

PENDING RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Judiciary & Rules Committee
66th Idaho Legislature
Second Regular Session – 2022



Prepared by:

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

January 2022



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

January 10, 2022

MEMORANDUM

TO: **Members of the 2022 Idaho State Legislature**

FROM: **Alex J. Adams, Administrator** *Alex J. Adams*
Bradley A. Hunt, Rules Coordinator *Bradley A. Hunt*

SUBJECT: **Overview of Executive Agency Rulemaking in 2021**

Background. Governor Little maintains and continues to stress the importance of an efficiently functioning government along with ensuring continuity of the services citizens expect and implemented through executive administrative rules. Nearly all rules published in the Legislative Rules Review books are simply re-published because the 2021 Legislature adjourned *sine die* without passing a concurrent resolution approving any pending fee rules as specified in Section 67-5224, Idaho Code, as well as not extending any effective rule on July 1 by statute as outlined in Section 67-5292, Idaho Code. The necessary rules were re-published in the following special bulletins:

- [July 21](#) – Temporary Rules
- [October 20](#) – Proposed Rules
- [December 22](#) – Pending Rules

Changes in Existing Rules. Since the vast majority of rules either expired or were not approved, there is no existing rule available to amend. Therefore, only a clean version of the rule chapter is able to be presented to the Legislature in January 2022. In some cases, rules were modified based on public comment, or to implement Executive Order [2020-01](#), Zero-Based Regulation (ZBR), among other reasons. Given the unprecedented volume, edits are incorporated within a single omnibus docket, or in the case of ZBR rulemaking a standalone docket, and presented as a clean rule chapter. There are several ways that legislators may view previous rules for comparison purposes:

- An [archive of any rule](#) since 1996 is available on the DFM website. This allows legislators to see the evolution of a rule over time.
- The Legislative Services Office analyzes all proposed rules. You can find their analysis of proposed rules which, in some cases, may discuss changes between previous rules and the proposed rules. These may be found on the [Legislature's website](#).
- Changes made between the proposed and pending rule stages for omnibus rulemaking were noted in the [December 22](#) bulletin where applicable.

Process for Approving Rules. Below, you will find a brief description on legislative actions and outcomes regarding the rules review process and contents of the Legislative Rules Review Books:

- Pending Fee Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to become final.
- Pending Rules become final and effective *sine die* unless rejected, in whole or in part, via concurrent resolution adopted by both bodies.
 - Pending rules may be approved, in whole or in part, or rejected if determined to be inconsistent with legislative intent of the governing statute.
 - If rejected, new or amended language must be identified at a numerical or alphabetical designation within the rule and specified in the concurrent resolution.
- A link to LSO's proposed rule analysis is provided at the beginning of each docket and includes any required supporting documentation (e.g. Cost Benefit Analysis (CBA), Incorporation By Reference Synopsis (IBRS)) as part of the analysis.
- All 2022 review books can be accessed on the DFM website [here](#).

Contact Information. If questions arise during the rules review process, please do not hesitate to contact the Rules Coordinator, Brad Hunt: Brad.Hunt@dfm.idaho.gov; 208-854-3096.

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

DOCKET NO. 05-0000-2100

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 2022 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 effective upon adoption of, or date specified in, the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(10), 20-504(12), 20-504(15), 20-520(1)(s), 20-532, and 16-1901, 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 publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature 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*; and
- 05.02.01, *Rules for Residential Treatment Providers*.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, [Vol. 21-10SE, pages 557-645](#).

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 FY2022 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 22nd day of December, 2021.

Monty Prow, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St.
P.O. Box 83720
Boise, ID 83720-0285
Phone: (208) 334-5100
Fax: (208) 334-5120

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(10), 20-504(12), 20-504(15), 20-520(1)(s), 20-532, 16-1901, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature 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*; and
- 05.02.01, *Rules for Residential Treatment Providers*.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible 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 proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Estela Cabrera 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 October 20, 2021.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING DOCKET NO. 05-0000-2100

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. 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.

()

002. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies.

()

003. -- 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.

()

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

()

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.

()

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.

()

05. Contraband. Any item not issued or authorized by the detention center.

()

06. Corporal Punishment. Any act of inflicting punishment directly on the body, causing pain or injury.

()

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.

()

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.

()

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.

()

10. Direct Care Staff. Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center.

()

11. Electroshock Device. A device which delivers an electric shock designed to temporarily disrupt muscle function.

()

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 will be provided to the juvenile offender population by the medical staff, physician, other appropriately trained staff, local ambulance services or outside hospital emergency rooms.

()

- 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. ()
- 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. ()
- 15. Health Authority.** The physician, health administrator, or agency responsible for the provision of health care services at the detention center. ()
- 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. ()
- 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. ()
- 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. ()
- 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. ()
- 20. Mechanical Restraints.** Devices used to restrict physical activity. ()
- 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. ()
- 22. Medical Records.** Records maintained by the health authority, to include medical examinations, diagnoses, and any medical care provided. ()
- 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. ()
- 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. ()
- 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. ()
- 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. ()
- 28. Physical Intervention.** Physical contact to guide, restrict, or prevent movement in order to take immediate control of a situation. ()
- 29. Policy and Procedures.** Standard operating strategies and processes developed by the

administrative authority governing detention center operations. ()

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. ()

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. ()

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. ()

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. ()

33. Rule Infraction. A violation of detention center rules of conduct or policy and procedures as governed by detention center policy and procedures. ()

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. ()

35. Secure Perimeter. The outer portions of a detention center that provide for secure confinement of juvenile offenders. ()

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. ()

37. Staffing Plan. A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. ()

38. Standards. Rules for Secure Juvenile Detention Centers, IDAPA 05, Title 01, Chapter 02. ()

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. ()

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. ()

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. ()

01. Annual Visits. Each juvenile detention center is subject to announced or unannounced visits by Department representatives on at least an annual basis. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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

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

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. ()

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. ()

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. ()

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. ()

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. ()

04. Minimum Qualifications. ()

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.” ()

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.” ()

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

05. Training and Staff Development Plan. Each juvenile detention center shall develop a staff training and development plan based on the policy and procedures of the detention center. The plan shall also ensure that all juvenile detention officers earn the juvenile detention officer certificate as mandated in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” ()

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

i. First aid/CPR; ()

ii. Security procedures; ()

iii. Supervision of juvenile offenders; ()

iv. Suicide prevention; ()

v. Fire and emergency procedures; ()

vi. Safety procedures; ()

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; ()

viii. Report writing; ()

ix. Juvenile offender rules of conduct; ()

x. Rights and responsibilities of juvenile offenders; ()

- xi. Key control; ()
- xii. Interpersonal relations; ()
- xiii. Social/cultural life styles of the juvenile population; ()
- xiv. Communication skills; ()
- xv. Mandatory reporting laws and procedures; ()
- xvi. Professional boundaries; and ()
- xvii. All training as outlined in section 115.331 of the PREA Standards. ()

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.” ()

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: ()

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 ()

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

iii. All other trainings that require recertification. ()

d. Volunteers and contractors shall be trained commensurate to their level of contact with juvenile offenders. ()

e. Each facility shall maintain accurate training documentation. ()

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; ()

b. Security of information, including access and protection from unauthorized disclosure; ()

c. Content of records; ()

d. Maintenance of records; ()

e. Length of retention; and ()

f. Method of storage or disposal of inactive records. ()

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. ()

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. ()

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: ()

- a.** Direct care staff on duty; ()
- b.** Time and results of security or well-being checks and head counts; ()
- c.** Names of juvenile offenders received or discharged with times recorded; ()
- 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; ()
- e.** Time of meals served; ()
- f.** Times and shift activities, including any action taken on the handling of any routine incidents; ()
- g.** Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; ()
- h.** Notations and times of unusual incidents, problems, disturbances, escapes; ()
- i.** Notations and times of any use of emergency or restraint equipment; and ()
- j.** Notation and times of perimeter security checks. ()

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. ()

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

- a.** Name of each visitor; ()
- b.** Time and date of visit; ()
- c.** Juvenile offender to be visited; and ()
- d.** Relationship of visitor to juvenile offender and other pertinent information. ()

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; ()
 - b. Record of court appearances; ()
 - c. Documentation of authority to hold; ()
 - d. Probation officer or caseworker, if assigned; ()
 - e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; ()
 - 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; ()
 - g. Documentation of education as outlined in PREA Standard Section 115.333; ()
 - h. Rule infraction reports; ()
 - i. Records of disciplinary actions; ()
 - j. Grievances filed and their dispositions; ()
 - k. Release records; ()
 - l. Personal information and emergency contact information; ()
 - m. Documentation of a completed intake medical screening; ()
 - n. Visitor records; ()
 - o. Incident reports; ()
 - p. Photographs. ()
- 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: ()
- a. Any criminal act; ()
 - b. Use of force; ()
 - c. Use of restraints, except for transfer; ()
 - d. Suicide or attempted suicide; ()
 - e. Escape or attempted escape; ()
 - f. Emergencies; ()
 - g. Serious rule violations; ()
 - h. Cross-gender searches; ()
 - i. Body cavity searches; ()
 - j. Seizure and disposition of contraband; and ()

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. ()

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. ()

217. MEDICAL INFORMATION.

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

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. ()

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: ()

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; ()

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

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); ()

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); ()

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

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; ()

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; ()

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

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; ()

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; ()

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); ()

l. The provision and documentation of training for staff as outlined by PREA Standard Section 115.331; ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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

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. ()

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

- i. Instances of justifiable self-protection; ()
- ii. The protection of others; ()
- iii. The protection of property; ()
- iv. The prevention of escapes; and ()
- v. The suppression of disorder. ()
- b.** Physical intervention shall not be used as punishment. ()

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. ()

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

- i. Instances of justifiable self-protection; ()
- ii. The protection of others; ()
- iii. The prevention of escapes; and ()
- iv. The suppression of disorder. ()

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

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

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. ()

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. ()

- a.** The use of restraints shall be restricted to: ()
 - i. Instances of transfer; ()
 - ii. Instances of justifiable self-protection; ()
 - iii. The protection of others; ()
 - iv. The protection of property; ()
 - v. Medical reasons under the direction of medical staff; ()
 - vi. The prevention of escapes; and ()
 - vii. The suppression of disorder. ()
- b.** Restraints shall not be used as punishment or for the convenience of staff. ()

c. Juvenile offenders in mechanical restraints shall not be left unattended except in documented exigent circumstances. ()

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. ()

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. ()

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. ()

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: ()

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

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

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; ()

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; ()

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

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

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

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; ()

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

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

- c. Any body cavity search observed by direct care personnel of the opposite sex of the juvenile; or ()
- d. Any strip, visual body cavity or body cavity search performed. ()

04. Seizure and Disposition of Contraband. The detention center shall have written policy and procedures which explain 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. ()

228. SECURITY DEVICES.

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

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. ()

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. ()

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. ()

231. (RESERVED)

232. SPECIAL DIETS.

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

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

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

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. ()

02. Review of Menus. Menus and records of meals served shall be reviewed on a regular basis at least annually by a licensed dietitian, 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 dietitian's, physician's or nutritionist's review and verification. Subsequent menus shall be promptly revised to eliminate any deficiencies noted. ()

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. ()

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. ()

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. ()

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

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

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. ()

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

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; ()

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. ()

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. ()

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. ()

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. ()

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. ()

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: ()

- a.** Soap; ()
- b.** Toothbrush; ()
- c.** Toothpaste; ()
- d.** Comb or brush; ()
- e.** Shaving equipment; ()
- f.** Products for female hygiene needs; and ()
- g.** Toilet paper. ()

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. ()

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: ()

- a.** A set of standard detention center clothing or uniform; ()
- b.** A set of standard detention center bedding and linens; ()
- c.** Fire-retardant mattress; ()
- d.** Sufficient blankets to provide comfort under existing temperature conditions; and ()
- e.** One (1) clean towel. ()

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

a. Clothing and towels used by the juvenile offender while in the detention center shall be laundered or exchanged at least twice each week. ()

b. Linen shall be changed and laundered or exchanged at least once weekly or more often, as necessary. ()

c. Blankets in use shall be laundered or exchanged at least monthly, or before re-issue to another juvenile offender. ()

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. ()

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: ()

a. Intake medical screening must be documented and performed on all juvenile offenders upon admission to the detention center. ()

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. ()

ii. The screening should also include observations of the physical condition, mental condition, and/or behavior. ()

b. Handling of juvenile offenders' requests for medical treatment; ()

c. Non-emergency medical services; ()

d. Emergency medical and dental services; ()

e. Use of a vehicle for emergency transport; ()

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

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

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

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

j. Delousing; ()

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

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

m. Notification of next of kin or appropriate authorities in case of serious illness, injury or death. ()

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. ()

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. ()

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. ()

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: ()

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

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; ()

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; ()

d. The behavior of juvenile offenders shall be controlled in an impartial and consistent manner; ()

e. Disciplinary action shall not be arbitrary, capricious, retaliatory, or vengeful; ()

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; ()

g. Juvenile offenders shall not be subject to any situation in which juvenile offenders impose discipline on each other. ()

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

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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

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

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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: ()

a. Determination that the juvenile offender is lawfully detained in the detention center; ()

b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; ()

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; ()

d. A complete search of the juvenile offender and possessions; ()

e. Pat searches shall be performed before mechanical restraints are removed at the admissions process; ()

f. The care and disposition of personal property; ()

g. Provision of shower and the issuance of detention clothing and personal hygiene articles; ()

h. The provision of medical, dental and mental health screening; ()

i. Male and female juvenile offenders shall not occupy the same sleeping room; ()

j. The recording of basic personal data and information; ()

k. Providing assistance to juvenile offenders in notifying their families of their admission and the discussion of procedures for mailing and visiting; ()

l. The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; and ()

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. ()

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. ()

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: ()

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

b. Verification of release papers; ()

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

- d. Return of personal effects; and ()
- e. Completion of any pending action. ()

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

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

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. ()

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: ()

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

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. ()

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. ()

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. ()

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. ()

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. ()

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

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; ()

b. All living areas shall provide visual access to natural light; ()

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; ()

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; ()

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; ()

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; ()

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 ()

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. ()

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

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

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

i. Reception; ()

ii. Booking; ()

iii. Search; ()

iv. Shower and clothing exchange; ()

- v. Medical screening; ()
- vi. Storage of juvenile offender's personal property and detention center clothing; ()
- vii. Telephone calls; ()
- viii. Interviews; and ()
- ix. Release screening and processing. ()
- 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 ()
- c. Temporary holding rooms shall have access to a toilet and wash basin with hot and cold water. ()
- 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. ()
- 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. ()
- 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: ()
 - a. One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; ()
 - b. One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and ()
 - c. Tables and seating sufficient for the maximum number expected to use the room at one (1) time. ()
- 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. ()
- 10. Program Space.** Adequate space shall be allocated for, but not limited to: ()
 - a. Educational programs; ()
 - b. Individual and group activities; ()
 - c. Exercise and recreation, indoor and outdoor; ()
 - d. Visitation; ()
 - e. Confidential attorney and clergy interviews; and ()
 - f. Counseling. ()

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. ()

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

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. ()

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. ()

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. ()

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

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. ()

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. ()

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. 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.

()

003. -- 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.

()

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.

()

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.

()

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.

()

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

()

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.

()

02. Written Record. A written record of the vote by the Board will 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.

()

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.

()

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. ()

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. ()

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

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. ()

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. ()

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. ()

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 ()

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. ()

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. ()

03. Hearing Schedules. Once a case is referred, the Board will set a date for the review hearing. ()

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; ()
- b. Report on original offenses leading to commitment plus order for commitment and orders of judgment; ()
- 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; ()
- e. Psychosocial or psychosexual evaluations; ()
- f. Victim's written statement; ()
- g. Juvenile's written statement; ()
- h. Initial classification; ()
- i. Custody level assessment at case review; and ()
- j. Any other pertinent information. ()

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. ()

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. ()

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. ()

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

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

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. ()

204. -- 299. (RESERVED)

300. BOARD DETERMINATIONS.

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

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. ()

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. ()

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. ()

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

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

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: ()

a. Seriousness of the crime; ()

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

c. Progress or completion of program, treatment plan, accountability; ()

d. Institutional history to include conformance to established rules, involvement in programs and overall behavior; ()

e. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen; and ()

f. Information or reports regarding physical, psychological, or other conditions. ()

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. ()

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. 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.

()

002. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies.

()

003. -- 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. SCOPE.

These rules are established to ensure that the juvenile corrections system in Idaho will be consistently based on the principles of 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. – 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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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

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. ()

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. ()

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

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

36. Progress Report. A written report summarizing progress toward the goals and objectives set in the service implementation plan. ()

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. ()

39. Region. Subunits of the Department organized by geographical areas and including all services and programs offered by the Department in that area. ()

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

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. ()

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. ()

44. Release from Department Custody. Termination of the Department's legal custody of a juvenile. ()

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. ()

46. Restitution. Financial payment intended to reimburse victims for loss, damage, or harm caused by a juvenile offender. Restitution must be court ordered, not imposed against a juvenile offender without a court order. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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). ()

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 needs 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. ()

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: ()

a. Target population and specific admission criteria; ()

b. Primary and secondary treatment modalities; ()

c. Outline of daily schedules for juvenile offenders and staff; ()

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; ()

f. Description of religious services, recreation services, and other specialized services provided, as indicated by the needs of the identified target population; ()

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

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

i. A detailed description of each individual treatment intervention, such as treatment group, psycho-

- educational group, cognitive restructuring group, and peer group including: ()
- i. The overall goals of the treatment intervention or service area; ()
 - ii. The average length, total length, and number of sessions in the treatment intervention or service area; ()
 - iii. The facilitator education and training requirements; and ()
 - iv. The specific curriculum used in the treatment intervention or service area. ()
 - j. A detailed description of the behavior management component of the program. ()

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. ()

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; ()
- b. Existing hazards; ()
- c. Potential hazards; and ()
- d. The corrective action that should be taken to address these hazards. ()

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

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. ()

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. ()

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; ()

b. Training provided to staff; ()

c. All alleged instances of child abuse; ()

d. Program audits or reviews, including corrective actions required and taken; ()

e. Reports of sexual abuse disclosures to the applicable state licensing authority or law enforcement; ()

f. Juvenile offender and staff grievances; ()

g. Copies of all completed incident reports; and ()

h. Copies of background checks for all current employees, contractors, volunteers and interns who may have contact with residents. ()

02. Employee Files. Employee personnel files must contain the following: ()

a. Minimum qualifications for the job held; ()

b. Hiring information; ()

c. Copies of all required licenses or certificates related to the job function; ()

d. Copies of academic credentials, driving record, and background checks, as required by state law; ()

e. Current training records; and ()

f. Performance evaluations and copies of personnel actions, such as disciplinary action taken and acknowledgments of outstanding performance. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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). ()

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: ()
 - i.** Identifying and responding to suicide risk; ()
 - ii.** Infectious diseases, blood borne pathogens, and universal precautions; ()
 - iii.** All training as outlined in section 115.331 of the PREA standards; ()
 - iv.** Prohibition of abuse and mandatory reporting of abuse; ()
 - v.** De-escalation of juvenile behavior and appropriate physical restraint techniques; and ()
 - vi.** Incident reporting. ()
- b.** Those areas of practice and operations requiring a current certification; ()
- 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: ()
 - i.** Principles and practices of juvenile care and supervision; ()
 - ii.** Program goals and objectives; ()
 - iii.** Juvenile offender rights and grievance procedures; ()
 - iv.** Procedures and legal requirements concerning the reporting of abuse and critical incidents and compliance with the PREA as outlined in these rules; ()
 - v.** Infectious diseases, blood borne pathogens, and universal precautions; ()
 - vi.** Handling of violent juvenile offenders (use of force or crisis intervention); ()
 - vii.** Security procedures (key control, searches, contraband); ()
 - viii.** Medical emergency procedures, first aid, and CPR; ()

- ix. Incident reporting; ()
- x. How to recognize and respond to suicidal behavior; ()
- 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; ()
- xiii. Appropriate response to health-related emergencies; ()
- xiv. Ethics and professional boundaries; and ()
- xv. Appropriate and safe transportation of all juvenile offenders. ()
- d.** In-service training for all first-year staff must include: ()
 - i. Program policies and procedures; ()
 - ii. Job responsibilities; ()
 - iii. Juvenile offender supervision; ()
 - iv. Safety and security emergency procedures (fire, disaster, etc.); ()
 - v. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA); ()
 - vi. Behavioral observation, adolescent psychology, and child growth and development; ()
 - vii. Effective interventions with juvenile offenders including criminogenic risk and need factors; ()
 - viii. Juvenile Corrections Act, balanced and restorative justice and this chapter, as applicable; ()
 - ix. Basic security procedures; ()
 - x. Signs and symptoms of chemical use or dependency; ()
 - xi. Drug-free workplace; ()
 - xii. Diversity training to include cultural awareness; and ()
 - xiii. Juvenile offender searches for contraband. ()
- 02. Trainer Qualifications.** ()
 - 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. ()
 - 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; ()
- b. Job title; ()
- c. Employment beginning date; ()
- d. Annual training hours required; and ()
- e. A current chronological listing of all training completed. ()

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. ()

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. ()

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. ()

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. ()

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

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

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

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. ()

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. ()

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. ()

- i. Volunteers and interns must agree in writing to abide by all program policies. ()
- 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. ()
- 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: ()
 - i. Program goals and objectives; ()
 - ii. The role of the subcontractor, volunteer, or intern and job duties or duties related to the learning plan; ()
 - iii. Subcontractor, volunteer, or intern's role in reporting incidents of sexual abuse under PREA, as outlined in these rules; ()
 - iv. Basic security procedures; ()
 - v. Recognizing suicidal behaviors; ()
 - vi. Confidentiality issues including the HIPAA; and ()
 - vii. Ethics and mandatory reporting of juvenile abuse. ()
- 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.: ()
 - 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; ()
- b.** Additional assessments; ()
- c.** Service implementation plans; ()
- d.** Progress reports; ()
- e.** Incident reports; ()
- f.** Court documents and dispositions; ()
- g.** Professional correspondence; ()
- h.** Restricted clinical information, kept separately; ()
- i.** Medical records, kept separately; ()
- j.** Educational records and school history, kept separately; ()
- k.** Relapse prevention plan; ()
- l.** Identifying information and physical descriptions; ()
- m.** Last known parent or guardian address and telephone number; ()
- 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. ()

02. Confidentiality. ()

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. ()

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." ()

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

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; ()

ii. Serve as custodian of all confidential juvenile offender records; and ()

iii. Determine to whom records may be released. ()

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. ()

a. Access to personal health information must be limited to: ()

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. ()

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

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; ()

iii. Appropriate staff of the Department; ()

iv. Counsel for the juvenile offender with signed consent form; ()

v. Judges, prosecutors, juvenile probation officers, and law enforcement officers, when essential for official business; ()

vi. Other individuals and agencies approved by the Department; and ()

vii. Schools, as appropriate. ()

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. ()

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: ()

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

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. ()

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. ()

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; ()

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); ()

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); ()

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; ()

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; ()

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); ()

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; ()

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; ()

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); ()

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

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

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; ()

- o.** A process for an initial internal investigation when sexual abuse is reported; ()
- p.** An expected first response practice of separating the alleged perpetrator from the alleged victim until the investigation is complete; ()
- 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. ()

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; ()

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; ()

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; ()

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 ()

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. ()

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

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. ()

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. ()

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: ()

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

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

04. Denial of Services. Denial of the following are prohibited as disciplinary responses: ()

- a. Educational and vocational services; ()
- b. Employment; ()

- c. Medical or mental health services; ()
- d. Food; ()
- e. Access to family, juvenile services coordinator, juvenile probation officer, and legal counsel; and ()
- f. Religious services. ()

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. ()

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. ()

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: ()
- a.** Requirements needed to complete program; ()
 - b.** Juvenile offender rights and responsibilities; ()
 - c.** The means available to safely report sexual abuse and harassment; ()
 - d.** Grievance procedures; ()
 - e.** Religious services; ()
 - 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; ()
 - i.** The Provider's obligation to make reasonable accommodations for any disabilities, language barriers, or other special needs; ()
 - j.** The daily schedule for juvenile offenders; and ()
 - k.** A description of services or items for which a juvenile offender may be charged by the Provider. ()

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. ()

154. PROGRAM OPERATIONAL REQUIREMENTS.

- 01. General Requirements.** ()
- 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. ()
 - 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. ()
 - 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. ()

02. Use of Polygraphs. ()

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: ()

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

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

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

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. ()

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: ()
 - i.** Every instance of emergency room access; ()
 - ii.** Refusal of medications, treatment recommended by a physician, or food for three (3) consecutive days; ()
- b.** Major incidents such as: ()
 - i.** Death of a juvenile offender; ()
 - ii.** Suicide, attempted suicide, or threat of suicide; ()
 - iii.** Attempted escape; ()
 - iv.** Sexual abuse among juvenile offenders or by staff including, but not limited to, incidents reportable under PREA; ()

- v. Criminal activity resulting in arrest, detention, or filing a report with local law enforcement; ()
- vi. Any other relevant report made to the Idaho Department of Health and Welfare or applicable state agency; ()
- c. Any incident of restraint that involves the use of medications, chemicals, or mechanical devices of any kind; ()
- d. Incidents of alleged or suspected abuse or neglect of juvenile offenders; ()
- e. Incidents involving major disasters affecting location or well-being of the juveniles; and ()
- f. Any restriction of a juvenile offender's family visitation due to the juvenile's behavior. ()
- 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. ()

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. ()

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

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

04. Incidents Requiring Notice Within Three Days to the Department. ()

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: ()

i. Instances of lost keys, equipment, or tools; ()

ii. Discovery of contraband not posing an immediate risk; or ()

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

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 ()

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

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; ()

b. Date, location, and time of the incident; ()

c. Witnesses and other staff and juvenile offenders involved; ()

d. Persons notified with date and time of notice; ()

e. Brief narrative description of the incident; ()

f. 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; ()

g. 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; ()

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

i. Documentation of injury and medical attention provided; and ()

j. If the incident involves sexual abuse, the incident report must include a description of action taken to: ()

- i. Keep the alleged victim(s) safe from intimidation of further abuse and maintain confidentiality; ()
- ii. Address any immediate trauma, either physical or emotional; ()
- iii. Address long-term medical or mental health needs related to the alleged abuse; ()
- iv. Notify responsible licensing, regulatory, and law enforcement agencies and preserve evidence; ()
- v. Conduct an initial internal investigation of the incident and as necessary request that an external investigation be completed; and ()
- vi. Prevent repetition of the abusive situation. ()

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; ()
- b. Admission policy describing the target population and criteria for admission, and identifying sources of referrals to the program; ()
- c. Criteria for assigning juvenile offenders to different units within the program, if applicable; ()

- d.** The provision of (or referral for) emergency and routine medical and mental health services for the population; ()
- e.** Behavior management within the program, including use of points and levels, restraints, separation, detention, and other types of special management; ()
- 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; ()
- 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; ()
- 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; ()
- j.** Treatment planning and progress reporting to the Department, juvenile offender, family, and others on the community treatment team; ()
- 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 ()
- l.** Emergency procedures in the event of a natural disaster. ()

02. Documented Staff Training. Documented staff training on these policies must also be available for review by the Department. ()

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. ()

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. 11-0000-2100

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 2022 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 effective upon adoption of, or date specified in, the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections (Forensics) 67-2901, 18-8002A, 18-8004, 19-5504, 67-2919, (Forfeitures) 67-2901, 372744, (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 publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature 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*; and
- 11.13.01, *The Motor Carrier Rules*.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, [Vol. 21-10SE, pages 813-838](#). This rulemaking clarifies language and incorporates the provisions of Idaho Code § 18-8310 and will provide for a more uniform application of law.

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 FY2022 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, email matthew.gamette@isp.idaho.gov
- 11.06.01 Forfeitures – Captain John Ganske, phone (208)884-7207, fax (208)884-7290, email john.ganske@isp.idaho.gov
- 11.07.01, 11.07.02, 11.07.03 Motor Vehicles – Captain Matt Smith, Phone (208)884-7022, Fax: (208) 884-7290, email Matt.Smith@isp.idaho.gov
- 11.10.03 Sex Offender Registry – Bureau Chief Leila McNeill, phone (208)884-7136, fax (208)884-7193, email leila.mcneill@isp.idaho.gov
- 11.13.01 Commercial Vehicle Safety – Captain Shawn Staley, phone (208)884-7222, fax (208)884-7192, email shawn.staley@isp.idaho.gov

Dated this 22nd day of December, 2021.

Lt. Colonel Bill Gardiner
Chief of Staff
Idaho State Police
700 S. Stratford Dr.
Meridian, Idaho 83642
(208) 884-7004
Bill.Gardiner@isp.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections (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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature 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*; and
- 11.13.01, *The Motor Carrier Rules*.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible 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 proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact:

- 11.03.01 Forensics – Lab Director Matthew Gamette, phone 208-884-7217, fax 208-884-7290, email matthew.gamette@isp.idaho.gov
- 11.06.01 Forfeitures – Captain John Ganske, phone 208-884-7207, fax 208-884-7290, email john.ganske@isp.idaho.gov
- 11.07.01, 11.07.02, 11.07.03 Motor Vehicles – Captain Matt Smith, Phone (208) 884-7022, Fax: (208) 884-7290, email Matt.Smith@isp.idaho.gov
- 11.10.03 Sex Offender Registry – Bureau Chief Leila McNeill, phone 208-884-7136, fax 208-884-7193, email leila.mcneill@isp.idaho.gov
- 11.13.01 Commercial Vehicle Safety – Captain Shawn Staley, phone 208-884-7222, fax 208-884-7192, email shawn.staley@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 October 20, 2021.

Substantive changes have been made to the pending rule.
Italicized red text indicates changes between the text of the proposed rule as adopted in the pending rule.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING DOCKET NO. 11-0000-2100

IDAPA 11 – IDAHO STATE POLICE 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. ()

001. SCOPE.

01. **Scope.** The rules relate to the governance and operation of the Alcohol Testing Program. ()

002. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: ()

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.** The chemical compounds of ethyl alcohol, methyl alcohol, or isopropyl alcohol. ()

02. **Approved Vendor.** A source/provider/manufacturer 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)

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: ()

a. 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 ISPFS 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 ISPFS before implementation; ()

b. 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; ()

c. Maintain specimens 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; ()

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; ()

e. 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 ISPFS. 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 ISPFS. 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. ()

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; ()

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.

()

02. Blood Collection. Blood collection shall be accomplished according to the following requirements:

()

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility;

()

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;

()

c. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant.

()

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.

()

04. Urine Collection. Urine samples shall be collected in clean, dry containers.

()

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.

()

06. Records. All records regarding proficiency tests, quality control and results shall be retained for three (3) years.

()

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 002 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.

()

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath.

()

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.

()

a. The breath alcohol test must be administered by an operator (BTO or BTS) currently certified in the use of the instrument.

()

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.

()

c. The operator shall administer a monitoring period prior to evidentiary testing.

()

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.

()

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.

()

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.

()

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.

()

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.

()

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.

()

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. ()

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. ()

f. A wet bath 0.20 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications. ()

g. Dry gas performance verification standards may be used continuously without replacement until the canister is spent or the expiration date is reached. ()

h. Performance verification standards should not be used beyond the expiration date. ()

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. ()

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. ()

k. An agency may run additional performance verification standard levels at their discretion. ()

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. ()

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. ()

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. ()

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. ()

a. Fifteen (15) minute monitoring period: The monitoring period is not required for the MIP/MIC procedure. ()

b. The breath alcohol test must be administered by an operator currently certified in the use of that instrument. ()

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. ()

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. ()

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. ()

g. The operator should manually log test results and/or retain printouts for possible use in court. ()

h. The instrument must not be in passive mode for the testing of subjects for evidential purposes. ()

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. ()

015. -- 999. (RESERVED)

11.06.01 – RULES GOVERNING CIVIL ASSET FORFEITURE REPORTING

000. LEGAL AUTHORITY.

01. 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. 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, and the outcome, if any, of the suspect's case; ()
- f. If the forfeiture was not processed under state law, the reason for the federal transfer, if known; ()
- g. The forfeiture case number; ()
- h. The date of the forfeiture decision; ()
- i. Whether there was a forfeiture settlement; ()
- j. 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 ()
- k. 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. ()

001. 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. ()

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: ()

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/>. ()

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>. ()

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>. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

001. SCOPE.

The rules apply to safety glazing material on motor vehicles under the jurisdiction of the Idaho State Police. ()

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: ()

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 ()

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: ()

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; ()

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; ()

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. ()

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. ()

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. ()

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. ()

001. SCOPE.

The rules apply to emergency vehicles/authorized emergency vehicles under the jurisdiction of the Idaho State Police. ()

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. ()

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. ()

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. ()
 - ii.** The specific purposes for which the vehicle will be used as an emergency vehicle. ()
 - iii.** The emergency vehicle listing year, make, model, vehicle identification number and license plate number. ()
 - iv.** The emergency lighting equipment to be used on the emergency vehicle. ()
 - v.** The emergency horns or warning devices to be used on the emergency vehicle. ()
- 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 of 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 update it 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. ()

b. A description of the emergency lighting equipment to be used on the emergency vehicle. ()

02. Requirements. Each driver of an authorized emergency vehicle must: ()

a. Be eighteen (18) years of age or older. ()

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. ()

c. Not have had driving privileges suspended for any reason within the last three (3) years. ()

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. ()

02. Restrictions. An authorized emergency vehicle may not be used except as follows: ()

a. Only by the drivers named on the original or amended application. ()

b. Only with the equipment described in the original or amended application. ()

c. Only within the geographical area described in the original or amended application. ()

d. Only for the purposes set forth in the original or amended application. ()

03. Limited Restriction. A limited authorized emergency vehicle may not be used except as follows: ()

a. Where a lane of traffic is obstructed or at the discretion of a peace officer, it may display a red, flashing light. ()

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. ()

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. ()

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. ()

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'). ()

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 be displayed upon request of any law enforcement officer. ()

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. ()

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. ()

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. ()

06. Valid. Any renewals or new applications expire on June 30 of each subsequent year following. ()

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. ()

001. SCOPE.

The rules relate to the administration of the state's sex offender central registry, which includes both adult and juvenile offenders. ()

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: ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

06. Expungement of Central Registry Information. ()

a. Upon receipt of an official notification recording the death of a person registered with the central registry, the bureau will expunge all records concerning the person from the central registry. ()

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. ()

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. ()

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

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. ()

e. *Pursuant to Section 18-8310(1)(a), Idaho Code, any periods of supervised release, probation, or parole without revocation references the offense(s) outlined in Section 18-8310(1)(d), Idaho Code.* ()

07. Determination of Substantially Equivalent or Similar Crime. ()

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. ()

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. ()

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. ()

f. The bureau's determination is a declaratory ruling as defined by Chapter 52, Title 67, Idaho Code. ()

g. Judicial review of the bureau's determination will be made in accordance with Chapter 52, Title 67, Idaho Code. ()

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. ()

001. 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: ()

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. ()

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 recom piled, 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 recom piled, 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 15, 2020, and as subsequently recom piled, 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. ()

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. ()

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. ()

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. ()

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: ()

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 ()

b. Is designed or used to transport more than eight (8) passengers, including the driver, for compensation; or ()

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 ()

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. ()

02. Department. The Idaho State Police. ()

03. Highway. Public roads, highways, and streets of the State. ()

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. ()

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. ()

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. ()

07. Person. Any individual, firm, co-partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof. ()

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. ()

011. (RESERVED)

012. SAFETY FITNESS PROCEDURES.

01. Purpose and Scope. ()

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 ()

ii. To transport more than fifteen (15) passengers, including the driver. ()

b. All provisions of Section 012 apply to all motor carriers subject to the requirement of this subchapter. ()

02. Definitions. The following definitions apply to Section 012. ()

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: ()

i. Involved a commercial motor vehicle, and ()

ii. Could have been averted but for an act, or failure to act, by the motor carrier or the driver. ()

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. ()

(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. ()

(2) A compliance review may result in the initiation of an enforcement action. ()

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. ()

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. ()

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. ()

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. ()

- iv. Unrated carrier. A safety rating has not been assigned to the motor carrier. ()

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: ()

- a. Commercial driver's license standards violations. ()
- b. Inadequate levels of financial responsibility. ()
- c. The use of unqualified drivers. ()
- d. Improper use and driving of motor vehicles. ()
- e. Unsafe vehicles operating on the highways. ()
- f. Failure to maintain accident register and copies of accident reports. ()
- g. The use of fatigued drivers. ()
- h. Inadequate inspection, repair, and maintenance of vehicles. ()
- i. Transportation of hazardous materials, driving and parking rule violations. ()
- j. Violation of hazardous materials regulations. ()
- k. Motor vehicle accidents and hazardous materials incidents. ()

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: ()

- 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. ()
- b. Frequency and severity of regulatory violations. ()
- c. Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections. ()
- d. Number and frequency of out-of-service driver/vehicle violations. ()
- e. Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews. ()
- 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. ()
- 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. ()

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. ()

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. ()

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. ()
- b.** Part 171. General Information, Regulations and Definitions. ()
- c.** Part 172. Hazardous Materials Table, special provisions, hazardous materials communications, emergency response information, and training requirements. ()
- d.** Part 173. Shippers-General Requirements for Shipments and Packaging. ()
- e.** Parts 174-176. (Not adopted regulations for railroads, aircraft and vessels). ()
- f.** Part 177. Carriage by Public Highway. ()
- g.** Part 178. Specifications for packagings. ()
- h.** Part 179. (Not adopted regulations for rail tanker cars). ()
- i.** Part 180. Continuing Qualification and Maintenance of Packagings. ()

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. ()

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. ()

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). ()

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). ()

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. ()

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. ()
- b.** Part 365. Rules Governing Application for Operating Authority. ()
- c.** Part 380. Longer Combination Vehicle (LCV) Driver-Training and Driver-Instructor Requirements. ()
- d.** Part 382. Controlled Substance and Alcohol Use and Testing. ()
- e.** Part 383. Commercial Driver's License Standards; Requirements and Penalties. ()

- f.** Part 385. Safety Fitness Procedures. ()
- g.** Part 386.71-84. Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. ()
- h.** Part 387. Minimum Levels of Financial Responsibility. ()
- i.** Part 388. Cooperative Agreements with States. ()
- j.** Part 390. Federal Motor Carrier Safety Regulations: General. ()
- k.** Part 391. Qualifications of Drivers. ()
- l.** Part 392. Driving of Commercial Motor Vehicles. ()
- m.** Part 393. Parts and Accessories Necessary for Safe Operation. ()
- n.** Part 395. Hours of Service of Drivers. ()
- o.** Part 396. Inspection, Repair and Maintenance. ()
- p.** Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. ()
- q.** Part 398. Transportation of Migrant Workers. ()
- r.** Part 399. Employee Safety and Health Standards. ()

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. ()

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
PEACE OFFICER STANDARDS AND TRAINING COUNCIL**

DOCKET NO. 11-1101-2100

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 2022 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 effective upon adoption of, or date specified in, the concurrent resolution.

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

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

This pending rule adopts and publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 11.11, rules of the Peace Officer Standards & Training Council:

IDAPA 11.11

- 11.11.01, *Rules of the Idaho Peace Officer Standards and Training Council*.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, Vol. 21-10SE, pages 1032-1064.

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 FY2022 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 Brad Johnson, phone 208-884-7251, fax 208-884-7295, email brad.johnson@POST.idaho.gov.

Dated this 22nd day of December 2021.

Lt. Colonel Bill Gardiner
Chief of Staff
Idaho State Police
700 S. Stratford Dr.
Meridian, Idaho 83642
(208) 884-7004
Bill.Gardiner@isp.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: 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 the purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 11.11, rules of the Peace Officer Standards & Training Council:

IDAPA 11.11

- 11.11.01, *Rules of the Idaho Peace Officer Standards and Training Council.*

The rule was reviewed during the summer of 2021 under the Governor's Zero-Based Regulation Executive Order. Various edits were made to the rule to update the rule, streamline the rule, and improve the clarity of the rule. Negotiated rulemaking was conducted. Various fees related to course evaluation of training courses are removed from the rule. The education requirements for applicants to POST are updated. A free Idaho Department of Labor administered three-part online assessment is a new option for meeting the education requirement.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rule being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted as part of the Zero-Based Regulation review of this rule under Docket No. 11-1101-2101 which published in the July 7, 2021, Idaho Administrative Bulletin, [Vol. 21-7, pages 24-25](#).

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 proposed rule attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact POST Division Administrator, Brad Johnson, via phone (208) 884-7251, fax (208) 884-7295, or email brad.johnson@POST.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 October 20, 2021.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING DOCKET NO. 11-1101-2100

IDAPA 11 – IDAHO STATE POLICE PEACE OFFICER STANDARDS AND TRAINING COUNCIL

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

000. LEGAL AUTHORITY.

Pursuant to Section 19-5107, Idaho Code, the Peace Officer Standards and Training Council has authority, in accordance with Title 67, Chapter 52, Idaho Code, to promulgate rules it deems necessary to carry out the provisions of Title 19, Chapter 51, Idaho Code. ()

001. SCOPE.

These rules constitute the minimum standards of training, education, employment, and certification for any discipline certified by the POST Council. ()

002. APPLICATIONS AND FORMS.

All persons seeking certification or endorsement by POST under these rules must complete all relevant POST approved forms, which shall be signed by the applicant's agency head or designee (on file at POST) prior to submission to POST. ()

003. DOCUMENTATION – COPIES.

01. Citizenship, Education, Military and Criminal Records. All documentation of citizenship, educational records and transcripts, military service, and criminal records required by these rules shall be submitted to POST in the form of a copy of a certified original document. ()

02. Training and Other Records. Training records and other records required or allowed to be submitted to POST by these rules shall be submitted in the form of an original or certified copy. Where neither an original or certified copy is available, records shall be legible and not mutilated, altered or damaged. ()

03. Notice of Employment/Termination. The names of all officers hired must be submitted to the Council within fifteen (15) days of employment. The termination of an officer's employment must also be relayed to the Council within fifteen (15) days of such action on an appropriate form designated by the Council. ()

004. ADMINISTRATIVE PROCEDURES ACT.

Rules of procedure in contested cases and administrative appeals will be governed by the administrative procedures act, (title 67, chapter 52, Idaho code), and these rules. ()

005. – 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions under 19-5101, Idaho Code, the following terms apply: ()

01. Act. Title 19, Chapter 51, of the Idaho Code. ()

02. Agency. A law enforcement agency which is a part of or administered by the state of Idaho or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; an adult misdemeanor probation department, a Public-Safety Answering Point (PSAP); the Idaho Department of Juvenile Corrections; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the a private correctional facility. ()

03. Agency Head. A chief of police of a city, sheriff of a county or chief administrator of a law enforcement agency, as defined herein. ()

04. Applicant. A person applying to participate in a POST training program or applying for POST certification. ()

05. Basic Training Academy. A basic course of Council approved instruction in a discipline certified by POST. ()

06. Canine Team. A specific person and a specific dog controlled by that person as its handler, formally assigned to perform law enforcement duties together. ()

07. Canine Team Evaluator. An officer trained and certified by POST to evaluate the competence of canine teams. ()

08. College Credit. A unit of work toward an academic or vocational degree awarded by a college or university accredited by one of the accrediting agencies listed in Subsection 11.11.01.053.01.d. or other POST accepted U.S. regional accrediting agency. ()

09. Conviction. Any conviction in any federal, tribal, state, county, or municipal court; a voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court as final disposition; the payment of a fine or civil penalty; a plea of guilty or nolo contendere; or a finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred, or withheld, or whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed or reduced, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, or expungement of the record is based upon lenity or rehabilitation rather than upon a defect in the legality or factual basis of the plea, finding of guilt, or conviction. "Conviction" does not include a misdemeanor conviction upon a bond forfeiture for a violation that is or would at the time have in Idaho been an infraction violation, if the only reason it is classified as a misdemeanor is due to the bond forfeiture. ()

10. Correction Officer. An employee of the Idaho Department of Correction or a private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in a correction facility. ()

11. Council. The Idaho Peace Officer Standards and Training Council. ()

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

(Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction.

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13. Division Administrator. The administrator of the Idaho Peace Officers Standards and Training Division of the Idaho State Police.

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14. Field Training. Formal, on the job training for special and defined purposes.

()

15. Full Time. An employee who is, for a calendar month, employed on average at least thirty (30) hours of service per week, or one hundred thirty (130) hours of service per month.

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16. Hearing Board. A board of three members designated by the Chair of the Council to hear contested cases and enter recommended orders for the Council's decision.

()

17. Hearing Officer. A person designated by the Council to preside over decertification proceedings and to render findings of fact, conclusions of law and a recommended order at the conclusion of those proceedings.

()

18. In-Service Training. Training designed to refresh or enhance a certified officer's ability to perform their duties.

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19. Juvenile Detention Center. A facility that is part of or administered by an Idaho county and is responsible for the safety, care, protection, and monitoring of juvenile offenders.

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20. Juvenile Detention Officer. An employee working in a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders.

()

21. Juvenile Probation Department. A public or private agency administered by or contracted with the court, and providing juvenile probation services to a county at the concurrence and expense of the county commissioners.

()

22. Juvenile Probation Officer. An employee of a juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders.

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23. Law Enforcement Certification Program. A program operated by a college or university, law enforcement agency, or private entity and satisfying POST basic training academy requirements.

()

24. Law Enforcement Certification Program Facility. A facility at which law enforcement certification programs conduct training.

()

25. Law Enforcement Profession. As used in these rules in reference to agreements authorized pursuant to Section 19-5112, Idaho Code, the "law enforcement profession" includes the following positions: Peace Officer, County Detention Officer, Emergency Communications Officer, Juvenile Detention Officer, Juvenile Probation Officer, Correction Officer, Juvenile Corrections Direct Care Staff, Adult Felony Probation and Parole Officer, Idaho Department of Juvenile Corrections Direct Care Staff, and Adult Misdemeanor Probation Officer.

()

26. Marine Deputy. A person employed by a county sheriff whose primary function is to perform marine-related enforcement duties within established policies and procedures.

()

27. Misdemeanor Probation Department. A public or private agency administered by or contracted with the county, and providing misdemeanor probation services to a county at the concurrence and expense of the

county commissioners. ()

28. Part-Time Employee. An employee, regardless of discipline, who works less than thirty (30) hours per week or one hundred thirty (130) hours per month. ()

29. POST. The Idaho Peace Officer Standards and Training Program. ()

30. POST Certified Instructor. A person certified by POST as qualified to instruct or assess students in a course of instruction which meets POST standards for certification or training. ()

31. Program Coordinator. A person designated by a college, university, or agency to be responsible for a law enforcement certification program. ()

32. Public Safety Answering Point (PSAP). A city, county, or state emergency call center that receives direct or transferred 9-1-1 calls for police, firefighting, and ambulances. ()

33. Regional Training Specialist. A POST employee who is assigned to a specific region of the state, and who assesses training materials and instruction for law enforcement personnel to assure compliance with POST standards. ()

34. Reserve Peace Officer. A person appointed by an agency to perform the duties of a peace officer on a limited basis. ()

35. School. A school, college, university, academy, or local training program which offers law enforcement training and which is certified by the Council. ()

36. State. Unless otherwise indicated, the state of Idaho. ()

37. Student. A person participating in any Council-approved basic training program or law enforcement certification training program. ()

38. Temporary/Seasonal. Employment of less than one hundred eighty (180) consecutive days. ()

39. Trainee. A POST certified officer participating in in-service training. ()

011. – 049. (RESERVED)

050. BASIC CERTIFICATION OF LAW ENFORCEMENT OFFICERS.

All applicants for POST certification must meet the following standards and comply with the following requirements to be eligible to attend a basic training academy and for certification and employment in Idaho in any law enforcement discipline. ()

051. MANDATORY AND VOLUNTARY CERTIFICATION.

01. Mandatory Certification. Except as otherwise provided in these rules, no person shall act as a peace officer, marine deputy, county detention officer, emergency communications officer, juvenile detention officer, juvenile probation officer, correctional officer, adult probation and parole officer, juvenile direct care staff or misdemeanor probation officer in Idaho unless they are certified to do so by POST in accordance with these rules. ()

02. Voluntary Certification for Correctional Officers and Adult Probation and Parole Officers Employed Prior to July 1, 2005. Correctional officers and adult probation and parole officers who were employed prior to July 1, 2005 are not required to be POST certified in those disciplines, but may become certified by meeting all requirements for certification set forth in these rules. ()

03. Voluntary Certification for Emergency Communications Officers Employed Prior to July 1,

2012. Emergency Communications Officers who were employed prior to July 1, 2012 are not required to be POST certified, but may become certified by meeting all requirements for certification set forth in these rules. ()

04. Voluntary Certification for Certain Officials. The director of the Idaho State Police or any elected official, although specifically excluded by law from meeting the requirements set by the Council, may be certified if they so desire, provided they meet the minimum requirements for certification as prescribed in these rules. ()

052. CITIZENSHIP.

An applicant shall be a citizen of the United States and submit a certified copy or original of one (1) of the following as verification of citizenship: ()

01. Birth Certificate. A birth certificate issued by a city, county, or state; ()

02. Passport. A current passport issued by the United States Government; ()

03. Naturalization Certificate; ()

04. Consular Report of Birth Abroad or Certification of Birth; or ()

05. Certificate of Citizenship. ()

053. EDUCATION.

01. Acceptable Education. An applicant must have: ()

a. Graduated from a school accredited as a high school at the time of graduation by the state in which it is located or by a recognized regional accreditation body; or ()

b. Passed a GED or a Department of Labor administered assessment in subject areas required by POST; or ()

c. Have completed a high school equivalency program and obtained a state- issued certificate; or ()

d. Completed a minimum of fifteen (15) credits at a college accredited by one of the following: Middle States Association of Schools and Colleges; New England Commission of Higher Education Accrediting Commission for Community and Junior Colleges; North Central Association of Colleges and Schools (the Higher Learning Commission); Northwest Association of Colleges and Universities; Southern Association of Colleges and Schools; and Western Association of Schools and Colleges; or ()

e. Completed a course of study, either in a formal school setting or through homeschooling if the program is recognized by a state or by a local school district within a state as having met that state's high school graduation requirements; or ()

f. If educated outside the United States, an applicant must have passed GED testing or provide an evaluation from a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE), showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ()

02. Documentation of Education. An applicant must provide a certified copy or original of one of the following: ()

a. High school diploma indicating date of graduation; ()

b. Official high school transcript indicating date of graduation; ()

- c. Official transcript of GED results indicating a passing score; ()
- d. Correspondence from the Idaho Department of Labor, providing a passing score (minimum 75% in each assessment) result of testing on all POST designated assessments; ()
- e. Correspondence from a state or local school district indicating that the applicant has met that state's high school graduation requirements; ()
- f. State-issued high school equivalency certificate; ()
- g. Official transcript from a POST accepted U.S. regionally-accredited college indicating completion of a minimum of fifteen (15) credits; ()
- h. Official evaluation of foreign education by a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE) showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ()

054. AGE.

The minimum age requirements for employment in the following disciplines are: ()

01. Twenty-One (21) Years of Age. Patrol officers, felony probation and parole officers, misdemeanor probation officers, juvenile detention officers, juvenile probation officers, and juvenile corrections direct care staff. ()

02. Eighteen (18) Years of Age. Corrections officers, adult detention officers, emergency communications officers. ()

055. INELIGIBILITY BASED UPON PAST CONDUCT.

An applicant is ineligible to attend a basic training academy and for certification under the following circumstances. ()

01. Criminal Conviction. An applicant is ineligible if he was convicted of: ()

a. A felony, if the applicant was eighteen (18) years old or older at the time of conviction; ()

b. A misdemeanor Driving Under the Influence offense(s) within two (2) years immediately preceding application, or two or more (2) misdemeanor Driving Under the Influence offenses within five (5) years immediately preceding application; ()

c. A misdemeanor crime involving domestic violence, if the relevant law enforcement discipline requires the applicant to possess a firearm in the course of their duty, or if the conviction occurred within 5 years immediately preceding application; ()

d. A misdemeanor crime of deceit, as defined in these rules, or a misdemeanor sex offense, if the conviction occurred within five (5) years immediately preceding application; ()

e. A misdemeanor drug-related offense, if the conviction occurred within one (1) year immediately preceding application. ()

02. Driver's License. An applicant is ineligible if he does not possess a valid driving license from the applicant's state of residence and is unable to qualify for an Idaho driver's license, except for the following disciplines: ()

a. Correction Officers; ()

b. Emergency Communications Officers. ()

03. Marijuana. An applicant is ineligible if he used illegally purchased or illegally possessed marijuana, cannabis, hashish, hash oil, or THC in synthetic and natural forms, whether charged or not, if such use occurred: ()

a. Within one (1) year immediately preceding application; ()

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

04. Violations of Idaho Controlled Substances Act. An applicant is ineligible if he, while eighteen (18) years old or older, violated any provision of the Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, whether charged or not, that constitutes a felony, or of a comparable statute of another state or country, if the violation occurred: ()

a. Within three (3) years immediately preceding application; ()

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

05. Use of Prescription or Other Legally Obtainable Controlled Substance. An applicant is ineligible if he unlawfully used any prescription drug or a legally obtainable controlled substance within the past three (3) years, unless: ()

a. The applicant was under the age of eighteen (18) at the time of using the controlled substance; or ()

b. An immediate, pressing, or emergency medical circumstance existed to justify the use of a prescription controlled substance not specifically prescribed to the person. ()

06. Military Discharge. An applicant is ineligible if he received a “dismissal,” “bad conduct discharge” (BCD), “dishonorable discharge” (DD), or administrative discharge of other than honorable (OTH) from military service. ()

07. Decertification or Denial of Certification. An applicant is ineligible if he has been denied certification; his certification is suspended in another state or jurisdiction, denied, revoked or applicant is not able to obtain certification in another state or jurisdiction; or his basic certificate has been revoked by the Council in this state or the responsible licensing agency in any other issuing jurisdiction, unless the denial or revocation has been rescinded by the Council or by the responsible licensing agency of the issuing jurisdiction. ()

056. DOCUMENTATION OF CRIMINAL, TRAFFIC, AND MILITARY DISCHARGE RECORDS.
With a POST application, an applicant shall submit the following to verify criminal, traffic or military records. ()

01. Criminal or Traffic Matters. Charging documents, including citations, complaints, information or indictments; judgements of convictions, orders of restitution; orders involving probation, parole, or revocation of probation or parole; orders of dismissal or release; records of payments to the court. ()

02. Military Discharge. Copies of a DD214 for active military service, NGB Form 22 for National Guard Service, or Official Military Discharge Documentation for Reserve military service. ()

057. REQUIREMENTS FOR BASIC CERTIFICATION.

In addition to complying with the foregoing standards, each applicant for certification must also comply with the following requirements. ()

01. Agency Employment. Each applicant must be an employee of an agency, as defined in these rules, in a position requiring POST certification, or be a member of POST professional staff. ()

02. Background Investigation. The employing agency must conduct a comprehensive background investigation of each applicant to ensure that he meets requirements for POST certification and employment in the law enforcement profession. ()

a. The applicant must complete a comprehensive application and personal history statement prior to a background investigation in aid of determining he is eligible for certification. ()

b. The applicant must be fingerprinted on a standard FBI Applicant fingerprint card and a search of local, state, and national fingerprint databases must be made to disclose any criminal record. The employing agency must retain originals of all records check results. ()

c. The employing agency must investigate the applicant's traffic records in each state in which he resided. ()

d. The background investigation must include information from personal references, schools, the applicant's last three (3) previous employers, and law enforcement agency or PSAP records in jurisdictions where the applicant has lived or worked. ()

e. The employing agency must interview each applicant to ascertain his suitability for the law enforcement profession. Interview topics must include use of intoxicants, controlled substances, physical, mental, and emotional history, family problems, moral outlook and habits, and the applicant's financial history. ()

f. An experienced investigator must conduct a thorough investigation into the applicant's reputation, integrity, honesty, dependability, qualifications, experience, associations, emotional stability, and respect for the law. ()

03. Physical Readiness Assessment. The employing agency shall require an assessment of an applicant's physical readiness to ensure he can perform physically demanding tasks and tests while attending a basic training academy or equivalent program. An applicant who fails a required physical test during an academy may be dismissed, but may attend a future academy and must pass a physical readiness test prior to certification. ()

04. Mental Readiness Assessment. Where there is a question as to whether the applicant may be subject to a mental or emotional disorder that calls his suitability for the law enforcement profession into question, the employing agency shall have a psychiatrist or clinical psychologist conduct a thorough evaluation to ensure he is capable of performing law enforcement duties. ()

05. Application. Each applicant must fill out a POST Application and submit it to the employing agency, which shall submit it to POST with all required documentation. ()

a. Upon review of an application, POST may inspect an agency's background investigation file to ensure it is accurate and complete. If a review indicates that information submitted to POST may be inaccurate, incomplete or falsified, the Division Administrator must inspect the agency's background investigation file. ()

b. If the application contains inaccuracies or omissions, the Division Administrator may require the agency to supplement the application, and may approve the application. ()

c. If the application contains evident falsifications, the Division Administrator shall reject the application. ()

06. Aptitude Test. An applicant shall complete an aptitude test to ensure he is capable of performing law enforcement duties. ()

07. Code of Ethics/Standards of Conduct. Each applicant shall attest that he will abide by the following Law Enforcement Code of Ethics, and that he understands violations thereof constitute grounds for decertification:

As a member of the law enforcement profession, my fundamental duty is to serve the community; to

safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

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

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

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

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God or have a sincere and unfaltering commitment to my chosen profession...law enforcement.

()

08. Time for Completing Basic Training Academy or Alternative Training, Field Training and Probationary Period.

()

a. Except as otherwise provided in these rules, every person attending a basic training academy must complete that academy, a minimum of 40 hours of field training and six consecutive months of probation in that discipline with that hiring agency within twelve months of beginning employment in order to be certified. ()

b. Emergency communications officers attending a basic training academy must complete that academy, and six consecutive months of probation in that discipline with that hiring agency within eighteen (18) months of beginning employment in order to be certified. ()

c. Any person who does not become certified in the relevant discipline within three (3) years of graduating from a basic training academy or POST certified equivalent program must repeat that entire academy or program in order to become certified. ()

d. Every person seeking certification through the POST challenge process must complete that process within one year of beginning employment with an agency. ()

058. STANDARDS OF CONDUCT FOR BASIC TRAINING ACADEMY STUDENTS.

01. Required Behavior. All students shall conduct themselves in a manner which will bring credit to the law enforcement profession. Student behavior must reflect courtesy, consideration and respect for others. ()

02. Prohibited Conduct. Any conduct detrimental to the efficiency or discipline of the academy, whether or not stated in the instructions, is prohibited and can be cause for disciplinary action or expulsion. A student's agency head will be informed of any such infraction. ()

03. Notice. POST shall inform students of requirements relating to residency, equipment, supplies, and conduct at the academy at the time of their acceptance into an academy. ()

059. CHALLENGING A BASIC TRAINING ACADEMY.

An applicant for POST certification may challenge the basic training academy in the relevant discipline under the following circumstances, and subject to the following conditions. ()

01. Requirements for Challenging a Basic Training Academy. Except as otherwise provided by these rules, an applicant challenging a basic training academy must: ()

- a.** Be employed by an agency in Idaho; ()
- b.** Have been employed, and if applicable, have been certified or commissioned by another state or the federal government as an officer in the relevant discipline within the last five (5) years, or a student who has satisfactorily completed a basic training academy equivalent to the POST basic training academy in the relevant discipline within the last three (3) years; ()
- c.** Submit a POST certification challenge packet, including copies of all relevant service, educational and training records; ()
- d.** Disclose all information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction; ()
- e.** Complete a probationary period of at least six (6) consecutive months with the employing agency in the relevant discipline; ()
- f.** Comply with any additional provisions required by POST for a challenge in a specific discipline; and ()
- g.** Reserve Officers must have been employed, certified, or commissioned by another state or the federal government as an officer in the relevant discipline within the last three (3) years. ()

02. Patrol and Detention Law Enforcement Certification Program or POST Academy Graduates. An applicant who is appointed to either a peace officer or a detention officer position from 3 to 5 years after completing both the patrol and detention officer training through a POST approved law enforcement certification program or POST basic training academy, will be eligible for certification in the other discipline without attending an additional basic training academy, provided the officer: ()

- a.** Was appointed to a peace officer or detention officer position in Idaho within three (3) years from graduating from a law enforcement certification program or a POST Academy; ()
- b.** Possesses a detention or peace officer certification from POST; ()
- c.** Submits a POST challenge packet; ()
- d.** Discloses information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction; ()
- e.** Completes a probationary period of at least six (6) consecutive months with the employing agency in the relevant discipline; and ()
- f.** Complies with any additional provisions required by POST for a challenge in a specific discipline. ()

060. AGREEMENT TO SERVE – REIMBURSEMENT REQUIREMENT.

01. Agreement. Pursuant to Section 19-5112, Idaho Code, any student attending a POST funded basic training academy must execute an agreement promising to remain within the law enforcement profession in Idaho for two (2) years immediately following graduation. Violation of the agreement will give rise to a civil action which may

be commenced by the Council on behalf of the state for restitution of all costs of education paid by the Council plus costs and reasonable attorney's fees. ()

02. Fulfillment of Agreement. The agreement will be fulfilled if, following graduation from a basic training academy, the student remains in the law enforcement profession in Idaho, as follows: ()

a. On a full-time basis, for two (2) full calendar years immediately following graduation date; or ()

b. On a part-time basis, and the officer provides the Council with documentation of four thousand one hundred sixty (4,160) hours of service immediately following graduation date. ()

03. Relief from Obligation to Serve. A student is relieved of his obligations under the agreement if the student is: ()

a. Terminated by the employing agency due to budget cutbacks or loss of funding and the agency provides POST with a letter stating the student was terminated due to the agency's lack of funding; ()

b. Forced to resign due to his own or an immediate family member's terminal illness or prolonged debilitating condition and the student provides POST with documentation from an attending physician verifying the medical condition; ()

c. Ordered into full-time active military service, and the student provides POST with documentation of official military orders; or ()

d. The spouse of a person who is a member of the military and is being required to transfer outside Idaho for a prolonged period of time, and the student provides POST with documentation of the spouse's official military orders. ()

04. Reimbursement. A student who graduates from a basic training academy whose employment is terminated or resigns prior to fulfillment of the agreement or does not qualify for disqualification must reimburse the state for educational training expenses. ()

05. Proration. A student's reimbursement obligation under the agreement will be prorated if he remains in the law enforcement profession in Idaho following graduation from a basic training academy for the following time periods: ()

a. On a full-time basis for less than twelve (12) complete months following graduation. The full amount of money set forth in the agreement shall be owed; ()

b. On a full-time basis for a minimum of twelve (12) complete months following graduation but less than twenty-four (24) complete months. The amount owed to the Council will be reduced proportionately for each complete month worked from the date of graduation to the date of separation; or ()

c. On a part-time basis for a documented minimum of two thousand eighty (2,080) hours service following graduation, but less than four thousand one hundred sixty (4,160) hours. The amount owed to the Council will be reduced proportionately for each one hundred seventy-three (173) hours worked from the date of graduation to the date of separation. ()

06. Multiple Basic Training Academies. A student who graduates from more than one (1) basic training academy must fulfill a two-year agreement for each academy attended. ()

07. Decertification. A student who is decertified by POST prior to a period of two (2) years after graduating from an academy shall not be relieved of the obligation to reimburse POST pursuant to this section. ()

061. – 069. (RESERVED)

070. HIGHER LEVEL CERTIFICATION.

In addition to basic certification, the Council may issue higher-level certifications in recognition of additional training and experience to full-time officers already possessing a basic POST certification. ()

01. Types of Higher-Level Certification. In addition to basic certification, the Council may issue the following: ()

a. Intermediate certification for peace officers, detention officers, misdemeanor probation officers, juvenile probation officers, juvenile detention officers and emergency communications officers; ()

b. Advanced certification for peace officers, detention officers, misdemeanor probation officers and emergency communications officers; ()

c. Supervisor certification for peace officers, detention officers and emergency communications officers; ()

d. Master certification for peace officers, detention officers and emergency communications officers; ()

e. Management certification for peace officers, detention officers and emergency communications officers; ()

f. Executive certification for peace officers. ()

02. Requirements. In addition to the requirements otherwise set forth in these rules, the following are required for higher level certification: ()

a. An applicant shall possess POST basic certification in the relevant discipline and be a full-time employee of an agency. ()

b. An applicant shall attach to his POST application all relevant transcripts, certificates, diplomas, degrees, course outlines, or other documents not listed on the applicant's POST training record, verifying his education and training. ()

c. The agency of an applicant for a Supervisor, Management, or Executive certification must submit a job description or other documentation verifying the applicant's duties. ()

071. LAW ENFORCEMENT EXPERIENCE, MILITARY EXPERIENCE, AND COLLEGE CREDITS FOR PURPOSES OF HIGHER CERTIFICATION.

For purposes of determining whether a person is eligible for higher level certifications based upon experience and education, the following apply. ()

01. Law Enforcement Experience. Law enforcement experience shall include actual time served with a law enforcement agency as a full-time peace officer or county detention officer. POST Council determines the acceptability of time served in one of those positions in a jurisdiction other than Idaho, or one which does not comply with the minimum standards set forth in these rules. ()

02. Juvenile Justice Experience. Juvenile justice experience means actual time served as a full-time juvenile corrections, juvenile detention, or juvenile probation officer. ()

03. Emergency Communications Officer Experience. Emergency communications officer experience means actual time served as a full-time emergency communications officer with a duly constituted law enforcement or PSAP agency. ()

04. Misdemeanor Probation Experience. Misdemeanor probation experience means actual time served as a full-time misdemeanor officer. ()

05. Military Law Enforcement Service and Education. An applicant who has served in the military as a full-time military law enforcement officer may be awarded partial credit toward law enforcement experience and training. The applicant shall have served as a full-time military law enforcement officer for the period of time for which credit is requested. Regular guard duty does not qualify. ()

a. Credit will be awarded as follows: ()

i. One (1) year of accepted military law enforcement service shall equal three (3) months of law enforcement experience. ()

ii. Eight (8) hours of accepted military law enforcement training shall equal four (4) hours of law enforcement training. ()

b. No applicant shall be awarded more than two (2) years of law enforcement experience or more than one thousand (1,000) hours of law enforcement training. ()

c. Educational credit may be awarded for completion of military law enforcement schools. All certificates, course outlines, diplomas, DD-214's, and certificates of completion showing length of school shall be submitted to POST with the application for higher certification. ()

06. College Credits. POST may award credits for college education as follows: ()

a. One (1) college or university semester hour or unit shall equal one (1) college credit. ()

b. One (1) college or university quarter hour or unit shall equal two-thirds (2/3) of one (1) college credit. ()

c. College credits may be converted to POST training hours at the rate of twenty (20) POST training hours for one (1) college credit. ()

d. When college credit is awarded or purchased for POST approved training, it may be counted for either POST training hours or college credit, whichever is to the advantage of the applicant. ()

e. Applicants shall submit an official college transcript as verification of college credit. ()

072. INTERMEDIATE AND ADVANCED CERTIFICATION.

POST Intermediate and Advanced certification recognizes the additional training and experience of patrol, detention, emergency communications officers, juvenile probation officers and juvenile detention officers already possessing a basic POST certification. In addition to the requirements otherwise set forth in these Rules, the following are required for an Intermediate or Advanced Certificate. ()

01. Intermediate Certification. An applicant shall hold a current POST basic certification, and have acquired either the combination of college credits and/or POST training hours, combined with the prescribed years of law enforcement experience, or an associate or baccalaureate degree from a college recognized by a regional accreditation agency, combined with the prescribed years of law enforcement experience, as set forth in the following subsections: ()

a. Peace officers.

POST Training Hours Including POST Basic Patrol Academy	600 hours	800 hours	1,200 hours	1,600 hours	1,800 hours	POST Basic Patrol Academy
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One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree
Years of Law Enforcement Experience	8 or more	7	6	5	4	4	2

()

b. Detention officers.

POST Training Hours Including POST Basic Detention Academy	600 hours	800 hours	1,200 hours	1,600 hours	1,800 hours	POST Basic Detention Academy	
One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree
Years of Law Enforcement Experience	8 or more	7	6	5	4	4	2

()

c. Emergency communications officers. The applicant shall:

()

i. Have completed a minimum of one hundred twenty (120) hours of POST certified training, which must include Emergency Communications basic training. ()

ii. A minimum of three (3) years of emergency communications officer experience. ()

d. Juvenile detention officers.

POST Training Hours Including POST Basic Juvenile Detention Academy	200 hours	400 hours	600 hours	800 hours	1,000 hours	POST Basic Juvenile Detention Academy	
One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree
Years of Juvenile Justice Experience	8 or more	7	6	5	4	4	2

()

e. Juvenile probation officers.

POST Training Hours Including POST Basic Juvenile Probation Academy	200 hours	400 hours	600 hours	800 hours	1,000 hours	POST Basic Juvenile Probation Academy	
One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree
Years of Juvenile Justice Experience	8 or more	7	6	5	4	4	2

()

f. Misdemeanor probation officers.

POST Training Hours Including POST Basic MPO Academy	600 hours	800 hours	1,200 hours	1,600 hours	1,800 hours	POST MPO Basic Academy	
One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree
Years of Law Enforcement Experience	8 or more	7	6	5	4	4	2

()

02. Advanced Certification. An applicant shall hold a current POST basic certification, possess or be eligible to possess an intermediate certificate, and have acquired either the combination of college credits and POST training hours, combined with the prescribed years of law enforcement experience, or an associate, baccalaureate, master's or doctoral degree from a college recognized by a regional accreditation agency, combined with the prescribed years of law enforcement experience, as set forth in the following subsections: ()

a. Peace officers.

POST Training Hours Including POST Basic Patrol Academy	500 hours	600 hours	700 hours	800 hours	900 hours	1,200 hours	POST Basic Patrol Academy		
College Credits	15	20	30	40	45	60	Associate Degree	Baccalaureate Degree	Master's Degree or PhD
Years of Law Enforcement Experience	13 or more	12	11	10	9	8	8	6	4

Graduation from the Drug Enforcement Administration School in Washington, D.C., the Northwestern University Traffic Institute School of Police Staff and Command, the FBI National Academy or Southern Police Institute's Administrative Officers Course/Command Officers Development Course shall be accepted in lieu of the fifteen (15) college credits required for the Advanced Certificate with thirteen (13) years or more of experience. ()

b. Detention officers.

POST Training Hours Including POST Basic Detention Academy	500 hours	600 hours	700 hours	800 hours	900 hours	1,200 hours	POST Basic Detention Academy		
College Credits	15	20	30	40	45	60	Associate Degree	Baccalaureate Degree	Master's Degree or PhD
Years of Law Enforcement Experience	13 or more	12	11	10	9	8	8	6	4

Graduation from the Drug Enforcement Administration School in Washington, D.C., the Northwestern University Traffic Institute School of Police Staff and Command, the FBI National Academy or Southern Police Institute's Administrative Officers Course/Command Officers Development Course shall be accepted in lieu of the fifteen (15) college credits required for the Advanced Certificate with thirteen (13) years or more of experience. ()

c. Emergency communications officers. ()

i. Have completed a minimum of five hundred (500) hours of POST certified training, which must include POST approved Emergency Communications basic training. ()

ii. Have at least ten (10) years of communications specialist experience. ()

d. Misdemeanor probation officers.

POST Training Hours Including POST Basic MPO Academy	500 hours	600 hours	700 hours	800 hours	900 hours	1,200 hours	POST Basic MPO Academy		
College Credits	15	20	30	40	45	60	Associate Degree	Baccalaureate Degree	Master's Degree or PhD
Years of Law Enforcement Experience	13 or more	12	11	10	9	8	8	6	4

()

03. Probationary Period. An applicant shall have completed a probationary period of at least six (6) consecutive months with the employing agency prior to applying for intermediate or advanced certificates. Agencies may require a longer probationary period prior to application. ()

073. SUPERVISOR CERTIFICATION.

POST supervisor certification recognizes the training and experience of patrol, detention and emergency communications officers employed in positions above the operational level who holds the rank of sergeant or equivalent title and who are responsible for the direct supervision of line personnel. In addition to the requirements otherwise set forth in these rules, an applicant for a supervisor certificate must: ()

01. Position. Be employed for a minimum of one (1) year by an agency in a first-line supervision position above the operational level which is responsible for the direct supervision of nonsupervisory personnel.

()

02. Certification. Possess an intermediate or advanced patrol, detention officer or emergency communications officer certificate. ()

03. Training. Have completed one hundred (100) hours of POST certified supervisory-level training, of which fifty (50) hours shall have been completed within three (3) years immediately prior to submitting an application for the supervisor certificate. ()

074. MASTER CERTIFICATION.

POST master certification recognizes the training and experience of patrol, detention and emergency communications officers who hold a rank below sergeant or equivalent title and who have focused their career efforts on line functions. In addition to the requirements otherwise set forth in these Rules, an applicant for a master certificate must: ()

01. Prior Certification. Possess an advanced certificate. ()

02. Training. Have completed one thousand five hundred (1,500) hours of POST certified training. College credits may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. ()

03. Experience. Have completed a minimum of fifteen (15) years of full-time law enforcement service in assignments which did not include full-time supervisory, management, or executive positions. ()

075. MANAGEMENT CERTIFICATION.

POST management certification recognizes the training and experience of patrol, detention and emergency communications officers in positions between a first-line supervisor and an executive, with responsibility for direct supervision of supervisory personnel and/or command duties. POST management certification is also available to city police chiefs or administrators within state agencies having law enforcement powers whose duties are primarily administrative. In addition to the requirements otherwise set forth in these rules, the following are required for an award of a management certificate. ()

01. Position. An applicant must be employed by an agency for a minimum of six (6) months in a management or executive position with primary responsibilities that are administrative or managerial in nature, including direct supervision of supervisory personnel and/or command duties, and which is typically occupied by a person holding the rank of lieutenant or higher, or equivalent title. ()

02. Certification. An applicant must possess POST certification as a peace officer, detention officer, or emergency communications officer; certification from another state that has minimum peace officer standards; or a certificate of completion from a city, county, state, or federal law enforcement academy that meets that state's minimum training standards. ()

03. Training. An applicant must have completed one hundred (100) hours of POST certified management-level training, of which fifty (50) hours shall have been completed within three (3) years immediately prior to submitting an application for the Management Certificate. ()

04. Police Chiefs, Agency Administrators. City police chiefs or administrators within state agencies having law enforcement powers who have duties which are primarily administrative may satisfy the certification requirement of Section 19-5109(2), Idaho Code, by obtaining this certificate. All other city police chiefs or state agency administrators having law enforcement powers may be awarded this certificate upon meeting the requirements, but shall also complete the requirements necessary to obtain a Basic Certificate. ()

076. EXECUTIVE CERTIFICATION.

POST Executive Certification recognizes the training and experience of law enforcement agency heads. In addition to the requirements otherwise set forth in these rules, an applicant for an Executive Certificate must: ()

01. Position. Be employed for a minimum of three (3) years immediately prior to submitting the

application as a chief of police, sheriff, director or chief executive of an agency. ()

02. Prior Certification. Possess a POST Advanced or Management Certificate, or the equivalent from another state meeting or exceeding Idaho standards. ()

03. Training. Have completed one hundred (100) hours of POST certified executive-level training, of which fifty (50) hours shall have been completed within three (3) years immediately prior to application for an Executive Certificate. ()

077. – 079. (RESERVED)

080. CERTIFICATIONS FOR PART-TIME OFFICERS.

In addition to basic POST certification, as set forth in these rules, the Council may issue certifications to the following employees who work under the supervision of full-time, POST certified Officers. ()

01. Requirements. Part-time officers in all disciplines except reserve peace officers, marine deputies and part-time juvenile detention officers will meet the same requirements as full time officers and will be issued a basic certificate. ()

a. Part-time juvenile detention officers who attend the basic juvenile detention academy will receive a basic certificate. Part-time juvenile detention officers who attend the part-time juvenile detention training will be issued a part-time juvenile detention certificate. ()

b. Part-time misdemeanor probation officers must work sixty (60) hours per year to maintain certification. ()

c. Reserve peace officers will be issued a reserve peace officer certification. ()

d. Marine deputies will be issued a marine deputy certification. ()

02. Lapse of Certification. All part-time POST certifications shall lapse in the same manner as basic certifications, and as set forth in these rules. ()

03. Decertification. All-part time officers are subject to decertification in the manner set forth in these rules. ()

04. Limit and Authority. The certification and authority of part-time officers is not limited except where indicated in these rules. ()

081. RESERVE PEACE OFFICER CERTIFICATION.

The Council may issue reserve peace officer certification for part-time employees of agencies who are assigned limited duties and work under the supervision of full-time, POST certified peace officers. ()

01. Eligibility. An applicant for reserve peace officer certification must be a reserve peace officer employed on a part-time basis by an agency and meet minimum standards for employment as provided in these rules. ()

02. Reserve Officer Training. An applicant for reserve peace officer certification shall complete the POST approved reserve peace officer academy. ()

03. Peace or Reserve Officers Certified In Another State, Commissioned by the Federal Government, or Graduates of a Basic Police Academy. An applicant who has served as a full-time certified peace officer in another state or as a full-time commissioned peace officer of the federal government within the five (5) years immediately preceding application or has served as a certified reserve officer in another state or a student who has completed an equivalent to the basic patrol academy within the three (3) years immediately preceding application is eligible for reserve officer certification without attending the reserve officer academy, provided he: ()

a. Submits, with a reserve officer certification packet, records of certifications and training from other states, and transcripts, certificates, diplomas, or other documents that verify the officer's training and experience; ()

b. Discloses all information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction; ()

c. Comply with any additional provisions required by POST. ()

04. Absence of Three Years. An officer who has not served in law enforcement for over three (3) years must complete all requirements set forth in this section to be eligible for reserve peace officer certification. ()

05. Supervision. An agency utilizing reserve peace officers shall have a policy regarding the duties and supervision of certified reserve peace officers. ()

06. Limitation on Certification. A reserve peace officer's certification is effective only while he is formally assigned to peace officer duties by the employing agency. ()

07. Retaining Certification. A certified reserve peace officer must work a minimum of one hundred twenty (120) hours annually in a peace officer capacity to retain certification. ()

082. MARINE DEPUTY CERTIFICATION.

01. Appointment by Sheriff. Marine deputies may be appointed by the Sheriff of a county for the purpose of enforcing: ()

a. The provisions of Title 67, Chapter 70, Idaho Code; ()

b. The provisions of IDAPA 26, Title 01, Chapter 30, Administrative Rules of the Idaho Department of Parks and Recreation; ()

c. City and county ordinances pertaining to watercraft and waterways; and ()

d. Enforcement of Idaho Code as assigned by the Sheriff. ()

02. Minimum Basic Training. A person desiring marine deputy certification shall complete the Council approved core curriculum, comprising basic law enforcement and marine specific courses. ()

03. Peace Officer Eligibility. A person who, within the three (3) years immediately preceding application, has served as a full-time POST certified peace officer shall be eligible for POST marine deputy certification without completing the core curriculum, provided he completes required marine specific courses and passes the marine deputy certification examination. ()

04. Certified or Commissioned in Another Jurisdiction; Graduate of Basic Police Academy. A person who has, within the three (3) years immediately preceding application, served as a full-time certified peace officer in another state, or served as a full-time commissioned peace officer for the federal government, or completed a basic police academy equivalent to the POST basic patrol academy may be eligible for POST marine deputy certification, provided he passes the POST marine deputy certification examination and meets all additional POST requirements for marine deputy certification. ()

05. Absence of Three Years. A person who has not served as a marine deputy or as a peace officer for over three (3) years must complete the POST core curriculum to be eligible for marine deputy certification. ()

083. PART-TIME JUVENILE DETENTION OFFICER CERTIFICATION.

A part-time juvenile detention officer must be certified by the Council within one (1) year of the date he was first employed as a part-time juvenile detention officer. ()

- 01. Eligibility.** An applicant shall: ()
- a.** Meet the definition of part-time juvenile detention officer as defined in these rules. ()
 - b.** Meet the minimum standards for certification provided in these rules. ()
 - c.** Must have been employed by the agency for a minimum six (6) consecutive months, which may include part-time juvenile detention officer training time, prior to certification. ()
- 02. Requirements for Certification.** An applicant must: ()
- a.** Complete POST approved part-time juvenile detention officer training. ()
 - b.** Complete POST approved part-time juvenile detention officer field-training of no less than forty (40) hours. ()
 - c.** Comply with any additional provisions required by POST. ()
- 03. Retaining Certification.** A certified part-time juvenile detention officer must work sixty (60) hours annually in a juvenile detention officer capacity to retain certification. Documentation of hours worked must be kept on file at the appointing agency. A part-time juvenile detention officer working less than sixty (60) hours annually must complete all requirements for certification set forth in this section to be recertified. ()
- 04. Limitations on Certification and Authority.** ()
- a.** A part-time juvenile detention officer's certification is effective only during those periods when he is formally assigned by the employing agency to perform the duties of a certified part-time juvenile detention officer. ()
 - b.** All certified part-time juvenile detention officers shall be directly supervised by a POST certified full-time juvenile detention officer, and each agency shall have a policy regarding supervision of part-time juvenile detention officers. ()
- 084. – 089. (RESERVED)**
- 090. CANINE-RELATED CERTIFICATIONS.**
Canine related certificates ensure the competence of law enforcement canine teams and evaluators. These rules do not limit the use of canine teams employed by other states or federal agencies for law enforcement purposes, or the use of volunteer canine teams in which the handler is not an Idaho peace, detention, correction, or adult probation and parole officer. ()
- 091. CANINE TEAM CERTIFICATION.**
- 01. Mandatory Certification.** A canine team shall be POST certified to perform law enforcement duties. ()
- 02. Eligibility.** A canine handler shall hold a POST law enforcement certification. Contract employees are not eligible for canine team certification. ()
- 03. Areas of Certification.** The Council shall certify a canine team which successfully demonstrates the handler's ability to control the dog, under the scrutiny of an evaluator, in addition to proficiency in one (1) or more areas as deemed by the Council. ()
- 04. Evaluation.** Evaluators of canine teams shall use POST standards for that particular skill category. Performance shall be rated on a pass/fail basis. The evaluator may discontinue testing if excessive time has been spent without results. The evaluator shall not be the owner or handler of the dog being evaluated, and not have a

proprietary interest in the training of the team being evaluated. A Regional Training Specialist shall be notified of all canine certification testing. ()

05. Failed Evaluation. If a team fails any portion of an evaluation, the entire evaluation is considered as having been failed. All skills shall be repeated and successfully demonstrated during retesting. The team shall wait at least twenty-four (24) hours before retesting, and be retested by the same evaluator, or his designee, that evaluated the failed test. ()

06. Expiration of Certification. POST Canine Certification is valid for fifteen (15) months. A canine team must be evaluated prior to their certification expiration date to maintain certification. Certification shall lapse if the handler and canine dog cease to perform canine team functions together. ()

092. CANINE EVALUATOR CERTIFICATION.

01. Certification. POST shall certify applicants who meet the requirements set forth in this section and are deemed qualified by their training and experience to evaluate police canine teams. Certificates shall be issued in the areas of Patrol and Detection. ()

02. Eligibility. To be eligible for a Canine Evaluator Certificate, each applicant shall: ()

a. Possess a current or previous POST professional certification and not have been previously decertified as a public safety official in any jurisdiction and comply with any additional provisions required by POST. ()

03. Retaining Certification. A certified canine evaluator shall evaluate a minimum of four (4) dogs every two (2) years in the discipline in which they are certified to evaluate. Any evaluator not satisfying this requirement shall complete all requirements for initial canine evaluator certification to be recertified. ()

04. Revocation. The Council may revoke Canine Evaluator certification if an evaluator is deemed unqualified to continue evaluating police canine teams. Review of canine evaluator certification may be initiated upon the request of an agency head, other reliable source or the Council. ()

093. – 099. (RESERVED)

100. LAPSE OF BASIC CERTIFICATION – REINSTATEMENT.

01. Lapse by Time. POST basic certification in any discipline will lapse if the officer does not serve as an officer in the discipline of certification in Idaho for three (3) consecutive years. The three-year period will be tolled during any time an officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ()

02. Exception for Officers Remaining With Agency. A POST certified officer who changes from one certified discipline to another certified discipline while remaining with the same agency will retain certification in the original discipline in which he was employed if he satisfies continuing training requirements. ()

03. Reinstatement After Three to Five Years Absence. An officer who has not served in full-time law enforcement from three (3) to five (5) years must meet the following requirements to be recertified: ()

a. Submit a POST Certification Challenge Packet; ()

b. Disclose all information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction. ()

c. Comply with any additional provisions required by POST. ()

d. Satisfy any applicable probationary period set forth in these rules. ()

04. Reinstatement After Five Years to Eight Years Absence. An officer who has not served in full-time law enforcement for over five (5) years but less than eight (8) years must attend a basic training academy to be recertified. ()

a. The Council may waive this requirement on a showing of good cause supported by clear and convincing evidence that during a substantial part of the that time out of full-time law enforcement, the officer engaged in an occupation requiring law enforcement training, skill, and experience equivalent to that required in the officer's discipline of certification. This evidence must be submitted with a POST challenge packet. ()

b. Upon receiving a waiver, the officer must: ()

i. Disclose all information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction. ()

ii. Satisfy any applicable probationary period set forth in these rules. ()

iii. Comply with any additional provisions required by POST. ()

05. Reinstatement After Eight Years Absence. An officer who has not served in full-time law enforcement for over eight (8) years must attend a basic training academy to be recertified. ()

101. – 109. (RESERVED)

110. DECERTIFICATION.

01. Mandatory Decertification. The Council shall decertify any person for: ()

a. A conviction of any felony or offense which would be a felony if committed in Idaho; ()

b. A conviction for a misdemeanor offense involving domestic violence; ()

c. Willfully falsifying or omitting any material information to obtain certification; ()

d. Violating any provision of the Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, whether charged or not, or of a comparable statute of another state or country, if the violation occurred while employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the illegal use occurred. ()

02. Discretionary Decertification. The Council may decertify any person for: ()

a. A conviction of any misdemeanor; ()

b. A violation of the Council's Code of Ethics; ()

c. Criminal conduct whether charged or not; ()

d. Consuming alcoholic beverages on duty, except as necessary for the lawful performance of duties; ()

e. Harassment or intimidation; ()

f. Lying or falsifying official written or verbal communications; ()

g. Inappropriate sexual conduct while on duty; ()

h. An inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication; ()

- i. Unauthorized use or unlawful conversion of the employing agency's property, equipment, or funds; ()
- j. Intentional and unauthorized disclosure of confidential information or information that may compromise an official investigation; ()
- k. Failure to report being charged with a felony or misdemeanor within five (5) business days; ()
- l. Failure to respond or to respond truthfully to questions related to an investigation or legal proceeding. ()
- 03. Required Notifications by Officers and Agencies. ()**
 - a. An officer charged with a felony or a misdemeanor shall notify his agency head within five (5) business days. ()
 - b. The agency head of an officer charged with a felony or misdemeanor shall notify the Division Administrator within fourteen (14) days of learning of the charge. ()
 - c. A person who is not currently employed by a law enforcement agency but is certified by POST shall notify POST of a misdemeanor or felony charge within fourteen (14) business days. ()
- 04. Effect of Decertification. ()**
 - a. A person decertified by the Council is ineligible for POST certification of any kind for ten (10) years following the date of decertification. After the expiration of ten (10) years an agency head may petition the Council to allow a decertified officer to attend a basic academy and become certified. ()
 - b. No decertified person shall exercise any law enforcement authority until recertified. Any officer who is the subject of a decertification investigation is ineligible for any additional POST certification while under investigation. ()
 - c. Voluntary resignation or relinquishment of certification(s) has the same full force and effect as decertification in a contested case. ()

111. DECERTIFICATION PROCEEDINGS-GENERAL PROVISIONS.

01. Legal Authority. In accordance with the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01.050, the Council partially declines to adopt the procedures established in IDAPA 04.11.01, but to the extent that the Council does adopt specific rules found in IDAPA 04.11.01 et seq. those rules are specified below. The procedures for fair hearings are provided within these rules to meet the unique requirements of the law enforcement profession for expeditious resolution of contested cases in order to assure public safety and to secure a just, speedy and economical determination of all matters presented to the Council. These procedures meet or exceed minimum Constitutional requirements for due process while allowing the Council to fulfill its obligations to protect the safety of the public and the integrity of the law enforcement profession. ()

02. Overview. Pursuant to Idaho Code Section 19-5113, the Division Administrator shall investigate all trustworthy allegations of misconduct by a person holding POST certification and determine whether decertification proceedings will be commenced. ()

03. Stipulation or Relinquishment. At any time during the course of an investigation, the person being investigated may stipulate to decertification or otherwise relinquish their certifications. ()

112. DECERTIFICATION PROCEEDINGS-DUE PROCESS PROCEDURES.

If the Division Administrator determines through investigation (which constitutes the complaint for the purpose of a contested case proceeding before the agency) that the allegations of misconduct by a person, which if proven, are

cause for decertification, the person shall be provided with notice and an opportunity to respond before a decision regarding decertification is made. ()

01. Notice of Intent to Decertify. The Division Administrator shall provide the person who is the subject of the proceeding with a notice of the intent to decertify, which shall include: ()

a. The basis for the contemplated decertification and an explanation of the evidence supporting the intended action. ()

b. That the person has a right to be represented by a person of their own choosing. ()

c. That the person may file a written response to object to the notice of intent to decertify. Said response shall be made within fourteen (14) days from the date of service of the notice of intent to decertify. The written response shall be made to the Division Administrator, setting forth any reasons why the intended action should not be taken. Concurrent with the written response, a written request may also be made for a conference with the Division Administrator to provide reasons why the intended action should not be taken. ()

d. That the person may waive a response by submitting a written waiver to the Division Administrator. ()

e. That, if the person waives a response or fails to respond within the designated time, signs an agreement to decertification or relinquishes their certificates; the Division Administrator will enter an order of decertification. ()

02. Stipulation or Relinquishment. A person may stipulate to decertification or otherwise relinquish their certifications, and the Division Administrator shall enter an order of decertification. ()

03. Decision – Request for Hearing. After the person who is the subject of the decertification proceeding has responded or waived a response, or the period to respond has expired, the Division Administrator shall, within twenty-eight (28) days, issue a decision on decertification. ()

a. The decision shall include findings of fact and conclusions of law and becomes a final order unless the person files a request for a hearing on the decision with the Council within fourteen (14) days of the date of service of the Division Administrator's decision. ()

b. A request for hearing shall include a brief statement of the issues upon which the person contends a hearing is required. ()

04. Hearing and Order. Upon receipt of a request for hearing, the Council shall assign the matter to a hearing officer for hearing. IDAPA Rules 04.11.01.410 through 04.11.01.417 apply to hearing officers. ()

a. The hearing officer shall have the power to subpoena witnesses, administer oaths, examine evidence and witnesses and request additional information from the parties. ()

b. The person who is the subject of the proceeding shall have the right to be represented at the hearing by a person of their own choosing and the right to conduct discovery. ()

c. Prior to submitting testimonial evidence, the person shall receive an administrative warning requiring that he provide testimony truthfully, and to acknowledge his understanding that no statements provided shall be used against him in criminal proceedings, based on *Garrity v. New Jersey*, 385 U.S. 493 (1967). ()

d. The hearing shall be recorded at the Council's expense. The recording will be the official record of the hearing. Any party to the action may, at their expense, request that a transcript of the hearing be prepared or that additional recordings be made. Such a request shall be approved if the additional recording does not distract from or disrupt the hearing. ()

e. Pursuant to Idaho Code Section 19-5113, the Division Administrator shall have the authority to

compel the attendance and testimony of witnesses and production and examination of books, papers, and records.

()

f. At the conclusion of proceedings, the hearing officer shall issue a decision in writing consisting of findings of fact, conclusions of law and an order that the person be decertified or that POST failed to show grounds for decertification and that the person be reinstated as an officer. The decision and the record of the proceedings, shall be filed with the Council.

()

g. The decision shall become a final order unless a petition for review by the full Council is filed with the Council within twenty-eight (28) days of the date of the decision. A petition for review shall include a brief statement of the basis upon which review is requested.

()

h. Where the decision directs the reinstatement of the person's certification, the Division Administrator shall reinstate certification upon the expiration of the time for filing a petition for review.

()

05. Petition for Agency Review.

()

a. Upon receipt of a petition for agency review, the Council shall issue a briefing schedule allowing the petitioner an opening brief, the respondent a response brief and the petitioner a reply brief. The Council shall review the record, briefs submitted and may allow oral argument. The petitioner may be represented by a person of their own choosing.

()

b. The Council may affirm, reverse, or modify the decision of the hearing officer, or may hold additional hearings or remand the matter. The Council's decision shall be a final order and may be appealed to district court by filing a petition for judicial review within twenty-eight (28) days of the date of service of the Council's decision.

()

06. Service. Service of all notices to be given, orders or other documents under Section 092 shall be by personal service, facsimile, other electronic means, or by U.S. mail, regular or certified, with postage prepaid, addressed to a person's last known address.

()

07. Public Notice. The names, agency and violation(s) of those persons whose certifications have been revoked are publicly available.

()

113. – 119. (RESERVED)

120. POST INSTRUCTOR CERTIFICATION.

To ensure the competence of instructors of subjects pertinent to law enforcement personnel, the Council will certify instructors who meet the requirements set forth in these rules.

()

121. POST INSTRUCTOR CERTIFICATION – GENERAL PROVISIONS.

01. POST Training Credit. POST will grant training credit for completion of training conducted by POST or instructed entirely by POST certified instructors provided the training is documented and meets POST training standards.

()

02. Agency Responsibility. Agencies, school directors, and POST Academy and Regional Training Specialists shall supervise, monitor, and audit instructors and courses to ensure that instructional excellence is maintained.

()

122. REQUIREMENTS FOR INSTRUCTORS OF LAW ENFORCEMENT SUBJECTS.

In addition to the other requirements for instructor certification set forth in these rules, instructors of law enforcement subjects must meet the following requirements.

()

01. Experience and Certification. An applicant must have a minimum of three (3) years of law enforcement experience, possess current or previous Idaho POST professional certification, and must not have been previously decertified as a law enforcement official of any jurisdiction.

()

02. Instructor Development Course. An applicant must complete the POST Instructor Development Course or approved equivalent. ()

03. Additional Requirements. An applicant must comply with any additional provisions required by POST. ()

123. REQUIREMENTS FOR HIGH LIABILITY INSTRUCTOR ENDORSEMENT.

POST certified instructors must obtain additional endorsements to instruct any topics deemed as “high liability” by the Council. ()

01. Completion of a High Liability Instructor School. An applicant for High Liability Instructor Endorsement must complete all requirements of the POST instructor course specific to the high liability topic area in which the applicant intends to instruct. ()

02. Application. After meeting the requirements for POST instructor certification, the applicant must submit a completed POST High Liability Instructor Endorsement Application Packet and must comply with any additional provisions required by POST. ()

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

04. Instruction Pending Endorsement. Prior to evaluation by a Regional Training Specialist, high liability instructor endorsement applicants cannot act as an instructor for any course offered for POST training credit in the intended topic area: Following completion of the POST instructor course specific to the intended high liability intended topic area, and upon notice from the Regional Training Specialist, the applicant may begin co-instruction of in the intended topic area, in preparation for evaluation. ()

05. Continuing Training Requirements. High liability instructors must complete a minimum of eight (8) hours of continuing instructor training every two (2) years, including use of force law, liability, and further instructor training specific to the endorsed topic area(s). ()

124. REQUIREMENTS FOR CANINE INSTRUCTOR CERTIFICATION.

POST canine instructor certificates recognize the competency of instructors of canine subjects pertinent to law enforcement. In addition to the other requirements set forth in these rules of POST Instructors, the following are necessary for award of a POST canine instructor certificate: ()

01. Canine Instructor School. The applicant must have completed a POST approved Canine Instructor School. ()

02. Certification and Service in Specific Discipline. The applicant must have served a minimum of five (5) years as a handler and have a minimum of five (5) annual certifications in the specific discipline for which certification is sought. ()

03. Canine Training. The applicant must have received a minimum of six hundred eighty (680) hours of canine training. ()

04. Recommendation. The applicant must be recommended for canine instructor certification by a committee comprised of a POST Training Specialist and two (2) POST certified canine instructors. ()

05. Application. After meeting the foregoing requirements, the applicant must submit a completed Certified Instructor Packet to POST. ()

06. Requirements for Maintaining Certification. To maintain certification, a POST certified canine instructor must teach a minimum of forty (40) hours every two (2) years in the specific discipline they are certified to teach. ()

07. Additional Requirements for Patrol Canine Instructor Certification. In addition to the requirements in this section, applicants for Patrol Canine Instructor Certification must obtain a High Liability Instructor Endorsement. ()

125. MASTER INSTRUCTOR CERTIFICATION.

POST master instructor certificates recognize exceptional competence as an instructor of instructors in subjects pertinent to law enforcement personnel. The Council will determine master instructor disciplines. In addition to the requirements otherwise set forth in these Rules, the following are required for award of a master instructor certificate. ()

01. POST Instructor Certification. POST will determine the number of master instructor certifications issued based upon POST's need of instructors. An applicant shall be a current POST certified instructor in the subject for which master instructor certification is sought in for a minimum of three (3) years prior to application. The Council may, upon written request, waive this requirement in exceptional cases. An applicant shall: ()

02. Instruction. Have instructed a minimum of forty (40) hours of classes in the subject for which he is applying for master instructor certification during each of the previous two (2) years. ()

03. Additional Training or Education. Have received additional training or education beyond basic training in the area of their instructor certification. ()

04. Exceptional Ability. Have demonstrated exceptional ability to develop and present training. ()

05. Recommendation. Be recommended for master instructor certification by a Regional Training Specialist or POST certified master instructor. ()

06. Maintain Certification. Teach a minimum of one (1) instructor class during the certification period to maintain certification. ()

07. Compliance With Other POST Requirements. Comply with any additional provisions required by POST. ()

126. MAINTAINING POST INSTRUCTOR CERTIFICATIONS AND ENDORSEMENTS.

01. Renewal of High Liability Endorsement. High liability instructor endorsements are valid for two (2) years, except Firearms endorsements which are valid for one (1) year, provided the instructor remains in good standing and complies with all POST requirements for in-service training. To renew the endorsement, the instructor must comply with any additional provisions required by POST. ()

02. Renewal of Master Instructor Certification. Master instructor certification is valid for three (3) years. To renew the certification, the instructor must comply with any additional provisions required by POST. ()

03. Renewal of Canine Instructor Certification. Canine instructor certification is valid for two (2) years. To renew the certification, the instructor must comply with any additional provisions required by POST. ()

04. Lapse of POST Instructor Certification. Except as otherwise set forth in these rules, POST instructor certification is valid indefinitely, provided it is not suspended or revoked, the instructor remains in good standing, and complies with all POST in-service training requirements. ()

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

- b. Inactive instructors may be required to complete a POST approved instructor orientation course. ()

127. SUSPENSION AND REVOCATION OF INSTRUCTOR CERTIFICATION OR ENDORSEMENT.

01. Suspension. The Division Administrator may suspend instructor certification or endorsement for up to one year if an instructor significantly or repeatedly fails to develop, document, conduct, or report training activities according to POST standards, or fails to abide by the POST Instructor Code of Ethics. A suspension will initiate an immediate review to determine if a revocation of the instructor's certificate is warranted. ()

02. Revocation. The Council may revoke instructor certification if an instructor is deemed unqualified to continue instructing. Review of instructor certification may be initiated upon request of an agency head, school director or coordinator, POST Division Administrator, the Council, or other reliable source. ()

128. – 129. (RESERVED)

130. IN-SERVICE TRAINING REQUIREMENTS.

The Council may, as a condition of continuing certification, require law enforcement officers to attend in-service training meeting POST standards. ()

131. IN-SERVICE TRAINING REQUIREMENTS FOR RETAINING BASIC CERTIFICATION.

01. Peace Officers. To retain POST certification, a peace officer must complete a minimum of forty (40) hours of continuing law enforcement training as directed by the POST Council every two (2) calendar years beginning January 1 following the date the officer was certified. This training must include a combined minimum twenty-four (24) hours of continuing law enforcement training in the following topics: ()

- a. Firearms: Eight (8) hours and an annual proficiency test (qualification); ()
- b. Arrest Techniques/Defensive Tactics (ARCON): Eight (8) hours; ()
- c. Emergency Vehicle Operation: Four (4) hours; ()
- d. Legal Update(s): Four (4) hours. ()

02. Emergency Communications Officers. To retain POST certification, an emergency communications officer must complete a minimum of forty (40) hours of continuing training related to public safety emergency communications every two (2) calendar years beginning January 1 following the date the officer was certified. ()

03. Tolling of Two-Year Period. The two (2) year continuing training period shall be tolled while an officer is on active military duty, and recommence upon the officer's return to duty with his agency. The agency shall submit a Notice of Separation/Change in Status form upon the officer's departure from and return to the agency. ()

132. DOCUMENTATION OF IN-SERVICE TRAINING.

01. Agency Responsibility to Ensure Accuracy of Training Records. Agency heads are required to ensure POST records of agency personnel training are up to date and complete as of December 31 of each year. ()

02. Agency Retention of Training Records. Each agency shall maintain, and make available to POST, records of each in-service training course provided, including: ()

- a. The name of the course provider and name and resume of the course instructor; ()
- b. The course learning objectives, the number of instructional hours, the number of in-service training

hours awarded and the attendance roster. ()

c. The names of the trainees completing the course and the date of completion. ()

03. POST Training Credit. No officer may receive POST training credit for training which has not been certified or approved by POST. ()

04. Notice of Non-Compliance. POST shall give written notice to officers who are not in compliance with in-service training requirements, and their agency heads. If an officer is not in compliance by December 31 of a two-year training cycle, his certification shall be suspended beginning January 1 of the following calendar year, unless an extension of time, not to exceed six (6) months, is granted by POST. The Division Administrator, may grant an additional extension of time for good cause shown. ()

05. College Courses. An officer fulfilling continuing training requirements by successfully completing a college course must have the college provide the employing agency with a transcript. The agency will make the transcript available to POST upon request. ()

133. POST CREDIT FOR IN-SERVICE TRAINING.

01. Credit for POST In-Service Training Provided by a Post Certified Instructor in Idaho. POST will grant training credit for in-service training according to the following criteria: ()

a. The training was provided by Idaho POST Certified Instructor(s). One (1) or more training instructors for any class must be POST certified. Instructors who are not POST certified will not be given credit for POST instructor hours. ()

b. The training was at least thirty (30) minutes in length. ()

02. Credit for POST In-Service Training Provided by an Organization or Vendor who is not POST Certified. All third-party in-service training must be pre- approved. The Council may maintain a list of organizations and vendors that will be exempt from this pre-approval process based on their reputation providing quality training, that are well established training organizations within the law enforcement training community, or that are offered through a regionally accredited college or university. Organizations and vendors who do not meet the criteria established through the Council, or its designee must meet the following criteria. ()

a. At least thirty (30) days prior to an in-service training session, the host agency will submit the following documents to a Regional Training Specialist: ()

i. A course outline; ()

ii. A description of the subject material and the time period to be devoted to each subject area; ()

iii. A description of the enforcement personnel to be instructed; ()

iv. A résumé on each instructor, unless the instructor is POST certified or approved; and ()

v. A lesson plan and all presentation and handout materials used in the course. ()

b. The course must be at least four (4) hours in length. ()

c. Any course which has been approved through this process, may be placed on the Council's designated pre-approved list after meeting the following criteria: ()

i. The course has been taught at least once in a calendar year, for at least three (3) consecutive years; or ()

ii. Is approved by the International Association of Directors of Law Enforcement Standards and

Training (IADLEST) and placed on the IADLEST national course certification index. ()

03. Course Attendance Roster. A lead instructor or facilitator must submit an original or electronic POST course attendance roster no later than thirty (30) days following the completion of the training for POST training credit approval. ()

04. Training Outside of Idaho. In-service training which is delivered outside of Idaho will be considered POST approved if the trainee provides any of the following: ()

- a.** The training was approved by the state's equivalent of POST, where the training occurred; or ()
- b.** The training course was approved by the International Association of Directors of Law Enforcement Standards and Training (IADLEST); or ()
- c.** The training course meets the criteria set forth above; and ()
- d.** Is submitted within thirty (30) days of the completion of the course; and ()
- e.** The trainee provides POST with the location, hours of the training, and a course syllabus or table of contents. ()

134. ALTERNATIVE METHODS OF IN-SERVICE TRAINING.

The Council may approve alternative methods of delivering training, including but not limited to training by videotape or compact discs, computer programs, internet-based training or written correspondence. ()

01. Training Medium. The training medium utilized must be indicated on the application for approval of the training. ()

02. Specialized Equipment. The applicant must provide POST with any specialized equipment, software, network access, etc. needed for the evaluation, at no cost at the time of application. ()

135. – 139. (RESERVED)

140. LAW ENFORCEMENT CERTIFICATION PROGRAM APPROVAL.

POST approval of a law enforcement certification program is established to ensure that instruction offered by such programs is equivalent to or exceeds POST basic academy training. ()

141. LAW ENFORCEMENT CERTIFICATION PROGRAM – GENERAL PROVISIONS.

01. Eligibility. To be eligible for approval as a law enforcement certification program, program must comply with all Idaho Department of Education standards if applicable, for such programs, and all other requirements of these rules. ()

02. Permission to Proceed With Approval Process. A program seeking approval as a law enforcement certification program must receive permission to proceed from POST prior to beginning the approval process, comply with the requirements of these Rules, and contact a Regional Training Specialist to schedule an on-site assessment. ()

03. Initial Assessment. POST will conduct an on-site assessment and provide the results to the program coordinator. ()

a. If the assessment finds that all requirements for program approval have not been met, the program will be given ninety (90) days to correct the deficiencies and a Regional Training Specialist will conduct a second on-site assessment. ()

b. If all requirements for the program approval are met, the Council will approve the program.

()

04. Assessment Visits. POST may conduct scheduled and unscheduled visits to entities seeking law enforcement certification program approval and currently- approved programs, to assess adherence to POST standards. ()

05. Expiration and Renewal of Certification. ()

a. Initial and subsequent law enforcement certification program approval is valid for two (2) years. ()

b. Renewal of program certification must be completed every two (2) calendar years, expiring December 31 of the second calendar year. ()

142. ADMINISTRATION OF COLLEGE OR UNIVERSITY PROGRAM.

A college or university law enforcement certification program shall have an advisory committee comprised of the Division Administrator or his designee and criminal justice executives or their designees from several agencies representative of the region the program serves. ()

01. Chair and Vice-Chair; Selection; Term. The advisory committee will elect a chair and vice-chair from among the committee members other than the Division Administrator or designee. The terms of office will be initially staggered. No chair or vice-chair may serve in that capacity for longer than four (4) consecutive years. ()

02. Duties of Chair and Vice-Chair. The chair or vice-chair schedule meetings and set agendas for advisory committee, meetings, work with the program coordinator and the program's administration, and perform other duties as necessary. ()

143. MAINTENANCE OF RECORDS.

A law enforcement certification program must maintain: ()

01. Course File. A file for each POST approved law enforcement training course it conducts, including curriculum, class schedules, attendance and discipline records, counseling records, tests with answer sheets, a course summary, and course evaluations. ()

02. Student Training File. A training file for each student including sufficient records to determine whether the student has completed all performance objectives. ()

03. Instructor File. A file for each instructor for the program including proof that the instructor is POST certified for each subject the instructor teaches, a copy of the instructor's student evaluations for the past year, and any other pertinent information related to the instructor's performance. ()

144. (RESERVED)

145. POST-GRADUATION SELF-EVALUATION.

A law enforcement certification program must conduct post-graduation evaluations of its entry-level training from six (6) to twelve (12) months after students leave the program, and must assess the relevance of the training to current law enforcement practices. ()

146. INSTRUCTION.

A law enforcement certification program must: ()

01. Monitoring of Instruction. Conduct periodic and random monitoring of instruction to ensure that lesson plans are being used, objectives are being addressed, appropriate instructional aids are available and being used properly, the instructor is in control and engaging the students; and classroom conditions such as lighting, noise levels, and temperature are acceptable. ()

02. Lesson Plans. Have a lesson plan on file for every training class and must review and update lesson plans and curricula on a regular basis to ensure compliance with POST requirements. ()

03. Evaluation of Instructors. Require students to complete written evaluations of every instructor. ()

04. Student Complaints. Investigate any student complaint regarding an instructor or the training process. ()

147. STANDARDS.

01. Law Enforcement Certification Program Student. Shall: ()

a. Meet the minimum standards for POST certification as set forth in these rules, with the exception of age. ()

b. Attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as set forth in these rules. ()

02. Law Enforcement Certification Program. Shall: ()

a. Have an integrity policy, which provides that dishonesty, including academic dishonesty, plagiarism and untruthfulness are grounds for disciplinary action and expulsion. All students shall review this policy on entering the program. ()

b. Have a policy prohibiting students from social contact, on or off campus, with staff members or instructors. Students and program staff or instructors shall maintain a professional relationship at all times. ()

c. Address other standards of conduct and behavior that reflect courtesy, consideration, and respect for others. Any conduct detrimental to the conduct, efficiency, or discipline of the program is prohibited. ()

148. PERIODIC ASSESSMENT BY POST.

01. Assessment. POST will perform periodic on-site assessments of each law enforcement certification program. POST will provide the program coordinator with no less than two (2) weeks notice prior to the assessment, and notify the program coordinator of the results. ()

02. Failure to Comply With Standards; Reassessment. If a law enforcement certification program does not meet all requirements for POST approval, the Council may suspend approval and direct corrective action. ()

a. The program must remedy all deficiencies within ninety (90) days of the initial assessment unless the Council grants an extension of time. ()

b. After ninety (90) days, or the applicable period if an extension of time is granted, POST will conduct a reassessment of the program. If all deficiencies are corrected, the Council will approve the program. ()

c. If all standards are not met, POST will notify the program administrator and, if applicable, the chairman of the program's advisory committee of the continuing deficiencies. The Council will review the reassessment report and may grant additional time to correct the deficiencies. ()

d. If all deficiencies are not corrected, the Council will revoke approval. ()

149. – 999. (RESERVED)

IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61.01.01 – GENERAL PROVISIONS AND DEFINITIONS

DOCKET NO. 61-0101-2101

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 2022 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

The rulemaking is focused on the definition of Vertical Representation in IDAPA 61.01.01.010.22, as a result of additional input from stakeholders. The text was prepared in collaboration with stakeholders and presented to the legislature.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 1, 2021 Idaho Administrative Bulletin, [Vol. 21-9, pages 133-136](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kathleen Elliott, (208) 332-1735.

DATED this November 29, 2021

Kathleen J. Elliott
Executive Director
Idaho State Public Defense Commission
816 W. Bannock, Suite 201
Boise, Idaho 83702
Phone: (208) 332-1735
Fax: (208) 364-6147
Email: Kathleen.Elliott@pdc.idaho.gov

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 19-850(1)(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Two public hearings concerning this rulemaking will be held via Zoom and meeting site as follows:

Thursday, September 9, 2021 – 1:00 p.m.–3:00 p.m. (PT) / 2:00 p.m.–4:00 p.m. (MT)

Friday, September 17, 2021 – 10:30 a.m.–12:30 p.m. (PT) / 11:30 a.m.–1:30 p.m. (MT)

*** Attendance via Zoom Meeting is Encouraged ***

To register for the Zoom public hearings, use the link below for the hearing date you want to register for:

September 9th: <https://us02web.zoom.us/meeting/register/tZMvcu-gqDsvEtc0IRMW6NFvogdVICWsvZ88>

September 17th: <https://us02web.zoom.us/meeting/register/tZwkdeqgpjsH9GotZJ7ISqdu-zHYZdsOm1C>

In-Person Meeting site:
Idaho Capitol Building
Senate Committee Room WW 53
700 West Jefferson Street
Boise, ID 83702

Masks, social distancing, and other COVID protocols at the time of the meeting will be enforced and consistent with the most recent State and Federal guidance

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

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

The rulemaking is focused on the definition of Vertical Representation in IDAPA 61.01.01.010.22, as a result of additional input from stakeholders. The text was prepared in collaboration with stakeholders and presented to the legislature.

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

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

This rule should have no fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 5, 2021 Idaho Administrative Bulletin, [Vol. 21-5, pages 28-29](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathleen Elliott at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2021.

DATED this 30th day of July 2021.

THE FOLLOWING IS THE TEXT OF PENDING DOCKET NO. 61-0101-2101

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Active Case. A Capital Case is active when it is not stayed. All other Cases are active when there is an appointment, appearance, filing or investigation in the reporting period or it is not stayed. (11-17-21)

02. Annual Report. The Defending Attorney report required by Section 19-864, Idaho Code, including CLEs, Caseloads, Workloads and other information requested for the October 1 through September 30 reporting period to complete the Annual Report form provided by PDC Staff. (11-17-21)

03. Capital Case. A case in which the state has given notice it will seek the death penalty or is legally entitled to seek the death penalty under Section 18-4004A, Idaho Code. (11-17-21)

04. Capital Defending Attorney. A Defending Attorney who meets the qualifications for and is on the Capital Defending Attorney Roster. (11-17-21)

05. Capital Defending Attorney Roster. The PDC's list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a Capital Case. (11-17-21)

06. Case. All related charges against an individual from a single incident, transaction or occurrence filed within a single case number. A probation violation or motion for contempt is counted as a separate Case. (11-17-21)

07. Caseload. A Defending Attorney's total number of Active Cases during the applicable reporting period as counted under IDAPA 61.01.02, "Requirements and Procedures for Representing Indigent Persons," Paragraph 060.05.c. A county's total Caseload to determine compliance with Workload rules is calculated as the mean of the Felony Case Equivalent calculation for each of the preceding three (3) years. (11-17-21)

08. Compliance Plan. A county's plan for meeting Public Defense Rules and curing any Deficiencies including detailed action items and completion dates. (11-17-21)

09. Cost Analysis. A detailed explanation of the expected expenses for the county to complete its Compliance Plan and how the county is proposing to pay for those expenses. (11-17-21)

10. **Defending Attorney.** Any attorney employed by a county or under contract with a county as an institutional Defending Attorney or a contract Defending Attorney or otherwise appointed by a Court to represent adults or juveniles at public expense. (11-17-21)
11. **Defending Attorney Roster.** The PDC's list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a non-capital Case. (11-17-21)
12. **Deficiency.** The noncompliance with any Public Defense Rule by a county, Defending Attorney, employee, contractor, representative or other agent. (11-17-21)
13. **Executive Director.** PDC employee appointed by the Commission under Section 19-850(2)(a), Idaho Code. (11-17-21)
14. **Felony Case Equivalent (FCE).** The calculation after all Case types are converted to their felony equivalent to determine compliance with Caseload rules. (11-17-21)
15. **Financial Assistance.** The state funding a county may request and may be awarded under Section 19-862A, Idaho Code. (11-17-21)
16. **Indigent Person.** A person who, at the time his need is determined under Section 19-854, Idaho Code, is unable to provide for the full payment of a Defending Attorney and all other necessary expenses of representation. (11-17-21)
17. **Initial Appearance.** The first appearance of the defendant before any judge. In the event a defendant appears before more than one judge, the first appearance before the first judge constitutes the Initial Appearance. (11-17-21)
18. **Material.** An action or failure to act that could have an immediate and significant negative impact on the effective representation of Indigent Persons or result in the misuse of state funds. (11-17-21)
19. **PDC.** The Idaho State Public Defense Commission including PDC Staff and the Commission. Information reported to the PDC will be reported using available PDC forms. (11-17-21)
20. **PDC Staff.** Employees of the Commission who report to the Executive Director. References to PDC Staff include the Executive Director unless otherwise specified. (11-17-21)
21. **Public Defense Rules.** Any rule promulgated by the Commission under Section 19- 850(1)(a), Idaho Code. (11-17-21)
22. **Vertical Representation.** A Defending Attorney ~~appointed to represent~~ is responsible for the continuous and personal representation and oversight of an Indigent Person's case ~~shall~~, to the extent reasonably practicable, ~~continuously and personally oversee the representation of the client's case~~ through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make ~~all~~ efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, ~~including but not limited to advising the Court of any conflict at the time of setting~~, providing ~~accurate~~ unavailable dates at the time of setting, and seek continuances in the case of unforeseen absences, ~~filing a motion or stipulation to continue~~. The Indigent Person may consent to have another Defending Attorney appear at a hearing. Each county is responsible to support and provide resources as necessary to ensure Vertical Representation. (11-17-21)()
23. **Willful.** An action or failure to act that is deliberate and with knowledge. (11-17-21)
24. **Workload.** A Defending Attorney's Caseload adjusted to account for available support staff, Case complexity, and distribution through the reporting year and other duties such as supervision. (11-17-21)
011. – 999. (RESERVED)

IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61.01.02 – REQUIREMENTS AND PROCEDURES FOR REPRESENTING INDIGENT PERSONS

DOCKET NO. 61-0102-2101

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 2022 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

The rulemaking is focused on specifically identified subsections as a result of additional input from stakeholders. The text was prepared in collaboration with stakeholders and presented to the legislature.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 1, 2021 Idaho Administrative Bulletin, [Vol. 21-9, pages 138-149](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kathleen Elliott, (208) 332-1735.

DATED this November 29, 2021

Kathleen J. Elliott
Executive Director
Idaho State Public Defense Commission
816 W. Bannock, Suite 201
Boise, Idaho 83702
Phone: (208) 332-1735
Fax: (208) 364-6147
Email: Kathleen.Elliott@pdc.idaho.gov

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 19-850(1)(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Two public hearings concerning this rulemaking will be held via Zoom and meeting site as follows:

Thursday, September 9, 2021 – 1:00 p.m.–3:00 p.m. (PT) / 2:00 p.m.–4:00 p.m. (MT)

Friday, September 17, 2021 – 10:30 a.m.–12:30 p.m. (PT) / 11:30 a.m.–1:30 p.m. (MT)

*** Attendance via Zoom Meeting is Encouraged ***

To register for the Zoom public hearings, use the link below for the hearing date you want to register for:

September 9th: <https://us02web.zoom.us/join/join?secret=0IRMW6NFv0gdVICWsvZ88>

September 17th: <https://us02web.zoom.us/join/join?secret=tZWkdeqgpjs0H9GotZJ7ISqdu-zHYZdsOm1C>

In-Person Meeting site:
Idaho Capitol Building
Senate Committee Room WW 53
700 West Jefferson Street
Boise, ID 83702

Masks, social distancing, and other COVID protocols at the time of the meeting will be enforced and consistent with the most recent State and Federal guidance

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

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

The rulemaking is focused on the following subsections as a result of additional input from stakeholders. The text was prepared in collaboration with stakeholders and presented to the legislature:

- 61.01.02.020.01.a. – regarding engaging attorneys on the Defending Attorney Roster;
- 61.01.02.030.02.a. – regarding the selection recommendation committee;
- 61.01.02.030.02.b. – regarding the independence working group;
- 61.01.02.030.05 – regarding independent contract negotiation;
- 61.01.02.040.02 – regarding pay;
- 61.01.02.050.02.a.ii. – regarding court inquiry about workload;
- 61.01.02.050.04 – regarding eligibility for appointment (this replaces 61.01.02.070.03);
- 61.01.02.060.03 – regarding qualifications;
- 61.01.02.060.03.c. – regarding vertical representation;
- 61.01.02.060.03.i.iv. – regarding entry of a not guilty plea;
- 61.01.02.060.03.n.xii. – regarding abilities for a case;
- 61.01.02.060.04.a. – regarding competence in capital cases;
- 61.01.02.070.01.a. – regarding the defending attorney roster requirements;

- 61.01.02.070.01.a.iv. – regarding time for completion of CLEs;
- 61.01.02.070.01.b. – regarding continuing eligibility to remain on the roster and addressing deficiencies;
- 61.01.02.070.02.a.iii. – regarding capital defending attorney roster forms;
- 61.01.02.070.03 – regarding eligibility for appointment (the replacement for this is 61.01.02.050.04);
- 61.01.02.080.03.a. – regarding list of situations requiring emergency removal;
- 61.01.02.080.03.c. – regarding the appeal of emergency removal; and
- 61.01.02.090.01 – regarding option to request CLE preapproval.

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

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

This rule should have no fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 5, 2021 Idaho Administrative Bulletin, Vol. 21-5, pages 30-31.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathleen Elliott at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2021.

DATED this 30th day of July 2021.

THE FOLLOWING IS THE TEXT OF PENDING DOCKET NO. 61-0102-2101

(BREAK IN CONTINUITY OF SECTIONS)

020. COUNTIES TO ADEQUATELY RESOURCE PUBLIC DEFENSE TO ENSURE EFFECTIVE REPRESENTATION IS PROVIDED TO INDIGENT PERSONS AS PROVIDED IN SECTIONS 19-860(2), 19-861(2)-(3), 19-862(1) AND 19-862A(1), (2) AND (8), IDAHO CODE.

Counties shall ensure effective representation is provided to Indigent Persons by adequately resourcing public defense as follows: (11-17-21)

01. Supported Defense Model. Annually appropriate enough money to fund the public defense model selected under Section 19-859, Idaho Code: (11-17-21)

a. Employ or contract with attorneys to provide public defense services from the Defending Attorney Roster or ~~require~~, if the attorney is not yet on the Defending Attorney Roster, have the attorney to apply for complete and submit to the PDC the Roster form within thirty (30) days from the date of their employment or contract under ~~Subsection 070-03 of these rules;~~ (11-17-21)()

b. Employ or contract with qualified staff and contractors with professional certificates, licenses and permissions as required by applicable rules and laws; and (11-17-21)

c. Provide resources for compliance with Public Defense Rules. (11-17-21)

02. Defending Attorney Resources. Provide Defending Attorneys with resources for carrying out the Defending Attorney's responsibilities, including: (11-17-21)

a. Confidential office, jail and courthouse meeting rooms to protect client confidentiality; (11-17-21)

b. Confidential servers and systems to protect client confidentiality; (11-17-21)

c. Sufficient equipment, technology, supplies; and (11-17-21)

d. Other resources needed to provide constitutional representation. (11-17-21)

03. Contracting. Counties and contract Defending Attorneys will enter into a contract for public defense services as required by Section 19-859, Idaho Code, which must include the following core terms: (11-17-21)

a. All parties will comply with Public Defense Rules; (11-17-21)

b. Description of services and Case types included in the contract; (11-17-21)

c. Prohibition of a single fixed fee for services and expenses; (11-17-21)

d. Fee structure and amount for services; (11-17-21)

e. The county will pay client related expenses and costs; (11-17-21)

f. Defending Attorney will safeguard and retain case files and records as necessary to protect Indigent Persons, and, at termination of their contract, transfer files to the successor contract Defending Attorney; proper safeguards will be put in place to ensure no file is transferred to an attorney who may have a conflict; (11-17-21)

g. All parties keep detailed records of their public defense services and expenditures; (11-17-21)

h. Defending Attorney will notify the county and the lead institutional or primary contracting Defending Attorney, as applicable, if the Idaho State Bar or other licensing organization files formal charges against a Defending Attorney or non-attorney staff; and (11-17-21)

i. Authorization for and disclosure of the contract to the PDC. (11-17-21)

04. Communication. The County will frequently meet with the lead institutional or primary contracting Defending Attorneys who are the main providers of public defense services about the following: (11-17-21)

a. Review compliance with Public Defense Rules, including monitoring Workloads and Vertical Representation; and (11-17-21)

b. Review county budget and expenditures for sufficient allocation of public defense resources and assess need for Financial Assistance. (11-17-21)

021. – 029. (RESERVED)

030. PUBLIC DEFENSE INDEPENDENT OF POLITICAL AND JUDICIAL INFLUENCE.

Counties will ensure public defense is independent of political and to the extent possible, judicial influence, provided however, the judiciary is encouraged to contribute information and advice concerning the delivery of public defense

services. (11-17-21)

01. No Judicial, Political or Conflict Influences. The county's selection and retention of Defending Attorneys will not involve conflicts of interest. (11-17-21)

02. Independent Committees. (11-17-21)

a. Selection Recommendation Committee. The county will use an independent committee from within the county or region for recommendations to the Board of County Commissioners for the selection of the lead institutional Defending Attorney or primary contracting Defending Attorneys as the main providers of public defense services as set forth in Sections 19-859 and 19-860(2), Idaho Code; and ~~(11-17-21)~~()

b. Independence Working Group. Each judicial district ~~will~~ may establish an independent ~~committee~~ working group of one (1) attorney for each county who practices public defense in or who is familiar or will become familiar with public defense in the county and who is not a Defending Attorney for the appointing county and who is not a prosecutor, to act as a liaison in independence issues between Defending Attorneys and county stakeholders. The Administrative District Judge (ADJ) or Trial Court Administrator (TCA) will identify the members of the ~~committee~~ working group for their District, and if the ADJ or TCA does not, the Commission will identify ~~committee~~ working group members. ~~(11-17-21)~~()

c. Information about an attorney's fitness to represent Indigent Persons is confidential and exempt from Public Records Act under Section 74-105(18)(a), Idaho Code. (11-17-21)

03. Independent Advocate. A Defending Attorney exercising their professional or ethical obligations or advocating for policies supporting constitutional representation of Indigent Persons is not cause for discipline or termination. Nothing in this Subsection 030.03 is intended to prohibit the discipline or termination of a Defending Attorney who has violated county employment policy or Idaho Rules of Professional Conduct. (11-17-21)

04. Independence. The county will limit prosecutor involvement in public defense matters that may jeopardize the independence of any Defending Attorney or undermine the delivery of public defense. (11-17-21)

05. Independent Contract Review Negotiation. The county should consider engaging independent legal counsel to negotiate Defending Attorney Contracts. ~~(11-17-21)~~()

031. – 039. (RESERVED)

040. COUNTIES TO PROVIDE CONSISTENT RESOURCES FOR PUBLIC DEFENSE.

Counties will provide adequate and equitable resources for public defense consistent with a properly funded prosecutor as provided in Sections 19-860(1), 19-861(3) and 19-850(1)(a)(vii)7, Idaho Code. (11-17-21)

01. Staff and Facilities. Defending Attorneys and prosecutors will have equal access to quality staff and facilities. (11-17-21)

02. Pay. So far as is possible, Defending Attorneys and their staff will receive similar compensation as not be compensated less than a properly funded prosecutor and staff with similar experience and performing similar duties. ~~(11-17-21)~~()

03. Other Resources. Defending Attorneys and the prosecutor will have equal access to resources necessary for legal representation. This includes but is not limited to the independent investigation and evaluation of evidence. (11-17-21)

04. Equity Review. The county will frequently review and assess equity between, and resource needs of, Defending Attorneys and prosecutors. (11-17-21)

05. Budget for Equity. The county will frequently review resource needs with Defending Attorney and adequately budget to meet those needs. (11-17-21)

041. – 049. (RESERVED)

050. COURT APPOINTMENT OF COMPETENT DEFENDING ATTORNEYS.

Courts will appoint Defending Attorneys who are competent to represent Indigent Persons as provided in Sections 19-855 and 19-850(1)(a)(vi), Idaho Code, and Subsection 060 of these rules. (11-17-21)

01. Appointment in Non-Capital Cases. (11-17-21)

a. Courts will appoint a Defending Attorney from the Defending Attorney Roster except in extraordinary circumstances where the Court: (11-17-21)

i. Finds there is good cause to appoint an attorney at public expense who is not on the Roster; (11-17-21)

ii. Finds the attorney is competent to represent the Indigent Person in the particular case; and (11-17-21)

iii. Directs the appointed attorney to notify the PDC of the appointment. (11-17-21)

b. Every attorney appointed under this Subsection 050.01 to represent an Indigent Person at public expense must comply with Subsection 060 of these rules. (11-17-21)

02. Appointment in Capital Cases. (11-17-21)

a. In Capital Cases, Courts will: (11-17-21)

i. Appoint a Defending Attorney from the Capital Defending Attorney Roster to represent an Indigent Person at public expense; (11-17-21)

ii. ~~Assess~~ Inquire about the Defending Attorney's Workload to ensure compliance with the Public Defense Rules; ~~(11-17-21)~~ ()

b. At or before the Initial Appearance in a Capital Case, appoint no less than two (2) qualified Capital Defending Attorneys, one (1) designated lead and the other(s) as co-counsel. (11-17-21)

03. Conflicts of Interest. A Court shall not appoint a Defending Attorney to any case with a conflict of interest in that case. (11-17-21)

04. Eligibility. Except as provided in Subsection 050.01.a. of these rules, attorneys who are not approved for inclusion on the applicable Roster are not eligible to represent Indigent Persons at public expense. ()

051. – 059. (RESERVED)

060. DEFENDING ATTORNEY MINIMUM REQUIREMENTS.

Defending Attorneys shall meet the following minimum requirements for providing effective representation to Indigent Persons as provided in Sections 19-855, 19-860(2), 19-850(1)(a)(vi) and 19-850(1)(a)(v)(ii) 5 and 8, Idaho Code. (11-17-21)

01. Idaho State License, Defending Attorney Roster, and County Employment or Contract Requirements: (11-17-21)

a. Licensed to practice law in Idaho and in compliance with Idaho State Bar rules; (11-17-21)

b. Member of the Defending Attorney Roster, except as provided in Subsection 050 of these rules; (11-17-21)

- c. Employed or under contract to provide public defense services to a county; and (11-17-21)
- d. If a Court attempts to appoint an attorney to represent an Indigent Person at public expense and the attorney does not meet one or more of the requirements in this Subsection 060.01, the attorney will immediately notify the Court. (11-17-21)
- 02. Public Defense Competency.** Be competent to counsel and represent Indigent Persons. (11-17-21)
- 03. Qualifications.** Have ~~demonstrated~~ the ability, training, experience, and understanding ~~regarding representing Indigent Persons and necessary for their appointed Cases to~~ do the following: ~~(11-17-21)()~~
- a. Apply laws, rules, procedures, and practices to the Case and perform thorough legal research and analysis; (11-17-21)
- b. Protect client confidentiality, and if breached, notify the client and any other entities when necessary to preserve the client's constitutional and statutory rights; (11-17-21)
- c. Ensure Vertical Representation from the time a Defending Attorney is appointed in each Case. Nothing in this rule is intended to prohibit a different Defending Attorney from representing the client at Initial Appearance. Defending Attorneys who are unable to comply with this rule will notify their supervisor, Board of County Commissioners, or the Court and request appropriate resources; ~~(11-17-21)()~~
- d. Dedicate sufficient time to each Case; (11-17-21)
- e. Promptly and independently investigate the Case; (11-17-21)
- f. Request funds as needed to retain an investigator; (11-17-21)
- g. Request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case; (11-17-21)
- h. Continually evaluate the Case for defense investigations or expert assistance; (11-17-21)
- i. Be present at the Initial Appearance and available to the Indigent Person in person or via technology, and; (11-17-21)
 - i. Preserve the client's constitutional and statutory rights; (11-17-21)
 - ii. Discuss the charges, case and potential and collateral consequences with the client; (11-17-21)
 - iii. Obtain information relevant to Idaho Criminal Rule 46 (bail or release on own recognizance) and if appropriate, seek release; (11-17-21)
 - iv. Encourage the entry of a not guilty plea at Initial Appearance except in ~~extraordinary~~ circumstances where a guilty plea is constitutionally appropriate; ~~(11-17-21)()~~
 - j. Work within Caseload or Workload limits, defined in Subsection 060.05 of these rules. If a Defending Attorney's Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards; (11-17-21)
 - k. Have sufficient time and private space to confidentially meet with Indigent Persons; (11-17-21)
 - l. Have confidential and secure information systems for Indigent Person's confidential information; (11-17-21)
 - m. Identify and resolve conflicts of interests in compliance with Idaho Rules of Professional Conduct

- (IRCP) and other applicable laws and rules; (11-17-21)
- n. Be familiar with and competent to identify or use; (11-17-21)
 - i. Forensic and scientific methods used in prosecution and defense; (11-17-21)
 - ii. Mental, psychological, medical, environmental issues and impacts; (11-17-21)
 - iii. Written and oral advocacy; (11-17-21)
 - iv. Motions practice to exhaust good faith procedural and substantive defenses; (11-17-21)
 - v. Evidence presentation and direct and cross examination; (11-17-21)
 - vi. Experts as consultants and witnesses and expert evidence; (11-17-21)
 - vii. Forensic investigations and evidence; (11-17-21)
 - viii. Mitigating factors and evidence; (11-17-21)
 - ix. Jury selection methods and procedures; (11-17-21)
 - x. Electronic filing, discovery and evidence and systems; (11-17-21)
 - xi. Constitutional representation; and (11-17-21)
 - xii. ~~Understand their own professional limitations and~~ When a Defending Attorney's abilities do not match the nature and complexity of the Case, they will seek the advice of experienced attorneys, seek training, or decline appointments ~~when necessary~~. (11-17-21)()

04. Additional Qualifications for Capital Cases. Capital Defending Attorneys must meet the following additional requirements: (11-17-21)

- a. Have advanced familiarity and demonstrated competence with the above minimum requirements for Defending Attorneys; and (11-17-21)()
- b. Have knowledge and experience in the following: (11-17-21)
 - i. Capital laws, rules, procedures and practices; (11-17-21)
 - ii. Capital mitigation; (11-17-21)
 - iii. Use of mental health evaluations and evidence; (11-17-21)
 - iv. Managing and litigating complex cases; (11-17-21)
 - v. Assembling and leading a trial team; (11-17-21)
 - vi. Capital jury selection methods and procedures; and (11-17-21)
 - vii. Qualifications meeting or exceeding the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases to extent they do not conflict with Idaho law; (11-17-21)
- c. Lead trial Defending Attorney in Capital Cases will meet or exceed the following experience levels: (11-17-21)

- i. Active trial practitioner with no less than ten (10) years in criminal defense litigation; (11-17-21)
- ii. Lead counsel in no less than ten (10) felony jury trial tried to verdict; and (11-17-21)
- iii. Lead or co-counsel in no less than one (1) Capital Case tried to verdict or capital sentencing; (11-17-21)
- d.** Trial co-counsel Defending Attorney in Capital Cases who are not qualified as lead trial counsel will meet or exceed the following experience levels: (11-17-21)
 - i. Active trial practitioner with no less than five (5) years in criminal defense litigation and one (1) of the following: (11-17-21)
 - ii. Lead counsel in no less than five (5) felony jury trial tried to verdict; or (11-17-21)
 - iii. Lead or co-counsel in no less than one (1) Capital Case tried to verdict or capital sentencing; (11-17-21)
- e.** Lead appellate/post-conviction Defending Attorney in Capital Cases will meet or exceed the following experience levels: (11-17-21)
 - i. Active appellate/post-conviction attorney with no less than ten (10) years in criminal defense litigation; and (11-17-21)
 - ii. Lead counsel in no less than one (1) Capital or federal capital habeas corpus Case; (11-17-21)
- f.** Appellate/post-conviction co-counsel in Capital Cases who are not qualified as lead appellate or lead post-conviction counsel will meet or exceed the following experience levels: (11-17-21)
 - i. Active appellate and post-conviction practitioner with no less than five (5) years in criminal defense litigation; and (11-17-21)
 - ii. Attorney in no less than one (1) felony appeal with appellate argument, or if tried to evidentiary hearing either a post-conviction or federal habeas corpus Case; (11-17-21)
- g.** Lead trial or appellate/post-conviction counsel who do not meet the numeric years of practice or numeric number of trials/cases will meet the following alternate requirements: (11-17-21)
 - i. Meet all the other minimum requirements to ensure their abilities, training, and experience are appropriate given the nature and complexity of a Capital Case, and (11-17-21)
 - ii. Demonstrate they are qualified to provide lead trial representation or appellate and post-conviction representation in a Capital Case, as applicable, despite their years in practice and trials/cases handled; (11-17-21)
- h.** Minimum requirements for Capital Case defense teams: (11-17-21)
 - i. At least two (2) qualified Capital Defending Attorneys, one (1) designated lead and the other or others as co-counsel, appointed at or before the Initial Appearance; (11-17-21)
 - ii. Immediate assembly of a team by Capital Defending Attorneys consisting of no less than the following: (11-17-21)
 - (1) Fact investigator; (11-17-21)
 - (2) Mitigation specialist; (11-17-21)
 - (3) Person trained and professionally qualified to screen for mental and psychological screenings; and

- (11-17-21)
- (4) Other persons needed to provide effective and zealous representation; and (11-17-21)
- (5) Require ongoing training and compliance with standards. (11-17-21)
- 05. Caseloads and Workloads.** Defending Attorneys will have Caseloads and Workloads that are appropriately sized to permit effective representation as follows: (11-17-21)
- a.** Caseload standard. Maximum Caseloads by Active Case type shall not during the reporting period exceed: (11-17-21)
- i. Two (2) Capital Cases at a time; (11-17-21)
- ii. Two hundred ten (210) non-capital felony Cases; (11-17-21)
- iii. Five hundred twenty (520) misdemeanor Cases; (11-17-21)
- iv. Two hundred thirty-two (232) juvenile Cases; (11-17-21)
- v. One hundred five (105) child protection or parent representation Cases; (11-17-21)
- vi. Six hundred eight (608) civil contempt or mental health Cases; and (11-17-21)
- vii. Thirty-five (35) non-capital substantive appeal Cases. (11-17-21)
- viii. To determine maximum Caseloads for mixed Case types, add the percentage of the maximum Caseload for each category and the sum of those percentages is not to exceed one hundred percent (100%); and adjust the Caseload downward when the Case assignments are weighted toward more serious offenses, complex Cases, or those requiring significant expenditure of time and resources. (11-17-21)
- b.** Maximum Caseloads will remain in effect until April 30, 2023, unless otherwise addressed by the Commission prior to that date. In the absence of a numerical Caseload rule, Defending Attorneys and counties should use the National Advisory Commission (NAC) Caseload limits recognized by the American Bar Association as a guideline for assessment. (11-17-21)
- c.** Case Counting. (11-17-21)
- i. A felony Case is counted as follows: (11-17-21)
- (1) A Case filed as a felony is counted as one (1) felony, whether it is dismissed, remanded, pled, or tried to completion; (11-17-21)
- (2) A Case filed as a misdemeanor that is later amended to a felony is counted as a felony; (11-17-21)
- ii. A probation violation or motion for contempt is counted as a separate Case; (11-17-21)
- iii. A Case that is conflicted or consolidated is counted by the Defending Attorney assigned to the conflicted or consolidated Case and not counted by the initial Defending Attorney; (11-17-21)
- iv. A Case sent to a problem-solving court is counted once as initially filed as a felony, misdemeanor, or juvenile Case; (11-17-21)
- v. A Case is counted as a Capital Case if, in any part of the reporting period, the state is legally entitled to seek the death penalty under Section 18-4004A, Idaho Code; (11-17-21)
- vi. Post-judgment motions are not counted as a Case; (11-17-21)

d. Defending Attorneys who are unable to comply with the Caseload rules will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources. (11-17-21)

e. Workloads. Caseloads maximums are based on the following considerations: (11-17-21)

i. Adequate support staff; (11-17-21)

ii. Cases of average complexity; (11-17-21)

iii. Reasonable distribution of Cases throughout the year; and (11-17-21)

iv. No supervisory duties; (11-17-21)

f. Defending Attorneys unable to comply with the Workload rules will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources. (11-17-21)

061. – 069. (RESERVED)

070. ATTORNEY ROSTERS REQUIREMENTS AND PROCEDURES.

01. Defending Attorney Roster. (11-17-21)

a. ~~For inclusion on the Attorneys who complete the PDC form verifying they meet the items in this Subsection 070.01 will be automatically included and remain on the~~ Defending Attorney Roster, ~~attorneys must: until they request removal or are removed for failing to comply with Public Defense Rules. Attorneys who are unable to verify the items in this Subsection 070.01 may submit a new verification form at any time.~~ (11-17-21)()

i. Have an active license to practice law in Idaho; (11-17-21)

ii. Attest they are in compliance with the Public Defense Rules or will comply with the Rules when appointed and representing an Indigent Person; (11-17-21)

iii. New attorneys admitted to the Idaho State Bar within the previous year will name and be mentored by an experienced Defending Attorney on the Defending Attorney Roster; (11-17-21)

iv. Have completed the minimum continuing legal education (“CLE”) requirements in Paragraph 090.03 of these rules within the previous year or within the next ~~sixty ninety~~ (690) days of being placed on the Roster; (11-17-21)()

v. ~~Have completed the Defending Attorney Roster application and authorization forms.~~ (11-17-21)

vi. Attorneys on the Defending Attorney Roster will complete Annual Reports as set forth in IDAPA 61.01.03, “Records, Reporting and Review,” Paragraph 020.01.a. Attorneys who at the time of inclusion on the Defending Attorney Roster are not under contract with a county will promptly provide PDC Staff notice and copy of any county contracts entered after inclusion. (11-17-21)

b. ~~Attorneys who meet the requirements in Subsection 070.01.a. of these rules will be included and remain on the Defending Attorney Roster until they request removal or are removed for failing to comply with Public Defense Rules under written findings of the Executive Director;~~ (11-17-21)

eb. Continuing Eligibility. ()

i. To remain on the Defending Attorney Roster attorneys must: ()

(1) eComply with the Public Defense Rules and: (11-17-21)()

- ~~1.~~(2) Have completed the minimum CLE requirements under Subsection 090.03 of these rules; and (11-17-21)
- ~~2.~~(3) Have completed an Annual Report. (11-17-21)
- ii. To address Defending Attorney Deficiencies: ()
- (1) PDC Staff will review reported Defending Attorney Deficiencies and work directly with the Defending Attorney, and the county when appropriate, to resolve them. ()
- (2) If the Deficiency cannot be resolved at the review, PDC Staff may ask the Defending Attorney to submit a plan to cure the Deficiency with proposed detailed action items and completion dates. ()
- (3) If a plan is requested and is not submitted or completed, or if the Defending Attorney Deficiency is not cured, it will be referred to the Commission with the Executive Director's order of removal, which the Defending Attorney may appeal as set forth in Subsection 080.04 of these rules. County Deficiencies, which are not Defending Attorney Deficiencies, are the responsibility of the county and not the Defending Attorney. County responsibilities are set forth in these rules including without limitation Section 020 of these rules and subject to the county Deficiency process set forth in IDAPA 61.01.03, "Records, Reporting and Review," Sections 050 through 060. ()
- 02. Capital Defending Attorney Roster.** (11-17-21)
- a. For Inclusion on the Capital Defending Attorney Roster, a Defending Attorney must: (11-17-21)
- i. Meet minimum qualifications under Subsection 060.04 of these rules; and (11-17-21)
- ii. Have completed minimum CLE requirements under Paragraph 090.03.b. of these rules within two (2) years; (11-17-21)
- iii. Have completed Capital Defending Attorney Roster ~~application and authorization~~ forms. (11-17-21)()
- b. PDC Staff or contractor investigates an applicant for initial inclusion on the Capital Defending Attorney Roster. The Commission appointed subcommittee reviews applications and PDC Staff reports and makes recommendations to the Commission. The Commission makes the final decision. (11-17-21)
- c. Continuing Eligibility. To remain on the Capital Defending Attorney Roster Defending Attorneys must comply with the Public Defense Rules and: (11-17-21)
- i. Have completed the minimum CLE requirements under Subsection 090.03 of these rules; and (11-17-21)
- ii. Have completed Capital Case reporting and authorization forms by November 1 every other year. (11-17-21)
- d. PDC Staff or contractor investigates continuing eligibility to remain on the Capital Defending Attorney Roster. The Commission appointed subcommittee reviews continuing eligibility and PDC Staff reports and makes recommendations to the Commission. The Commission makes the final decision. The Commission will remove attorneys who do not meet continuing eligibility requirements from the Capital Defense Roster. (11-17-21)
- ~~03. Attorneys Engaged Prior to Roster Membership. Attorneys who are not on the Defending Attorney Roster at the time of employment or contract to provide representation at public expense must apply for Roster membership within thirty (30) days from the date of their employment or contract. Except as provided in Subsection 050 of these rules, attorneys who are not approved for inclusion on the applicable Roster are not eligible to represent Indigent Persons at public expense.~~ (11-17-21)
- 043. Confidentiality.** Information about an attorney's fitness to represent Indigent Persons is

confidential and exempt from the Public Records Act under Section 74-105(18)(a), Idaho Code. (11-17-21)

071. – 079. (RESERVED)

080. REVIEW OF ROSTER DECISIONS.

01. Denial of Initial Inclusion on the Defending Attorney Roster. (11-17-21)

a. An attorney may appeal a denial of initial inclusion on the Defending Attorney Roster by submitting a notice of appeal within fourteen (14) days of the date of the notice of denial. (11-17-21)

b. The Commission will review a timely appeal and issue a final agency order affirming or reversing the denial, or take other action deemed appropriate by the Commission. (11-17-21)

02. Denial of Initial Inclusion on the Capital Defending Attorney Roster. (11-17-21)

a. A Defending Attorney may appeal a denial of initial inclusion on the Capital Defending Attorney Roster by submitting a notice of appeal within fourteen (14) days of the date of the notice of denial. (11-17-21)

b. A hearing officer appointed by the Commission will review a timely appeal and issue a recommended order to the Commission. (11-17-21)

c. The Commission will issue a final agency order adopting or rejecting the hearing officer's recommended order, or take other action deemed appropriate by the Commission. (11-17-21)

03. Emergency Removal of an Attorney from the Defending Attorney Roster or Capital Defending Attorney Roster. (11-17-21)

a. To prevent or avoid immediate danger when: (11-17-21)

i. An attorney's Idaho license to practice law is suspended; (11-17-21)

ii. An attorney is disbarred in Idaho; or ~~(11-17-21)~~()

iii. An attorney's Idaho license status is inactive; ~~or~~ ~~(11-17-21)~~()

~~iv. An attorney is convicted of a serious crime as defined in IRPC 501(p); (11-17-21)~~

b. The attorney will be removed by the Executive Director who will notify the attorney and Commission upon issuance of the notice of removal which will include a statement of the immediate danger and is effective immediately. (11-17-21)

c. An appeal of the removal under Subsection 080.03 of these rules, ~~may~~ will be reviewed by the Commission in an emergency proceeding under Section 67-5247, Idaho Code; ~~(11-17-21)~~()

d. An attorney may appeal their emergency removal by submitting a notice of appeal and all supporting documentation within fourteen (14) days of the date of the Executive Director's notice of removal. (11-17-21)

e. The Commission will review a timely appeal and issue a decision within twenty-eight (28) days of receipt of timely filed notice and materials. (11-17-21)

f. The Commission may base its decision on a written record or elect to hold a hearing. (11-17-21)

04. Removal of an Attorney from the Defending Attorney Roster or Capital Defending Attorney Roster for Other Reasons. (11-17-21)

a. An attorney removed from a Roster for reasons other than set forth in Subsection 080.03 of these rules, may appeal their removal by submitting a notice of appeal and all supporting documentation within fourteen (14) days of the Executive Director's order of removal. A Defending Attorney will remain on the Roster pending resolution of the appeal. A Defending Attorney who fails to file a notice of appeal within fourteen (14) days will be immediately removed from the Roster. (11-17-21)

b. The Commission will review a timely appeal and issue a final agency order affirming or reversing the Executive Director's decision, or take other action deemed appropriate by the Commission. (11-17-21)

05. Confidentiality. Information about an attorney's fitness to represent Indigent Persons is confidential and exempt from Public Records Act under Section 74-105(18)(a), Idaho Code. (11-17-21)

081. – 089. (RESERVED)

090. CONTINUING LEGAL EDUCATION.

Roster members must complete the minimum continuing public defense legal education requirements as provided in Sections 19-850(1)(a)(vii)5 and 8, Idaho Code, as follows. (11-17-21)

01. Approval. CLE credits that meet the requirements in Subsection 090.02 of these rules will count toward minimum requirements. Roster members have the option to request advance approval of a CLE course to confirm the course meets minimum requirements. Courses that are not pre-approved by PDC Staff will not be approved ~~if~~ if they do not meet these requirements. (~~11-17-21~~)()

02. Idaho Law. Legal education must directly relate to Idaho substantive or procedural law and the Defending Attorney's public defense practice to count toward minimum requirements, and will not be approved if not substantially related. (11-17-21)

03. Minimum Number and Type of CLEs Required for Each Roster. (11-17-21)

a. Defending Attorney Roster – Minimum of seven (7) CLE credits each county fiscal year (October 1 – September 30); (11-17-21)

b. Capital Defending Attorney Roster – Minimum of twelve (12) CLE credits with at least ten (10) from a nationally recognized and well-established capital trial training program, every other county fiscal year. Attorneys on both Rosters may count capital CLE credits toward the seven (7) CLE credits. (11-17-21)

c. Defending Attorneys with supervisory or management duties – Minimum of two (2) CLE credits each county fiscal year in leadership skills, attorney management, or mentoring, which count toward the seven (7) CLE credits. (11-17-21)

091. – 999. (RESERVED)