

JUDICIARY, RULES & ADMINISTRATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS

05.01.02 - RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS

DOCKET NO. 05-0102-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(9), 20-504(11), and 20-531(4), Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011, Idaho Administrative Bulletin, Vol. 11-10, pages 83 through 103.](#)

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:

The fiscal impact for the implementation of the Prison Rape Elimination Act (PREA) is still being determined by the federal government; there will be no other fiscal impact with these changes.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections at 334-5100 x 404.

DATED this 29th day of November, 2011.

Sharon Harrigfeld, Director
Idaho Dept. of Juvenile Corrections
954 W. Jefferson St.
PO Box 83720, Boise, Idaho 83720-0285
Phone: (208) 334-5100 ext. 404
Fax: (208) 334-5120

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(2), and 20-504(11), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 changes reflect current practices, language clean-up, and address the Prison Rape Elimination Act (PREA).

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

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

The fiscal impact for the implementation of the Prison Rape Elimination Act (PREA) is still being determined by the federal government; there will be no other fiscal impact with these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was not published. However, the Detention Standards Committee met regularly and consulted with all Detention Administrators to determine appropriate changes. All Administrators have expressed their support for changes.

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

Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections at 334-5100 x 404.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0102-1101

010. DEFINITIONS.

As used in this chapter: (4-5-00)

01. Adult. A person eighteen (18) years of age or older. (4-5-00)

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 authority. (4-5-00)

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

04. 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. (4-5-00)

05. Commit. Commit means to transfer legal custody to the Idaho Department of Juvenile Corrections. (3-30-07)

06. Community-Based Program. An in-home detention program or a nonsecure or staff secure residential or nonresidential program operated to supervise and provide competency development to juvenile offenders in the least restrictive setting, consistent with public safety, operated by the state or under contract with the state or by the county. (3-30-07)

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

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

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

10. Court. Idaho district court or magistrate's division thereof. (3-30-07)

- 11. Day Room/Multi-Purpose Room.** That portion of the housing unit used for varied juvenile offender activities which is separate and distinct from the sleeping rooms. (3-30-07)
- 12. Department.** The Idaho Department of Juvenile Corrections. (3-30-07)
- 13. Detention.** Detention means the temporary placement of juvenile offenders who require secure custody for their own or the community's protection in physically restricting facilities. (3-30-07)
- 14. Detention Center.** A facility established pursuant to Title 20, Chapter 5, Sections 20-517 and 20-518, Idaho Code, for the temporary placement of juvenile offenders who require secure confinement. (3-30-07)
- 15. Detention Records.** Information regarding the maintenance and operation of the detention center including but not limited to correspondence, memorandums, complaints regarding the detention center, daily activity logs, security and fire safety checks, head counts, health inspection records, and safety inspection records, use of physical force records and use of restraints records, incident reports, employee training and certification for use of security equipment. (3-30-07)
- 16. Direct Care Staff.** Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. (3-30-07)
- 17. Director.** The Director of the Idaho Department of Juvenile Corrections. (3-30-07)
- 18. Electroshock Weapons.** Weapons used for subduing a person by administering an electric shock which disrupts muscle function. ()
- 189. Emergency Care.** Care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call. Emergency care shall be provided to the juvenile offender population by the medical staff, physician, other appropriately trained staff, local ambulance services or outside hospital emergency rooms. (3-30-07)
- 1920. Emergency Plans.** Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. (4-5-00)
- 201. Health Appraisal.** An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. (3-30-07)
- 212. Health Authority.** The physician, health administrator, or agency responsible for the provision of health care services at the detention center. (3-30-07)
- 223. Health-Trained Employee.** A person who operates within the limits of any license or certification to provide assistance to a physician, nurse, physician's assistant, or other professional medical staff. Duties may include preparing and reviewing screening forms for

needed follow-up; preparing juvenile offenders and their records for sick call; and assisting in the implementation of medical orders regarding diets, housing, and work assignments.

~~(3-30-07)~~()

234. Housing Unit. The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. (3-30-07)

245. Incident Report. A written document reporting any occurrence or event, or any other incident which threatens the safety and security of direct care staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (3-30-07)

256. Judge. A district judge or a magistrate. (4-5-00)

267. Juvenile. A person less than eighteen (18) years of age. (3-30-07)

278. Juvenile Detention Records. Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. (3-30-07)

289. Juvenile Offender. A person who was under the age of eighteen (18) at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (3-30-07)

2930. Legal Custody. The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. (3-30-07)

301. Legal Guardian. A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender. (4-5-00)

312. Mechanical Restraints. Devices used to restrict physical activity. (3-30-07)

323. Medical Employee. A certified or licensed person such as a physician, nurse, physician's assistant, or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. ~~(3-30-07)~~()

334. Medical Records. Separate records of medical examinations and diagnoses maintained by the health authority. (4-5-00)

345. Intake Medical Screening. A system of structured observation/initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a

medical employee or ~~by a~~ health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. (~~3-30-07~~)()

356. Observation and Assessment Program. A residential or nonresidential program designed to complete assessments of juvenile offenders. (3-30-07)

367. Pat Search. The touching or feeling of a subject's clothed body to detect contraband. (4-5-00)

378. Perimeter Security. A system that controls ingress and egress to the interior of a detention center or institution. The system may include electronic devices, walls, fence, patrols or towers. (3-30-07)

389. Perimeter Security Check. Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breach. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas as designated by detention center policy and procedures. (3-30-07)

3940. 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. The petition for exemption must contain written justification why the petitioner should be relieved from enforcement of specific detention standard(s). (3-30-07)

401. Physical Intervention. Appropriate physical control used in instances of justifiable self-defense, protection of others, protection of property, or prevention of escapes. (3-30-07)

412. Policy and Procedures. Standard operating strategies and processes developed by the administrative authority governing detention center operations. (3-30-07)

a. Policy is a course of action that guides and determines present and future decisions and actions. Policies indicate the general course or direction of an organization within which the activities of the direct care staff must operate. (3-30-07)

b. Procedure is the detailed and sequential action which must be executed to ensure that policy is implemented. It is the method of performing an operation or a manner of proceeding on a course of action. It differs from a policy in that it directs actions required to perform a specific task within the guidelines of the policy. (4-5-00)

423. Rated Capacity. The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. (3-30-07)

434. Renovation. The alteration of the structure of any existing juvenile detention center, or portion thereof, for the purposes of changing or improving its function. This may include, but not be limited to, altering the physical layout of essential areas within the detention center or reconstruction of the existing structure, areas, or interior features. (3-30-07)

445. Rule Infraction. A violation of detention center rules of conduct or policy and procedures as governed by detention center policy and procedures. (3-30-07)

456. Safety Equipment. Devices primarily used for safety purposes such as but not limited to firefighting equipment, for example, chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms. (4-5-00)

467. Secure Perimeter. The outer portions of a detention center that provide for secure confinement of juvenile offenders. (3-30-07)

478. Security Devices. Equipment used primarily to confine and control detained persons and may include but is not limited to locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers, electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain detention center security. (3-30-07)

489. Staffing Plan. A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. (3-30-07)

4950. Standards. Rules for Secure Juvenile Detention Centers, IDAPA 05, Title 01, Chapter 02. (3-30-07)

501. Strip Search. A visual examination of a juvenile offender's naked body for weapons, contraband, injuries, or vermin infestations. This also includes a thorough search of the juvenile offender's clothing while such is not being worn. (~~3-30-07~~)()

512. 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 juveniles offenders and will be supervised by direct care staff at the detention center. (~~3-30-07~~)()

011. -- 199. (RESERVED)

200. INSPECTION PROVISIONS.

The Idaho Department of Juvenile Corrections or its designee shall have the authority to visit and inspect all juvenile detention facilities to assess such facilities' compliance with these rules and any other standards outlined in Title 20, Chapter 5, Section 20-518, Idaho Code. (~~3-30-07~~)()

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

02. Review of Logs, Records, Policy and Procedure Manuals, Memorandums and Reports. All logs, records, policy and procedures manuals, memorandums, training records, and incident and other reports shall be available for review excluding medical records, personnel records and personnel action reports. Idaho Department of Juvenile Corrections' representatives shall be allowed to observe and interview juvenile offenders and staff concerning any matter pertaining to these rules. Department representatives shall further have access to all parts of the

detention center for the purpose of inspecting the physical plant. ~~(3-30-07)~~()

201. DEPARTMENT PREPARED WRITTEN REPORT OR THEIR AGENTS.

Department representatives shall prepare a written report of each inspection within ~~thirty~~ ninety (~~30~~) 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 of the Idaho Department of Juvenile Corrections for consideration and review of the issuance or renewal of a certificate. ~~(4-2-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

210. DETENTION CENTER ADMINISTRATION.

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

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

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

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

05. Policy and Procedures. The detention center administrator shall develop and maintain written policy and procedures which shall safeguard the basic rights of juvenile offenders and shall 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 ~~and the governing body~~. The policy and procedures manual shall be submitted to the prosecuting attorney or other legal authority for review ~~as mandated by each detention center~~ and approved by county commissioners or other governing authority on an ~~regular~~ annual basis. After such approval, a copy of the policy and procedures manual shall be submitted to the Department of Juvenile Corrections. ~~(3-30-07)~~()

211. FISCAL MANAGEMENT.

The annual budget request shall provide for an allocation of resources for detention center operations and programming. The methods used for collecting, safeguarding, and disbursing monies, including juvenile offenders' personal funds held by the ~~facility~~ detention center, shall comply with accepted accounting procedures and the laws of the state of Idaho. ~~(3-30-07)~~()

212. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.

01. Twenty-Four Hour Supervision. The detention center shall be staffed by detention center employees on a twenty-four (24) hour basis when juvenile offenders are being housed. (3-30-07)

02. Staffing. The detention center shall have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center shall have policy and procedures in place governing staffing and shall submit a staffing plan to the department prior to licensing and renewal. The following staffing plan is a recommendation only, and is not mandatory. It is recommended that the staffing plan have at least two (2) staff awake and on duty through sleeping hours and the following staff during waking hours as governed by the one (1) direct care staff to eight (8) juvenile offenders, plus one (1) staff rule: (3-30-07)

a. If the detention center houses eight (8) or fewer juvenile offenders, there should be at least one (1) direct care staff and one (1) other staff awake at all times. (3-30-07)

b. If the detention center houses more than eight (8) juveniles ~~offenders~~, there should be one (1) direct care staff for each eight (8) juveniles ~~offenders~~ plus one (1) additional staff awake at all times. Example: if the detention center houses thirty-two (32) juvenile offenders, four (4) direct care staff would be recommended (one (1) staff to eight (8) juvenile offenders), plus one (1) additional staff for a total of five (5) staff. ~~(3-30-07)~~()

03. Gender of Employees. At least one (1) of the detention center employees on duty should be female when females are housed in the detention center and at least one (1) should be male when males are housed in the detention center. An employee of the same gender as the juvenile offender being detained shall be on duty at the time of intake. (3-30-07)

04. Minimum Qualifications. (3-30-07)

a. Direct care staff, at the time of employment, shall meet the minimum criminal history background and certification requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

b. Direct care volunteers, before starting volunteer services, shall meet the minimum criminal history background requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

05. Training and Staff Development Plan. Each juvenile detention center shall develop a staff training and development plan based on the policy and procedures of the detention center. The plan shall also ensure that all juvenile detention officers earn the juvenile detention officer certificate as mandated in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

a. All new direct care staff, ~~paid or unpaid~~, shall be provided orientation training. The orientation and training plan shall address areas including, but not limited to: ~~(3-30-07)~~()

- i. First aid/CPR; (3-30-07)
 - ii. Security procedures; (3-30-07)
 - iii. Supervision of juvenile offenders; (3-30-07)
 - iv. Signs of suicide risks; (3-30-07)
 - v. Suicide precautions; (3-30-07)
 - vi. Fire and emergency procedures; (3-30-07)
 - vii. Safety procedures; (3-30-07)
 - viii. Appropriate use of physical intervention; (3-30-07)
 - ix. Report writing; (3-30-07)
 - x. Juvenile offender rules of conduct; (3-30-07)
 - xi. Rights and responsibilities of juvenile offenders; (3-30-07)
 - xii. Fire and emergency procedures; (3-30-07)
 - xiii. Safety procedures; (3-30-07)
 - xiv. Key control; (3-30-07)
 - xv. Interpersonal relations; (3-30-07)
 - xvi. Social/cultural life styles of the juvenile population; (3-30-07)
 - xvii. Communication skills; ~~and~~ ~~(3-30-07)~~()
 - xviii. Counseling techniques; ~~and~~ ~~(3-30-07)~~()
 - ~~xix. Inappropriate sexual contact. ()~~
- b.** Ongoing training shall be provided at the minimum rate of twenty (20) hours for each subsequent year of employment. (3-30-07)
- c.** Volunteers and contractors shall be trained commensurate to their level of contact with juvenile offenders. ()

213. -- 214. (RESERVED)

215. DETENTION CENTER INFORMATION SYSTEMS.

01. Written Policy and Procedures. 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 shall address, at a minimum, the following: (3-30-07)

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

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

03. Access to Records. Parents, legal guardians, legal representatives, and staff shall be permitted access to information in the juvenile offender's files and records as authorized by law. ~~Juvenile offender's shall be permitted reasonable access under appropriate supervision to information in their own files and records.~~ Absent a court order to the contrary, the detention center administrator may restrict ~~the juvenile offender's~~ access to certain information, or provide a summary of the information when its disclosure ~~to the juvenile offender~~ 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 ~~a juvenile offender's~~ access to records is denied or restricted, documentation that states the reason for the denial or restriction shall be maintained by the detention center administrator. (~~3-30-07~~)()

216. DOCUMENTATION.

01. Shift Log. The detention center shall maintain documentation including time notations on each shift which includes the following information, at a minimum: (3-30-07)

- a. Direct care staff on duty; (3-30-07)
- b. Time and results of security or well-being checks and head counts; (4-5-00)
- c. Names of juvenile offenders received or discharged with times recorded;(3-30-07)
- d. Names of juvenile offenders temporarily released or returned for such purposes as court appearances, work/education releases, furloughs, or other authorized absences from the

- detention center with times recorded; (3-30-07)
- e. Time of meals served; (4-5-00)
 - f. Times and shift activities, including any action taken on the handling of any ~~unusual or~~ routine incidents; ~~(4-5-00)~~()
 - g. Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; (4-5-00)
 - h. Notations and times of unusual incidents, problems, disturbances, escapes; ~~(4-5-00)~~()
 - i. Notations and times of any use of emergency or restraint equipment; and (4-5-00)
 - j. Notation and times of perimeter security checks. (4-5-00)
- 02. Housing Assignment Roster.** The detention center shall maintain a master file or roster board indicating the current housing assignment and status of all juvenile offenders detained. (3-30-07)
- 03. Visitor's Register.** The detention center shall maintain a visitor's register in which the following will be recorded: (3-30-07)
- a. Name of each visitor; (4-5-00)
 - b. Time and date of visit; (4-5-00)
 - c. Juvenile offender to be visited; and (3-30-07)
 - d. Relationship of visitor to juvenile offender and other pertinent information. (3-30-07)
- 04. Juvenile Detention Records.** The detention center shall classify, retain and maintain an accurate and current record for each juvenile offender detained in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record shall contain, at a minimum, the following: (3-30-07)
- a. Booking and intake records; (4-5-00)
 - b. Record of court appearances; (4-5-00)
 - c. Documentation of authority to hold; (4-5-00)
 - d. Probation officer or caseworker, if assigned; (4-5-00)
 - e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; (3-30-07)

- f. Record of deposits/withdrawals from the juvenile offender's account; (3-30-07)
- g. Classification records, if any; (4-5-00)
- h. Records of participation in programs and services; (4-5-00)
- i. Rule infraction reports; (4-5-00)
- j. Records of disciplinary actions; (4-5-00)
- k. Grievances filed and their dispositions; (4-5-00)
- l. Release records; (4-5-00)
- m. Personal information and emergency contact information; (4-5-00)
- n. ~~Medical history and a~~ Documentation of a completed ~~admission~~ intake medical screening; ~~(3-30-07)~~ ()
- o. Visitor records; (4-5-00)
- p. Incident reports; (4-5-00)
- q. Photographs. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

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

~~**01. Sexual Contact.** The detention center shall have written policies prohibiting the sexual contact, by any employee, with a juvenile offender, as defined in Title 18, Chapter 61, Section 18-6110, Idaho Code. These policies shall contain at a minimum the following provisions:~~ (3-30-07)

~~**a.** The detention center shall make every effort to inform juvenile offenders of the means available to safely report rape and sexual activity;~~ (3-30-07)

~~**b.** The detention center shall provide two (2) or more avenues for a juvenile offender to report rape and sexual activity;~~ (3-30-07)

~~**c.** The detention center shall have a process, which requires reporting of any instance of solicitation of staff by juvenile offenders;~~ (3-30-07)

~~d. The detention center staff shall treat all information regarding sexual assault and sexual activity with confidentiality; (3-30-07)~~

~~e. The detention center shall have a process in place for an initial internal investigation when a complaint is reported and a subsequent external investigation when rape or sexual activity is suspected; (3-30-07)~~

~~f. The detention center shall make every attempt to house the juvenile offender who was allegedly sexually assaulted away from the accused offender until the investigation is complete; and (3-30-07)~~

~~g. The detention center will provide at a minimum one (1) hour of annual training for staff concerning the statutory prohibition of sexual contact with a juvenile offender, including criminal prosecution. (3-30-07)~~

021. Sexual Assault Abuse of Juvenile Offenders. The detention center, in accordance with Public Law 108-79, also known as the Prison Rape Elimination Act of 2003 (PREA), shall have written policy and procedures that promote zero tolerance toward the sexual assault abuse of juvenile offenders by staff or by other juvenile offenders. The policy and procedures shall contain, at a minimum, the following provisions: (3-30-07)()

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

b. The appointment of a PREA Coordinator, as required to be determined by the detention center administrator; ()

c. The restrictions for cross-gender viewing and searches; ()

~~ad.~~ The ~~detention center staff shall make every effort~~ process that will be in place to inform juvenile offenders of their right to be safe from sexual abuse and the means available to safely report ~~rape and~~ sexual activity abuse; (3-30-07)()

~~be.~~ The ~~detention center staff shall provide~~ provision of two (2) or more avenues for a juvenile offender to report ~~rape and~~ sexual activity abuse; (3-30-07)()

f. The process for gathering information to make classification and housing decisions to reduce the risk of sexual victimization; ()

~~eg.~~ The ~~detention center staff shall treat~~ handling of all information regarding sexual assault and sexual activity abuse with confidentiality; (3-30-07)()

~~dh.~~ The ~~detention center shall have a~~ process which will be in place for an initial internal investigation when a complaint is reported and a subsequent external investigation when ~~rape or~~ sexual activity abuse is suspected; (3-30-07)()

~~ei.~~ The ~~detention center shall make every attempt to house the juvenile offender who was allegedly sexually assaulted away from the accused offender until the investigation is~~

~~complete~~ The process to employ multiple protection measures, including housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims; (3-30-07)()

i. The provision of timely and unimpeded access to crisis intervention services and medical and mental health care to victims; ()

gk. The ~~detention center shall provide~~ provision and documentation of at a minimum least one (1) hour of annual training ~~on mandatory reporting procedures as outlined in Title 16, Chapter 16, Section 16-1605, Idaho Code.~~ for staff concerning the statutory prohibition of sexual abuse or sexual contact with a juvenile offender, including criminal prosecution; (3-30-07)()

l. The provision and documentation of training for all volunteers and contractors who have contact with residents on the agency's zero-tolerance policy regarding sexual abuse, sexual harassment, and reporting duties, based on the level of contact that they have with juveniles; ()

fm. ~~If~~ The detention center's ~~is selected to receive~~ participation in the yearly "Survey on Sexual Violence" from the Bureau of Justice Statistics, ~~the detention center shall complete and submit the survey;~~ and (3-30-07)()

n. The detention center's compliance with the promulgated Rules and Standards of the Prison Rape Elimination Act of 2003. ()

(BREAK IN CONTINUITY OF SECTIONS)

224. DETENTION CENTER SECURITY.

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

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

03. Cross Gender Supervision. The detention center shall have written policy and procedures governing supervision of female juvenile offenders by male employees and male juvenile offenders by female employees which shall be based on privacy needs and legal standards. Except in emergencies, detention center employees shall not observe juvenile offenders

of the opposite sex in shower areas. Reasonable accommodation of privacy needs shall be observed. (4-2-08)

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

05. Camera Surveillance. Camera surveillance equipment ~~should~~ **shall** not be used in place of the personal observation of juvenile offenders. (~~3-30-07~~)()

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. The use of physical intervention shall be restricted to instances of justifiable self-protection, the protection of others or property, the prevention of escapes, or the suppression of disorder and then only to the degree necessary to restore order. (3-30-07)

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

b. A written report shall be made following any use of physical intervention. The report will be reviewed by the detention center administrator and will be maintained as part of the detention center records. (3-30-07)

02. Use of Chemical Agents. The detention center shall have written policy and procedures which govern the use of chemical agents, if approved for use in the detention center. The use of chemical agents shall be restricted to instances of justifiable self-protection, or the protection of others and then only to the degree necessary to restore order. ()

a. Chemical agents shall not be administered by any individual who has not successfully completed a P.O.S.T. certified training course taught by a P.O.S.T. certified trainer. ()

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

03. Use of Electroshock Weapons. The use of electroshock weapons is prohibited in juvenile detention centers unless used by law enforcement officers responding to a call for assistance initiated by detention staff. ()

024. 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. The use of restraints shall be restricted to justifiable instances, during transfer, and for medical reasons under the direction of medical staff. Justifiable instances shall be specifically defined in each detention center's policy and procedures. Written policy and

procedures shall provide that instruments of restraint are never applied as punishment and are applied only with the approval of the detention center administrator or designee, and that juvenile offenders in mechanical restraints are not left unattended. ~~(3-30-07)~~()

- a. Restraints shall not be used as punishment or for the convenience of staff. (4-5-00)
- b. A written report shall be made following any use of restraints except for transfer. The report will be reviewed by the detention center administrator and will be maintained as part of the detention records. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

227. SEARCH AND SEIZURE.

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

02. Personal Searches. The detention center shall have written policy and procedures governing the searching of juvenile offenders for the control of contraband and weapons which includes, at a minimum, the following provisions: (3-30-07)

- a. Search of juvenile offenders upon entering the security perimeter; (3-30-07)
- b. Search of newly admitted juvenile offenders; (3-30-07)
- c. Periodic unannounced and irregularly timed searches of juvenile offenders; (3-30-07)
- d. Provision for strip searches and body cavity searches at such times when there exists reasonable belief that the juvenile offender is in the possession of contraband or weapons or other prohibited material and shall only be conducted as described in Subsections 227.02.f. and 227.02.g.; (3-30-07)

e. Pat searches. Except in cases of emergency, pat searches ~~should~~ **shall** be conducted by direct care personnel of the same sex; ~~(4-5-00)~~()

f. Strip searches. All strip searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. All strip searches shall be conducted by direct care personnel of the same sex as the juvenile offender or by the health authority or medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during the strip search; and (3-30-07)

g. Body cavity searches. All body cavity searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. Body cavity searches shall be conducted only by the health authority or by a medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during body cavity searches. (3-30-07)

03. All Body Cavity Searches Shall Be Documented. Documentation of body cavity searches shall be maintained in detention center records and in the juvenile offender's record. (3-30-07)

04. Seizure and Disposition of Contraband. The detention center shall have written policy and procedures to govern the handling of contraband. All contraband found during facility detention center or juvenile offender searches shall be seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband shall be documented. When a crime is suspected to have been committed within the detention center, all evidence shall be maintained and made available to the proper authorities. (~~3-30-07~~)()

(BREAK IN CONTINUITY OF SECTIONS)

234. MEALS.

01. Providing Meals. The detention center shall have written policy and procedures which govern the providing of meals. Three (3) meals, ~~and pursuant to Section 20-518, Idaho Code,~~ at least two (2) of which includes a hot entree, shall be served daily. (~~3-30-07~~)()

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

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

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

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

02. Use of Food as Disciplinary Sanction Prohibited. The detention center shall have written policy and procedures which dictate that food shall not be withheld from juvenile

offenders, nor the menu varied as a disciplinary sanction. (3-30-07)

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

235. FOOD SERVICE SANITATION.

01. Written Policy and Procedures. The detention center shall have written policy and procedures to govern food service sanitation, and shall at a minimum include, but not be limited to, the following items: (3-30-07)

a. Food service and related sanitation practices shall comply with the requirements of the state health department or other appropriate regulatory body. The detention center's food service operation shall be inspected in the manner and frequency mandated by local health authorities. The detention center administrator shall solicit at least an annual sanitation inspection by a qualified entity. The results of such inspections shall be documented and the detention center administrator shall take prompt action to correct any identified problems; ~~(3-30-07)~~()

b. All persons assigned to food service work, including juvenile offenders, shall be in good health and free from any communicable or infectious disease, vermin, or open, infected wounds; (3-30-07)

c. All persons assigned to food service work shall be familiar with and adhere to appropriate food service sanitation practices and requirements; (3-30-07)

d. All dishes, utensils, pots, pans, trays, and food carts used in the preparation, serving, or consumption of food shall be washed and rinsed promptly after every meal. Disposable utensils and dishes shall not be reused; and (3-30-07)

e. Food service area ventilation systems shall not be altered from engineering or architectural specifications, except when repair or upgrade is needed. (3-30-07)

02. Food Service Inspections. A weekly inspection of all food service areas and equipment shall be conducted by the detention center administrator or designee. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

250. HEALTH SERVICES.

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

a. ~~Admission~~ 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 unusual behavior, including state of consciousness, mental status, appearance, conduct, tremor, sweating, body deformities, physical injuries, trauma markings, bruises, ~~jaundice~~, rashes, evidence of body vermin, and ease of movement; (~~3-30-07~~)()

- b.** Handling of juvenile offenders' requests for medical treatment; (3-30-07)
- c.** Non-emergency medical services; (4-5-00)
- d.** Emergency medical and dental services; (4-5-00)
- e.** Emergency evacuation plan of juvenile offenders from the detention center; (3-30-07)
- f.** Use of an emergency vehicle; (4-5-00)
- g.** Use of one (1) or more hospital emergency rooms or other appropriate health care facility; (4-5-00)
- h.** Emergency on-call physician and dental services when the emergency health care facility is not located nearby; (4-5-00)
- i.** First-aid and CPR instructions and training, including the availability of first-aid supplies; (4-5-00)
- j.** Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; (3-30-07)
- k.** Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; (3-30-07)
- l.** Delousing ~~procedures~~; (~~4-5-00~~)()
- m.** Infectious disease control and medical isolation; (4-5-00)
- n.** Temporary, immediate isolation, and proper examination by the medical employee of juvenile offenders suspected of having contagious or infectious diseases; (3-30-07)
- o.** Management of pharmaceuticals, including storage in a secure location; and (3-30-07)

p. Notification of next of kin or appropriate authorities in case of serious illness, injury or death. (3-30-07)

02. Medical Judgements. Except for regulations necessary to ensure the safety and order of the detention center, all matters of medical, mental health, and dental judgement shall be the sole province of the health authority, who shall have final responsibility for decisions related to medical judgements. (3-30-07)

03. Informed Consent. Permission to perform medical, surgical, dental or other remedial treatment shall be obtained from parents, spouse, guardian, court or other competent person as stated in Title 16, Chapter 16, Section 16-1627, Idaho Code. (3-30-07)

04. Health Appraisal. A health appraisal for each juvenile offender shall be provided by the health authority or medical employee within fourteen (14) days of admission. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

256. MAIL, VISITING, TELEPHONE.

01. Written Policy and Procedures. The detention center shall have written policy and procedures which shall govern the practices of handling mail, visitation, use of the telephone, and any limitations or restriction on these privileges. Juvenile offenders shall have the opportunity to receive visits and to communicate and correspond with persons, representatives of the media or organizations, subject to the limitations necessary to maintain detention center security and order. (3-30-07)

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

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

a. Telephone calls shall not be monitored, except where legitimate reason exists in order to maintain security and order in the detention center. Notification that the juvenile offender's phone calls may be monitored should be posted in the detention center. (3-30-07)

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

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

d. Juvenile offenders shall be allowed to make a reasonable number of telephone

calls to their attorneys. (3-30-07)

- i. Telephone calls to attorneys shall be of reasonable duration. (4-5-00)
- ii. Telephone calls to attorneys shall not be monitored. (4-5-00)
- iii. Telephone calls to attorneys shall not be revoked as a disciplinary measure. (4-5-00)

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

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

06. 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, counselors, caseworkers and the clergy. (3-30-07)

07. Visitation. Attorneys, probation and parole officers, counselors, caseworkers and clergy shall be permitted to visit juvenile offenders at reasonable hours other than during regularly scheduled visiting hours. (3-30-07)

a. Visits with attorneys, probation and parole officers, counselors, caseworkers and clergy shall not be monitored, except that detention center employees may visually observe the visitation as necessary to maintain appropriate levels of security. (3-30-07)

b. Visits with attorneys, probation and parole officers, counselors, caseworkers or clergy ~~shall~~ **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. ~~When a contact visit is not allowed, the reasons for the restriction shall be documented in the juvenile offender's record.~~ (3-30-07)()

257. -- 260. (RESERVED)

261. ADMISSION.

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

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

- a. Determination that the juvenile offender is lawfully ~~committed to~~ **detained in** the detention center; ~~(3-30-07)~~()
- b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; (3-30-07)
- c. If the juvenile offender shows signs of illness, injury, is incoherent, or unconscious, he shall not be admitted to the detention center until the ~~committing~~ **detaining** officer has ~~been~~ provided written documentation from ~~a~~ medical personnel or a physician of examination, treatment, and fitness for confinement; ~~(3-30-07)~~()
- d. A complete search of the juvenile offender and possessions; (3-30-07)
- e. The disposition of personal property; (3-30-07)
- f. Provision of shower and the issuance of detention clothing and personal hygiene articles; (3-30-07)
- g. The provision of medical, dental and mental health screening; (3-30-07)
- h. Male and female juvenile offenders shall not occupy the same sleeping room; (3-30-07)
- i. The recording of basic personal data and information; (3-30-07)
- j. Providing assistance to juvenile offenders in notifying their families of their admission and the discussion of procedures for mailing and visiting; ~~and~~ ~~(3-30-07)~~()
- k. The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; ~~and~~ ~~(3-30-07)~~()
- l. The administration of the MAYSI or other approved risk 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. Status offenders shall not be placed in any jail or detention center, but instead may be placed in juvenile shelter care facilities. (3-30-07)

04. Limitations of Detention. Written policy and procedures shall limit the use of detention in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code. (3-30-07)

262. RELEASE.

01. Release. Written policy and procedures shall govern the release of any juvenile offender and the release process including, but not limited to, verification of juvenile offender's identity, verification of release papers, completion of release arrangements, including the person

or agency to whom the juvenile offender is being released, return of personal effects, completion of any pending action, and instructions on forwarding mail. (3-30-07)

02. Community Leaves. Written policy and procedures shall govern escorted and unsecured day leaves into the community. (4-5-00)

03. Personal Property Complaints. Written policy and procedures shall govern a procedure for handling complaints about personal property. (3-30-07)()

04. Disposal of Property. Property not claimed within four (4) months of a juvenile offender's discharge may be disposed of by the detention center in accordance with Title 55, Chapter 14, Section 55-1402, Idaho Code. (3-30-07)()

263. -- 264. (RESERVED)

265. PROGRAMS AND SERVICES AVAILABLE.

01. Written Policies and Procedures Governing Available Programs and Services.
The detention center shall have written policy and procedures which govern what programs and services will be available to juvenile offenders, ~~subject to the limitations necessary to maintain detention center security and order.~~ These programs and services shall include, at a minimum, the following: ()

- a.** ~~A~~Access or referral to counseling; ()
- b.** ~~R~~Religious services on a voluntary basis; ()
- c.** ~~O~~ne (1) hour per day, ~~and~~ five (5) days per week of large muscle exercise; ~~and~~ ()
- d.** ~~P~~Passive recreational activities; ()
- e.** ~~R~~egular and systematic access to reading material; ()
- f.** ~~juvenile w~~Work assignments; and ()
- g.** ~~e~~Educational programs according to the promulgated rules of the Idaho State Department of Education, ~~except where there is justification for restricting a juvenile offender's participation.~~ ()

02. Limitations and Denial of Services. Access to services and programs will be afforded to all juvenile offenders, subject to the limitations necessary to maintain detention center security and order. Any denial of services must be documented. (3-30-07)()

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 ~~for which construction was initiated after October 1, 1998~~. In the case of a partial renovation of an existing detention center, it is intended that these rules should apply only to the part of the detention center being added or renovated. (3-30-07)()

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

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

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

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

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

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

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

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

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

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

to routinely monitor the interior of sleeping rooms; and (3-30-07)

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

05. Admission and Release Area. The detention center shall have an intake and release area which should be located within the security perimeter, but apart from other living and activity areas. (3-30-07)

a. Adequate space shall be allocated for, at least but not limited to; (3-30-07)

i. Reception; (3-30-07)

ii. Booking; (3-30-07)

iii. Search; (3-30-07)

iv. Shower and clothing exchange; (3-30-07)

v. Medical screening; (3-30-07)

vi. Storage of juvenile offender's personal property and detention center clothing; (3-30-07)

vii. Telephone calls; (3-30-07)

viii. Interviews; and (3-30-07)

ix. Release screening and processing. (3-30-07)

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

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

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

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

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

a. One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; (3-30-07)

b. One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and (3-30-07)

c. Tables and seating sufficient for the maximum number expected to use the room at one (1) time. (3-30-07)

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

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

a. Educational programs; (3-30-07)

b. Individual and group activities; (3-30-07)

c. Exercise and recreation, indoor and outdoor; (3-30-07)

d. Visitation; (3-30-07)

e. Confidential attorney and clergy interviews; and (3-30-07)

f. Counseling. (3-30-07)

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

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

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

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

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

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

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

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

IDAPA 11 - IDAHO STATE POLICE

11.10.03 - RULES GOVERNING THE SEX OFFENDER REGISTRY

DOCKET NO. 11-1003-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 18-8304(5), 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.

During the 2011 session, the legislature made some substantive changes to Idaho Code Title 18, Chapter 83, Sexual Offender Registration Notification And Community Right-to-Know Act. Those changes necessitate changes in IDAPA 11.10.03.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the November 2, 2011 Idaho Administrative Bulletin, Vol.11-11, pages 18 through 23.

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:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Dawn Peck, Idaho State Police Bureau of Criminal Identification Manager, 208-884-7136, or dawn.peck@isp.idaho.gov.

DATED this 16th day of December, 2011.

Col. G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Dr., Meridian, ID 83642
Phone: 208-884-7003 / Fax: 208-884-7090

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 18-8304(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 16, 2011.

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:

Substantive changes were made to Title 18, Chapter 83, Idaho Code, Sexual Offender Registration Notification and Community Right-To-Know Act, under Senate Bill 1154. Changes made in this rulemaking conform the rule to the statutory changes made under SB 1154.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were made in response to law changes that were already in place.

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 Dawn Peck, Idaho State Police Bureau of Criminal Identification Manager, 208-884-7136.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 23, 2011.

DATED this 20th day of September, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1003-1103

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 18-8326~~31~~.
(3-18-99)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General."
(3-18-99)

01. Exception. Any decision rendered by the central registry will be considered a final order for the purposes of appeal and will be governed by Title 67, Chapter 52, Idaho Code, Section 67-5270 et seq.
()

02. Delegation of Authority. The director of Idaho State Police hereby delegates his authority to the Bureau of Criminal Identification, Idaho State Police the ability to issue final orders on his behalf in instances where the bureau determines an offender's registration requirement based upon a conviction of a substantially similar or substantially equivalent crime.
()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

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

01. Bureau. "Bureau" means the Bureau of Criminal Identification, Idaho State Police.
(3-18-99)

02. Central Registry. "Central Registry" means the state-level records system containing information, photographs and fingerprints relating to persons required to register as a sex offender under Title 18, Chapters 83 and 84, Idaho Code.
(3-18-99)

03. **Department.** “Department” means the Idaho State Police. (3-18-99)

04. **Director.** “Director” means the director of the Idaho State Police. (3-18-99)

05. Substantially Equivalent or Similar. “Substantially Equivalent or Similar” means any sex offense related crime, regardless of whether a felony or misdemeanor, that consists of similar elements defined in Title 18 of the Idaho Criminal Code. It does not mean exactly the same, nor exactly identical to. ()

056. Working Days. “Working Days” means each day except Saturday, Sunday, or a legal state holiday. (3-18-99)

[Codified Section 011 has been moved and renumbered to proposed Section 012]

011. ABBREVIATIONS.

There are no abbreviations associated with this chapter of rules. ()

012. SEX OFFENDER CENTRAL REGISTRY -- ADMINISTRATION.

01. **Central Registry Established.** Pursuant to Title 18, Chapter 83, Idaho Code, the department establishes a sex offender central registry in the bureau of criminal identification. The bureau is responsible for administration of the central registry pursuant to the requirements set forth in Title 18, Chapters 83 and 84, Idaho Code and these rules. (3-18-99)

02. **Forms.** The following forms and procedures ~~are prescribed for~~ will be used to provide ~~notice~~ notice to and collect ~~information~~ information from persons required to register as a sex offender pursuant to Title 18, Chapters 83 and 84, Idaho Code. (4-11-06)()

a. “Idaho Sex Offender Registry ~~Notification and Registration~~ Form.” This ~~two~~ three (23) page form notifies an offender of ~~the duty to~~ register requirements and collects from an offender information required for ~~first-time~~ registration ~~in a county, annual re-registration in a county,~~ or any change of address or status, ~~within the county of residence~~ as required by statute. ~~This form is also used for change of name. The court, correctional agency, or the sheriff shall forward the original copy, along with the offender’s photograph and fingerprints, when taken at the sheriff’s department, to the bureau within three (3) working days of completing the form.~~ (4-11-06)()

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. ~~Information Required at Initial Registration.~~ In addition to the information required by Section 18-8307(8), Idaho Code, the “Idaho Sex Offender Registry Notification and Registration Form” shall collect the following information: **Registration Location.** An offender who is required to register either as an adult under Title 18, Chapter 83, Idaho Code, or as a juvenile under Title 18, Chapter 84, Idaho Code, must notify and register at the sheriff’s office in the county where the offender’s primary address is located. (4-11-06)()

~~a. Whether the offender is registering as an adult under Title 18, Chapter 83, Idaho Code, or as a juvenile under Title 18, Chapter 84, Idaho Code; (3-18-99)~~

~~b. Physical description of the offender, including gender, race, height, weight, eye color, hair color, and scars, marks, and tattoos; (3-18-99)~~

~~c. Offender's occupation and name and place of employment; (3-18-99)~~

~~d. The name and location of a school, college, or university that the offender attends; and (3-18-99)~~

~~e. Name of the offender's probation/parole officer. (3-18-99)~~

04. Photographs and Fingerprints. Whenever the Idaho Sex Offender Registry Notification and Registration Form is used to register an offender ~~who moves into a county or within a county, to re-register an offender annually, or register an offender who resides out of state but is employed in the state or enrolled in an institution of higher learning as defined in Section 18-8304(1)(d), it is~~ **will be** submitted to the central registry with the offender's photograph, ~~and~~ fingerprints, ~~and palmprints.~~ (4-11-06)()

a. An offender's photograph ~~shall~~ **will** be in color. The sheriff ~~shall~~ **will** forward ~~one (1) a copy of the~~ photograph ~~of the offender with each registration 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 ~~shall~~ **will** be a copy of the new photographs taken at the time of each registration. From collected registration fees, the sheriff ~~shall~~ **will** pay to the state the cost of photography materials lawfully required by a state agency or department. (4-11-06)()

b. The sheriff ~~shall~~ **will also** submit the required fingerprints on the federal bureau of investigation form FD-249. For each registrant, the sheriff ~~shall~~ **will** forward one (1) FBI fingerprint cards ~~s~~ with each registration Form. (4-11-06)()

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

~~05. Change of Address or Status Notification. (5-3-03)~~

~~a. When an offender changes address or actual residence within a county, the offender will complete within five (5) days after the change Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. (4-11-06)~~

~~b. When an offender moves to another county to establish permanent or temporary domicile, the offender must register as a new resident with the sheriff having jurisdiction within ten (10) days of moving to the other county. (5-3-03)~~

~~c. When an offender moves to another state, the offender shall notify the central~~

~~registry by certified mail within five (5) days after moving to the other state. (5-3-03)~~

~~d. When an offender enrolls as a student at or becomes an employee of a school, college, or university in the state, the offender, whether such enrollment or employment is part-time or full-time and is for more than fourteen (14) days or an aggregate period exceeding thirty (30) days per year, will complete within five (5) days of the commencement of employment or enrollment the Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. (4-11-06)~~

~~e. When an offender, who is a student at or an employee of a school, college, or university, changes status as a student or employee, the offender will complete within five (5) days of the change of status the Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. (4-11-06)~~

~~f. When a nonresident offender is required to register pursuant to Section 18-8304(1)(d), Idaho Code, the offender must register, within ten (10) days of the commencement of employment or enrollment, with the sheriff having jurisdiction. When the status of such employment or enrollment changes, the offender will complete within five (5) days after the change the Idaho Sex Offender Registry Notification and Registration Form to provide required notification. (4-11-06)~~

065. Notification to Local Law Enforcement. ~~The bureau will provide to a local law enforcement agency on its request a list of registered sex offenders residing in its jurisdiction. Lists of all offenders registered within a county are available on the sex offender registry web site located at http://isp.idaho.gov/sor_id/. The bureau will notify the local 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 the an agency's jurisdiction. Whenever practical, the bureau will provide notification using the Idaho law enforcement telecommunication system (ILETS). (3-18-99)()~~

076. Notification to Other States Jurisdictions. Within one (1) working day of receiving notification that a registered sex offender is moving to another state jurisdiction, the bureau will notify the receiving state jurisdiction's designated sex offender registration agency of the move by mail or electronic means. (3-18-99)()

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

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

b. Upon receipt of a duly attested copy of a pardon issued by the governor of a state the jurisdiction as to a where the conviction was entered and then reported to the central registry, the bureau will expunge all records concerning the conviction from the central registry. If the pardoned person has no other conviction requiring registration, the bureau will expunge all references concerning the person from the central registry. (3-18-99)()

c. Upon receipt of a duly attested document from a court clerk that a conviction

previously reported to the central registry has been reversed ~~or dismissed~~ by the court of conviction, ~~except where such a dismissal is on a withheld judgment~~, the bureau will expunge all records concerning the conviction from the central registry. If provided that the person has no other conviction requiring registration, ~~the bureau will expunge all references concerning the person from the central registry. An offender registered for a withheld judgment is required to obtain relief from registration under provisions of Section 18-8310, Idaho Code.~~ (5-3-03)()

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

~~d. Upon receipt of a duly attested document from a court clerk that a registered sex offender has been released by the court from registration requirements pursuant to Section 18-8310, Idaho Code~~ Pursuant to Section 18-8310(5), Idaho Code, if a person is exempted from the registration requirement by court order, the bureau will expunge all records and references concerning the offender from the central registry. (3-18-99)()

~~09. Correction of Central Registry Information.~~ (3-18-99)

~~a. A person registered pursuant to Title 18, Chapters 83 or 84, Idaho Code, may submit a written request to the bureau to correct or modify information regarding that person in the central registry for the purpose of making the information accurate and complete. The bureau will respond to the request in writing within thirty (30) days after receipt of the request. When a request is denied, in whole or part, the bureau will explain the reasons for the decision.~~ (3-18-99)

~~b. A person whose request, under Subsection 011.09.a. of this Section, is denied, in whole or part, may appeal to the director for review of the decision within thirty (30) days after the mailing of the bureau's written response. The appeal must be in writing and must set out the reasons for the appeal. The decision of the director will be in writing and made within forty-five (45) calendar days after the department's receipt of the appeal.~~ (3-18-99)

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

a. A person convicted of a sex offense in another jurisdiction and who moves to 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's decision is an agency action as defined by Chapter 52, Title 67, Idaho Code. ()

i. Judicial review of the bureau's decision shall be made in accordance with Chapter 52, Title 67, Idaho Code. ()

~~012. RELEASE OF INFORMATION TO THE PUBLIC.~~

~~01. Methods of Access. (4-11-06)~~

~~a. Any person may inquire on a named person or obtain a list of sex offenders by geographic area by submitting a completed Request for Information Form SOR-4 to the bureau or local sheriff. The bureau or sheriff may only provide public access to central registry information by means of a completed Form SOR-4, which must include the requester's full name, address, and either driver's license number or social security number. The bureau or sheriff shall respond to a completed Form SOR-4 within ten (10) working days of receipt. A sheriff may refer a person to the bureau for public access to the central registry. (4-11-06)~~

~~b. Any person can access registration information via an authorized web site. (4-11-06)~~

~~02. Geographic Lists. Any person using a Form SOR-4 may request a list of offenders by county or zip code or any person may obtain a list of offenders by county or zip code from the bureau web site. (4-11-06)~~

~~03. Information Released. Only central registry information authorized for release pursuant to Section 18-8323(2), Idaho Code, may be provided by the bureau or sheriff in response to a completed Form SOR-4 or as a response to a query of the web site. A conviction of incest (Section 18-6602, Idaho Code, or equivalent offense) shall be reported as sexual abuse of a child under sixteen (16) years of age (Section 18-1506, Idaho Code). (4-11-06)~~

~~04. Fee for Accessing Information. The bureau shall collect a fee of five dollars (\$5) for each inquiry on a named person or for each request for a list of sex offenders by geographic area. Schools, state agencies, and nonprofit organizations working with youth, women, or other vulnerable populations are exempt from payment of the fee. The bureau may request information additional to that required by the Form SOR-4 to determine eligibility status for nonfee access to central registry information. A registered offender may request a copy of the offender's own central registry information without payment of a fee. Any person can access registration information without charge on the bureau's web site. (4-11-06)~~

~~05. Photographs. Any person may request the photograph of a registered sex offender by submitting to the bureau a completed Request for Registry Photograph Form SOR-5. The bureau may only provide public access to central registry photographs by means of a completed Form SOR-5, which must include the requester's full name, address, and either driver's license number or social security number. Any person can access registration photos via the bureau's or an authorized web site. (4-11-06)~~

~~06. Fee for Photographs. The bureau shall collect a fee of five dollars (\$5) for each photograph provided in response to a completed Form SOR-5. Any person can access registration photos without charge on the bureau's web site. (4-11-06)~~

~~07. Retention of Request Forms. The bureau and all sheriffs shall retain in their files the original copies of forms SOR-4 and SOR-5 for a period of two (2) years from the date of submission. These forms are available for inspection only by law enforcement and criminal justice agencies. (3-18-99)~~

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 19-5107, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 239 through 249.](#)

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:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Flink at (208) 884-7251.

DATED this 22nd day of November, 2011.

William L. Flink
Division Administrator
Idaho State Police
Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Defines the terms “direction” and “supervision” as it relates to reserve officers; establishes that the Basic Misdemeanor Probation Academy may operate as a closed campus if POST has dorm space available; clarifies that a student must attend all basic academy classes to successfully complete the course; establishes criteria for obtaining credit toward higher certifications for officers who formerly served as military law enforcement officers; removes the requirement that communications specialists meet the minimum employment standards for age and traffic record; removes references to the Advanced Dispatch Academy which is no longer offered; removes confusing language in reference to canine team training and certification requirements; and updates the list of explosive substances used for detection canine team certification.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN

COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

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

010. DEFINITIONS.

- 01. Act.** Title 19, Chapter 51, of the Idaho Code. (4-5-00)
- 02. Adult Probation and Parole Officer.** Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (3-30-07)
- 03. Agency.** A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 04. Agency Head.** A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 05. Applicant.** Any person applying to participate in a POST training program or applying for POST certification. (4-2-08)
- 06. Basic Adult Probation and Parole Academy.** A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. (4-2-08)
- 07. Basic Correction Academy.** A basic course of instruction for Correction Officers as recognized by POST Council. (4-2-08)

- 08. Basic Detention Academy.** A basic course of instruction for Detention Officers as recognized by POST Council. (4-2-08)
- 09. Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. (4-2-08)
- 10. Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (4-2-08)
- 11. Basic Patrol Academy.** A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)
- 12. College Credit.** A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other equivalent accrediting agency. (7-1-93)
- 13. Correction Officer.** Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. (3-30-07)
- 14. Correction Standards and Training Council.** An advisory group to the POST Council that is comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. (4-2-08)
- 15. Council.** The Idaho Peace Officer Standards and Training Council. (4-2-08)
- 16. County Detention Officer.** An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)
- 17. Crime of Deceit.** Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of

Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (4-2-08)

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

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

~~190.~~ **Full Time.** Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days. (4-2-08)

~~201.~~ **High School.** A school accredited as a high school by the Department of Education of the state in which the high school is located, or a school accredited as a high school by the recognized regional accreditation body, or a school accredited as a high school by the State University of the state in which the school is located. (7-1-93)

~~212.~~ **In-Service Training.** Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned. (7-1-93)

~~223.~~ **Juvenile Detention Center.** A juvenile detention facility that is part of or

administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders. (4-2-08)

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

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

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

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

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

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

2930. Part-Time Juvenile Detention Officer. Any employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-2-08)

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

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

323. POST Basic Training Academy. The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile Probation Academy, or the Basic Patrol Academy. (4-2-08)

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

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

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

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

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

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

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

3941. Temporary. Employment of less than ninety (90) consecutive calendar days. (7-1-93)

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

(BREAK IN CONTINUITY OF SECTIONS)

071. BASIC TRAINING ACADEMY.

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

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

02. POST Basic Misdemeanor Probation Academy. The POST Basic Misdemeanor Probation Academy may operate as a closed campus depending upon the availability of POST resources. ()

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

034. Attendance. Attendance shall be required of each trainee at all classes in the Basic Training Academy. ~~A trainee who is absent for more than one (1) day of the academy session shall make up such course content.~~ (4-7-11)()

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

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

(BREAK IN CONTINUITY OF SECTIONS)

095. LAW ENFORCEMENT EXPERIENCE.

01. Law Enforcement Experience. Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 064, ~~will~~ **shall** be subject to the determination of the Council. (4-2-08)()

02. 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. ()

a. The applicant shall have served in the military as a full-time military law enforcement officer for the period of time he is requesting credit for. Regular guard duty does not qualify. ()

b. Education shall be military law enforcement schools successfully completed. All certificates, course outlines, diplomas, DD-214's, and certificates of completion showing length of school shall accompany an appropriate application form designated by the Council. ()

c. Credit shall 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. ()

d. 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. ()

(BREAK IN CONTINUITY OF SECTIONS)

174. LAW ENFORCEMENT EXPERIENCE.

01. Law Enforcement Experience. Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for

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

d. 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. ()

(BREAK IN CONTINUITY OF SECTIONS)

197. GENERAL PROVISIONS.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. Communications Specialist Certification is not statutorily mandated, but is voluntary. (4-2-03)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the communications specialist is appointed as an Idaho communications specialist by a duly constituted Idaho law enforcement agency and has not been decertified. (3-29-10)

03. Eligibility. To be eligible for the award of a Level I, Level II, Level III, or Advanced certificate, each applicant shall be a full-time communications specialist appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

04. Applications. All applications for award of the Level I, Level II, Level III, or

Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

05. Submission. The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

06. Training. Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. (4-2-03)

07. Minimum Standards. Each applicant shall meet the minimum standards for employment as provided in Sections 050 ~~through~~, 051, 052, 054, 055, 056, and 058. (4-2-08)()

198. COMMUNICATIONS SPECIALIST EXPERIENCE.

Communications specialist experience, as used herein, means actual time served as a full-time communications specialist with a duly constituted law enforcement agency. The acceptability of time served as a communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 ~~through~~, 051, 052, 054, 055, 056, and 058, shall be subject to the determination of the Council. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

202. ADVANCED CERTIFICATE.

01. Requirements. The Advanced Certificate is for individuals who have consciously decided to focus career efforts on public safety communications. A candidate for the Advanced Certificate ~~must~~ shall: (4-11-06)()

- a. Possess the Level III Communications Specialist Certificate. (4-2-03)
- b. Have satisfactorily completed five hundred (500) hours of POST-certified communications-related training. (4-2-03)
- c. Have satisfactorily completed ~~both~~ the POST Basic ~~and Advanced~~ Dispatch Academy. (4-2-03)()
- d. Have a minimum of ten (10) years of communications specialist experience. (4-2-03)

02. Exception. An applicant who has a minimum of twenty (20) years of communications specialist experience but has not satisfactorily completed the POST Basic ~~and Advanced~~ Dispatch Academy ~~will~~ shall be eligible for the Advanced Certificate without

attending the academies provided he meets all other requirements as set forth in Section 202 of these rules and can pass the final examination for ~~each~~ the academy with a minimum score of seventy-five percent (75%). The applicant ~~will~~ shall be allowed two (2) attempts to pass ~~each~~ the examination. The attempts ~~must~~ shall be no less than thirty (30) days apart and no more than six (6) months apart. If an applicant fails both attempts or fails to retake the examination within six (6) months, he ~~must~~ shall successfully complete the POST Basic ~~and Advanced~~ Dispatch Academy ~~iesy~~ to be eligible for the Advanced Certificate. (4-11-06)()

203. -- 209. (RESERVED)

210. CANINE EVALUATOR CERTIFICATION.

01. Purpose. Canine Evaluator Certificates are established for the purpose of recognizing competence as an evaluator of police canine teams. (4-11-06)

02. Certification. The Council ~~will~~ 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 ~~will~~ shall be issued in the areas of Patrol, ~~Tracking, Evidence Search, Controlled Substance Detection,~~ and ~~Explosive Substance~~ Detection. The applicant ~~must~~ shall show training and experience in each area he is requesting certification in. Certificates ~~will~~ shall be issued to the agency head for award to the applicant. (4-11-06)()

03. Revocation. Canine Evaluator certification may be revoked by the Council whenever a canine evaluator is deemed to be unqualified to continue evaluating police canine teams. Review of canine evaluator certification may be initiated upon the request of an agency head or other reliable source. Such review may also be initiated by the Council in the absence of external requests or complaints. (4-11-06)

04. Eligibility. To be eligible for the award of a Canine Evaluator Certificate, each applicant ~~must~~ shall meet the following POST requirements: (4-11-06)()

a. Be a POST-certified or federally commissioned peace, detention, correction, or adult probation and parole officer who is actively involved in a law enforcement canine program; (4-11-06)

b. Have three (3) years of canine handler experience; (4-11-06)

c. Have three hundred ninety (390) hours of POST-certified or federally-approved canine-related training; (4-11-06)

d. Successfully complete the Idaho POST-certified Canine Evaluators course; (4-11-06)

e. Evaluate seven (7) dogs while under supervision of a current Idaho POST-certified canine evaluator; and (4-11-06)

f. Submit an Idaho POST Canine Evaluator Application Packet to POST Council, which ~~must~~ shall include: (4-11-06)()

i. Transcripts, certificates, diplomas, or other documents that substantiate the applicant's education and training in the canine field; and (4-11-06)

ii. A letter of recommendation from an administrator within the applicant's employing agency. (5-8-09)

05. Retaining Certification. To retain certification, a certified canine evaluator ~~must~~ **shall** evaluate a minimum of four (4) dogs every two (2) years. Any canine evaluator not satisfying this requirement ~~must~~ **shall** complete all requirements as set forth in Section 210 of these rules to be recertified. ~~(5-8-09)~~()

(BREAK IN CONTINUITY OF SECTIONS)

213. GENERAL PROVISIONS.

01. Mandatory Certification. A canine team shall be Idaho-POST certified in order to perform their duties. (4-7-11)

02. Eligibility. The canine handler shall be an Idaho POST-certified peace, detention, correction, adult probation and parole, juvenile detention, juvenile probation, or adult misdemeanor probation officer employed by a law enforcement agency which is a part of or administered by the state or any political subdivision thereof, or an Idaho POST-certified direct care staff member of the Idaho Department of Juvenile Corrections to be eligible for certification under these rules. Contract employees shall not be eligible for canine team certification. (4-7-11)

03. Notification of Canine Being Put Into Service. Prior to a canine being put into service, the law enforcement agency head shall submit written notification to the Council of such pending action unless the canine team is POST-certified in another state or approved by the federal government, in which case notification shall be submitted within fifteen (15) days of the canine being put into service in Idaho. (4-7-11)

04. Training. (4-11-06)

a. A patrol canine handler shall have completed two hundred forty (240) hours of POST-approved canine handler training. The training shall include, but not be limited to: (4-7-11)

i. Suspect search; (4-11-06)

ii. Apprehension; (4-11-06)

iii. Handler protection; (4-11-06)

iv. Obedience; and (4-11-06)

v. Agility. (4-11-06)

b. A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler shall have completed one hundred sixty (160) hours of POST-approved canine handler training. The training shall include, but not be limited to: (4-7-11)

i. Obedience; and (4-11-06)

ii. Odor recognition specific to the area the canine team is seeking certification in. (4-11-06)

~~**e.** A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler cross-trained as a patrol canine handler shall have completed two hundred forty (240) hours of POST-approved canine handler training. (4-7-11)~~

05. Evaluation. In evaluating the proficiency of the canine teams, the evaluators shall use the standards approved by the POST Council for that particular skill category. Performance shall be rated on a pass/fail basis. The evaluator shall have the discretion to discontinue the testing if excessive time has been spent without results. The evaluator shall not be the owner or handler of the canine being evaluated, and shall not have a proprietary interest in the training of the canine team being evaluated. A POST Training Specialist shall be notified of all canine certification testing. (4-7-11)

06. Failed Evaluation. If a canine team fails any portion of an evaluation, the entire evaluation is considered to be failed, and all skills shall be repeated and successfully demonstrated during retesting. The canine team shall wait at least twenty-four (24) hours before retesting, and they shall be retested by the same evaluator that evaluated the failed test or his designee. (4-7-11)

07. Areas of Certification. The Council shall certify a canine team which successfully demonstrates the handler's ability to control the canine, under the scrutiny of a canine evaluator, in addition to proficiency in one (1) or more of the following areas: (4-7-11)

a. Patrol; (3-30-01)

b. Tracking; (3-30-01)

c. Evidence search; (3-30-01)

d. Controlled substance detection; or (3-30-01)

e. Explosive substance detection. (3-30-01)

08. Expiration of Certification. Each certification issued pursuant to these rules shall remain valid for fifteen (15) months. A canine team shall be evaluated prior to their certification expiration date to maintain their certification. A canine team certification shall lapse if the handler and canine cease to perform canine team functions together. (4-7-11)

09. Appeal. Any handler who believes there have been improper procedures applied in implementing the standards may file an appeal with the Idaho Peace Officer Standards and Training *Academy* in writing. This appeal shall be filed within thirty (30) days of the testing date. ~~(4-7-11)~~()

(BREAK IN CONTINUITY OF SECTIONS)

241. EXPLOSIVE SUBSTANCES.

Explosive substances ~~will~~ shall consist of twelve (12) areas. An explosive detection dog ~~must~~ shall locate one (1) find of each of the following: (4-11-06)

01. C-4 Explosive. (4-11-06)
02. Pyrodex. (4-11-06)
03. Ammonium Nitrate. (4-11-06)
04. Detonating Cord. (4-11-06)
05. Time Fuse. (4-11-06)
06. Nitro Methane. (4-11-06)
07. TNT. (4-11-06)
08. ~~Nitro Glycerin Dynamite~~ PETN. ~~(4-11-06)~~()
09. ~~Non Nitro Glycerin~~ Dynamite. ~~(4-11-06)~~()
10. Sodium Chlorate. (4-11-06)
11. Potassium Chlorate. (4-11-06)
12. Gun Powder. (4-11-06)

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1102

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 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.

In response to suggestions from the Senate Judiciary & Rules and House Judiciary, Rules & Administration Subcommittees for Review of Administrative Rules, the following changes were made:

Title of provision language was amended in Subsection 063 for clarification and to make the provision consistent with statutory language in 19-5109(3)(c).

Language was amended in Subsection 063.04 to reference all agencies defined in the definition of “law enforcement” within 19-5101(c) and “law enforcement profession” as provided by IDAPA 11.1101.010.26.

Language was amended in Subsection 091.04 for consistency with Subsection 063 and statutory language in 19-5109(3)(c).

Language was amended in Subsection 091.04.m. to add applicability to legal proceedings.

Language was amended in Subsection 092.02.b. regarding an officer’s failure to respond to investigation questions or failure to respond truthfully from “may” to “shall” be cause for decertification.

Language was amended in Subsection 092.03.b. to add language to provide record of complaint and record information to officer.

Language was amended in Subsection 092.03.b.iii. to establish an emergency hearing

with POST Division Administrator prior to effective date of order.

Language was amended in Subsection 092.03.c. to should officer fail to appear at emergency hearing or respond in writing and the effect upon the finality of the order.

Language was amended in Subsection 092.03.d. to provide Division Administrator seven days to render a decision after the emergency hearing or written response, and give notice of the decision.

Subsection 092.03.e. adds new language that the POST Division Administrator's decision is a final decision subject to review by the POST Council.

Language was amended in Subsection 092.03.f. to clarify the employing agency record is not the exclusive basis for POST action.

Language was amended in Subsection 092.05 to make a request with the POST Council for a hearing, requiring the officer to provide a brief statement of the questions or issues to be addressed during the hearing.

Subsection 092.06.a.iii. adds language regarding an officer's right to discovery under IDAPA 04.11.01.520.

Subsection 092.06.a.v. adds language regarding an officer's failure to respond to hearing questions or failure to respond truthfully as cause for decertification.

Language was amended in Subsection 092.06.a.ix. to reflect the proper spelling of "principal".

Language was amended in Subsection 092.06.b. to make a petition for review with the full POST Council regarding the hearing board or hearing officer's decision; petition for review shall include a brief statement of the reasons the hearing is requested.

Language was amended in Subsection 092.08 that service of all notices by mail shall be made by certified mail – return receipt requested.

The complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 250 through 260.](#)

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:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Flink at (208) 884-7251.

DATED this 23rd day of November, 2011.

William L. Flink
Division Administrator
Idaho State Police
Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Requires the POST Division Administrator to report decertification proceedings to the POST Council on a regular basis; identifies the conduct that may constitute cause for decertification; requires an officer charged with a felony or misdemeanor to notify his agency head within five business days; requires an agency head to notify POST within fourteen days of learning of the charge; allows an agency head intending to hire a decertified officer to petition the Council, ten years after the date the officer was decertified, for reconsideration for law enforcement officer employment; and establishes the due process procedures.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1102

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1102

031. DIVISION ADMINISTRATOR.

There shall be established in the Idaho State Police a nonclassified position of Division Administrator of the Idaho Peace Officer Standards and Training Council. (4-7-11)

01. Selection of Division Administrator. (4-7-11)

a. The Chairman of the POST Council shall recommend one Chief or Sheriff who is a member of the POST Council to serve on the examining board set up by the Idaho Division of Human Resources. (4-2-08)

b. The Division Administrator shall be selected by the director of the Idaho State Police subject to approval of the POST Council from the approved register established by the Idaho Division of Human Resources after competitive testing. (4-7-11)

02. Under POST Council's Direction. The Division Administrator shall be employed by the Idaho State Police to serve under the direction of the POST Council in carrying out the duties and responsibilities of the Council. (4-7-11)

03. Decertification Investigations. The POST Division Administrator shall report to the Council on a regular basis regarding all decertification proceedings. ()

034. Supervision Over Employees. The Division Administrator shall have supervision over the employees and other persons necessary in carrying out the functions of POST. (4-7-11)

045. Administration. For administrative purposes, the Division Administrator and his staff shall be governed by the Policies and Rules of the state of Idaho and the Idaho State Police, concerning but not limited to fiscal, purchasing, and personnel matters. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

063. CODE OF ~~CONDUCT~~/CODE OF ETHICS/STANDARDS OF CONDUCT.

Each applicant shall attest that he has read, understands, and will abide by the ~~Law Enforcement POST Council's Code of Conduct Ethics~~ as ~~found in Subsection 091.04~~ standards of professional conduct and ~~the Law Enforcement Code of Ethics that he has read and understands the conduct that may constitute cause for decertification~~ as found in Subsections ~~091.053 and 091.04~~.
(4-2-08)()

01. Fundamental Duty. As a law enforcement officer, 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. ()

02. Personal and Official Life. 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. ()

03. Appropriately Enforce the Law. 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. ()

04. Public Trust. I recognize the badge 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 service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other law enforcement officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. ()

05. Professional Performance. 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 to my chosen profession...law enforcement.
()

(BREAK IN CONTINUITY OF SECTIONS)

091. INTRODUCTION.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. (3-20-97)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the officer has not been decertified and is appointed as an Idaho peace, county detention, juvenile detention, juvenile probation, correction, adult probation and parole, or misdemeanor probation officer, or an Idaho Department of Juvenile Corrections Direct Care Staff member. (3-29-10)

03. Decertification -- Mandatory, Discretionary, Reporting, Eligibility.
(3-30-07)()

a. The Council shall decertify any officer who is convicted, as defined in ~~Idaho Code~~ Section 19-5109, Idaho Code, of any felony or offense which would be a felony if committed in this state. ()

b. The Council may decertify any officer who is convicted, as defined in Section 19-5109, Idaho Code, of any misdemeanor; willfully or otherwise falsifies or omits any material information to obtain any certified status; or ~~violates any of the standards of conduct as established by the council's code of conduct or code of ethics, as adopted and amended by the council. Any officer charged with a felony, a non-traffic misdemeanor, or a misdemeanor that would be a felony if committed in this state, must notify the POST Division Administrator within fourteen (14) business days. Failure to notify constitutes a violation of the Law Enforcement Code of Ethics and the Law Enforcement Code of Conduct~~ for any of the causes set forth in Subsection 091.04. (3-29-10)()

c. Any officer charged with a felony or misdemeanor shall notify his agency head within five (5) business days. ()

d. The agency head of an officer charged with a felony or misdemeanor shall notify the POST Division Administrator within fourteen (14) days of learning of the charge. ()

be. Any officer decertified by the Council ~~is~~ shall not be eligible for POST certification of any kind ~~in the future~~ for ten (10) years following the date of decertification. An agency head intending to hire an officer who has been decertified shall request a waiver from the POST Council. No decertified officer shall exercise any law enforcement authority until

recertified by the POST Council. Any officer who is the subject of a POST decertification investigation ~~is~~ shall not be eligible for POST certification of any kind while under investigation. (3-29-10)()

04. ~~Law Enforcement~~ **POST Council's Code of Conduct Ethics, Additional Cause for Decertification.** ~~As a law enforcement officer, 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 recognize the badge 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 police service. In furtherance of these duties, I hereby adopt and accept~~ **The Council may also decertify any officer who engages in any of the following code of conduct which shall be considered a violation of the Council's code of ethics and standards of professional conduct:** (7-1-99)()

a. ~~I shall conduct myself at all times in a manner that does not damage or have the likely result of damaging or bringing the public image, integrity, or reputation of my department or myself into discredit or disrepute~~ **Engage in criminal conduct whether charged or not.** (7-1-99)()

b. ~~I shall not possess or consume~~ **Consumption of** alcoholic beverages on duty ~~or while in uniform on duty or off duty~~; except as ~~expressly required~~ **necessary** for the lawful performance of my duties. ~~Nor shall I unlawfully possess, sell, consume, use or assist in the use of any illegal or unauthorized drugs or medications on duty or off duty.~~ (7-1-99)()

c. ~~I shall not engage in any~~ **Illegal or unlawful harassment or intimidation of another; nor shall I permit personal prejudices, political beliefs, animosities, or friendships to influence my decisions.** (7-1-99)()

d. ~~I shall not lie, give misleading information,~~ **Lying** or ~~falsifying official~~ **written or verbal communications in official reports or in my actions with another person or organization when it is reasonable to expect that such information may be relied upon because of my position or affiliation with my department.** (3-30-07)()

e. ~~I shall willfully observe and obey the lawful verbal and written rules, duties, policies, procedures, and practices of my department. I shall also subordinate my personal preferences and work priorities to the lawful verbal and written rules, duties, policies, procedures and practices of my department, as well as to the lawful orders and directives of supervisors and superior command personnel of my department. I shall willfully perform all lawful duties and tasks assigned by supervisory and/or superior-ranked personnel. Direct, tacit, or constructive refusal to do so is insubordination~~ **Engaging in inappropriate sexual conduct while on duty.** (7-1-99)()

f. ~~I shall obey the constitutional, criminal and civil laws of the city, county, state, and federal government. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers~~ **Engaging in 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.** (7-1-99)()

- g.** Unlawful or excessive use of force. ()
- h.** Acts of corruption or bribery. ()
- i.** Engaging in conduct, other than protected speech, that damages, discredits, or brings into disrepute the integrity of the officer, his agency, or the law enforcement profession. ()
- j.** Unauthorized use or unlawful conversion of the property, equipment, or funds of his agency. ()
- k.** Intentional and unauthorized disclosure of confidential information or information that may compromise an official investigation. ()
- l.** Failure to report being charged with a felony or misdemeanor within five (5) business days. ()
- m.** Refusal to respond or failure to respond truthfully to questions asked in relation to an investigation or legal proceeding. ()

~~05. Law Enforcement Code of Ethics.~~ (3-30-07)

~~**a.** As a law enforcement officer, 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.~~ (3-30-07)

~~**b.** 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 to 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.~~ (3-30-07)

~~**c.** 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 with 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.~~ (3-30-07)

~~**d.** I recognize the badge 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 police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.~~ (3-30-07)

~~e. 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 to my chosen profession...law enforcement. (3-30-07)~~

Codified Sections 092 through 098 have been moved and renumbered to proposed Sections 096 through 102, respectively.

092. DUE PROCESS PROCEDURES.

01. Overview. The POST Division Administrator shall oversee and conduct investigations into all trustworthy allegations or information received pertaining to officer conduct that could be a cause for decertification as set forth in these rules. Based upon the results of the investigation in each case, the Division Administrator shall make a determination whether decertification proceedings shall be commenced. The due process procedures set forth in these rules shall apply to all decertification proceedings once they are commenced. ()

02. Investigations. ()

a. The officer may be interviewed during the investigation. The officer shall receive an administrative warning requiring the officer to respond to questions, to answer such questions truthfully, and to acknowledge his understanding that no statements provided shall be used against him in criminal proceedings, as based on *Garrity v. New Jersey* 385 U.S. 493 (1967). ()

b. Refusal to respond or failure to respond truthfully to questions asked in relation to an investigation under this section shall be cause for decertification. ()

03. Due Process Procedures - Summary Decertification. If the POST Division Administrator determines that the allegations of conduct by the officer constitute cause for decertification and create a situation involving an immediate danger to the public health, safety, or welfare, he shall issue an order of decertification, including a brief, reasoned statement to justify both that the immediate danger exists and the decision to summarily decertify. ()

a. The order shall include findings of fact and conclusions of law and shall be effective when issued. ()

b. The officer and his agency head shall be provided written notice of the order and a copy of the record. ()

i. The notice of the order shall advise the officer of his right to respond to the order and present the POST Division Administrator, in writing or in person, with any reasons why the action should not have been taken. The order shall specify a deadline for such response. ()

ii. The notice shall inform the officer of his right to be represented by a person of the officer's own choosing during the opportunity to respond. ()

iii. The notice shall establish a date for an emergency hearing on the matter within seven (7) days of the date of the order, unless otherwise agreed upon by the officer and POST Division Administrator. ()

c. The decision of the POST Division Administrator shall become final if the officer fails to appear at the emergency hearing, or respond within the time allowed, or if a response has been waived in writing by the officer, whichever occurs first. ()

d. If the officer appears at the emergency hearing or responds in writing, the POST Division Administrator shall review and consider his response and shall, within seven (7) days of the emergency hearing or receiving written response, make a decision and give notice of the decision to the officer. ()

e. The decision of the POST Division Administrator is a final decision that is subject to review pursuant to Subsection 092.05. ()

f. The agency record need not constitute the exclusive basis for POST action in a summary proceeding or for judicial review thereof. ()

04. Due Process Procedures - Non-Summary Decertification. If the POST Division Administrator determines that the allegations of conduct by the officer do not create a situation involving an immediate danger to the public health, safety, or welfare, the officer shall be provided notice and an opportunity to respond before a decision is made to decertify. ()

a. The POST Division Administrator shall provide the officer with a notice of the intent to decertify, which shall state the basis or reason for the contemplated decertification and an explanation of the evidence supporting the intended action. ()

b. The officer shall be given the opportunity to respond to the notice and present the POST Division Administrator, in writing or in person, any reasons why the intended action should not be taken. The notice shall inform the officer of his right to be represented by a person of the officer's own choosing during the opportunity to respond. The deadline for the opportunity to respond shall not occur sooner than fourteen (14) days after the notice is given. After the officer has responded, or after the period to respond has expired or has been waived in writing by the officer, whichever occurs first, the POST Division Administrator shall, within twenty-eight (28) days, make a decision on the decertification of the officer and give notice of the decision and the reasons therefore to the officer. ()

05. Final Decision. The decision or action of the POST Division Administrator shall be final and conclusive unless the officer files with the POST Council a request for a hearing on the decision within fourteen (14) days after the date of the POST Division Administrator's decision. The request for hearing shall include a brief statement of the questions or issues to be addressed during the requested hearing. ()

06. Due Process Procedure - Hearing. Upon receipt of a request for hearing, the POST Council shall assign the matter to a hearing board or officer for hearing. If after the hearing the hearing board or officer determines that proper cause for decertification did not in fact exist under Subsection 091.03 or 091.04 of these rules, or that proper procedures were not followed in

reaching the decision, the hearing board or officer shall order the reinstatement of the officer's certification, or may remand the case to the POST Division Administrator for further proceedings. ()

a. Process and procedure for the hearing before the hearing board or officer shall be as summary and simple as reasonably may be. ()

i. The hearing board or officer appointed by the POST Council shall have the power to subpoena witnesses, administer oaths, and examine such of the records of the parties as relate to the questions in dispute. ()

ii. The officer shall have the right to be represented at the hearing by a person of the officer's own choosing. ()

iii. The officer shall have the right to discovery under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 520 through 532. ()

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

v. Refusal to respond or failure to respond truthfully to questions asked in relation to a hearing under Section 092 shall be cause for decertification. ()

vi. A verbatim record of the proceedings at hearing before the hearing board or officer shall be recorded at the POST Council's expense. The verbatim record shall be the official record of the proceedings. ()

vii. Any party to the action may, at its expense, request that a transcript of the proceedings be prepared or that additional recordings be made of the proceedings. Such a request shall be approved if the making of the additional recording does not cause distraction or disruption of the hearing. ()

viii. The hearing board or officer to whom the matter has been assigned shall make such inquiry and investigations as shall be deemed necessary. ()

ix. The hearings shall be held at the *principal* office of the Idaho Division of the Peace Officer Standards and Training in Ada County or in such place as the hearing board or officer may designate. ()

x. The district court, in and for the county of Ada, shall have the power to enforce by proper proceedings the attendance and testimony of witnesses and production and examination of books, papers, and records. ()

b. The decision of the hearing board or officer, consisting of such findings of fact, conclusions of law, and orders as are necessary, together with the record of the proceedings, shall

be filed with the POST Council. A copy of the hearing board or officer's decision shall be immediately sent to the parties by United States mail. The decision of the hearing board or officer shall be final and conclusive between the parties, unless a petition for review by the full POST Council is filed with the Council within twenty-eight (28) days. The petition for review shall include a brief statement of the reasons that a hearing is requested. Where the decision and order of the hearing board or officer directed the reinstatement of the officer's certification, the certification shall be reinstated by the POST Division Administrator upon the expiration of the time for filing a petition for review. ()

07. Due Process Procedure - Review by POST Council. If a petition for review is filed, the POST Council shall review the record of the proceedings before the hearing board or officer, briefs submitted in accordance with any briefing schedule it orders, and any transcripts submitted of the hearing. The Council may grant the parties the opportunity to present oral argument, but need not do so. The officer may be represented by a person of the officer's own choosing during the review process. The Council may affirm, reverse, or modify the decision of the hearing board or officer, or may remand the matter. A decision of the POST Council shall be final and conclusive between the parties. The POST Council's decision may be appealed to district court by filing a notice of appeal within twenty-eight (28) days of the filing of the decision. ()

08. Notice. All notices to be given under Section 092 of these rules shall be made either by personal service, facsimile or by U.S. mail, with postage prepaid, addressed to a party's last known address, as shown in the records and files of the POST Council. Service by mail shall be made by certified mail, return receipt requested. An affidavit of personal service shall be filed by the person making the same. ()

093. -- 095. (RESERVED)

0926. LAPSE OF PEACE OFFICER CERTIFICATION.

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

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

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

- b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c.** Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- d.** Pass the following tests administered by a POST Training Specialist: (4-2-03)

 - i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097101~~02.b.; ~~(4-2-03)~~()
 - ii. The POST Firearms Qualification Course; (4-2-03)
 - iii. The POST Physical *Fitness Readiness* Test ~~Battery~~; and ~~(4-2-03)~~()
- e.** Satisfy the probationary period requirement of Section 064. (4-2-08)

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

- a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b.** Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- c.** Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)
- d.** Pass the following tests administered by a POST Training Specialist: (4-2-03)

 - i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097101~~02.b.; ~~(4-2-03)~~()
 - ii. The POST Firearms Qualification Course; (4-2-03)
 - iii. The POST Physical *Fitness Readiness* Test ~~Battery~~; and ~~(4-2-03)~~()
- e.** Satisfy the probationary period requirement of Section 064. (4-2-08)

03. Over Eight Years. A peace officer who has been out of full-time law enforcement status for over eight (8) years ~~must~~ **shall** attend the POST Basic Patrol Academy to be recertified.

No waiver of this requirement ~~will~~ shall be granted by the Council. (4-6-05)()

04. Exception. The provisions of Subsections 0926.01 through 0926.03 ~~will~~ shall not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. (4-6-05)()

0937. PEACE OFFICER CERTIFICATION.

Any peace officer as defined in Section 19-5101(d), Idaho Code, except any elected official, any deputy sheriff serving civil process, the director of the Idaho State Police, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, shall be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in Subsection 030.11. (4-2-08)

0948. GENERAL PROVISIONS.

01. Purpose. Basic, Part-Time Basic, Intermediate, and Advanced Certificates are established for the purpose of fostering professionalism, education, and experience necessary to perform adequately the duties of law enforcement. (4-2-03)

02. Eligibility. To be eligible for the award of a Basic, Intermediate, or Advanced Certificate, each applicant shall be a professional member of the POST Council staff, or a full-time peace officer appointed by a duly constituted Idaho law enforcement agency. To be eligible for the award of a part-time Basic certificate each applicant shall be a professional member of the POST Council staff, or a part-time peace officer appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

03. Applications. All applications for award of the Basic, Part-Time Basic, Intermediate, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

04. Submission. The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

05. Minimum Standards. Each applicant shall meet the minimum standards for employment and basic training as provided in Sections 050 through 064 and 070 through 076. (4-2-08)

06. Other. 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. (4-2-08)

0959. LAW ENFORCEMENT EXPERIENCE.

Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications

specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 064, ~~will~~ **shall** be subject to the determination of the Council. (4-2-08)()

~~006~~100. COLLEGE CREDITS.

01. College Hour. One (1) college or university semester hour or unit shall equal one (1) college credit. (7-1-93)

02. College Quarter Hour. One (1) college or university quarter hour or unit shall equal two-thirds (2/3) of one (1) college credit. (7-1-93)

03. Conversion to POST Training Hours. College credits may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. (4-2-03)

04. Credits for POST-Approved Training. 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. (4-2-08)

05. Documentation. Proof of college education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of an official transcript. (4-7-11)

~~007~~101. THE BASIC AND PART-TIME BASIC CERTIFICATE.

In addition to the requirements set forth in Section 0948 of these rules, the requirements in Section ~~007~~101 are necessary for award of the basic certificate and the part-time basic certificate. (4-2-03)()

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

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

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

b. Be a graduate of a **college** law enforcement ~~vo-tech~~ program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Patrol Academy, and shall have passed the POST patrol certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he shall successfully complete the POST Basic Patrol Academy to be certified. (4-2-03)()

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

04. ~~Vo-Tech~~ College Law Enforcement Program Graduates. Graduates from Idaho POST-certified college law enforcement ~~vo-tech~~ programs shall also comply with the requirements of Subsection 073.02. (~~4-2-03~~)()

05. Patrol and Detention ~~Vo-Tech~~ College Law Enforcement Program or POST Academy Graduates. An applicant who is appointed to a peace officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified college law enforcement ~~vo-tech~~ program or the Idaho POST Academy, shall be eligible for peace officer certification in Idaho without attending the POST Basic Patrol Academy, provided the officer: (~~4-7-11~~)()

a. Was appointed to a county detention officer position in Idaho within three (3) years from graduating from the ~~vo-tech~~ college law enforcement program or POST Academy; (~~4-7-11~~)()

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

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

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

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

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097~~101.02.b.; (4-2-08)

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

iii. The POST Physical Fitness Readiness Test ~~Battery~~; and (~~4-2-08~~)()

f. Satisfies the probationary period requirement of Section 064. (4-2-08)

~~098~~102.CHALLENGING THE BASIC PATROL ACADEMY.

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

01. Submission of Challenge Packet. Submits a POST Certification Patrol Challenge Packet to POST Council, which ~~must~~ shall include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other

documents that substantiate the officer's education and experience; ~~(4-6-05)~~()

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

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

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

a. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097~~101.02.b.; ~~(4-2-03)~~()

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

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

05. Completes Probationary Period. Completes his probationary period as required by Subsection ~~097~~101.01. ~~(4-2-03)~~()

~~099~~103. -- 105.(RESERVED)

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1103

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 19-5107, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 261 through 263.](#)

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Flink at (208) 884-7251.

DATED this 22nd day of November, 2011.

William L. Flink
Division Administrator
Idaho State Police
Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 existing rule in reference to felony conviction allows the POST Council to grant a waiver if the crime has, by statute, been reduced to a misdemeanor or decriminalized. This exceeds statutory authority.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1103

055. CRIMINAL RECORD.

01. Fingerprints. The applicant shall be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results shall be retained by the POST Council. (4-2-03)

02. Conviction. The term “conviction” shall include: (4-2-03)

- a. Any conviction in a federal, tribal, state, county, or municipal court; (3-15-02)
- b. A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant’s appearance in court as final disposition; (3-15-02)
- c. The payment of a fine; (3-15-02)
- d. A plea of guilty, nolo contendere; or (3-15-02)
- e. A finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed or reduced, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (3-15-02)()

03. Misdemeanor Conviction. A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-2-03)

- a. An applicant shall be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant’s agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator shall have the discretion to refer the application to the POST Council. In all other cases, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. (4-2-03)()

b. An applicant shall be rejected who has been convicted of a DUI during the two (2) years immediately preceding application. No waivers shall be granted by the POST Council for DUI convictions within the last two (2) years. If the conviction occurred more than two (2) years prior to application, the applicant may be accepted upon approval of the POST Division Administrator provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. (3-15-02)

c. An applicant with any other misdemeanor conviction may be accepted upon approval of the POST Division Administrator provided the conviction occurred more than two (2) years prior to application and the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. If the conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable ~~as a peace, detention, juvenile detention, or juvenile probation officer~~ in the state of Idaho.

(4-2-03)()

04. Felony Conviction. An applicant shall be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction shall continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers shall be granted by the POST Council, ~~except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho.~~

(4-2-03)()

IDAPA 11 - IDAHO STATE POLICE

11.11.02 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE DETENTION OFFICERS

DOCKET NO. 11-1102-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 19-5107, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 264 and 265.](#)

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:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Flink at (208) 884-7251.

DATED this 22nd day of November, 2011.

William L. Flink
Division Administrator
Idaho State Police
Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Allows a POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities to qualify for Juvenile Detention certification without having to meet the minimum hearing and vision standards again.

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

There are no fees or charges imposed through this rulemaking.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

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

No documents have been incorporated by reference into this rule through this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1102-1101

030. JUVENILE DETENTION OFFICER CERTIFICATION.

01. Decertification. The council may decertify any juvenile detention officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (3-30-01)

02. Certification. The following dates govern voluntary and mandatory certification. (3-30-01)

a. From October 1, 2000 through September 30, 2002, any county Juvenile Detention Officer may receive voluntary certification from POST upon successful completion of the requirements outlined in Sections 031 or 032. (3-30-01)

b. If employed after October 1, 2002, any juvenile detention officer shall be certified by obtaining mandatory certification from the Peace Officer Standards and Training Council within one (1) year of the date the officer was first employed as a juvenile detention officer. (3-30-01)

c. Juvenile detention officers employed prior to October 1, 2002, shall comply with the training and certification provisions of Section 030 by September 30, 2004, however, the requirement for successful completion of the POST Basic Juvenile Detention Academy ~~will~~ **shall** be waived if the officer scores a minimum of seventy-five percent (75%) on a challenge examination administered by POST and any other requirements for certification. The officer ~~will~~ **shall** be allowed two (2) attempts to pass the examination. The attempts ~~must~~ **shall** be no less than thirty (30) days apart and no more than six (6) months apart. If the officer fails both attempts ~~or fails to retake the examination within six (6) months~~, the officer ~~must~~ **shall** successfully complete the POST Basic Juvenile Detention Academy to be certified. (~~3-30-01~~)()

03. Applications. All applications for award of the Juvenile Detention Officer Certificate shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. (3-30-01)

04. Submission. The Application for Certification form ~~must~~ **shall** be submitted by the officer/applicant to the applicant's department head, who shall forward the application to the Council. Certificates ~~will~~ **shall** be issued to the department head for award to the applicant.

~~(3-30-01)~~()

05. Minimum Standards.

()

a. Each applicant ~~must~~ shall meet the minimum standards for employment and training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of ~~height, weight,~~ fitness, and physical disability which ~~will~~ shall be left to the discretion of the employing agency. ~~(3-30-01)~~()

b. A POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities, shall not be required to meet the hearing and vision standards again in order to qualify for juvenile detention certification. ()

IDAPA 11 - IDAHO STATE POLICE

11.11.06 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR MISDEMEANOR PROBATION OFFICERS

DOCKET NO. 11-1106-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 19-5107, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 266 and 267.](#)

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:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Flink at (208) 884-7251.

DATED this 22nd day of November, 2011.

William L. Flink
Division Administrator
Idaho State Police
Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

There are five counties that contract for misdemeanor probation officer services. This rule change allows POST to certify Misdemeanor Probation Officers employed by a private contractor.

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

No fees or charges are imposed through this rulemaking.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

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

No documents have been incorporated by reference into this rule through this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1106-1101

010. DEFINITIONS.

01. Basic Misdemeanor Probation Academy. A basic course of instruction for Misdemeanor Probation Officers as recognized by POST Council. (4-7-11)

02. Misdemeanor Probation Department. Any public or private agency administered by or contracted with the county, made up of one (1) or more staff to provide misdemeanor 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. (~~4-7-11~~)()

03. Misdemeanor Probation Officer. Any employee of a misdemeanor probation department who is responsible for preparing reports to the court, making recommendations regarding conditions of probation, and the supervision of misdemeanor offenders' compliance with court orders. (4-7-11)

04. Misdemeanor Probation Training Council. An advisory group to the POST Council that is comprised of a Magistrate, two (2) county commissioners, three (3) misdemeanor probation department administrators, a representative of the Idaho Association of Counties, a representative of the Idaho Department of Correction, and a representative of the Administrative Office of the Courts. The purpose of the Misdemeanor Probation Training Council is to advise POST Council in the planning, development, and operation of the Basic Misdemeanor Probation Academy. (4-7-11)

05. Part-Time Misdemeanor Probation Officer. Any employee of a misdemeanor probation department who is responsible for preparing reports to the court, making recommendations regarding conditions of probation, or the supervision of misdemeanor offenders' compliance with court orders, and is employed less than full time or does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-7-11)

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD
57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD

DOCKET NO. 57-0101-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2011, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 18-8314(3), Idaho Code.

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

This rulemaking was initiated to address statutory changes that became effective July 1, 2011. The Sexual Offender Classification Board was eliminated and replaced by a Sexual Offender Management Board, which assumed responsibilities. Additionally, procedures for the designation of violent sexual predator status were eliminated.

The pending rule is being adopted as proposed. The complete text of the proposed and temporary rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Vol. 11-8 pages 262 through 270](#). The Sexual Offender Management Board received no comments to the proposed and temporary rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will not be any negative fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kathy Baird at (208) 658-2149 or at kbaird@idoc.idaho.gov.

DATED this 5th day of October, 2011.

Kathy Baird, Management Assistant
Sexual Offender Management Board
1299 N Orchard St Suite 110
Boise, ID 83706
p: (208) 658-2149; f: (208) 327-7102

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

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2011**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 18-8314(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2011.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Senate Bill No. 1154aa eliminated the Sexual Offender Classification Board effective July 1, 2011, and in its place created the Sexual Offender Management Board which will assume some of the responsibilities of the previous board. The bill also effectively removed statutory references to the Violent Sexual Predator designation procedures. This rulemaking effects a board name change and eliminates the procedures for a VSP designation process that is no longer in place.

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

Compliance with deadlines in amendments to governing law or federal programs.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is a result of statutory changes that became effective July 1, 2011.

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 temporary and proposed rule, contact Kathy Baird at (208) 658-2149.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 7th day of July, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 57-0101-1101

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 18-8314(~~73~~), Idaho Code, to implement the provisions of Sections 18-8312 through 18-83~~27~~16, Idaho Code.

(~~3-24-05~~)()

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 57.01.01, “Rules of the Sexual Offender ~~Classification~~ Management Board.”

(~~3-24-05~~)()

02. Scope. These rules provide procedures for the Sexual Offender ~~Classification~~ Management Board to:

(~~3-24-05~~)()

~~**a.** Determine whether a sexual offender should be designated as a Violent Sexual Predator;~~

(~~3-24-05~~)

ba. Set certified evaluator qualifications and standards; (3-24-05)

cb. Approve, issue, renew, deny, suspend or revoke psychosexual evaluator certification; and (3-24-05)

dc. Establish fees for initial psychosexual evaluator certification and annual psychosexual evaluator certification renewal. (3-24-05)

03. Relationship to the Department of Correction. The board is created in the Idaho Department of Correction, and relies upon the department for fiscal and administrative support.

The governor appoints the board members. The powers and duties of the board are separate from the Department of Correction, and are set forth in Section 18-8314, Idaho Code. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The Sexual Offender ~~Classification~~ **Management** Board administrative office is located at the Department of Correction headquarters, 1299 North Orchard, Suite 110, Boise, Idaho 83706. Business hours are typically 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is Office of the Sexual Offender ~~Classification~~ **Management** Board, 1299 North Orchard, Suite 110, Boise, Idaho 83706. The telephone number is (208) 658-2149. The facsimile number is (208) 327-7102. The board's website address is ~~Sex Offender Registry at~~ <http://www.socb.idaho.gov>. (3-24-05)()

006. PUBLIC RECORDS ACT COMPLIANCE.

01. Administrative Rules. The rules contained herein are promulgated pursuant to Title 67, Chapter 52, Idaho Code, and are public records. (3-24-05)

02. Public Records Requests. Requests for public information are processed in compliance with ~~Sections 18-8321, 18-8323, and 20-223, Idaho Code;~~ IDAPA 06.01.01, "Rules of the Board of Correction"; and the Idaho Public Records Act. (3-24-05)()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Sexual Offender ~~Classification~~ **Management** Board described in Section 18-8312, Idaho Code. (3-24-05)()

02. Central Roster of Certified Evaluators. A roster of evaluators who meet the qualifications, and are certified by the board to perform psychosexual evaluations. (3-24-05)

03. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 54, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of adult sexual offenders, shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in Sections 18-8314, Idaho Code. (3-24-05)

04. Client. A person receiving mental health services from a certified evaluator. A client may be a person who is not a sexual offender. (3-24-05)

05. Evaluation. For the purpose of certification eligibility, defined as the direct provision of comprehensive evaluation and assessment services to an adult who has been

convicted of a sexual offense. The evaluation must be related to the client's sexual offending behavior. (3-24-05)

~~**06. Mental Abnormality.** A congenital or acquired condition affecting the emotional or volitional capacity of a person in a manner that predisposes him to commit criminal sexual acts to a degree that makes him a menace to the health, safety, or both, of other persons. (3-24-05)~~

~~**07. Personality Disorder.** A congenital or acquired physical or mental condition resulting in a general lack of power or desire to control sexual impulses. (3-24-05)~~

~~**08. Predatory.** Actions directed at an individual who was selected by the offender for the primary purpose of engaging in illegal sexual behavior. (3-24-05)~~

096. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing an offender's sexual development, sexual deviancy, sexual history and risk of re-offense. (3-24-05)

107. Quality Assurance. Technical review of a psychosexual evaluation report to assure minimum standards are met. The board conducts the review. (3-24-05)

108. Sexual Offender. A person convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts. (3-24-05)

~~**12. Sexually Violent Offense.** (3-24-05)~~

~~**a.** A criminal offense as listed in Section 18-8314, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts; or (3-24-05)~~

~~**b.** Engaging in physical contact with another person with intent to commit sexual abuse or aggravated sexual abuse as described in Sections 2241 and 2242 of Title 18, United States Code, and Section 18-8303(1), Idaho Code. (3-24-05)~~

09. Sexual Offender Classification Board. A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. ()

130. Treatment. For the purpose of certification eligibility, defined as the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense. Treatment must be directly relevant to the client's sexually offending behavior. (3-24-05)

~~**14. Victim.** A person, including the immediate family of a minor, named in the~~

~~complaint, information or indictment, who suffers physical or emotional injury as the result of the offender's criminal conduct.~~ (3-24-05)

151. Violent Sexual Predator. A person ~~convicted of an offense listed in Section 18-8314, Idaho Code, and who is determined by the board to pose a high risk of committing an offense or engaging in predatory sexual conduct~~ **who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise.** (3-24-05)()

011. ABBREVIATIONS.

01. ATSA. The Association for the Treatment of Sexual Abusers. (3-24-05)

02. DSM-IV. The "Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition," published by the American Psychiatric Association. (3-24-05)

03. IDOC. The Idaho Department of Correction. (3-24-05)

04. SOCB. The Sexual Offender Classification Board. ()

045. VSP. Violent Sexual Predator. (3-24-05)

012. -- 019. (RESERVED)

020. RECORDKEEPING.

01. Evaluators. Records on all applicants and certifications issued, renewed, denied, suspended, and revoked shall be maintained for a period not less than five (5) years. (3-24-05)

02. Violent Sexual Predators. The file on a sexual offender ~~that~~ **who was designated as a violent sexual predator by the SOCB** is maintained by the board **and** is considered the official file for all purposes. (3-24-05)()

021. BOARD MEETINGS.

01. Meetings. The board meets at least quarterly and may meet more frequently. All business of the board is conducted in compliance with the open meeting law, pursuant to Title 67, Chapter 23, Idaho Code, and Section 18-8315, Idaho Code. (3-24-05)

02. Agenda. An agenda for each regularly scheduled meeting is posted in ~~the IDOC central office at least twenty-four (24) hours prior to the regularly scheduled meeting~~ **compliance with Section 67-2343, Idaho Code.** (3-24-05)()

022. -- 030. (RESERVED)

~~031. OFFENDERS SUBJECT TO EVALUATION.~~

~~01. Pre-Sentence.~~ ~~A sexual offender who is convicted on or after July 1, 1993 of any~~

~~offense listed in Section 18-8304, Idaho Code, is subject to psychosexual evaluation prior to sentencing, if ordered by the court. (3-24-05)~~

~~**02. Pre-Release.** Prior to release from incarceration, a sexual offender whose conviction is listed in Section 18-8314(1), Idaho Code, and who has been referred by the IDOC or the Commission for Pardons and Parole, shall be considered by the board for review for possible VSP designation. (3-24-05)~~

~~**03. Under IDOC Supervision.** (3-24-05)~~

~~**a.** Upon recommendation by the supervising officer, the Commission for Pardons and Parole may request the board to consider a sexual offender for review for possible VSP designation. The offender must be under parole supervision for a crime as listed in Section 18-8314(1), Idaho Code. (3-24-05)~~

~~**b.** Upon recommendation by the supervising officer, the court having jurisdiction over a sexual offender may request the board to consider the offender for review for possible VSP designation. The offender must be under court ordered probation for a crime as listed in Section 18-8314(1), Idaho Code. (3-24-05)~~

~~**04. Under Federal Supervision.** The federal court having jurisdiction over a sexual offender who is residing in Idaho may request the board to consider the offender for review for possible VSP designation. The offender must be under federal supervision for conviction of a crime as listed in Section 18-8214(1), Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts. (3-24-05)~~

~~**032.—039. (RESERVED)**~~

040. CERTIFIED EVALUATOR QUALIFICATIONS.

Each evaluator who performs an adult psychosexual evaluation pursuant to Sections 18-8316 ~~and 18-8317~~, Idaho Code, must meet the qualifications as set forth in this section and be certified by the board. (3-24-05)()

01. Credential. The credential of a certified evaluator must be in good standing with no currently pending disciplinary action by the issuing authority. The certified evaluator shall be a recognized professional, who specializes in evaluation, treatment, or both, of adult sexual offenders. (3-24-05)

02. Educational and Professional Qualifications. A certified evaluator must be: (3-24-05)

a. A licensed psychiatrist pursuant to Title 54, Chapter 18, Idaho Code; or (3-24-05)

b. A licensed masters or doctoral level mental health professional pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. (3-24-05)

03. Licensure. Idaho licensure is required pursuant to Section 18-8303, Idaho Code. A

certified evaluator must maintain licensure by the appropriate Idaho licensing board for the duration of his evaluator certification. (3-24-05)

04. Experience Qualifications. For initial certification, the certified evaluator applicant shall have at least two thousand (2000) hours of adult sexual offender treatment and evaluation experience within the preceding ten (10) years. The two thousand (2000) hours must include: (3-24-05)

a. At least two hundred fifty (250) hours of adult sexual offender evaluation experience; and (3-24-05)

b. At least two hundred fifty (250) hours of adult sexual offender treatment experience. (3-24-05)

05. Understanding. A certified evaluator shall have a thorough understanding of counter-transference issues and a broad knowledge of sexuality in the general population. A certified evaluator shall also have a good understanding of basic theories and typologies of sexual offenders and sexual assault victims. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

050. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

01. General Considerations. A certified evaluator shall: (3-24-05)

a. Be fully aware of and adhere to the standards of his area of credentialing; (3-24-05)

b. Subscribe to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Standards and Guidelines, as referenced in Section 004 of these rules; (3-24-05)

c. Be knowledgeable of statutes and scientific data relevant to specialized adult sexual offender evaluation; (3-24-05)

d. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Sections 18-8316 ~~and 18-8317~~, Idaho Code; ~~(3-24-05)~~()

e. Be committed to community protection and safety; (3-24-05)

f. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgement and risk exploitation; and (3-24-05)

g. Have no sexual relationships with any client. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

~~132.—149. (RESERVED)~~

~~**150. EVALUATION FOR VIOLENT SEXUAL PREDATOR REVIEW.**~~

~~The sexual offender referred to the board for VSP review shall be evaluated as set forth in Section 130 of these rules. (3-24-05)~~

~~**01. Evaluation Process.** (3-24-05)~~

~~**a.** The evaluator shall inform the sexual offender that the psychosexual evaluation is part of the board's review to determine if the offender should be designated as a VSP. (3-24-05)~~

~~**b.** The sexual offender shall have an opportunity for input at the time of the psychosexual evaluation. (3-24-05)~~

~~**c.** The board may request a polygraph examination. Refusal or declination to participate in a polygraph examination will not be considered as failure to cooperate as set forth in Section 151 of these rules. (4-11-06)~~

~~**151. FAILURE TO COOPERATE.**~~

~~Public safety takes precedence over the decision of a sexual offender not to cooperate with the evaluation for VSP designation review. The sexual offender shall be informed that the board may designate an offender as a VSP if he fails to cooperate with the psychosexual evaluation process or refuses to release records for the board's VSP designation review. (3-24-05)~~

~~**152. INTENTION TO RE-OFFEND.**~~

~~If credible evidence supports a finding that a sexual offender has indicated an intention to re-offend, the offender shall be referred to the board for VSP designation review. Pursuant to Section 18-8314(5), Idaho Code, the sexual offender shall be designated as a VSP. (3-24-05)~~

~~**153. SCOPE OF EVALUATION.**~~

~~The board and the evaluator conducting the psychosexual evaluation may have access to and may review all obtainable records on the sexual offender to conduct the VSP designation assessment. If required, the offender shall sign a release of information to comply with state or federal regulations. (3-24-05)~~

~~154.—169. (RESERVED)~~

~~**170. BOARD REVIEW.**~~

~~The board shall assess how biological, psychological, and situational factors, may cause or contribute to the offender's sexual behavior. (3-24-05)~~

~~**01. Evidence.** (3-24-05)~~

~~**a.** The board may collect documentary evidence in the form of copies, facsimiles, hearsay, or excerpts. (3-24-05)~~

~~**b.** The board may take notice of any facts that could be judicially noticed in the courts of this state, and generally recognized technical or scientific facts within the board's specialized knowledge. (3-24-05)~~

~~**c.** The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (3-24-05)~~

~~**d.** The board may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds. (3-24-05)~~

~~**e.** The board is not obligated to accept or review oral statements or documents, other than those of the victim. (3-24-05)~~

~~**f.** All other evidence may be admitted. (3-24-05)~~

~~**02. Review.** The board's review for VSP designation is conducted in executive session pursuant to Section 18-8315, Idaho Code. The board may authorize individuals to attend a designated period of the executive session. (3-24-05)~~

~~**03. Teleconference.** A review conducted by teleconference is permitted. (3-24-05)~~

~~**171. DEMONSTRATION OF HIGH RISK.**~~

~~The board determines if a prima facie case exists to justify the sexual offender's designation as a VSP. A sexual offender shall be designated as a VSP if his risk of re-offending sexually or threat of violence is of sufficient concern to warrant the designation for the safety of the community. (3-24-05)~~

~~**172. BOARD VOTE.**~~

~~The board reviews documentation and makes a determination whether a sexual offender presents a high risk of re-offense, and whether the sexual offender should be designated as a VSP. (3-24-05)~~

~~**01. Member Exclusion.** A board member who has had prior association with the sexual offender being reviewed is excluded from the discussion and voting process on that offender. (3-24-05)~~

~~**02. Vote.** A majority vote to designate a sexual offender is required. (3-24-05)~~

~~**a.** Votes are taken and recorded in executive session pursuant to Section 18-8315, Idaho Code. (3-24-05)~~

~~**b.** Votes of individual members are not public record. (3-24-05)~~

~~**03. Decision.** (3-24-05)~~

~~**a.** The board may conclude from the evidence that the sexual offender has or probably has a mental abnormality or personality disorder, causing or contributing to the sexual offender's risk of re-offense. (3-24-05)~~

~~**b.** The board may designate a sexual offender as a VSP with or without a finding of mental abnormality or personality disorder. (3-24-05)~~

~~**c.** The decision of the board is recorded in the minutes of the regular meeting. (3-24-05)~~

~~**d.** The results of any designation action may be requested by submitting a public record request to the board. (3-24-05)~~

173. FINDINGS.

~~The board makes written findings that include the risk assessment; the reasons upon which the risk assessment was based; the determination whether the sexual offender should be designated as a VSP; and the reasons upon which the determination was based. (3-24-05)~~

174. NOTICE OF DESIGNATION AS A VIOLENT SEXUAL PREDATOR.

~~Pursuant to Sections 18-8319(2) and 18-8320, Idaho Code, the sexual offender, the sheriff of the county where the sexual offender resides or intends to reside upon release, the central registry, and the IDOC are notified of the offender's designation as a VSP. Notice is in the form of the board's written findings. (3-24-05)~~

~~**175.—189. (RESERVED)**~~

190. JUDICIAL REVIEW.

~~A sexual offender designated as a VSP has the right to judicial review of the designation, pursuant to Section 18-8321, Idaho Code. A request for judicial review must be filed with the courts no more than fourteen (14) calendar days after receiving the "Notice of Designation as a VSP" from the board. (3-24-05)~~

~~**191.—199. (RESERVED)**~~

200. VICTIMS.

~~The board respects and complies with the rights of victims as identified in Section 19-5306, Idaho Code, and Article I, Section 22, Idaho Constitution. (3-24-05)~~

201. LOCATING VICTIMS.

~~**01. Attempt to Locate.** The board shall make a good faith effort to locate the victim of the sexual offender's crime of conviction. The purpose for this effort is to inform the victim of the sexual offender's referral for VSP designation review. (3-24-05)~~

~~**02. Methods.** In effort to locate the victim, the board may use information contained in IDOC or Commission for Pardons and Parole records, telephone directories, or contact with the county where the case was tried. (3-24-05)~~

~~03. **Decision.** If the victim has been located, the board shall notify the victim of the VSP designation action. (3-24-05)~~

~~04. **No Contact.** The board respects the right of the victim to not be contacted. (3-24-05)~~

202. VICTIM PARTICIPATION.

~~The victim, person representing the victim, or both, is afforded an opportunity to testify or submit written documents for consideration by the board. (3-24-05)~~

~~01. **Meeting.** The victim, person representing the victim, or both, is permitted to attend the portion of the executive session review that pertains to the associated sexual offender. The chairman has discretion to limit the allotted time for testimony. The victim, person representing the victim, or both, is excluded during any board discussion or vote. (3-24-05)~~

~~a. The victim, person representing the victim, or both, is permitted to review documents not restricted by law, that are being considered as evidence by the board. (3-24-05)~~

~~b. Before taking testimony from the victim, the board shall use reasonable means to verify the identity of the victim, person representing the victim, or both, or to verify the authenticity of written statements. (3-24-05)~~

~~c. The board may exclude evidence if the board determines the evidence is irrelevant, unduly repetitious, unreliable, or excludable on constitutional or statutory grounds. (3-24-05)~~

~~02. **Victim Confidentiality Protected.** Communications between the board and victim, person representing the victim, or both, are confidential. Information identifying the victim or the location of the victim is exempt from disclosure, pursuant to Section 18-8321(3)(a) and (b), Idaho Code. (3-24-05)~~

~~203~~**132.** -- 999.(RESERVED)