

JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2010 Legislative Session

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Docket No. 06-0101-09012

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DOCKET NO. 06-0101-0901
NOTICE OF PROCLAMATION OF RULEMAKING

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROCLAMATION

EFFECTIVE DATE: The effective date of this rule is November 6, 2009.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Section 20-212, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute. In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.

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

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

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

Section 010, Definitions - Amendment is necessary to Subsections 10, 26, and 27 to make the definitions consistent with the definitions currently being used in IDOC standard operating procedures (SOPs).

Section 116, Custody of Evidence - Amendment is necessary to make the entire section comprehensively reflect operational procedures currently being used in IDOC Office of Professional Standards, Division of Prisons, and Division of Community Corrections SOPs.

Section 145, Subpoenas - This new section is necessary to allow the IDOC to fully implement Sections 20-209G and 20-228A, Idaho Code. Section 20-209G, Idaho Code went into effect July 1, 2009.

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

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

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

Correction from conducting negotiated rulemaking.

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

DATED this 25th day of August, 2009.

THE FOLLOWING IS THE PENDING TEXT FOR DOCKET NO. 06-0101-0901

010. DEFINITIONS.

01. Archival Research. Research requiring access to stored historical data, files, documentation, video or audio tapes, electronically sorted data, or written material. (11-5-99)

02. Attorney of Record. An attorney appointed by a court or retained by an inmate in a legal action. (11-5-99)

03. Board. The State Board of Correction. (11-5-99)

04. Case Management File. An approved collection of legal documents, reports, submissions, statements, and support materials used in making decisions about an inmate (offender), parolee, or probationer regarding classification, treatment, programming, management, and parole, or clemency. (10-31-08)

05. Chief. The exempt employee in authority over a division of the Department. Chief is commonly referred to as the division chief. (10-5-07)

06. Commission of Pardons and Parole. The decision-making body that has the authority to grant, revoke, reinstate, or refuse parole. The Commission of Pardons and Parole is commonly referred to as the Parole Commission. (10-5-07)

07. Contact Visiting. Visiting where no physical partition, such as a window or wall, separates the visitor and the inmate. Physical touch may be allowed. (10-5-07)

08. Contraband. Any thing, of any kind, that is prohibited by Board, Department, or facility rules, policies, directives, or standard operating procedures. Contraband also includes any thing, of any kind, that a facility head has not approved: (10-5-07)

a. For possession by an inmate; or (10-5-07)

b. To bring into a facility or onto Department property. (10-5-07)

09. Contractor. A person who has entered into a contract with the Board or Department, or a contract with the State of Idaho administered by the Board or Department to

provide any service. (11-5-99)

10. Controlled Substance. A drug or substance restricted by law in respect of use and possession. ()

101. Department. The State Department of Correction. (11-5-99)

112. Department Property. Real property owned, leased, operated, or managed by the Board or Department. (10-5-07)

123. Directive. A sequence of steps within a particular division to implement a procedure. (11-5-99)

134. Director. The director of the Department of Correction. (11-5-99)

145. Division. An operating unit of the Department. Department divisions are the divisions of Prisons, Community Corrections, Education and Treatment, and Management Services. (10-5-07)

156. Execution. The carrying out of a sentence of death. (11-5-99)

167. Facility. A building or residence, including the property and land where the building or residence is located, owned, leased, operated, or managed by the Board or Department. (10-5-07)

178. Facility Head. The person primarily responsible for overseeing, managing or operating a Department facility. (10-5-07)

189. Field Memoranda. Detailed guidelines to implement directives within a facility or a service unit of a division. (11-5-99)

1920. Health Authority. The Department employee who is primarily responsible for overseeing or managing the Department's medical and mental health services. The health authority is commonly referred to as the health services director. (10-31-08)

201. Immediate Family -- Offender. The immediate family of an inmate is: (10-5-07)

a. The mother or father of the inmate, including step parent; (11-5-99)

b. The brother or sister of the whole or half (1/2) blood or by adoption, or the stepbrother or stepsister of the inmate; (11-5-99)

c. The wife or husband of the inmate, as proved by marriage license or other operation of law; (11-5-99)

d. The natural child, adopted child or stepchild of the inmate; (11-5-99)

e. The grandparents of blood relation to the inmate; or (11-5-99)

- f. The grandchildren of blood relation to the inmate. (11-5-99)
- ~~242.~~ **Inmate.** An individual in the physical custody of the Board. (11-5-99)
- ~~223.~~ **Minor.** An individual less than eighteen (18) years old. (10-5-07)
- ~~234.~~ **Noncontact Visiting.** Visiting with an inmate where there are physical barriers between the visitor and the inmate and the inmate and visitor are not allowed to touch. Verbal communication is generally accomplished through telephones, speakers, or openings in the physical barrier designed to allow sound to pass. (10-5-07)
- ~~245.~~ **Non-Department Literature.** Notices, placards, banners, advertisements, and other writings not generated by the Department for Department distribution. (10-31-08)
- ~~256.~~ **Offender.** A person under the legal care, custody, supervision, or authority of the Board, including a person within or without the state of Idaho pursuant to agreement with another state or contractor. (~~10-5-07~~)()
- ~~27.~~ **Office of Professional Standards.** The designated unit under the Director's office with primary responsibility for conducting investigations of employee misconduct allegations and providing assessment and general investigative services for the Department. ()
- ~~268.~~ **Parolee.** An offender who: (10-5-07)
- a. Is released from a facility by the paroling authority prior to the completion of his sentence; (10-5-07)
- b. Agrees to comply with certain conditions established by the paroling authority; and (10-5-07)
- c. Remains under the control of a probation and parole officer (PPO) for the established period of supervision. (10-31-08)
- ~~279.~~ **Penological Interests.** The security, programmatic, and rehabilitative interests of the Board and the Department. (11-5-99)
- ~~2830.~~ **Person.** An individual, corporation, governmental entity or organization, however organized or constituted. (11-5-99)
- ~~2931.~~ **Photo Identification.** A state issued driver's license, a state issued identification card displaying a photograph, a military issued identification card displaying a photograph, or a current valid passport. (10-5-07)
- ~~302.~~ **Post Order.** A detailed set of guidelines and procedures for each post or area of employee assignment which governs and explains the duties of the employee assigned to the post or area of responsibility. (11-5-99)

343. Probationer. An offender who the courts allow to continue to live and work in the community, instead of being sent to prison, while being supervised by a probation and parole officer (PPO) for an established period of time. (10-31-08)

324. Procedure. A sequence of steps or actions to be followed to implement and support a rule or policy. (11-5-99)

335. Public. A person, of the general public, that does not include offenders, contractors, vendors, volunteers, interns, or the employees of the Board, Department, or the Commission of Pardons and Parole. (10-5-07)

346. Public Information Officer. An employee of the Department designated by the director to be the primary contact person from whom the public and media may request information. (11-5-99)

357. Regular Volunteer. Any approved person, not employed by the Idaho Department of Correction (IDOC), who is at least eighteen (18) years of age and, of his own free will, provides good or services, for no monetary or material gain, to a facility and/or any of its sections. This person must: (10-5-07)

- a. Completed an application; (10-5-07)
- b. Receive volunteer and facility orientation training; and (10-5-07)
- c. Be approved by a facility head or designee. (10-5-07)

368. Student Intern Volunteer. An approved college or university student who, as part of an academic program, offers his time or services to help enhance the mission, activities, and programs of the Department, which also helps further his professional development. Some student interns may receive compensation from the Department. (See also Regular Volunteer.) (10-5-07)

379. Tobacco Products. Cigarettes, whether packaged or hand rolled, cigars, snuff, chew, or any other variation of a product containing tobacco. (11-5-99)

3840. Vendor. A person who supplies goods or services to the Board or any operation or facility under the authority of the Board. (11-5-99)

3941. Visiting Staff. Employees of the Department or the Commission of Pardons and Parole conducting business in the Department central office building on a regular or irregular basis. (10-5-07)

402. Visitor. A member of the public, as defined herein, who is approved to visit a Department facility. (10-5-07)

413. Volunteer. An approved person who volunteers or donates time or services to the Board or a Department operation or facility. (10-5-07)

424. Work Site. Any place where inmates may be found when assigned to a work project. (11-5-99)

(BREAK IN CONTINUITY OF SECTIONS)

116. CUSTODY OF EVIDENCE.

All evidence confiscated from Department employees, offenders, contractors, or witnesses, that is or may be utilized in administrative investigations and inquiries, probation or parole revocation hearings, or criminal proceedings, shall be maintained in a safe and secure manner until completion of the investigation, inquiry, or proceeding. ()

01. Evidence Retained. Items of evidence retained by the Department's Office of Professional Standards investigators, probation and parole officers, and correctional officers for use in any investigation, inquiry, hearing, or proceeding concerning a Department employee, offender, contractor, client, or residents shall be maintained in a safe and secure manner until completion of the investigation, inquiry, or proceedings, (to include the appeal). A member of the public claiming an interest in an item of evidence may file a written request for its return with the Department for its return or law enforcement agency having jurisdiction. (11-5-99)()

02. ~~Drugs Disposed of~~ Evidence Disposal. ~~Items of evidence in the form of narcotics or other usable drugs shall be given to a law enforcement agency for disposal~~ Upon a finding of unfounded, exonerated, not sustained, or not guilty and when all appeals have been exhausted, the Department may return evidence to the original possessor or release it to a third party who has a credible claim of ownership or is legally entitled to possess pieces of the evidence. (11-5-99)()

a. Unless a request to continue to possess or preserve the evidence is received from the court, Idaho Office of the Attorney General, Idaho Personnel Commission, or Commission of Pardons and Parole, any unclaimed evidence (with the exception of contraband or illegal items) may be disposed of by the Department as follows: ()

i. Division of Community Corrections' probation and parole officers and Division of Prisons' correctional officers may dispose of evidence sixty (60) days after adjudication (to include the appeal process); and ()

ii. The Office of Professional Standards shall maintain evidence for one (1) year after adjudication (to include the appeal process) and thereafter periodically consult with the deputy attorneys general who represent the Department to determine if the evidence may be disposed. ()

b. When firearms or controlled substances were seized as evidence, the claimant shall file for its return with the law enforcement agency having jurisdiction. ()

c. Third-party claimants must provide photo identification. If the third party is between the ages of sixteen (16) and eighteen (18) years, a student ID card issued by his school (if

not expired) shall suffice. ()

d. A credible claim of ownership shall include documentation such as a receipt, a bill of sale or transfer, or other written evidence of ownership. ()

03. Contraband Not Returned. Items of evidence which are now contraband or were contraband at the time they came into the possession of the Department shall not be given to any claimant but may be disposed of according to the Department's standard operating procedures and applicable state and/or federal laws. (10-31-08)

(BREAK IN CONTINUITY OF SECTIONS)

136. -- ~~304~~144.(RESERVED).

145. SUBPOENAS.

The Department shall conduct thorough and appropriate investigations and absconder apprehensions, in part, by requesting, reviewing, processing, and issuing subpoenas consistent with Sections 20-209G and 20-228A, Idaho Code. ()

01. Subpoena Authority. The Director has the authority to require, by way of an administrative subpoena, the production of all documents that are necessary in the performance of the functions assigned by law. For the purpose of this section only, documents shall be defined as any writings, charts, records, recordings, electronic records or data, photographs, tangible things, drawings, or diagrams of any type or kind. ()

a. Office of Professional Standards' investigators, conducting an authorized inquiry or investigation, may request an administrative subpoena be issued for documents. ()

b. Probation and parole officers, assisting in the apprehension of parolees who have absconded and for whom there are arrest warrants, may request an administrative subpoena be issued for documents. ()

02. Service of Subpoenas. Normally, the investigator will personally serve the administrative subpoena at the principal place of business or residence of the person being served. A duplicate original (i.e., a second copy with original signatures) shall be left with the business or person being served. ()

03. Timelines for the Production of Documents. The business or person on whom the service was successfully executed, should be allowed reasonable time (usually ten (10) to thirty (30) calendar days) to produce the documents listed in the administrative subpoena. Factors to be considered when determining what is reasonable includes: ()

a. The type and volume of documents requested; and ()

b. The possibility of documents being removed or destroyed. ()

04. Compliance and Noncompliance with the Served Subpoena. Upon compliance with the terms of the subpoena, the recipient investigator shall provide written notice to the Office of Professional Standards' administrative assistant (or designee). The administrative assistant (or designee) will file the written notification in the investigative file and record receipt of the documents subpoenaed. ()

a. If the business or person subpoenaed to produce the documents does not comply with the subpoena, the investigator will promptly advise the deputy attorneys general who represent the Department, via memorandum, describing the relevant circumstances. The deputy attorneys general will advise the investigator and the Director as to whether to compel production of the documents via court action and, if so, develop a strategy and procedures to compel compliance. ()

05. Reimbursement. Generally, subpoenaed businesses or persons are entitled to reimbursement of reasonable costs associated with searching for, assembling, and copying subpoenaed documents pursuant to Idaho Rules of Civil Procedure, Rule 35. ()

a. Financial institutions, as defined in 12 U.S.C. Section 35, Right to Financial Privacy Act, may seek reimbursement for the costs of providing a customer's financial records. ()

b. Pursuant to 18 U.S.C. Section 2706, telecommunication carriers are authorized to charge a reasonable fee to cover the costs of searching for and providing information responsive to a subpoena. Some agency subpoenas are an exception to this rule but only to the extent that they seek records or other information maintained by a common carrier that relate to telephone toll records and telephone listings. ()

i. Telephone toll records generally include records of outgoing long-distance calls made from a landline and records of all incoming and outgoing calls made to and from a cellular phone. ()

ii. With respect to landlines specifically, the cost of searching for records of incoming local calls is reimbursable, and the cost of searching for records of incoming long-distance calls may also be reimbursable. ()

c. Upon receipt of an invoice for documents provided by any business or person, the Office of Professional Standards' chief investigator (or designee) will consult with the deputy attorneys general to determine if reimbursement is required. ()

i. When reimbursement is approved, invoices will be paid by the respective Department division. ()

146. -- 301. (RESERVED).