Defending Attorneys,” shall apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who is assigned to represent at least one indigent defendant or is otherwise assigned to represent an adult or juvenile at public expense in state courts in a fiscal year. Additionally, as Section 19-859, Idaho Code, establishes that the board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney, these standards also apply to the delivery of such services by the county, Section 19-862A(9), Idaho Code. (5-1-17)

022. – 999. (RESERVED)

**61.01.08 – RULES GOVERNING THE ADMINISTRATION OF IDAHO’S
INDIGENT DEFENSE DELIVERY SYSTEM – RULE DEFINITIONS**

000. LEGAL AUTHORITY.

Sections 19-849 through 19-866, Idaho Code, give the State Public Defense Commission (PDC) authority to adopt rules and standards to improve the delivery of trial-level indigent defense services in Idaho. The PDC is authorized under Sections 19-850(1)(a) and 19-862A, Idaho Code, to supervise and administer the indigent defense delivery system. (5-1-18)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery System – Rule Definitions.” (5-1-19)

02. Scope. These rules contain the definitions used throughout the chapters of rules adopted by the PDC. ()

002. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (5-1-18)

01. Idaho’s Principles of an Indigent Defense Delivery System. “Idaho’s Principles of an Indigent Defense Delivery System, edition 2016,” revised as of January 25, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/wp-content/uploads/sites/11/2017/01/Idahos-Principles-of-PD-System.pdf>. (5-1-18)

02. Standards for Defending Attorneys. “Standards for Defending Attorneys, edition 2018,” revised as of November 14, 2018, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-19)

03. Application for Capital Defense Roster. “Application for Capital Defense Roster, edition 2017,” revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-18)

003. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of the Indigent Defense Delivery System chapters of rules, the following definitions apply: (5-1-18)

01. Annual Report. A report submitted to the appropriate Board of County Commissioners, Administrative District Judge and the PDC by a defending attorney pursuant to Section 19-864, Idaho Code, on an annual reporting form created by the PDC. The annual reporting form is available on the PDC website: <https://pdc.idaho.gov/forms/>. (5-1-18)

02. Applicant – Indigent Defense Financial Assistance. A County that identifies a need for an Indigent Defense Financial Assistance by submission of a compliance proposal, and applies for financial assistance through the PDC. (5-1-18)

03. Approval – IDG Application. An IDG application shall be approved if the applicant meets the requirements for eligibility. An approval does not guarantee the amount or disbursement of an IDG award. The PDC retains the ability to determine the amount of an IDG award based upon the components listed in IDAPA 61.01.04. Disbursement of funds is subject to availability as appropriated by the State Legislature each year. (5-1-18)

04. Capital Counsel Roster. A roster of defending attorneys who may be appointed to represent an indigent defendant in a case in which the death penalty may be imposed. Defending attorneys not on this roster may not represent indigent defendants in such cases. (5-1-18)

05. Case. (5-1-18)

a. A case consists of all related charges from a single incident, transaction or occurrence filed within a single case number, handled by one defending attorney. A probation violation or motion for contempt is counted as a separate case. (5-1-18)

b. A felony case is counted as follows: (5-1-18)

- i. A case filed as a felony is counted as one felony, whether it is dismissed, remanded, pled, or tried to completion. (5-1-18)
 - ii. A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. (5-1-18)
 - iii. A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. (5-1-18)
 - c. Post-judgment motions, such as those requesting early termination of probation or a reduction in sentence pursuant to Idaho Criminal Rule 35, are not counted as a case. (5-1-18)
 - d. If two or more cases are consolidated prior to significant representation being undertaken on each individual case, then the consolidated case is counted as one case. If significant representation has occurred prior to consolidation, the cases in which such representation has occurred shall be counted as separate cases. (5-1-18)
- 06. Caseload.** The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. (5-1-18)
- 07. Compliance Checklist.** A document provided by the PDC each financial assistance cycle to assist an Applicant determine eligibility for an IDG. The checklist will be updated each year and is required as a part of an IDG application. (5-1-18)
- 08. Compliance Period.** The compliance period runs from May 1 through March 31. Indigent defense standards that are in place by May 1 of a given year must be complied with by March 31 of the following year. (5-1-18)
- 09. Compliance Proposal.** A plan that specifically addresses how indigent defense standards shall be met and how any deficiencies previously identified by the PDC will be cured in the upcoming county fiscal year. The plan shall include a cost analysis that specifically identifies the amount of funding in excess of the applicable local share necessary to allow the county to successfully execute the compliance proposal. If the county can execute its plan without exhausting the entirety of the financial assistance for which it may be eligible, the plan may include a request for funding for other improvements to its delivery of indigent defense services, pursuant to Section 19-862A(2), Idaho Code. (5-1-18)
- 10. Compliance Verification.** A form that must be completed and submitted to the PDC by a county that chooses not to file an Indigent Defense Financial Assistance Application. This verification requires the county to describe how IDG funds have been used in the prior year (if applicable) and an explanation as to how the county will fund their indigent defense delivery system in compliance with established standards. (5-1-18)
- 11. Contracting Authority.** The board of county commissioners or its designated agent who enters into a contract with a defending attorney for the provision of representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. (5-1-19)
- 12. Contractor.** A defending attorney, law firm or office of public defender that enters into a contract with a Contracting Authority for the provision of representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. (5-1-19)
- 13. Corrective Action Plan.** A plan developed by a county or defending attorney with the assistance of PDC staff that addresses any reported violation of established standards and how those violations will be corrected. (5-1-18)
- 14. Defending Attorney.** Defined in Section 19-851, Idaho Code, as any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense in state courts. (5-1-18)
- 15. Deficiency.** The violation of an established standard for which the timeline for compliance has passed pursuant to Section 19-862A(9), Idaho Code. (5-1-18)

- 16. Eligible Applicant – Indigent Defense Financial Assistance.** To be considered for an award of an IDG, an applicant must meet the requirements of IDAPA 61.01.04, Section 024, “Award Eligibility Requirements.” (5-1-18)
- 17. Established Standards.** Rules promulgated by the PDC pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)
- 18. Finding of Compliance with Recommendation.** A finding of compliance with recommendation refers to a condition whereby a county or defending attorney may be in compliance with Indigent Defense Standards; however, the provision of indigent defense services could be improved to ensure constitutionally-sound representation or achieve compliance with indigent defense standards yet to be promulgated. This finding is not a PDC determination of deficiency or non-compliance. The PDC does not have the authority to enforce compliance with a recommendation. (5-1-18)
- 19. Finding of Non-Compliance.** A finding of non-compliance refers to an instance where a county or defending attorney is not in compliance with applicable Indigent Defense Standards and may be related to a deficiency in the provision of indigent defense services. This finding is not necessarily a PDC determination of a deficiency and still requires a finding of material and willful non-compliance before the take-over provisions of Section 19-862A, Idaho Code, are invoked. (5-1-18)
- 20. Fiscal Year.** As referred to in this chapter, fiscal year refers to a county fiscal year beginning on October 1 and ending on September 30 of the following calendar year. (5-1-18)
- 21. Formal Status Meeting.** A meeting between PDC staff and a county or defending attorney conducted in accordance with IDAPA 61.01.06, section 023.02. (5-1-18)
- 22. Indigent Defense Budget.** The funds appropriated each fiscal year by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code, that includes the expenses of investigation, other preparation and trial, but does not include amounts received from the Capital Crimes Defense Fund or the Public Defense Commission. The appropriated funds shall not be less than a county’s local share for that fiscal year. (5-1-18)
- 23. Indigent Defense Contract.** A written contract between the board of county commissioners and a defending attorney or existing office of public defender that provides representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. Such contracts shall not include a pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney. (5-1-19)
- 24. Indigent Defense Delivery System.** The system created by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code. The system includes the county, indigent defense provider, defending attorneys, and any other county staff necessary for the administration of indigent defense services. (5-1-18)
- 25. Indigent Defense Expenditures.** Any monies expended for indigent defense services within a county that do not include amounts received from the public defense commission or amounts expended for capital cases by those counties participating in the capital crimes defense program in excess of premiums and deductibles required by guidelines approved by the Idaho capital crimes defense fund board of directors. (5-1-18)
- 26. Indigent Defense Financial Assistance.** Pursuant to Section 19-862A, Idaho Code, any sum of money awarded by the PDC to a county to support compliance with Indigent Defense Standards or for other improvements to its delivery of indigent defense service. (5-1-19)
- 27. Indigent Defense Financial Assistance Application.** An application created by the PDC each year requesting information related to the provision of indigent defense services in an Applicant’s county. This application will be updated each year and be provided by February 28, initiating the financial assistance cycle. Counties are required to use this application when requesting an IDG award. (5-1-18)

28. Indigent Defense Provider. Any agency, entity, organization or person selected by a board of county commissioners in accordance with Section 19-859, Idaho Code, or designee of the commission if the commission’s actions to remedy specific deficiencies pursuant to Section 19-862A(11)(b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. (5-1-18)

29. Indigent Defense Services. County services provided to indigent persons and other individuals who are entitled to be represented by an attorney at public expense pursuant to Section 19-859, Idaho Code. (5-1-18)

30. Indigent Defense Stakeholders (“Stakeholders”). A person, agency, entity or other organization with an interest or concern in the delivery of indigent defense in Idaho. (5-1-18)

31. Indigent Defense Standard. Defined in Section 19-851, Idaho Code, as any rule promulgated by the commission pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)

32. Joint Incentive Indigent Defense Financial Assistance. Pursuant to Section 19-862A, Idaho Code, a sum of money awarded by the PDC to counties who join together to establish and maintain a joint office of public defender pursuant to Section 19-859(2), Idaho Code. (5-1-18)

33. Local Share. Defined in Section 19-851, Idaho Code, as the benchmark figure calculated by the commission to determine the minimum amount of funding that shall be maintained by a county and to determine the award amount of state indigent defense financial assistance for which a county may be eligible pursuant to Section 19-862A, Idaho Code. For any given county fiscal year, a county’s local share shall be the median of the annual amount in county funds expended by that county for indigent defense during each of the first three (3) of the preceding five (5) county fiscal years, as certified by the county clerk. (5-1-18)

34. Oversight Review. An annual or periodic review of a county or defending attorney, completed by PDC staff, that considers whether indigent defense standards are being met and if deficiencies are being identified and cured in a timely fashion. (5-1-18)

35. Public Defense Roster. A roster of compliant defending attorneys who may be appointed to represent indigent defendants or other persons entitled to be represented by an attorney at public expense. The roster may also include non-attorney staff under the regular employ or supervision of a defending attorney. (5-1-19)

36. Reporter. An Indigent Defense Provider or defending attorney who submits an Annual Report as required by Section 19-864, Idaho Code, and IDAPA 61.01.02. (5-1-19)

37. Scholarship. Any amount of training funds granted by the PDC to be used toward the costs of attending a training program. (5-1-18)

38. Staff. Any individual employed by the PDC. (5-1-18)

39. Submission Date. The date upon which one mails or digitally submits a document, form, or application to the PDC. (5-1-18)

40. Training Funds. An amount designated in the annual budget of the PDC designated for the benefit of defending attorneys and those under their employ or supervision. These funds are dedicated to provide training and education for persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

41. Training Program. Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

42. Vertical Representation. Continuous representation by the same attorney from assignment through completion of the case. Assignment shall occur immediately following an initial appearance to ensure that the constitutionally required level of advocacy necessary to mount a meaningful defense commences as soon as possible. (5-1-18)

43. Workload. The term workload recognizes that a caseload generally consists of a mix of case types that each require differing amounts of time and resources. (5-1-18)

011. ABBREVIATIONS.

01. MCLE. Mandatory Continuing Legal Education credit as determined by the Idaho State Bar. (5-1-18)

02. PDC. The State Public Defense Commission. (5-1-18)

03. IPIDDS. Idaho’s Principles of an Indigent Defense Delivery System. (5-1-18)

04. IDFA. Indigent Defense Financial Assistance. (5-1-18)

012. – 999. (RESERVED)