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Director

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Judiciary, Rules & Administration Committee

**FROM:** Principal Legislative Research Analyst - Brooke Brouman

**DATE:** September 19, 2013

**SUBJECT:** Idaho State Police - Idaho Peace Officer Standards & Training Council

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council (Docket No. 11-1101-1301) - **Proposed Rule**

The Idaho Peace Officer Standards & Training Council submits notice of rulemaking, which includes the following proposed rule changes relating to the minimum standards for employment for every peace, county detention, juvenile detention and juvenile probation officer:

- (1) Character Standards: defines "moral turpitude" and clarifies that an applicant who has committed an act involving moral turpitude, even though the applicant has never been charged by a law enforcement agency for such act, may be rejected or accepted under stated circumstances;
- (2) Drug Use: provides that an applicant shall be rejected if he or she has (a) used marijuana or other controlled substances within a stated time frame or under stated circumstances; (b) has misused prescription drugs; or (c) has violated any provision of the Idaho Uniform Controlled Substances Act or a comparable statute of another state, unless waived by the POST Division Administrator or unless the applicant falls within the juvenile drug offense exception; and
- (3) Criminal Record: revises (a) grounds for rejection of an applicant who has been convicted of misdemeanor DUI offenses; (b) revises grounds for rejection or acceptance of an applicant who has been convicted of other misdemeanor offenses within stated time frames; (c) clarifies that any misdemeanor conviction prosecuted under Title 18, Chapter 15, Idaho Code shall not be a basis for rejection of an applicant; and \*(d) provides an exception to the rule that an applicant shall be rejected who has been convicted of a felony crime, the punishment for which could have been imprisonment in a federal or state penal institution.

\*In regards to the felony conviction exception described in (3)(d) above, Section 19-5109(9), Idaho Code, provides that "...the council shall reject an applicant for certification who has been convicted of a felony, the punishment for which could have been imprisonment in a federal or state penal institution." There is no exception to this mandate provided in Idaho Code. Therefore, there may be a question as to whether the Council can establish an exception to the statutory mandate by rule. (See Section 056.04. on page 98 of its proposed rule.)

The proposed rule also makes changes to rules relating to administration as follows:

- (1) Renames "vocational law enforcement program" to read "college law enforcement program;" and
- (2) Revises the circumstances under which the advisory board/committee may request a waiver for a student.

The Council states that negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

There is no negative fiscal impact to the state general funds as a result of this rulemaking.

Aside from the comments above regarding Section 056.04., the Council's proposed rule appears to be authorized pursuant to Section 19-5107, Idaho Code.

cc: Idaho State Police - Peace Officer Standards & Training  
William L. Flink - Division Administrator