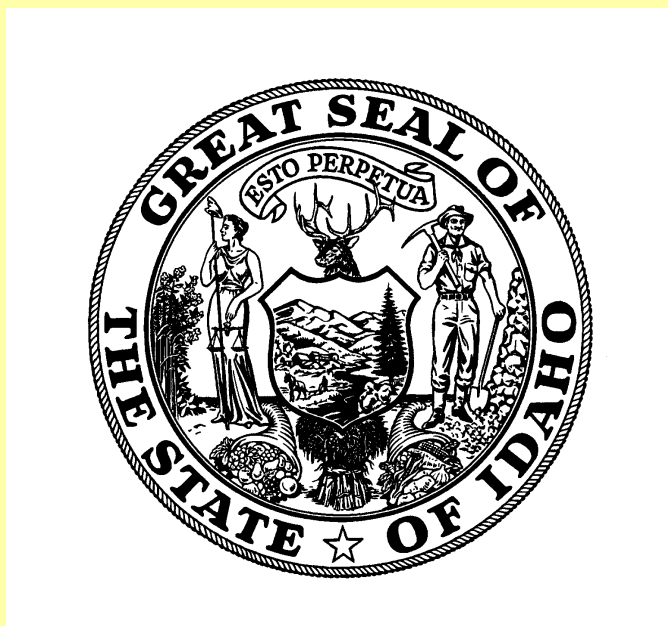


PENDING RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Judiciary & Rules Committee
63rd Idaho Legislature
First Regular Session



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2015

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

2015 Legislative Session

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.01 - Rules for Contract Providers
Docket No. 05-0101-1401 (Chapter Repeal)3

05.01.05 - Rules for Reintegration Providers
Docket No. 05-0105-1401 (Chapter Repeal)5

05.02.01 - Rules for Residential Treatment Providers
Docket No. 05-0201-1401 (New Chapter)7

05.02.02 - Rules for Staff Secure Providers
Docket No. 05-0202-1401 (New Chapter)37

05.02.03 - Rules for Reintegration Providers
Docket No. 05-0203-1401 (New Chapter)61

05.02.04 - Rules for Supported Living Providers
Docket No. 05-0204-1401 (New Chapter)79

IDAPA 11 - IDAHO STATE POLICE

11.03.01 - Rules Governing Alcohol Testing
Docket No. 11-0301-140196

11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council
Docket No. 11-1101-1401106
Docket No. 11-1101-1402110
Docket No. 11-1101-1403113

**11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council
for Correction Officers and Adult Probation and Parole Officers**
Docket No. 11-1104-1401121

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE

50.01.01 - Rules of the Commission of Pardons and Parole
Docket No. 50-0101-1401125

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD

57.01.01 - Rules of the Sexual Offender Management Board
Docket No. 57-0101-1401159

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.01 - RULES FOR CONTRACT PROVIDERS

DOCKET NO. 05-0101-1401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, page 80](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x.410.

DATED this 21st Day of November, 2014.

Sharon Harrigfeld
Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83702-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE
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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(3) and 20-504(12), 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 September 17, 2014.

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:

This rule is being repealed in its entirety and replaced by new chapter IDAPA 05.02.01, "Rules for Residential Treatment Providers," and IDAPA 05.02.02 "Rules for Staff Secure providers," which are being published in this Bulletin.

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: No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 27](#).

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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 x. 410.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

LSO RULES ANALYSIS MEMO

IDAPA 05.01.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.05 - RULES FOR REINTEGRATION PROVIDERS

DOCKET NO. 05-0105-1401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, page 81](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x. 410.

DATED this 21st Day of November, 2014.

Sharon Harrigfeld
Director
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954 W. Jefferson
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Boise, ID 83702-0285
Phone: (208) 334-5100
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(3) and 20-504(12), 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 September 17, 2014.

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:

This rule is being repealed in its entirety and being replaced with new chapter IDAPA 05.02.03, "Rules for Reintegration Providers," IDAPA 05.02.01, "Rules for Residential Treatment Providers" and 05.02.04, "Rules for Supported Living Providers," which are being published in the Bulletin.

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: No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 28](#).

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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 x. 410.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014

LSO RULES ANALYSIS MEMO

IDAPA 05.01.05 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.01 - RULES FOR RESIDENTIAL TREATMENT PROVIDERS

DOCKET NO. 05-0201-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 82 through 110](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x. 410.

DATED this 21st Day of November, 2014.

Sharon Harrigfeld
Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83702-0285
Phone: (208) 334-5100
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(3) and 20-504(12), 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 September 17, 2014.

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:

05.02.01, "Rules for Residential Treatment Providers," will contain rules that are applicable to all residential treatment providers who contract with the IDJC. This will eliminate current duplication of these rules in multiple chapters. Changes include: additional requirements relating to the Department of Justice PREA Standards and providing clarification in areas of past misinterpretation.

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: No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 29](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 x. 410.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0201-1401

**IDAPA 05
TITLE 02
CHAPTER 01**

05.02.01 - RULES FOR RESIDENTIAL TREATMENT PROVIDERS

000. LEGAL AUTHORITY.

01. Section 20-504(10), Idaho Code. Pursuant to Section 20-504(10), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders committed to the department. ()

02. Section 20-504(12), Idaho Code. Pursuant to Section 20-504(12), Idaho Code, the department

shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. ()

03. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the “Interstate Compact on Juveniles,” the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.02.01, “Rules for Residential Treatment Providers,” IDAPA 05, Title 02, Chapter 01. ()

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

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretations of these rules. The document is available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. ()

003. ADMINISTRATIVE APPEALS.

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

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., Boise, Idaho 83720. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections’ rules should be directed to 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. The telephone of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 (800) 377-1363 or 711. The facsimile number of the office is (208) 334-5120. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the residential treatment providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. REGIONAL FACILITY CONTACT INFORMATION.

01. IDJC Region 1 Facility. The Juvenile Corrections Center at Lewiston may be contacted at (208) 799-3332. ()

02. IDJC Region 2 Facility. The Juvenile Corrections Center at Nampa may be contacted at (208) 465-8443. ()

03. IDJC Region 3 Facility. The Juvenile Corrections Center at St. Anthony may be contacted at (208) 624-3462. ()

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Adult. A person eighteen (18) years of age or older. ()

- 02. Assessment.** The process of gathering information to determine risk and program needs for the purpose of guiding placement decisions and to develop the individualized treatment/service plan. ()
- 03. 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. ()
- 04. Body Search, Clothed.** Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. ()
- 05. Body Search, Unclothed.** Also referred to as a Strip Search. A search during which a juvenile offender is required to remove all clothing that is conducted by a medical health professional. ()
- 06. Clinical Supervisor.** Person who supervises juvenile services coordinators and clinicians in assigned regions and reviews and approves case management documentation. This responsibility also includes oversight of the regional observation and assessment process, and assisting in the maintenance and development of programs. ()
- 07. Commit.** To transfer legal custody to the Idaho Department of Juvenile Corrections. ()
- 08. Community Service Hours.** Hours of community service performed by a juvenile offender in response to a court order or which may be imposed following a formal disciplinary process within a residential treatment provider program for damages to the facility or program. ()
- 09. Community Treatment Team.** A team including the juvenile services coordinator, residential treatment provider case manager, juvenile probation officer, family, and others, as necessary, who work together to provide input into each juvenile offender's service implementation plan, implement their respective sections of that plan, and monitor and report progress on treatment goals. ()
- 10. Contraband.** Any item not issued or authorized by the residential treatment provider. ()
- 11. Confidential Information.** Information that may only be used or disclosed as provided by state or federal law, federal regulations, or state rule. ()
- 12. Court.** District court or magistrate's division thereof. ()
- 13. Criminogenic Risks and Needs.** Assessed juvenile offender risk factors or attributes of juvenile offenders that are directly linked to criminal behavior and, when changed, influence the probability of recidivism. ()
- 14. Department.** The Idaho Department of Juvenile Corrections. ()
- 15. Detention.** Refers to the temporary placement of juveniles who require secure custody for their own or the community's protection in physically restricting facilities. ()
- 16. Director.** The director of the Idaho Department of Juvenile Corrections. ()
- 17. Escape/Attempted Escape.** Attempting to leave or leaving a facility without permission, or attempting to leave or leaving the lawful custody of any officer or other person responsible for juvenile's supervision without permission. ()
- 18. Facility.** The physical plant associated with the operation of residential or nonresidential programs. ()
- 19. Facility Treatment Team.** The group of staff employed by the department or by the residential treatment provider who have input into developing the juvenile offender's service implementation plan, who provide direct services to juvenile offenders, and who monitor and report on the progress on meeting the goals in that plan. The facility treatment team is responsible for working with the community treatment team to develop and implement

the service implementation plan. ()

20. Incident Report. A written document reporting any occurrence or event, or any other incident which threatens the safety and security of staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. ()

21. Interns. A paraprofessional staff who is pursuing a degree and who, as a part of documented coursework with a college or university, may provide counseling or other services to juvenile offenders in the department's custody or their families, under direct supervision of qualified staff. ()

22. Judge. A district or a magistrate judge. ()

23. Juvenile. A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. ()

24. Juvenile Offender. A person under the age of eighteen (18), at the time of any act, omission, or status and who has been adjudicated as being within the purview of the Juvenile Corrections Act. ()

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

26. Juvenile Services Coordinator. An individual, employed by the department, who provides ongoing coordination of services for juvenile offenders committed to the custody of the department. Services include but are not limited to: case coordination/management, family services, and reintegration. In all cases, the juvenile services coordinator collaborates with the facility case manager in providing these services. The juvenile services coordinator communicates information with families, communities, courts, and with other IDJC employees throughout a juvenile's commitment. ()

27. 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. ()

28. Legal Guardian. A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this title, 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. ()

29. Mechanical Restraints. Mechanical devices used to prevent an uncontrollable juvenile offender from injuring themselves or others. ()

30. Medical Health Professional. An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. ()

31. Mental Health Professional. An individual who possesses a master's degree and meets the applicable state's criteria as a licensed LPC, LMFT, LCPC, LCSW, LMSW, psychologist or the equivalent. ()

32. Observation and Assessment Evaluation. Written documentation of assessment tool results, observations, interviews, risks, and any special considerations resulting in the creation of the service plan, which includes the initial reintegration plan. ()

33. Observation and Assessment Program. A residential or nonresidential program designed to complete assessments of juveniles in the custody of the department. ()

34. Physical Restraint. Any method of physical control of a juvenile offender which involves staff touching or holding a juvenile offender to limit or control the juvenile offender's actions. ()

35. **PREA.** A federal act promulgating standards that promote zero tolerance toward sexual abuse of juvenile offenders by staff or by other juvenile offenders. Also known as Public Law 108-79 or the Prison Rape Elimination Act. ()
36. **Program Director.** The administrator of the residential treatment provider for juvenile offenders. ()
37. **Progress Report.** A written report summarizing progress toward the goals and objectives set in the service implementation plan. ()
38. **Quality Improvement Services Bureau.** Department employees responsible for overseeing residential treatment provider's compliance with contract terms and these rules. ()
39. **Referral Packet.** The information necessary for a potential residential treatment provider to determine whether the program can appropriately meet the identified criminogenic risks and needs of the juvenile being referred. ()
40. **Region.** Subunits of the department organized by geographical areas and including all services and programs offered by the department in that area. ()
41. **Regional Facility.** Department-operated juvenile correctional centers located in each region of the state. ()
42. **Reintegration Plan.** That part of the juvenile offender's service plan which specifically addresses the terms, conditions and services to be provided as the juvenile offender moves to a lower level of care or leaves the custody of the department. ()
43. **Relapse Prevention Plan.** A document completed by the juvenile, used to identify interventions for problem behavior, positive supports, and high risk people and places. ()
44. **Release from Department Custody.** Termination of the department's legal custody of a juvenile. ()
45. **Residential Treatment Provider.** Also known as Provider. A residential program under contract with the department to supervise juvenile offenders, provide accountability and competency development in the least restrictive setting, consistent with public safety. ()
46. **Restitution.** Financial payment intended to reimburse victims for loss, damage, or harm caused by a juvenile offender. Restitution must be court ordered. Providers may not impose restitution against a juvenile offender without a court order. ()
47. **Restricted Clinical Information.** Any record, document or other information legally protected from dissemination to the general public by statute or rule, such as psychological evaluations, therapy notes, therapy journals, sex histories, polygraph results, psychological testing, or other legally confidential information. ()
48. **Room Confinement.** Instances in which juvenile offenders are confined in the room in which they usually sleep, rather than being confined in an isolation room. ()
49. **Separation or Isolation.** Any instance when juvenile offenders are confined alone for over fifteen (15) minutes in a room other than the room in which they usually sleep. ()
50. **Service Implementation Plan.** A written document produced and regularly updated by a residential treatment provider with input from the community treatment team. This plan describes interventions and objectives to address the service plan goals including the areas of community protection, accountability, and competency development. ()
51. **Service Plan.** A written document produced during the observation and assessment period

following commitment to the department that defines the juvenile offender's criminogenic needs and risks, strengths, goals, and recommendations for family and reintegration services. The service plan addresses the relevant needs and services for each juvenile offender in areas such as mental health, medical, education, substance abuse, and social skills. ()

52. Sexual Abuse. Includes any type of contact which is sexual in nature and directed toward a juvenile offender by staff or by juvenile offenders as well as sexual harassment which includes repeated and unwelcomed sexual advances, comments, gestures, voyeurism, implied threats, and coercion. ()

53. Staffings. Regularly scheduled meetings of the community and facility treatment team members to review progress on treatment goals and objectives identified in each juvenile offender's service implementation plan. ()

54. Subcontractor. A person or business which has contracted with the residential treatment provider for provision of some portion of work or services. ()

55. Suicide Risk Assessment. An evaluation performed by a mental health professional to determine the level of immediate risk of a juvenile offender attempting suicide, and to apply this information in developing a safety plan for the juvenile offender. ()

56. Suicide Risk Screening. An evaluation that is used to quickly determine, based upon known history and current behavior, whether a juvenile offender presents any identifiable risk of immediate suicidal behavior, and to call in a mental health professional to complete a suicide risk assessment. ()

57. Superintendent. The person who has responsibility and oversight of a regional facility and over the region of the state where the regional facility is located. ()

58. Transfer. Any movement of a juvenile offender in the custody of the department from one (1) residential treatment provider to another without a release from department custody. ()

59. Treatment. Any program of planned services developed to meet risks and needs of juvenile offenders and their families, as identified in an assessment, and as related to activities designed to teach alternate behaviors and to support change in the beliefs that drive those behaviors. Treatment as referenced in this context also includes the maintenance of conditions that keep juvenile offenders, staff and the community safe. ()

60. Variance. The means of complying with the intent and purpose of a residential treatment provider rule in a manner other than that specifically prescribed in the rule. ()

61. Vocational Services. Any service provided related to assessment, education, guidance or training in the area of work or basic living skills. ()

62. Volunteer. A person from the community who freely chooses to do or provide both direct or indirect services to juvenile offenders or staff at a facility or juvenile correctional center. This person is not compelled to do so and is not compensated for the services. ()

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

64. Work Program. A public service work project which employs juveniles at a reasonable wage for the purpose of reimbursing victims of juvenile offender's delinquent behavior. ()

011. -- 099. (RESERVED)

100. INITIATION OF SERVICES.

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

101. WAIVER AND VARIANCE.

Minimum program standards established herein shall apply to all services provided by the residential treatment provider. A waiver and variance from the standards stated in these rules must receive prior written approval from the department and must be attached as a formal amendment to the contract. ()

102. APPLICABILITY.

This chapter applies to all residential treatment providers that coordinate needed treatment services identified in individual service implementation plans. Resident treatment providers must also abide by IDAPA 05.02.02, "Rules for Staff Secure Providers"; IDAPA 05.02.03, "Rules for Reintegration Providers"; or IDAPA 05.02.04, "Rules for Supported Living Providers," as applicable. ()

103. -- 199. (RESERVED)

200. AUTHORITY TO INSPECT.

01. Inspections. The department shall have the authority to conduct reviews of programs, program operations, and facilities to ensure the residential treatment provider's compliance with these rules. The residential treatment provider shall cooperate with the department's review, and must provide access to the program or facility and all juvenile records for juveniles in department custody, as deemed necessary by the department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available. ()

02. Quarterly Reports. In order to assist the department in monitoring contract programs for key areas of operational performance, each residential treatment provider will be required to submit a quarterly report to the department's Quality Improvement Services Bureau. These reports may be submitted by facsimile, mail, or electronically within thirty (30) calendar days of the end of each quarter. The reports must include, at a minimum, the following information: ()

- a. All staff turnover during the quarter; ()
- b. Number of reportable incidents of the type listed below: ()
 - i. Assaults against juvenile offenders; ()
 - ii. Assaults against staff; ()
 - iii. Behavioral and psychiatric emergencies; ()
 - iv. Contraband; ()
 - v. Escapes; ()
 - vi. Visitation restrictions due to juvenile offender behavior; ()
 - vii. Injuries or illness requiring significant medical attention; ()
 - viii. Restraints; ()
 - ix. Separation or isolation; ()
 - x. Sexual abuse; and ()
 - xi. Self-harm and suicide behavior. ()
- c. Number of hours and topics included in staff training for the quarter; ()
- d. Community services hours; ()

e. GED/HSE or high school diplomas awarded; and ()

f. A copy of juvenile offender grievances and resolutions according to Section 232 of these rules. ()

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

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

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

06. Additional Incident Reporting. The residential treatment provider must report to the department any and all incidents of the type normally requiring immediate notice to the department, as identified in Subsection 241.01, that occur in their program or facility regardless of whether or not the juveniles involved are in the department's custody. Any such reports regarding juveniles not in department custody must include the type and scope of the incident without any information identifying the juvenile, and must be made available to the department's Quality Improvement Services Bureau. ()

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

b. All instances of battery committed on staff must be documented and, whenever appropriate, charges filed with the appropriate authorities. Each such incident must be reported to the juvenile offender's juvenile services coordinator as an incident report according to Subsection 241.01 of these rules. ()

07. Additional Reporting Requirements. In situations where the department has determined that the safety, security, or order of a program are at risk, more frequent and more detailed reporting will be required by the Quality Improvement Services Bureau. The department has a responsibility at all times to monitor the overall safety, security, and order of a program for the protection and well-being of the juvenile offenders. ()

201. COMPREHENSIVE AND CURRENT PROGRAM DESCRIPTION.

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

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

a. Target population and specific admission criteria; ()

b. Primary and secondary treatment modalities; ()

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

d. Full description of educational services provided; ()

- e.** Description of emergency and routine medical and mental health services, including psychotropic medication monitoring, unless this population is specifically excluded from admission to the program; ()
- f.** Description of religious services, recreation services, and other specialized services provided as indicated by the needs of the identified target population; ()
- g.** Written criteria for successful completion of the program and written criteria for termination from the program prior to completion; ()
- h.** A thorough description of all services offered as a part of the program, including a description of the frequency of service delivery; ()
- i.** A detailed description of each individual treatment intervention, such as treatment group, psycho-educational group, cognitive restructuring group, and peer group including: ()

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

202. DISPOSITION OF REFERRALS FROM THE DEPARTMENT.

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

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

02. Declining Referral. Residential treatment providers must not, without just cause, deny admission to any juvenile offender who meets the specific admission criteria set forth in the provider's program description. If a residential treatment provider denies a referral, the specific reason for denial must be documented on the department's Referral Acceptance/Denial Form and the form returned to the regional referral coordinator. The residential treatment provider must then destroy the referral packet. ()

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

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

203. SAFETY AND MAINTENANCE OF BUILDINGS AND GROUNDS.

01. Compliance with State and Local Codes and Ordinances. The residential treatment provider must maintain compliance with all state and local building, life safety, and zoning requirements. Documentation of

compliance must be made available to the department. ()

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

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

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

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

a. Fire safety; ()

b. Existing hazards; ()

c. Potential hazards; and ()

d. The corrective action that should be taken to address these hazards. ()

06. Emergency Procedures. The residential treatment provider will utilize and maintain a current emergency procedure manual which must include, at a minimum, procedures pertaining to: ()

a. Fire safety and escape; ()

b. Emergency medical care; ()

c. Notification and filing charges on escape; ()

d. Incidents of violence within the program; ()

e. Suicide prevention; ()

f. Child abuse reporting; and ()

g. Sexual abuse disclosures. ()

204. VEHICLES.

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

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

03. Maintenance and Equipment Checklist. The residential treatment provider must have a vehicle maintenance and equipment checklist, which must include a listing of all critical operating systems and equipment inspections, the date of the last inspection, and the type of service or action taken. All repairs required to critical

operating systems, such as brakes and headlights, must be made immediately. All worn or missing critical equipment must be replaced immediately, such as tires, jacks, and seat belts. ()

205. TRANSPORTATION.

01. Transportation for Service Plan. It shall be the responsibility of the residential treatment provider to provide all transportation associated with the juvenile offender's service implementation plan. The family may be relied upon to provide transportation for passes and some other community contacts as long as this does not present any undue risk or burden to the juvenile offender, family, or community. ()

02. Transportation for Court Proceedings. It is the provider's responsibility to immediately notify the juvenile offender's juvenile services coordinator of court dates and appearances. Arrangements for transportation related to court appearances, as well as related to transfer or release of juvenile offenders from department custody, must be made between the residential treatment provider and the juvenile services coordinator. ()

03. Transport in Personal Vehicles. Juveniles in the custody of the department will not be transported in personal vehicles unless an emergency situation exists and is substantiated by documentation. ()

206. DRIVERS.

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

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

207. -- 209. (RESERVED)

210. ADMINISTRATIVE RECORDS.

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

a. Program consultation provided, such as technical assistance on program design and implementation; ()

b. Training provided to staff; ()

c. All alleged instances of child abuse; ()

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

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

f. Juvenile offender and staff grievances; ()

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

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

- 02. Employee Files.** Employee personnel files must contain the following: ()
- a.** Minimum qualifications for the job held; ()
 - b.** Hiring information; ()
 - c.** Copies of all required licenses or certificates related to the job function; ()
 - d.** Copies of academic credentials, driving record and criminal background checks, as required by state law; ()
 - e.** Current training records; and ()
 - f.** Performance evaluations and copies of personnel actions, such as disciplinary action taken and acknowledgements of outstanding performance. ()

211. STAFF QUALIFICATIONS.

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

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

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

212. POSITION DESCRIPTIONS AND QUALIFICATION CRITERIA.

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

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

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

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

05. Rehabilitation Technician or Direct Care Worker. An individual who is responsible for providing individual or group rehabilitative therapeutic services, supervising juvenile offender's day-to-day living activities and performing such duties as preparing nutritious meals, supervising and training juvenile offenders in basic living skills, and providing some community transportation. Such individual must have a high school diploma or its equivalent. ()

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

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

213. PROGRAM STAFFING REQUIREMENTS.

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

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

214. GENERAL REQUIREMENTS FOR TRAINING.

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

- a. Annual in-service training for all staff to include, but not be limited to: ()
 - i. Identifying and responding to suicide risk; ()
 - ii. All training as outlined in section 115.331 of the Prison Rape Elimination Act (PREA) standards; ()
 - iii. Prohibition of abuse and mandatory reporting of abuse; ()
 - iv. De-escalation of juvenile behavior and appropriate physical restraint techniques; and ()
 - v. Incident reporting. ()
- b. Those areas of practice and operations requiring a current certification; ()

- c.** Prior to being assigned sole responsibility for supervision of juvenile offenders, rehabilitation technicians or direct care staff must have training in the following areas: ()
- i. Principles and practices of juvenile care and supervision; ()
 - ii. Program goals and objectives; ()
 - iii. Juvenile offender rights and grievance procedures; ()
 - iv. Procedures and legal requirements concerning the reporting of abuse and critical incidents and compliance with the PREA as outlined in these rules; ()
 - v. Handling of violent juvenile offenders (use of force or crisis intervention); ()
 - vi. Security procedures (key control, searches, contraband); ()
 - vii. Medical emergency procedures, first aid, and CPR; ()
 - viii. Incident reporting; ()
 - ix. How to recognize and respond to suicidal behavior; ()
 - x. How to access emergency health and mental health care; ()
 - xi. Proper storage and dispensing of medications, as well as general signs and symptoms of adverse reactions, including identification of the individual who will dispense medications in the facility; ()
 - xii. Appropriate response to health-related emergencies; ()
 - xiii. Ethics and professional boundaries; and ()
 - xiv. Appropriate and safe transportation of all juvenile offenders. ()
- d.** In-service training for all first-year staff must include: ()
- i. Program policies and procedures; ()
 - ii. Job responsibilities; ()
 - iii. Juvenile offender supervision; ()
 - iv. Safety and security emergency procedures (fire, disaster, etc.); ()
 - v. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA); ()
 - vii. Infectious diseases, blood borne pathogens, and universal precautions; ()
 - viii. Behavioral observation, adolescent psychology and child growth and development; ()
 - ix. Effective interventions with juvenile offenders including criminogenic risk and need factors;()
 - x. Juvenile Corrections Act, balanced and restorative justice, this chapter, and department rules applicable to the specific type of residential treatment provider; ()
 - xi. Basic security procedures; ()

- xii. Signs and symptoms of chemical use or dependency; ()
- xiii. Drug-free workplace; ()
- xiv. Diversity training to include cultural awareness; and ()
- xv. Juvenile offender searches for contraband. ()

02. Trainer Qualifications. ()

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

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

03. Documentation of Training. Staff training records must be kept by a designated staff person. Training records must be established for each staff member and volunteer and shall include: ()

- a.** Name; ()
- b.** Job title; ()
- c.** Employment beginning date; ()
- d.** Annual training hours required; and ()
- e.** A current chronological listing of all training completed. ()

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

215. SUBCONTRACTORS, VOLUNTEERS, AND INTERNS.

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

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

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

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

b. Recruiting of volunteers is conducted by the program director or designee. Recruitment is

encouraged from all cultural and socio-economic segments of the community. ()

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

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

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

f. Interns must have a fully developed internship or practicum agreement which details their activities for the period, and relates these to learning objectives developed with the academic institution and program in which they are enrolled. The internship agreement must include the signatures of the intern, supervising residential treatment provider staff, and a representative of the academic institution in which the intern is enrolled. ()

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

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

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

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

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

b. Minimum training for subcontractors, volunteers, and interns must include the following: ()

i. Program goals and objectives; ()

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

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

iv. Basic security procedures; ()

v. Recognizing suicidal behaviors; ()

vi. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and ()

vii. Ethics and mandatory reporting of juvenile abuse. ()

04. Volunteers of Minimal Use. Volunteers who meet all of the following criteria may be excluded from Subsection 215.03.a. and Subsection 215.03.b.: ()

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

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

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

05. Documentation. The residential treatment provider must maintain individual personnel files for each volunteer and intern working in the program. The files must contain all documentation as described in Subsection 215.03 of these rules. ()

06. Supervision of Volunteers. Volunteers will be supervised at all times by a staff member of the residential treatment provider. This individual shall coordinate and direct the activities of the volunteer. Volunteer performance must be evaluated periodically and evidence of this evaluation be made part of the personnel record of the volunteer. ()

07. Supervision of Interns. An intern will be supervised by a paid employee of the residential treatment provider who has the licenses and credentials required by state law and who has been accepted by the intern's school as an appropriate supervisor for the discipline of instruction. This individual shall coordinate and direct the activities of the intern. Intern performance must be evaluated periodically and evidence of this evaluation made part of the work record of the intern. ()

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

216. CRIMINAL BACKGROUND CHECKS.

The residential treatment provider must ensure that all employees, subcontractors, interns, and volunteers, with the exception of those listed in Section 215.04 of these rules, have undergone a criminal background check every five (5) years in the manner and form required by IDAPA 16.05.06, "Criminal History and Background Checks." In addition to the crimes listed resulting in unconditional denial, any crime not specified there that requires registration on the sex offender registry in Idaho or any other state, will also result in an unconditional denial of employment for direct care or services, or where the employee would have any opportunity to have contact with a juvenile offender in the residential treatment provider's care, including as a volunteer or intern. Documentation of appropriate requests and responses must be kept in confidential employee personnel files. ()

217. -- 219. (RESERVED)

220. JUVENILE RECORDS.

01. Case Management Documents. The residential treatment provider must maintain individual files on all juvenile offenders which shall include: ()

- a. Observation and assessment evaluation provided by the department; ()
- b. Additional assessments; ()
- c. Service implementation plans; ()
- d. Progress reports; ()
- e. Incident reports; ()
- f. Court documents and dispositions; ()
- g. Professional correspondence; ()
- h. Restricted clinical information, which must be kept separate; ()
- i. Medical records, which must be kept separate; ()

- j. Educational records and school history, which must be kept separate; ()
- k. Relapse prevention plan; ()
- l. Identifying information and physical descriptions; ()
- m. Last known parent or guardian address and telephone number; ()
- n. Date of admittance and projected release from the residential treatment provider; ()
- o. Records of juvenile offender’s earnings, restitution payments, and community service hours earned; ()
- 02. Confidentiality.** ()
 - a. Sections 20-525 and 9-340(2)(b), Idaho Code, and Idaho Court Administrative Rule 32 provide for confidentiality, under certain conditions, of records that contain information about juvenile offenders. ()
 - b. All matters relating to confidentiality of juvenile offender files must also comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Chapter 1, Sub-Chapter A, Part 2, “Confidentiality of Alcohol and Drug Abuse Patient Records.” ()
 - c. Restricted clinical information, as defined, and education and medical records must each be filed separately and stored in a secured area. ()
 - d. For residential treatment providers that serve sex offenders, individual treatment assignments, such as journals and detailed sexual histories, must be destroyed at the time the juvenile offender is transferred or released from the program. ()
 - e. The residential treatment provider must have written policies and procedures to address the confidentiality of juvenile offender records. In compliance with HIPAA’s privacy regulations, written procedures shall designate a privacy officer who will: ()
 - i. Supervise the maintenance of identifiable personal health care information; ()
 - ii. Serve as custodian of all confidential juvenile offender records; and ()
 - iii. Determine to whom records may be released. ()
- 03. Automated Records.** Automated records must include a procedure to ensure confidentiality and be in compliance with any state or federal privacy laws pertaining to those records. The procedure must also include provisions for backing up automated records. ()
- 04. Restrictions to Records Access.** ()
 - a. Access to personal health information must be limited to: ()
 - i. Employees of the department and the residential treatment provider, to the extent necessary to perform normal business functions, including health treatment, and other functions designed to maintain the good order, safety and security of the juvenile offenders or the program; ()
 - ii. Individuals participating in a staffing for a juvenile offender, who have a direct need to know the information, and who are obligated to or promise to maintain the confidentiality of information disclosed. These individuals may include employees or representatives of law enforcement, the department, the residential treatment provider, probation officer, medical or mental health professionals and other appropriate individuals; and ()

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

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

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

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

iii. Appropriate staff of the department; ()

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

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

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

vii. Schools, as appropriate. ()

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

06. Retention of Juvenile Records. At the time of transfer or release from department custody, all case management records must be forwarded to the juvenile correctional center in Nampa. ()

07. Requests for Information. Requests for information of any kind about juvenile offenders in department custody, following their release or transfer from a residential treatment provider's program must be directed to the juvenile correctional center in Nampa. ()

08. Document Reproduction. The residential treatment provider agrees that documents provided by the department shall not be distributed without written permission from the department. ()

221. RELEASE FORMS.

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

02. Release of Medical Information. Release of medical information requires more specific authorization. The residential treatment provider must abide by IDAPA 05.02.02, Section 262, "Rules for Staff Secure Providers"; or IDAPA 05.02.03, Section 262, "Rules for Reintegration Providers"; or IDAPA 05.02.04, Section 262, "Rules for Supported Living Providers," as applicable. ()

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

a. Name of person, agency or organization requesting information; ()

b. Name of person, agency or organization releasing information; ()

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

222. JUVENILE OFFENDER PHOTOGRAPHS.

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

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

223. RESEARCH PROJECTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

n. A process that requires reporting and documentation of any instance of sexual abuse among juvenile offenders or between juvenile offenders and staff or volunteers, according to Subsection 241.01 and Subsection 241.05 of these rules. These must be reported on a form provided by the department; ()

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

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

q. In addition to completing the form supplied by the department, the residential treatment provider must document any and all steps taken to ensure the juvenile offender's safety; and ()

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

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

03. Sexual Victimization Survey. Residential treatment providers are required to participate in all state and federal surveys, and shall complete and submit the survey and supply the department with copies. ()

225. SUICIDE PRECAUTIONS.

01. Policy Requirements. All residential treatment providers must have a written policy for responding to juvenile offenders who present a risk of suicide. The policy, at a minimum, shall require that: ()

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

b. The residential treatment provider utilizes medical or other staff trained by a mental health professional to review history, interview, and observe juvenile offenders new to the program in order to complete a

suicide risk screening within two (2) hours of admission. The screening is done to identify any immediate threat of suicide or self-harm and the need for a suicide risk assessment; ()

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

d. The residential treatment provider utilizes a mental health professional to develop and disseminate a safety plan for each juvenile offender identified as presenting a risk for suicide. The safety plan includes a detailed supervision plan for the juvenile offender; ()

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

f. The residential treatment provider prohibits the use of separation and isolation of juvenile offenders identified as presenting a suicide risk, unless constant one-on-one (1 on 1) staff supervision is provided. ()

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

03. Reporting to the Department. All incidents of suicide, attempted suicide or threat of suicide must be reported to the department in the manner described in Subsection 241.01 of these rules. ()

226. -- 229. (RESERVED)

230. JUVENILE OFFENDER RIGHTS AND RESPONSIBILITIES.

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

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

a. Requirements needed to complete program; ()

b. How to access medical services; ()

c. How to file a grievance; ()

d. How to report incidents of sexual abuse between juvenile offenders or between staff and juvenile offenders; and ()

e. How to contact the juvenile services coordinator and juvenile probation officer. ()

231. DISCIPLINE OF JUVENILE OFFENDERS.

01. Written Policies and Procedures. All providers offering treatment services must have

comprehensive written discipline policies and procedures, which shall be explained to all juvenile offenders, families, and staff. These policies must include positive responses for appropriate behavior. They must include a provision for written notice to the juvenile offender being disciplined, a mechanism for a fair and impartial hearing to include at least one staff member not involved in the disciplinary action, and a process for appeal. ()

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

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

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

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

03. Prohibited Actions. The residential treatment provider is prohibited from using certain actions as disciplinary responses as listed in the child care licensing rules of the Idaho Department of Health and Welfare. ()

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

a. Educational and vocational services; ()

b. Employment; ()

c. Medical or mental health services; ()

d. Food; ()

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

f. Religious services. ()

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

232. GRIEVANCE PROCEDURES.

01. Written Procedures. The residential treatment provider must have a written grievance procedure for juvenile offenders, which shall include the right to appeal disciplinary actions against them if a separate disciplinary grievance procedure is not available. It must be written in a clear and simple manner and shall allow juvenile offenders to make complaints without fear of retaliation. ()

02. Grievance Forms. The grievance procedure must be explained to the juvenile offender by a staff member who shall document the explanation in the juvenile's file. Grievance forms must be in a location accessible to juvenile offenders without having to request such a form from staff. Completed forms should be placed in a secure

area and collected daily. The provider must complete a review and discuss findings with the juvenile offender within three (3) working days of receipt of the grievance form. If the juvenile offender lives independently, the provider must have a process for the juvenile to submit grievance forms to the program director without having to request such a form from staff. A copy of the grievance and the resolution of that grievance must be attached to the quarterly report as specified in Subsection 200.02 of these rules. ()

233. JUVENILE OFFENDER SAFETY.

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

234. JUVENILE OFFENDER AND PARENT OR GUARDIAN HANDBOOK.

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

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

- a. Requirements needed to complete program; ()
- b. Juvenile offender rights and responsibilities; ()
- c. The means available to safely report sexual abuse and harassment; ()
- d. Grievance procedures; ()
- e. Religious services; ()
- f. A list of what constitutes as contraband and the consequences for its possession; ()
- g. The provider's disciplinary process; ()
- h. Visitation, mail, and phone correspondence; ()
- i. The provider's policy on searches for contraband, including a list of what constitutes contraband; ()
- j. The provider's obligation to make reasonable accommodations for any disabilities, language barriers, or other special needs; ()
- k. The daily schedule for juvenile offenders; and ()
- l. A description of services or items for which a juvenile offender may be charged by the provider. ()

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

235. -- 239. (RESERVED)

240. PROGRAM OPERATIONAL REQUIREMENTS.

01. General Requirements. ()

a. Residential treatment providers shall provide vigorous programming that minimizes periods of idle time, addresses behavioral problems of juvenile offenders, and teaches and promotes healthy life choices. Programs

should specifically address those factors in juvenile offender's lives that contribute to delinquency and that can be realistically changed. ()

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

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

d. Service needs remaining at the time of release from department custody or transfer must be accounted for in the reintegration plan for each juvenile offender. ()

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

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

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

02. Use of Polygraphs. ()

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

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

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

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

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

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

d. Polygraph reports must be sent to the juvenile services coordinator by the residential treatment provider. ()

241. INCIDENT REPORTING REQUIREMENTS.

01. Incidents Requiring Immediate Notice to Parent or Guardian and Department. All notifications under this section must be made to the regional facility in the region where the residential treatment provider is located. Out-of-state providers must notify the juvenile correctional center in Nampa. Residential treatment providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. If any of the following events occur, the residential treatment provider must immediately notify the juvenile offender's parent or guardian, juvenile services coordinator,

juvenile probation officer, and the department's regional facility by telephone (not by facsimile or electronically). The department's regional R.N. must also be notified immediately in the event of all medical and mental health incidents. ()

- a. Medical and mental health emergencies including, but not limited to: ()
 - i. Every instance of emergency room access; ()
 - ii. Refusal of medications, treatment recommended by a physician, or food for three (3) days; ()
- b. Major incidents such as: ()
 - i. Death of a juvenile offender; ()
 - ii. Suicide, attempted suicide or threat of suicide; ()
 - iii. Attempted escape; ()
 - iv. Sexual abuse among juvenile offenders or by staff including, but not limited to, incidents reportable under PREA; ()
 - v. Criminal activity resulting in arrest, detention, or filing a report with local law enforcement; ()
 - vi. Any other relevant report made to the Idaho Department of Health and Welfare or applicable state agency; ()
- c. Any incident of restraint which involves the use of medications, chemicals, or mechanical devices of any kind; ()
- d. Incidents of alleged or suspected abuse or neglect of juvenile offenders; ()
- e. Incidents involving major disasters affecting location or well-being of the juveniles; and ()
- f. Any restriction of a juvenile offender's family visitation due to the juvenile's behavior. ()
- g. A written incident report must also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile. Transmission of all written incident reports may be electronic or by facsimile. ()

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

a. Clothing and other personal belongings must be secured immediately and maintained in a secure place until returned to the department. ()

b. The juvenile offender shall continue to be assigned to the program, although not physically present, for up to forty-eight (48) hours. The program will be reimbursed for the days the juvenile offender was on escape status up to forty-eight (48) hours. Should the program, in consultation with the juvenile offender's treatment team, choose to transfer the juvenile offender after returning, then the procedures outlined in IDAPA 05.02.02, Section 237, "Rules for Staff Secure Providers"; or IDAPA 05.02.03, Section 237, "Rules for Reintegration Providers"; or IDAPA

05.02.04, Section 237, "Rules for Supported Living Providers," as applicable, shall apply. ()

03. Incidents Requiring Immediate Notice to Department and Three Day Notice to Parent or Guardian. The following incidents require immediate notice to the juvenile services coordinator in the manner described in Subsection 241.01, and require notice within three (3) business days to parent or guardian of the juveniles involved. ()

- a. Any use of separation or isolation for more than two (2) hours; ()
- b. Incidents involving the disclosure of criminal behavior by juvenile offenders; ()
- c. Instances of physical assault or fighting; ()
- d. Major misconduct by one (1) or more staff against a juvenile offender; ()
- e. Discovery of contraband that represents an immediate threat to safety and security such as weapons or drugs; ()
- f. Any instance of an unclothed body search or a body cavity search of a juvenile offender; ()
- g. Other than incidents described in Paragraph 241.01.e., significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters; and ()
- h. Any pattern of restraint of a juvenile, which is defined as three (3) or more restraints within a twenty-four (24) hour period. ()

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

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

b. A detailed incident report is also required for each incident of juvenile offender misconduct that is not reportable under Subsection 241.03 and results in any type of: ()

- i. Instances of lost keys, equipment, or tools; ()
- ii. Discovery of contraband not posing an immediate risk; or ()
- iii. A pattern of refusal of program participation that rises to the point of raising questions about the appropriateness of the placement. ()

c. A detailed incident report is also required for each incident of staff misconduct relating to juvenile care that is not reportable under Subsection 241.03 and results in any type of: ()

- i. Any physical restraint that does not involve the use of medications, chemicals, or mechanical devices of any kind; or ()
- ii. Separation, isolation, or room confinement for more than fifteen (15) minutes but less than two (2) hours. ()

05. Incident Report Content. Residential treatment providers may elect to use the department's standard incident report form or may use another form as long as all of the following information is included: ()

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

- b. Date, location, and time of the incident; ()
- c. Witnesses and other staff and juvenile offenders involved; ()
- d. Persons notified with date and time of notice; ()
- g. Brief narrative description of the incident; ()
- e. Type of incident by category, such as assault against staff or juvenile offender, behavioral and psychiatric emergency, contraband, escape, injury or illness, self-harm or suicidal behavior, or sexual abuse; ()
- f. Action taken by category, such as restraint, separation, isolation, or room confinement with times in and out, visitation restrictions due to juvenile offender behavior, suicide precautions initiated, or escape precautions initiated; ()
- h. Signature of staff and reviewing supervisor, which may be affixed electronically; ()
- i. Documentation of injury and medical attention provided; and ()
- j. If the incident involves sexual abuse, the incident report must include a description of action taken to:
 - i. Keep the alleged victim(s) safe from intimidation of further abuse and maintain confidentiality; ()
 - ii. Address any immediate trauma, either physical or emotional; ()
 - iii. Address long-term medical or mental health needs related to the alleged abuse; ()
 - iv. Notify responsible licensing, regulatory, and law enforcement agencies and preserve evidence; ()
 - v. Conduct an initial internal investigation of the incident and as necessary request that an external investigation be completed; and ()
 - vi. Prevent repetition of the abusive situation. ()

242. ADDITIONAL PROGRAM POLICY REQUIREMENTS.

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

- a. Program elements and implementation; ()
- b. Admission policy describing the target population and criteria for admission, and identifying sources of referrals to the program; ()
- c. Criteria for assigning juvenile offenders to different units within the program, if applicable; ()
- d. The provision of (or referral for) emergency and routine medical and mental health services for the population; ()
- e. Behavior management within the program, including use of points and levels, restraints, separation, detention and other types of special management; ()
- f. Supervision of juvenile offenders policy that shall include managing juvenile offender movement

within the program, including the timely transfer of behavioral information about juvenile offenders from staff during shift changes; ()

g. Juvenile offender's access to the community policy that shall include use of community schools or job sites, and individual or group activities away from the program site. This also includes individual community passes; ()

h. Administrative coverage in emergency situations, after regular work hours; ()

i. Documentation and reporting of critical incidents to program administrators, the department and others on the community treatment team; ()

j. Treatment planning and progress reporting to the department, juvenile offender, family and others on the community treatment team; ()

k. Reintegration policy that shall describe criteria for successful completion of program, termination from program prior to completion, and the involvement of the department and community treatment team; and ()

l. Emergency procedures in the event of a natural disaster; ()

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

243. -- 999. (RESERVED)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.02 - RULES FOR STAFF SECURE PROVIDERS

DOCKET NO. 05-0202-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 111 through 134](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x. 410.

DATED this 21st Day of November, 2014.

Sharon Harrigfeld
Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83702-0285
Phone: (208) 334-5100
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(3) and 20-504(12), 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 September 17, 2014.

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:

05.02.02, "Rules for Staff Secure Providers," will contain additional rules that are only applicable to these specific providers. Changes include: additional requirements relating to the Department of Justice PREA Standards and providing clarification in areas of past misinterpretation.

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:

No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 30](#).

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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 x. 410.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0202-1401

**IDAPA 05
TITLE 02
CHAPTER 02**

05.02.02 - RULES FOR STAFF SECURE PROVIDERS

000. LEGAL AUTHORITY.

01. Section 20-504(10), Idaho Code. Pursuant to Section 20-504(10), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders committed to the department. ()

02. Section 20-504(12), Idaho Code. Pursuant to Section 20-504(12), Idaho Code, the department

shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. ()

03. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the “Interstate Compact on Juveniles,” the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.02.02, “Rules for Staff Secure Providers,” IDAPA 05, Title 02, Chapter 02. ()

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

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretations of these rules. The document is available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. ()

003. ADMINISTRATIVE APPEALS.

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

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., Boise, Idaho 83720-0285. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections' rules should be directed to 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. The telephone of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 (800) 377-1363 or 711. The facsimile number of the office is (208) 334-5120. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. 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. ()

02. Body Search, Clothed. Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. ()

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

04. Education Plan. A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Common Core Standards recommended coursework for their grade level based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. ()

05. General Education Student. A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). ()

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

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

08. Individual Community Pass. Any instance in which a juvenile offender leaves the residential treatment provider's facility for a planned activity, without direct supervision by at least one (1) residential treatment provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: ()

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

b. Day or overnight home visits; ()

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

d. Funeral leave. ()

09. Individual Education Plan (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. ()

10. Medical Health Assessment. A thorough review to determine a juvenile offender's comprehensive health needs. This information is used to develop the medical terms of a juvenile offender's service plan. ()

11. Medical Health Professional. An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. ()

12. Medical Health Screening. A process used to quickly identify a juvenile offender's immediate health needs and to determine if there are any immediate needs related to a chronic health condition. ()

13. Mental Health Assessment. A thorough review to determine a juvenile offender's comprehensive mental health needs. This information is used to develop the medical terms of a juvenile offender's service plan. ()

14. Mental Health Screening. A process used to quickly identify a juvenile offender's immediate mental health needs and to determine if there are any immediate needs related to a chronic mental health condition. ()

15. Privileged Mail. Mail between the juvenile offender and their attorneys, legal aid services, other agencies providing legal services to juvenile, or paraprofessionals having legitimate association with such agencies; judges and clerks of federal, state and county courts; public officials and their authorized representatives acting in their official capacities; and the communications with clergy of the juvenile's faith. ()

16. Staff Secure Facility. Secure residential facility with awake staff twenty-four (24) hours a day, seven (7) days a week for intensive supervision of juvenile offenders. This includes architecturally secure residential facilities. ()

011. -- 099. (RESERVED)

100. INITIATION OF SERVICES.

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

101. WAIVER AND VARIANCE.

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

102. APPLICABILITY.

This chapter applies to providers of treatment services identified in individual service implementation plans. Staff secure providers must also abide by IDAPA 05.02.01, "Rules for Residential Treatment Providers." ()

103. -- 199. (RESERVED)

200. AUTHORITY TO INSPECT.

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

201. COMPLIANCE WITH RULES REQUIREMENTS.

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

202. MINIMUM MANDATORY STAFF TRAINING REQUIREMENTS.

Good professional practice in the area of juvenile offender treatment requires staff to be competently trained. Therefore, all staff is required to have eighty (80) hours of training for all staff during first year of employment. Up to twenty-five percent (25%) of the eighty (80) hours may be fulfilled by working with an experienced staff mentor, who must verify and document basic competencies for new staff; and forty (40) hours of training per year following the first year of employment. ()

203. CLOTHING AND PERSONAL ITEMS.

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

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

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

204. FOOD SERVICE.

Juvenile offenders must be served a varied and nutritional diet with menus approved or developed by a qualified

nutritionist or dietician and which meet the recommended dietary allowances of the National Research Council or its equivalent. Juvenile offenders must be provided three (3) meals daily in accordance with the child care licensing rules of the Idaho Department of Health and Welfare, or the applicable state's licensing authority. ()

205. RELIGIOUS SERVICES.

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

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

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

03. Transportation. Programs must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community. ()

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

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

206. EMPLOYMENT OF JUVENILE OFFENDERS.

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

02. Employment Opportunities. Every reasonable effort must be made to select employment opportunities that are consistent with the individual interests of the juvenile offender to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training, and may be suitable for continuing post-release employment. Reasonable effort must be made to provide a juvenile offender with the highest paying job possible. Income earned by a juvenile offender must be handled consistent with Subsection 207.04 of these rules. ()

207. PERSONAL FUNDS.

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

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

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

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

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

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

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

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

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

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

03. Juvenile Offenders with Earned Income. The provider is responsible for maintaining and accounting for any money earned by a juvenile offender. There must be a plan for the priority use of the juvenile offender's earned income to pay court ordered restitution, as referenced in Subsection 208.02 of these rules, and a specific allocation for daily incidental expenses. The provider must establish a written plan for the juvenile offender to save the funds necessary to be used upon program completion, for purposes such as paying deposits on utilities and housing or the purchasing of resources necessary for employment. ()

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

208. COMMUNITY SERVICES AND RESTITUTION.

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

02. Court Ordered Restitution. The provider must create a plan for the juvenile offender to submit a portion of a juvenile offender's personal funds or earned income for the payment of restitution as described in this section. The provider must work with the juvenile probation officer and juvenile services coordinator to determine the amount of restitution owed. When juvenile personal funds are available the provider will submit payment to the county until the restitution amount is satisfied. Documentation of the payment is provided to the juvenile services coordinator. Court ordered restitution must be a claim against and paid from the juvenile offender's personal funds account in the amount of fifty percent (50%) of those funds. Should the juvenile offender have no other funds available, then a plan must be developed by the provider to assist the juvenile offender in earning the amount of restitution and, if appropriate, help him develop a payment plan. ()

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

209. JUVENILE OFFENDER MAIL.

01. Restrictions. Juvenile offenders shall be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the department or by court order. All other restrictions of mail must be discussed with the community treatment team, approved in writing by the juvenile services coordinator, and documented in the juvenile offender's service implementation plan. There must be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. Juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence, and for at least two (2) personal letters each week. ()

02. Inspection of Outgoing Letters. ()

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

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

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

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

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

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

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

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

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

210. VISITATION.

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

services coordinator and juvenile probation officer to identify and approve potential visitors. ()

211. -- 219. (RESERVED)

220. SEARCHES FOR CONTRABAND.

01. Searches of Personal Items. Routine searches of personal items being introduced into the program may be conducted by staff prior to the juvenile offender taking possession of his property, or when the juvenile offender is returning to the program from an individual community pass. Search of a juvenile offender's belongings may be done at any time and must be minimally intrusive. ()

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

03. Visitor Searches. ()

a. Prior to visitors being allowed in the program, they must be given rules established by the provider that govern their visit and advised that they may be subject to a search by trained staff. They must sign a statement of receipt of these rules and it shall be placed in the provider's file. ()

b. Visitors may be required to submit personal items for inspection. If there is reason to believe that additional searches are necessary, admission to the facility shall be denied. Visitors who bring in items that are unauthorized, but not illegal, will have these items taken and locked in an area inaccessible to the juvenile offenders during the visit. These items will be returned to the visitors upon their exit from the facility. ()

c. All visitor searches must be documented. When contraband is found, a written report must be completed and submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency will be notified. ()

04. Clothed Body Searches. ()

a. Clothed body searches of juvenile offenders may be conducted whenever the provider believes it is necessary to discourage the introduction of contraband into the program, or to promote the safety of staff, juvenile offenders, and visitors. A clothed body search may be used when a juvenile offender is returning from a visit, outside appointment, or activity. ()

b. Clothed body searches must be conducted in the manner required by the rules of the Idaho Department of Health and Welfare under IDAPA 16.06.02, "Standards for Child Care Licensing." Clothed body searches of juvenile offenders will be conducted by staff of the same gender as the juvenile offender. Clothed body searches will be conducted using a pat down search on the outside of the juvenile's clothing. The staff member must have had appropriate training in conducting clothed body searches. ()

05. Unclothed Body Searches. Unclothed body searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Unclothed body searches must be based upon a reasonable belief that the juvenile is concealing contraband or signs of abuse. Immediately after conducting an unclothed body search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

06. Body Cavity Searches. Body cavity searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Body cavity searches of juveniles will not be performed by staff, interns, or volunteers under any circumstances. Looking into a juvenile's mouth, ears, or nose does not constitute a body cavity search. Body cavity searches must be based upon a reasonable belief that the juvenile is concealing contraband. Immediately after conducting a body cavity search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

07. Documentation of Searches. All searches must be documented in terms of reason for the search, who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator must be notified and it shall be reported according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." If necessary, the appropriate law enforcement agency should be notified. ()

08. Contraband Disposal. All contraband found in the possession of juvenile offenders, visitors, or staff must be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement must be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the program director, in consultation with the department, to dispose of all contraband not confiscated by police. ()

221. SMOKING AND SALE OF CIGARETTES.

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

222. ROOM RESTRICTIONS.

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

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

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

223. USE OF FORCE OR PHYSICAL RESTRAINTS.

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

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

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

03. Reporting Requirement. All instances of use of force must be documented in an incident report

and submitted according to the terms of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." Incidents of inappropriate use of force must be reported to the state's applicable licensing authority, or law enforcement as required by law. ()

224. -- 229. (RESERVED)

230. PROGRAMMING.

01. Basic Program Requirements. Providers must provide opportunities and services for juvenile offenders to improve their educational and vocational competence, to effectively address underlying behavior problems, and to prepare them for responsible lives in the community. Programs provided must be gender equitable, gender specific, and culturally competent. The ultimate treatment goal for juvenile offenders involved in these programs is the successful return of juvenile offenders to the community without committing further crimes. ()

02. General Requirements. ()

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

231. GUIDELINES FOR SPECIFIC SERVICES.

01. Counseling Services. ()

a. All counseling services provided to juvenile offenders, whether individual, group or family, must be performed by a clinician, counselor, or therapist as defined in these rules. ()

b. Counseling should be planned and goal directed. ()

c. Notes must be written for each service provided and include documentation of who provided the service. The notes must be dated and clearly labeled either individual, group or family counseling. ()

d. The methods and techniques applied in counseling and the frequency and intensity of the sessions should be determined by assessment. ()

e. Counseling should be reality oriented and directed toward helping juvenile offenders understand and solve specific problems; discontinue inappropriate, damaging, destructive or dangerous behaviors; and fulfill individual needs. ()

f. The minimum standard for the frequency of counseling services must be specified in the comprehensive program description attached to the contract with the department. ()

g. There should be a mechanism developed to monitor and record incremental progress toward the desired outcome of counseling services. ()

h. Programs should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. ()

i. Programs must provide crisis intervention counseling if warranted by the assessment and circumstances. ()

j. The provider must furnish adequate space for conducting private interviews and counseling sessions at the facility. ()

k. Family counseling services must be available as a part of the juvenile offender's service implementation plan, to the extent that this is supported by the assessment. If the assessment indicates a need for these services, family counseling should specifically address issues that, directly or indirectly, resulted in the juvenile offender's removal from the home and the issue of eventual reintegration back into the family unit. A statement of goals to be achieved or worked toward by the juvenile offender and the family should be part of the service implementation plan. ()

02. Substance Abuse Services. As a minimum standard, programs must provide substance abuse services as determined by assessment and indicated in the service implementation plan. Substance abuse services must have direct oversight by a certified alcohol and drug counselor, or master's level clinician with three (3) years' experience in the substance abuse field. Substance abuse services must be fully described in the detailed program description and must have a written curriculum containing a description of each session offered. Juvenile offenders

receiving substance abuse services must have an introduction to a community intervention program. Relapse prevention plans must be a component of the substance abuse services provided. Relapse prevention plans must be specifically based on the individual needs of the juvenile offender. Notes documenting the service provided must be dated, clearly labeled “substance abuse services,” and each entry must be signed by the counselor performing the service. ()

03. Social Skills Training Including Relapse Prevention Skills. Programs must assess each juvenile offender's social skills and document specific services provided to improve functioning in this area. Additionally, every juvenile offender must have developed a written relapse prevention plan prior to successfully completing the program. ()

04. Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders are taught basic life skills and that age-appropriate juvenile offenders are involved in independent living skills consistent with their age and needs. This program should include, at a minimum, instruction in: ()

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

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

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

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

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

232. CASE MANAGEMENT REPORTING REQUIREMENTS.

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

01. Service Implementation Plan. Within thirty (30) calendar days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the service plan from the observation and assessment report. The service implementation plan should, at a minimum, address the following areas as indicated by need: ()

- a. Education and employment; ()
- b. Personality and behavior; ()
- c. Substance abuse; ()
- d. Attitudes, values, and delinquent orientation; ()
- e. Family circumstances and parenting; ()
- f. Peer relations; ()
- g. Leisure and recreation; ()
- h. Sexual misconduct; ()
- i. Specialized needs; and ()
- j. Reintegration plan, including living arrangements upon release from department custody or transfer and aftercare services needed. ()

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

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

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

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

06. Progress Notes. Monthly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan and submitted to the juvenile services coordinator. ()

07. Progress Report. A written progress report must be submitted to the juvenile services coordinator and any designees at least every two (2) months. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community

protection, competency development, and accountability). Areas of need that were included in the service implementation plan and identified in Subsection 232.01 of these rules should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. ()

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

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

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

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

233. INDIVIDUAL COMMUNITY PASSES.

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

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

- a. The juvenile offender's name and date of birth; ()

- b. The name, address and telephone number of the individual assuming responsibility; ()
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; ()
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; ()
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; ()
- f. A complete listing of the activities required during the pass; ()
- g. Specific stipulations prohibiting: ()
 - i. The use of alcohol, tobacco, and drugs; ()
 - ii. Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; ()
 - iii. Participation in sexual relations of any kind; ()
 - iv. Possession of any kind of firearm or weapon; ()
 - v. Any violation of the terms of probation; and ()
- h. Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. ()

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

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

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

234. GROUP ACTIVITIES OFF FACILITY GROUNDS.

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

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

02. Staff Requirements. ()

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

CPR must accompany the group. ()

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

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

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

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

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 234.01 of these rules. Each juvenile offender must have prior written consent from a parent or guardian, if available, and the department's regional superintendent. Consent must include: ()

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

b. Acknowledgement of planned activities; and ()

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

04. Activity Reports. At the conclusion of each overnight or high risk recreational activity pass, the provider must document in the juvenile offender's file and include in the progress report, any significant positive or negative events that transpired while the juvenile offender was on pass. Any unusual occurrences must be reported to the juvenile services coordinator and documented on an incident report as identified in IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the provider, and the results of that exam reported to the juvenile services coordinator. ()

235. OUT-OF-STATE TRAVEL.

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

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

a. Dates of the scheduled trip; ()

b. Location of the trip; ()

c. Purpose of the trip; ()

d. Transportation arrangements; ()

e. Where the juvenile offender will be staying if overnight accommodations are required (address and phone number); and ()

f. Who is going, such as juvenile offender, and name and position of staff. ()

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

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

236. DRUG SCREENS OF JUVENILE OFFENDERS.

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

237. PLANNING FOR RELEASE OR TRANSFER.

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

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

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

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

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

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

b. Within two (2) business days after a juvenile offender leaves the facility or program, the provider must send any available dental or medical records to the privacy officer at the juvenile correctional center in Nampa. ()

c. Within two (2) business days after a juvenile offender leaves the facility or program, the provider must send a report showing the juvenile offender's total hours, credits, and associated grades directly to the juvenile correctional center in Nampa. The provider must maintain adequate documentation to support the submitted education reports. Timely receipt of these records is critical to assist the transition of the juvenile offender to another educational facility. ()

06. Termination Prior to Completion. ()

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

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

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

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

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

238. -- 249. (RESERVED)

250. EDUCATION SERVICES.

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

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

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

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

b. That grades will be submitted, as required in Subsection 237.05 of these rules, within two (2) business days of transfer or release from department custody; ()

- c. Curriculum for special education services, if appropriate; ()
- d. A plan for the provision of state required testing; and ()
- e. Types of services that will be provided beyond the established limits of the regular school year for that school district. ()

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

05. Accreditation Requirements. Each provider serving juvenile offenders, who have been committed to the department, will have, or contract with, an education program that will meet the accreditation standards of the Northwest Association of Schools or equivalent associating organization, or the applicable state's Department of Education. ()

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

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

b. Consistent with statewide educational standards, providers are responsible for assuring that each juvenile offender is tested in accordance with the applicable state's assessment schedule and all required measures. Any fees associated with the testing services will be the responsibility of the provider. Results of testing must be submitted to the department's education records manager at the juvenile corrections center in Nampa within ten (10) business days after the provider's receipt of the scores. ()

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

08. Special Education Services. ()

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

b. Providers must make every reasonable effort and thoroughly document all efforts to contact parents or guardians of juvenile offenders identified as eligible for special education. If it is not possible to involve the natural parents or guardians, a surrogate parent must be appointed by the agency providing special educational services. This surrogate cannot be the director or other employee of an agency, institution, or community-based residential facility who is involved in providing care or education to a juvenile offender, or an employee of a state agency or agency volunteer, such as caseworker, social worker, or court-appointed special advocate who has been appointed by the state to provide for the welfare of the student. A surrogate parent is used only for special educational requirements and has no other legal authority. ()

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

10. Educational Records and Confidentiality. ()

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

i. Subjects taken; ()

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

iii. Units of credit with explanation; ()

iv. Attendance records; and ()

v. Any standardized test scores. ()

b. Reports of the juvenile offender's educational progress (report cards) must be provided to the education records manager at the juvenile correctional center in Nampa within ten (10) business days after the end of the school's grading periods (midterm, semester, trimester, etc.). ()

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

d. When a juvenile offender is released from department custody or transferred, the permanent education file must be updated by the department's education records technician. The providers will provide final withdrawal grades and credits within twenty-four (24) hours or next business day after the juvenile offender is released from department custody or transferred. The providers must send the education records manager at the juvenile correctional center in Nampa an e-mail advising that the final grades have been entered into the software program. Working educational files must be returned to the juvenile correctional center in Nampa within ten (10) business days of the juvenile offender's release from department custody or transfer. ()

251. -- 259. (RESERVED)

260. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender must be provided with medical, dental, optical, mental health, emergency or any other related health services while in the provider's care. Each provider must have access,

on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified physical or mental health services, including medications. Medical and mental health screenings must be provided within two (2) hours of a juvenile offender's admission to a program. Comprehensive and professional medical and mental health assessments must be provided by the provider within thirty (30) calendar days of admission, unless these are provided by the department. A copy of these assessments must be forwarded to the department's regional R.N. ()

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

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

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

261. ADMISSION AND ANNUAL HEALTH SERVICES AND TREATMENT RECORDS.

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

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

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

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

262. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

01. Confidentiality. Confidentiality of personal health information of each juvenile offender must be maintained in accordance with the Privacy Regulations promulgated under HIPAA of 1996 or, if more stringent, the laws of the applicable state. Compliance with these regulations is the responsibility of the provider. Staff shall be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the

performance of their job duties. ()

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

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

263. NOTIFICATION OF CRITICAL HEALTH INCIDENTS.

The provider must immediately report critical medical and mental health incidents according IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

264. INFECTIOUS DISEASES.

01. Policies. ()

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

b. The provider must comply with the child care licensing rules of the Idaho Department of Health and Welfare regarding universal precautions. ()

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

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

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

265. PREGNANCY.

01. Individual Medical Plan. Within the individual medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan must be based on the orders of the juvenile offender's licensed healthcare provider and must include special care, location for delivery, regular medical check-ups, and special dietary and recreational needs. A copy of the individual medical plan will be sent to the department's regional R.N. ()

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

03. Medicaid Reimbursement. Medical services relating to pregnancy must be provided by a licensed healthcare provider and facility accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. ()

04. Infant Care. When an infant is delivered and the mother continues in department custody, the infant must be placed with an appropriate family member or in the temporary care of the Family and Children

Services Division of the Idaho Department of Health and Welfare, subject to any necessary court approval. At no time shall the infant remain in the provider's facility. ()

266. REFUSAL OF TREATMENT.

Refusal of medications or treatment recommended by a physician for three (3) days requires immediate notification to the department's regional R.N. according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. A provider staff member must witness the juvenile offender's signature. This refusal form will be filed in the juvenile offender's medical record. ()

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the provider must issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. ()

267. USE OF MEDICATIONS.

01. Written Policy. The provider must have written policies and procedures governing the use and administration of medication to juvenile offenders. Policies must conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare or the applicable state's licensing authority. ()

02. Notification. If initiating or modifying any medication, the department's regional R.N. must be notified. Notification must include the following: ()

- a. The name of the prescribed medication; ()
- b. The name and phone number of the prescribing doctor, nurse practitioner, or physician's assistant; and ()
- c. The reason the medication is being prescribed. ()

268. FIRST AID KITS.

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

269. -- 999. (RESERVED)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.03 - RULES FOR REINTEGRATION PROVIDERS

DOCKET NO. 05-0203-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 135 through 151](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x. 410.

DATED this 21st Day of November, 2014.

Sharon Harrigfeld
Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83702-0285
Phone: (208) 334-5100
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(3) and 20-504(12), 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 September 17, 2014.

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:

05.02.03, "Rules for Reintegration Providers," will contain additional rules that are only applicable to these specific providers. Changes include: additional requirements relating to the Department of Justice PREA Standards and providing clarification in areas of past misinterpretation.

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:

No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 31](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 x. 410.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0203-1401

IDAPA 05
TITLE 02
CHAPTER 03

05.02.03 - RULES FOR REINTEGRATION PROVIDERS

000. LEGAL AUTHORITY.

01. Section 20-504(10), Idaho Code. Pursuant to Section 20-504(10), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders committed to the department. ()

02. Section 20-504(12), Idaho Code. Pursuant to Section 20-504(12), Idaho Code, the department

shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. ()

03. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the “Interstate Compact on Juveniles,” the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.02.03, “Rules for Reintegration Providers,” IDAPA 05, Title 02, Chapter 03. ()

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

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretations of these rules. The document is available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for providers. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., Idaho 83720-0285. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections’ rules should be directed to 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. The telephone number of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 (800) 377-1363 or 711. The facsimile number of the office is (208) 334-5120. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. 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. ()

02. Body Search, Clothed. Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. ()

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

04. Education Plan. A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Common Core Standards recommended coursework for their grade level based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan

(IEP) in lieu of an education plan. ()

05. General Education Student. A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). ()

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

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

08. Individual Community Pass. Any instance in which a juvenile offender leaves the residential treatment provider's facility for a planned activity, without direct supervision by at least one (1) residential treatment provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: ()

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

b. Day or overnight home visits; ()

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

d. Funeral leave. ()

09. Individual Education Plan (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. ()

10. Medical Health Professional. An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. ()

11. Privileged Mail. Mail between the juvenile offender and their attorneys, legal aid services, other agencies providing legal services to juvenile, or paraprofessionals having legitimate association with such agencies; judges and clerks of federal, state and county courts; public officials and their authorized representatives acting in their official capacities; and the communications with clergy of the juvenile's faith. ()

12. Reintegration Placement. The placement of a juvenile offender receiving independent living and reintegration skills services from the provider. This placement may be with a host family, in a group setting, or in an apartment. ()

011. -- 099. (RESERVED)

100. INITIATION OF SERVICES.

Juveniles are committed to the department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-549, Idaho Code). ()

101. WAIVER OR VARIANCE.

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

102. APPLICABILITY.

This chapter applies to providers of reintegration and independent living skills that coordinate needed treatment services identified in individual service implementation plans. Reintegration providers must also abide by IDAPA

05.02.01, "Rules for Residential Treatment Providers." ()

103. -- 199. (RESERVED)

200. AUTHORITY TO INSPECT.

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

02. Site Visit. If the juvenile offender is living independently, the juvenile services coordinator or designee shall conduct site visits of the residence prior to occupancy. ()

201. CLOTHING AND PERSONAL ITEMS.

The reintegration provider must ensure that the juvenile offender has sufficient clothing. The provider shall not require the juvenile offender to purchase clothing with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the provider. Any clothing purchased with the juvenile offender's personal funds must be documented. The provider will ensure the juvenile is provided proper care and cleaning of clothing in the juvenile offender's possession. All clothing and incidentals become the property of the juvenile offender upon release. ()

202. FOOD SERVICE.

The reintegration provider must ensure that the juvenile has sufficient food at all times. The provider shall not require the juvenile offender to purchase food with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the provider. Shopping, meal preparation, planning and proper nutrition must be part of the independent living skills. ()

203. RELIGIOUS SERVICES.

The reintegration provider must ensure that attendance at religious services is voluntary. No juvenile offender shall be required to attend religious services, and no juvenile offender shall be penalized for not attending nor given privileges for certain attendance. ()

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

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

03. Transportation. The reintegration provider must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community. ()

04. Risk to Community. If the juvenile offender cannot attend religious services in the community because staff has reason to believe he would attempt to escape, or otherwise present a risk to the safety of the community, the provider must make every reasonable effort to ensure that he has the opportunity to participate in religious services of his choice at the program or residence. ()

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

204. EMPLOYMENT OF JUVENILE OFFENDERS.

01. Employment. If juvenile offender employment away from the program site is a part of the program, written policy and procedure must provide that program resources and staff time are devoted to helping employable juvenile offenders locate employment. The reintegration provider must ensure that each employment

opportunity meets all legal and regulatory requirements for juvenile employment. The juvenile offender's employer must be consulted at least monthly by the provider concerning the juvenile offender's work abilities and performance on the job-site. Additionally, the provider must make checks on the job-site at least twice monthly to ensure the juvenile offender is working under acceptable conditions, and must document these checks in the juvenile offender's progress report. Under no circumstances should staff or the families of staff benefit financially, or otherwise, from work done by juvenile offenders in the program. ()

02. Employment Opportunities. Every reasonable effort must be made to select employment opportunities that are consistent with the individual interests of the juvenile offender to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training, and may be suitable for continuing post-release employment. Reasonable effort must be made to provide a juvenile offender with the highest paying job possible. Income earned by a juvenile offender must be handled consistent with Subsection 205.04 of these rules. ()

205. PERSONAL FUNDS.

01. Funds Handled by a Provider. The provider will follow generally accepted accounting practices in managing personal funds of juvenile offenders and must be able to demonstrate appropriate measures of internal fiscal controls related to the juvenile's personal funds. ()

a. The provider must establish a written budget for a juvenile, as part of the service implementation plan, for the use of the juvenile offender's personal funds. There must be a specific allocation for daily incidental expenses. ()

b. If the amount of personal funds maintained for the juvenile offender does not exceed one hundred (100) dollars, the provider may secure the funds locally if the following conditions are met: ()

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

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

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

c. The provider must ensure that the juvenile offender saves at least thirty percent (30%) of income to be used at program completion for purchasing the resources for independent living and employment. ()

d. Upon the juvenile offender's personal funds exceeding one hundred (100) dollars, the reintegration provider must assist the juvenile offender in opening an account in the juvenile's name at a public banking institution. ()

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

f. The provider must develop written procedures governing any limits to the amount of funds a juvenile offender may withdrawal from their personal funds. ()

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

h. There must be no commingling of juvenile personal funds with provider funds. Borrowing or moving funds between juvenile personal accounts is prohibited. ()

02. Reporting Requirements. A personal funds report must be submitted monthly to the juvenile services coordinator. The report must show a list of all juvenile offender account balances. The personal fund account

is subject to review and audit by the department or its representatives at any time. Any discrepancies in juvenile offender accounts must be resolved by the reintegration provider within five (5) business days of completion of the review. ()

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

206. COMMUNITY SERVICE AND RESTITUTION.

01. Community Service. Juvenile offenders may have court-ordered community service hours. The reintegration provider must obtain prior approval from the juvenile probation officer to complete any court-ordered community service hours while at the reintegration provider. The reintegration provider shall be responsible for documenting approved community service hours and reporting the accumulation of completed hours in the juvenile offender's progress report. ()

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

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

207. JUVENILE OFFENDER MAIL.

01. Restrictions. Juvenile offenders must be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the department or by court order. All other restrictions of mail must be discussed with the community treatment team, approved in writing by the juvenile services coordinator, and documented in the juvenile offender's service implementation plan. There must be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. Juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence. ()

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

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

04. Packages. Packages may be inspected for contraband but only in the presence of the juvenile offender. ()

05. Publications. Books, magazines, newspapers and printed matter which may be legally sent to juvenile offenders through the postal system may be approved by the reintegration provider, unless deemed to constitute a threat to the security, integrity, or order of the programs. ()

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

208. VISITATION

01. Visitation Policy. The provider must develop a written policy governing visitation which protects the safety of visitors, staff, and juvenile offenders. This policy may restrict visitation to the residence of visitors below an established age or provide for higher levels of supervision in circumstances where safety of visitors, staff, and juvenile offenders may be at risk. The provider must provide a copy of the visitation policy to each juvenile offender, his parent or guardian, and the juvenile services coordinator. In all cases, the provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors in accordance with the provider's criteria. ()

02. Visitor Admission. If there is reason to believe a visitor is under the influence of alcohol or drugs or possesses illegal contraband, admission into the residence shall be denied. Visitors who bring in items that are unauthorized, but not illegal, must either be denied admission into the program or residence or have these items taken and locked in an area inaccessible to the juvenile offenders during the visit. These items will be returned to the visitors upon their exit from the program or residence. All visitors denied access to the program or residence, and the reason for their denial, must be documented. ()

209. -- 219. (RESERVED)

220. SEARCHES FOR CONTRABAND.

01. Searches of Personal Items. Routine searches of personal items being introduced into the program or residence may be conducted by staff prior to the juvenile offender taking possession of their property, or when the juvenile offender is returning to the program or residence from an individual community pass. Search of a juvenile offender's belongings or residence may be done at any time and must be minimally intrusive. ()

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

03. Clothed Body Searches. ()

a. Clothed body searches of juvenile offenders may be conducted whenever the reintegration provider believes it is necessary to discourage the introduction of contraband into the facility, or to promote the safety of staff, juvenile offenders, and visitors. A clothed body search may be used when a juvenile offender is returning from a visit, outside appointment, or activity. ()

b. Clothed body searches must be conducted in the manner described in the rules of the Idaho Department of Health and Welfare under IDAPA 16.06.02, "Standards for Child Care Licensing." Clothed body searches of juvenile offenders will be conducted by staff of the same gender as the juvenile offender. Clothed body searches will be conducted using a pat down search outside the juvenile's clothing on each quadrant. ()

04. Unclothed Body Searches. Unclothed body searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Unclothed body searches must be based upon a reasonable belief that the juvenile is concealing contraband or signs of abuse. Immediately after conducting an unclothed body search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

05. Body Cavity Searches. Body cavity searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Body cavity searches of juveniles will not be performed by staff, interns, or volunteers under any circumstances. Looking into a juvenile's mouth, ears, or nose does not constitute a body cavity search. Body cavity searches must be based upon a reasonable belief that the juvenile is concealing contraband. Immediately after conducting a body cavity search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

06. Documentation of Searches. All searches must be documented in terms of reason for the search, who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator must be notified and it shall be reported according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." If necessary, the appropriate law enforcement agency should be notified. ()

07. Contraband Disposal. All contraband found in the possession of juvenile offenders, visitors, or staff must be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement must be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the program director, in consultation with the department, to dispose of all contraband not confiscated by police. ()

221. -- 229. (RESERVED)

230. PROGRAMMING.

01. Basic Program Requirements. Reintegration providers must provide opportunities and services for juvenile offenders to improve their educational and vocational competence, to effectively address underlying behavior problems, and to prepare them for responsible lives in the community. Programs provided must be gender equitable, gender specific, and culturally competent. The ultimate treatment goal for juvenile offenders involved in these programs is the successful return of juvenile offenders to the community without committing further crimes. ()

02. General Requirements. ()

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

b. Programs that serve a special needs population, such as developmentally delayed or seriously emotionally disturbed juvenile offenders, must be able to demonstrate that the program services offered address the needs of the population served by the reintegration provider. ()

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

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

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

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

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

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

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

v. Address the principles of accountability to victims and to the community, competency

development, and community protection in case planning and reporting; ()

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

vii. Work with the department to provide juvenile offenders with educational and vocational services based upon their documented needs and abilities; and ()

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

231. GUIDELINES FOR SPECIFIC SERVICES.

01. Counseling and Other Outpatient Services. The reintegration provider must schedule all initial outpatient appointments, such as drug and alcohol counseling, for the juvenile offender within five (5) business days of arrival into the program. The provider should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. ()

02. Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders are taught basic life skills. This program should include, at a minimum, instruction in: ()

- a. Hygiene and grooming skills; ()
- b. Laundry and maintenance of clothing; ()
- c. Appropriate social skills; ()
- d. Housekeeping; ()
- e. Use of recreation and leisure time; ()
- f. Use of community resources, such as identifying medical and mental health providers; ()
- g. Handling personal finances, and issues such as leases, contracts, cell phone usage and agreements, insurance, banking and credit management with some support and intervention; ()
- h. Use of public transportation, where available; ()
- i. Budgeting and shopping; ()
- j. Cooking; ()
- k. Punctuality, attendance and other employment-related matters; ()
- l. Vocational planning and job finding skills; ()
- m. Wears clothing appropriate for the weather and activity; ()
- n. Takes own medication, as prescribed; ()
- o. Obtains and produces identification, as needed; and ()
- p. Travels to and from necessary destinations. ()

232. CASE MANAGEMENT REPORTING REQUIREMENTS.

Each juvenile offender's progress or lack of progress through these levels must be clearly documented and must be

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

01. Service Implementation Plan. Within ten (10) business days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the most recent progress report and reintegration plan from the sending facility or program. The service implementation plan must address the needs and areas in the reintegration plan. ()

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

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

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

05. Progress Notes. Bi-weekly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan and submitted to the juvenile services coordinator. ()

06. Progress Report. A written progress report must be submitted to the juvenile services coordinator and any designees at least every month, and must include current bank statements and reconciled monthly budget. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). Areas of need that were included in the service implementation plan and identified in Subsection 232.01 of these rules should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. ()

07. Relapse Prevention Plan. The reintegration provider shall receive a working copy of the juvenile offender's relapse prevention plan from the department. The provider must work with the juvenile to continue developing the relapse prevention plan form provided as the juvenile experiences increased exposure to the community. The reintegration provider must send the relapse prevention plan to the juvenile services coordinator and any designees prior to the juvenile offender's release from department custody. ()

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

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

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

233. OVERNIGHT COMMUNITY PASSES.

Any pass involving an overnight stay away from the program or residence, or involving special circumstances such as a sexual victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an overnight community pass, the provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and at the time he returns. ()

01. Potential Risk to Public Safety. If the pass is to the home of a parent or guardian, reintegration providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The department's pass form may be used for this purpose. If the department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision must contain at least the following information: ()

- a. The juvenile offender's name and date of birth; ()
- b. The name, address and telephone number of the individual assuming responsibility; ()
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; ()
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; ()
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; ()
- f. A complete listing of the activities required during the pass; ()
- g. Specific stipulations prohibiting:
 - i. The use of alcohol and drugs; ()
 - ii. Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; ()
 - iii. Participation in sexual relations of any kind; ()
 - iv. Possession of any kind of firearm or weapon; ()
 - v. Any violation of the terms of probation; and ()
- h. Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. ()

02. Frequency. Frequency of passes must be consistent with the terms of the juvenile offender's reintegration plan and reintegration provider's contract with the department. ()

03. Documentation. Documentation of the exact date and time of the juvenile offender's departure from the program for a pass, and his return, must be maintained along with complete information about the individual

assuming physical custody, transportation, and supervision during the pass. ()

234. ACTIVITIES.

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

02. Staff Requirements for Group Activities. ()

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

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

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

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

e. There will be no consumption of alcoholic beverages or illicit drugs by juvenile offenders, staff, volunteers, or interns. ()

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 234.01 of these rules. Each juvenile offender must have prior written consent from the department's regional superintendent. Consent must include: ()

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

b. Acknowledgement of planned activities; and ()

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

04. Activity Reports. At the conclusion of each overnight or high risk recreational activity pass, the provider must document in the juvenile offender's file and include in the progress report, any significant positive or negative events that transpired while the juvenile offender was on pass. Any unusual occurrences must be reported to the juvenile services coordinator and documented on an incident report as identified in IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the provider, and the results of that exam reported to the juvenile services coordinator. ()

235. OUT-OF-STATE TRAVEL.

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

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

- a. Dates of the scheduled trip; ()
 - b. Location of the trip; ()
 - c. Purpose of the trip; ()
 - d. Transportation arrangements; ()
 - e. Where the juvenile offender will be staying if overnight accommodations are required (address and phone number); and ()
 - f. Who is going, such as juvenile offender, and name and position of staff. ()
- 02. Prior Approval.** The provider must obtain all necessary approvals prior to authorizing travel. ()
- 03. Interstate Compact for Juveniles.** Any out-of-state travel for more than twenty-four (24) hours requires a travel permit and compliance with the Interstate Compact for Juveniles. ()

236. DRUG SCREENS OF JUVENILE OFFENDERS.

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

237. PLANNING FOR RELEASE OR TRANSFER.

01. Reintegration Staffing. The juvenile services coordinator shall convene a reintegration staffing which will include the juvenile offender's probation officer, the provider, the juvenile offender's parent or guardian if applicable, and the juvenile offender. At a minimum, the reintegration staffing must consider and, to the extent possible, solidify plans to address any ongoing medical or mental health, substance abuse, social skills, education, vocation, independent living, and other special needs. Based upon the results of that staffing, the department will make the final decision regarding transfer or release from department custody. ()

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

a. If releasing, the provider must provide the juvenile offender's Medicaid card and all medications to the juvenile. ()

b. If transferring, the provider must provide the juvenile offender's Medicaid card and all medications to the individual or agency authorized to transport the juvenile offender. ()

c. Within two (2) business days after a juvenile offender leaves the program, the provider must send any available dental or medical records to the privacy officer at the juvenile correctional center in Nampa. ()

d. Within two (2) business days after a juvenile offender leaves the program, the provider must send a report showing the juvenile offender's total academic hours, credits, and associated grades directly to the juvenile correctional center in Nampa. The provider must maintain adequate documentation to support the submitted education reports. Timely receipt of these records is critical to assist the transition of the juvenile offender to another educational facility. The education files must be mailed within two (2) business days of the juvenile offender's transfer. ()

03. Termination Prior to Completion. ()

a. When a provider believes a juvenile offender is at risk for transfer prior to program completion, the

juvenile services coordinator must be notified as far in advance as possible so that a staffing with the regional clinical supervisor and, if necessary, the department's regional superintendent, may be held. The purpose of this staffing is to consider the circumstances which may require the transfer, and to make every effort to address the concerns with the provider to avoid the necessity of making another placement. The provider must document these efforts at problem solving. The department will make a decision about transfer based upon the results of this staffing and any subsequent work agreed upon with the provider. The provider can request transfer of a juvenile offender in the following circumstances: ()

- i. A pattern of documented behavior clearly indicating a lack of progress; or ()
 - ii. Commission of one (1) or more serious or violent incidents that jeopardize the safety and security of individuals or the program. ()
- b.** In matters involving life, health, and safety of any juvenile in department custody, the department shall remove the juvenile offender immediately. ()
- c.** A final progress report must include, at a minimum, a report on progress or lack of progress on all service implementation plan areas, and recommendations for follow-up. The report must be forwarded to the juvenile services coordinator within twenty-four (24) hours of release from department custody or transfer prior to program completion. ()

238. -- 249. (RESERVED)

250. EDUCATION SERVICES.

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

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

251. -- 259. (RESERVED)

260. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender must be provided with medical, dental, optical, mental health, emergency or any other related health services while in the provider's care. Each provider must have access, on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified medical or mental health services, including medications. The provider must coordinate services and assist juvenile offender in interpreting and complying with any follow up care as requested by healthcare provider. Any time a juvenile offender receives treatment under this section or for any health related service, a copy of any medical or dental assessments, treatments, test results, and follow up care must be forwarded to the department's regional R.N. ()

02. Medical Consent. As part of the admission process, the provider must have a copy of the department's Release of Information and Consent form signed by a juvenile offender over eighteen (18) years of age. The consent form must be filed in the juvenile offender's case file maintained by the provider. ()

03. Emergency Medical Treatment. In cases of emergency medical treatment requiring signed authorization for juveniles in the custody of the department, the authorization may be signed by the department's regional R.N. or designee. This does not restrict the provider from taking action in life and death situations. ()

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

261. ADMISSION HEALTH SERVICES AND TREATMENT RECORDS.

01. Prior Approval. Prior approval or review from the department's regional R.N. is required for all health services, other than emergency services. Prior approval may be given for up to five (5) routine, pre-scheduled medical appointments. ()

02. Medical Records. The provider must assist the juvenile offender in organizing medical information, instructions, prescriptions and any necessary follow up papers in a designated medical folder. Any time a juvenile offender receives treatment under this section or for any health related service, the provider must retain the original medical record and shall immediately send a copy to the department's regional R.N. ()

03. Medical Billing. The direct care provider must submit medical bills directly to the department's regional R.N. that approved the provision of services. ()

262. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

To the extent the provider has medical information, confidentiality of personal health information of each juvenile offender must be maintained in accordance with the Privacy Regulations promulgated under HIPAA of 1996 or, if more stringent, the laws of the applicable state. Compliance with these regulations is the responsibility of the provider. Staff shall be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the performance of their job duties. ()

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

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

263. NOTIFICATION OF CRITICAL HEALTH INCIDENTS.

The provider must immediately report critical medical and mental health incidents according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

264. INFECTIOUS DISEASES.

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

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

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

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

265. PREGNANCY.

01. Individual Medical Plan. Within the individual medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan must be based on the orders of the juvenile offender's licensed healthcare provider and must include special care, location for delivery, regular medical check-ups, and special dietary and recreational needs. A copy of the individual medical plan will be sent to the department's regional R.N. ()

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

03. Medicaid Reimbursement. Medical services relating to pregnancy must be provided by a licensed healthcare provider and facility accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. ()

04. Infant Care. When an infant is delivered and the mother continues in department custody, the infant must be placed with an appropriate family member or in the temporary care of the Family and Children Services Division of the Idaho Department of Health and Welfare, subject to any necessary court approval. At no time shall the infant remain in the provider's facility. ()

266. REFUSAL OF TREATMENT.

Refusal of medications or treatment recommended by a physician for three (3) days requires immediate notification to the department's regional R.N. according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. This refusal form must be sent from the direct care service provider to the regional R.N. ()

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the provider must issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. ()

267. USE OF MEDICATIONS.

The provider must have written policies and procedures governing the use and administration of medication to juvenile offenders. Policies must conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare. ()

01. Medication Management Upon Arrival. If the juvenile offender is taking medication, the reintegration provider must schedule an initial medication management appointment for the juvenile offender within five (5) business days of arrival into the program. ()

02. Notification. If initiating or modifying any medication, the department's regional R.N. must be

notified. Notification must include the following: ()

a. The name of the prescribed medication; ()

b. The name and phone number of the prescribing doctor, nurse practitioner, or physician's assistant;
and ()

c. The reason the medication is being prescribed. ()

268. FIRST AID KITS.

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

269. -- 999. (RESERVED)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.04 - RULES FOR SUPPORTED LIVING PROVIDERS

DOCKET NO. 05-0204-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 152 through 167](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jessica Moncada, (208) 334-5100 x. 410.

DATED this 21st Day of November, 2014.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83702-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE
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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(3) and 20-504(12), 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 September 17, 2014.

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:

05.02.04, "Rules for Supported Living Providers." This chapter will contain additional rules that are only applicable to these specific providers. Changes include: additional requirements relating to the Department of Justice PREA Standards and providing clarification in areas of past misinterpretation.

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:

No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 32](#).

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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jessica Moncada, (208) 334-5100 x. 410.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0204-1401

IDAPA 05 TITLE 02 CHAPTER 04

05.02.04 - RULES FOR SUPPORTED LIVING PROVIDERS

000. LEGAL AUTHORITY.

01. Section 20-504(10), Idaho Code. Pursuant to Section 20-504(10), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders committed to the department. ()

02. Section 20-504(12), Idaho Code. Pursuant to Section 20-504(12), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67,

Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. ()

03. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the “Interstate Compact on Juveniles,” the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.02.04, “Rules for Supported Living Providers,” IDAPA 05, Title 02, Chapter 04. ()

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

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretations of these rules. The document is available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for providers. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., Boise, Idaho 83720-0285. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections' rules should be directed to 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. The telephone number of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 (800) 377-1363 or 711. The facsimile number of the office is (208) 334-5120. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Education Plan. A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Common Core Standards recommended coursework for their grade level based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. ()

02. General Education Student. A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). ()

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

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

05. Individual Community Pass. Any instance in which a juvenile offender leaves the residential treatment provider's facility for a planned activity, without direct supervision by at least one (1) residential treatment provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: ()

- a. Day passes alone or with family or other, approved individuals; ()
- b. Day or overnight home visits; ()
- c. Recreational activities not otherwise approved as a part of a group activity; and ()
- d. Funeral leave. ()

06. Individual Education Plan (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. ()

07. Medical Health Professional. An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. ()

08. Privileged Mail. Mail between the juvenile offender and their attorneys, legal aid services, other agencies providing legal services to juvenile, or paraprofessionals having legitimate association with such agencies; judges and clerks of federal, state and county courts; public officials and their authorized representatives acting in their official capacities; and the communications with clergy of the juvenile's faith. ()

011. -- 099. (RESERVED)

100. INITIATION OF SERVICES.

Juveniles are committed to the department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-549, Idaho Code). ()

101. WAIVER OR VARIANCE.

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

102. APPLICABILITY.

This chapter applies to providers of supported living that coordinate needed treatment services identified in individual service implementation plans. Supported living providers must also abide by IDAPA 05.02.01, "Rules for Residential Treatment Providers." ()

103. -- 199. (RESERVED)

200. AUTHORITY TO INSPECT.

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

02. Site Visit. A juvenile services coordinator or designee shall conduct a site visit of the residence prior to occupancy by the juvenile offender. ()

201. CLOTHING AND PERSONAL ITEMS.

The supported living provider must ensure that the juvenile offender has sufficient clothing. The provider shall not require the juvenile offender to purchase clothing with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the provider. Any clothing purchased with the juvenile offender's personal funds must be documented. The provider will ensure the juvenile is provided proper care and cleaning of clothing in the juvenile offender's possession. All clothing and incidentals become the property of the juvenile offender upon release.

()

202. FOOD SERVICE.

The supported living provider must ensure that the juvenile has sufficient food at all times. The provider shall not require the juvenile offender to purchase food with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the provider. Shopping, meal preparation, planning and proper nutrition must be part of the independent living skills.

()

203. RELIGIOUS SERVICES.

The provider must ensure that attendance at religious services is voluntary. No juvenile offender shall be required to attend religious services, and no juvenile offender shall be penalized for not attending nor given privileges for certain attendance.

()

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

()

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

()

03. Transportation. The provider must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community.

()

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

()

204. EMPLOYMENT OF JUVENILE OFFENDERS.

01. Employment. If juvenile offender employment away from the program site is a part of the program, written policy and procedure must provide that program resources and staff time are devoted to helping employable juvenile offenders locate employment. The supported living provider must ensure that each employment opportunity meets all legal and regulatory requirements for juvenile employment. The juvenile offender's employer must be consulted at least monthly by the provider concerning the juvenile offender's work abilities and performance on the job-site. Additionally, the provider must make checks on the job-site at twice least monthly to ensure the juvenile offender is working under acceptable conditions, and must document these checks in the juvenile offender's monthly progress report. Under no circumstances should staff or the families of staff benefit financially, or otherwise, from work done by juvenile offenders in the program. Providers must make every reasonable effort to assure that each juvenile offender's transportation to and from a job-site is safe.

()

02. Employment Opportunities. Every reasonable effort must be made to select employment opportunities that are consistent with the individual interests of the juvenile offender to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training, and may be suitable for continuing post-release employment. Reasonable effort must be made to provide a juvenile offender with the highest paying job possible. Income earned by a juvenile offender must be handled consistent with Subsection 205.04 of these rules.

()

205. PERSONAL FUNDS.

01. Funds Handled by a Provider. The provider will follow generally accepted accounting practices in managing personal funds of juvenile offenders and must be able to demonstrate appropriate measures of internal

fiscal controls related to the juvenile's personal funds. ()

a. The provider shall be required to deposit all personal funds collected for the juvenile offender in a public banking institution in an account in the juvenile's name. The provider must maintain a reconciled ledger showing each juvenile offender's deposits and withdrawals within the juvenile's account and copies of current bank statements. ()

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

c. The provider must develop written procedures governing any limits to the amount of funds a juvenile offender may withdrawal from their personal funds. ()

d. The provider must not require juvenile offenders, parents, or guardians to pay for services and supplies that are to be provided by the supported living provider. ()

e. There can be no commingling of juvenile personal funds with provider funds. Borrowing or moving funds between juvenile personal accounts is prohibited. ()

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

03. Juvenile Offenders with Earned Income. ()

a. The supported living provider is responsible for maintaining and accounting for any money earned by a juvenile offender. The provider must establish a written budget for a juvenile, as part of the service implementation plan, for the juvenile offender's use of these funds. There must be a plan for the priority use of the juvenile offender's earned income to pay court ordered restitution and a specific allocation for daily incidental expenses. ()

b. The provider must ensure that the juvenile offender save at least thirty percent (30%) of income to be deposited into the juvenile's personal funds account. The budget must specify the purpose for which the funds saved will be used for any unplanned expenses. ()

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

206. COMMUNITY SERVICE AND RESTITUTION.

01. Community Service. Juvenile offenders may have court-ordered community service hours. The supported living provider must obtain prior approval from the juvenile probation officer to complete any court-ordered community service hours while at the supported living provider. The provider shall be responsible for documenting approved community service hours and reporting the accumulation of completed hours in the juvenile offender's progress report. ()

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

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

207. JUVENILE OFFENDER MAIL.

01. Restrictions. Juvenile offenders must be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the department or by court order. All other restrictions of mail must be discussed with the community treatment team, approved in writing by the juvenile services coordinator, and documented in the juvenile offender's service implementation plan. There must be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. Juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence. ()

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

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

04. Packages. Packages may be inspected for contraband but only in the presence of the juvenile offender. ()

05. Publications. Books, magazines, newspapers and printed matter which may be legally sent to juvenile offenders through the postal system may be approved by the supported living provider, unless deemed to constitute a threat to the security of the residence. ()

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

208. VISITATION

01. Visitation Policy. The provider must develop a written policy governing visitation which protects the safety of visitors, staff, and juvenile offenders. This policy may restrict visitation to the residence of visitors below an established age or provide for higher levels of supervision in circumstances where safety of visitors, staff, and juvenile offenders may be at risk. The provider must provide a copy of the visitation policy to each juvenile offender, his parent or guardian, and the juvenile services coordinator. In all cases, the provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors in accordance with the provider's criteria. ()

02. Visitor Admission. If there is reason to believe a visitor is under the influence of alcohol or drugs or possesses illegal contraband, admission into the residence shall be denied. Visitors who bring in items that are unauthorized, but not illegal, must either be denied admission into the program or residence or have these items taken and locked in an area inaccessible to the juvenile offenders during the visit. These items will be returned to the visitors upon their exit from the program or residence. All visitors denied access to the program or residence, and the reason for their denial, must be documented. ()

209. -- 219. (RESERVED)

220. SEARCHES FOR CONTRABAND.

01. Searches of Personal Items. Routine searches of personal items being introduced into the residence may be conducted by staff prior to the juvenile offender taking possession of his property, or when the

juvenile offender is returning to the residence from an individual community pass. Search of a juvenile offender's belongings or residence may be done at any time and must be minimally intrusive. ()

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

03. Documentation of Searches. All searches must be documented in terms of reason for the search, who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator will be notified and it must be reported according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." If necessary, the appropriate law enforcement agency should be notified. ()

04. Contraband Disposal. All contraband found in the possession of juvenile offenders must be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement must be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the program director, in consultation with the department, to dispose of all contraband not confiscated by police. ()

221. -- 229. (RESERVED)

230. PROGRAMMING.

01. Basic Program Requirements. Supported living providers must provide opportunities and services for juvenile offenders to improve their educational and vocational competence, to effectively address underlying behavior problems, and to prepare them for responsible lives in the community. Programs provided must be gender equitable, gender specific, and culturally competent. The ultimate treatment goal for juvenile offenders involved in these programs is the successful return of juvenile offenders to the community without committing further crimes. ()

02. General Requirements. ()

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

b. Programs that serve a special needs population, such as developmentally delayed or seriously emotionally disturbed juvenile offenders must be able to demonstrate that the program services offered address the needs of the population served by the supported living provider. ()

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

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

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

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

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

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

- iv. Seek to involve juvenile offender's families in treatment, unless otherwise indicated for the safety and benefit of the juvenile offenders or other family members; ()
- v. Address the principles of accountability to victims and to the community, competency development, and community protection in case planning and reporting; ()
- vi. Participate fully with the department and the community treatment team in developing and implementing service plans for juvenile offenders they serve; ()
- vii. Work with the department to provide juvenile offenders with educational and vocational services based upon their documented needs and abilities; and ()
- f. Reintegration services include all aspects of case planning and service delivery designed to facilitate successful return of the juvenile offender to the community. ()

231. GUIDELINES FOR SPECIFIC SERVICES.

01. Behavior Assessment. A current assessment of independent behavior capacity must be used to determine the levels of service needed. ()

02. Counseling and Other Outpatient Services. The supported living provider must schedule all initial outpatient appointments, such as drug and alcohol counseling, for the juvenile offender within five (5) business days of arrival into the program. The provider should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. ()

03. Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders are taught basic life skills consistent with their age and needs. This should include, at a minimum, instruction in: ()

- a. Hygiene and grooming skills; ()
- b. Laundry and maintenance of clothing; ()
- c. Appropriate social skills; ()
- d. Housekeeping; ()
- e. Use of recreation and leisure time; ()
- f. Use of community resources, such as identifying medical and mental health providers; ()
- g. Handling personal finances, and issues such as leases, contracts, cell phone usage and agreements, insurance, banking and credit management with some support and intervention; ()
- h. Use of public transportation, where available; ()
- i. Budgeting and shopping; ()
- j. Cooking; ()
- k. Punctuality, attendance and other employment-related matters; ()
- l. Vocational planning and job finding skills; ()
- m. Wears clothing appropriate for the weather and activity; ()

- n. Obtains and produces identification, as needed; and ()
- o. Travels to and from necessary destinations. ()

232. CASE MANAGEMENT REPORTING REQUIREMENTS.

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

01. Service Implementation Plan. Within ten (10) business days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the most recent progress report and reintegration plan from the sending facility or program. The service implementation plan must address the needs and areas in the reintegration plan. ()

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

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

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

05. Progress Notes. Bi-weekly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan and submitted to the juvenile services coordinator. ()

06. Progress Report. A written progress report must be submitted to the juvenile services coordinator and any designees at least every month, and must include current bank statements and reconciled monthly budget. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful release from department custody. Areas of need that were included in the service implementation plan and identified in Subsection 232.01 of these rules should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. ()

07. Relapse Prevention Plan. The supported living provider shall receive a working copy of the juvenile offender's relapse prevention plan from the department. The provider must work with the juvenile to continue developing the relapse prevention plan form provided as the juvenile experiences increased exposure to the community. The supported living provider must send the relapse prevention plan to the juvenile services coordinator and any designees prior to the juvenile offender's release from department custody. ()

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

- a. A current summary of the juvenile offender's progress; ()
- b. A summary of the efforts to reach the juvenile offender's goals and objectives, including education; ()

- c. Any unresolved goals or objectives; ()
- d. Recommendation for continuing services, including education, in the home community; and ()
- e. The current address of the juvenile. ()

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

233. OVERNIGHT COMMUNITY PASSES.

Any pass involving an overnight stay away from the residence, or involving special circumstances such as a sexual victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an overnight community pass, the provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and at the time he returns. ()

01. Potential Risk to Public Safety. If the pass is to the home of a parent or guardian, providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The department's pass form may be used for this purpose. If the department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision must contain at least the following information: ()

- a. The juvenile offender's name and date of birth; ()
- b. The name, address and telephone number of the individual assuming responsibility; ()
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; ()
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; ()
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; ()
- f. A complete listing of the activities required during the pass; ()
- g. Specific stipulations prohibiting: ()
 - i. The use of alcohol and drugs; ()
 - ii. Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; ()
 - iii. Participation in sexual relations of any kind; ()
 - iv. Possession of any kind of firearm or weapon; ()
 - v. Any violation of the terms of probation; and ()
- h. Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. ()

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

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

234. ACTIVITIES

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

02. Staff Requirements for Group Activities. ()

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

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

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

d. There will be no consumption of alcoholic beverages or illicit drugs by juvenile offenders, staff, volunteers, or interns. ()

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 234.01 of these rules. Each juvenile offender must have prior written consent from the department's regional superintendent. Consent must include: ()

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

b. Acknowledgement of planned activities; and ()

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

04. Activity Reports. At the conclusion of each overnight or high risk recreational activity pass, the provider must document in the juvenile offender's file and include in the progress report, any significant positive or negative events that transpired while the juvenile offender was on pass. Any unusual occurrences must be reported to the juvenile services coordinator and documented on an incident report as identified in IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the provider, and the results of that exam reported to the juvenile services coordinator. ()

235. OUT-OF-STATE TRAVEL.

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

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

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

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

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

236. DRUG SCREENS OF JUVENILE OFFENDERS.

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

237. PLANNING FOR RELEASE OR TRANSFER.

01. Application for Developmental Disability Services. The supported living provider shall be responsible for compiling and submitting the necessary documentation that will determine if the juvenile offender is eligible for developmental disability services. The provider must begin this process upon the juvenile's admission into the program. ()

02. Reintegration Staffing. The juvenile services coordinator shall convene a reintegration staffing which will include the juvenile offender's probation officer, the provider, the juvenile offender's parent or guardian if applicable, and the juvenile offender. At a minimum, the reintegration staffing must consider and, to the extent possible, solidify plans to address any ongoing medical or mental health, substance abuse, social skills, education, vocation, independent living, and other special needs. Based upon the results of that staffing, the department will make the final decision regarding transfer or release from department custody. ()

03. Check-Out Procedures. Prior to the release from department custody or transfer, the provider must have completed a Provider Juvenile Check-Out Form supplied by the department. The form must be dated, signed by the juvenile offender, and forwarded to the juvenile services coordinator and any designees on the actual date that the juvenile offender is released from department custody. ()

a. If transferring, the provider must provide the juvenile offender's Medicaid card and all medications to the individual or agency authorized to transport the juvenile offender. ()

b. Within two (2) business days after a juvenile offender is released from department custody, the provider must send any available dental or medical records to the privacy officer at the juvenile correctional center in Nampa. ()

04. Termination Prior to Completion. ()

a. When a provider believes a juvenile offender is at risk for transfer prior to release from department custody, the juvenile services coordinator must be notified as far in advance as possible so that a staffing with the

regional clinical supervisor and, if necessary, the department's regional superintendent, may be held. The purpose of this staffing is to consider the circumstances which may require the transfer, and to make every effort to address the concerns with the provider to avoid the necessity of making another placement. The provider must document these efforts at problem solving. The department will make a decision about transfer based upon the results of this staffing and any subsequent work agreed upon with the provider. ()

b. If it is determined that the juvenile offender is not eligible for developmental disability services, the supported living provider must notify the juvenile services coordinator as soon as possible. ()

c. The provider can request transfer of a juvenile offender in the following circumstances: ()

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

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

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

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

238. -- 249. (RESERVED)

250. EDUCATION SERVICES.

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

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

251. -- 259. (RESERVED)

260. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender must be provided with medical, dental, optical, mental health, emergency or any other related health services while in the provider's care. Each provider must have access, on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified physical or mental health services, including medications. The provider must coordinate services and assist juvenile offender in interpreting and complying with any follow up care as requested by healthcare provider. Any time a juvenile offender receives treatment under this section or for any

health related service, a copy of any medical or dental assessments, treatments, test results, and follow up care must be forwarded to the department's regional R.N. ()

02. Medical Consent. As part of the admission process, the provider must have a copy of the department's Release of Information and Consent form signed by a juvenile offender over eighteen (18) years of age. The consent form must be filed in the juvenile offender's case file maintained by the provider. ()

03. Emergency Medical Treatment. In cases of emergency medical treatment requiring signed authorization for juveniles in the custody of the department, the authorization may be signed by the department's regional R.N. or designee. This does not restrict the provider from taking action in life and death situations. ()

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

261. ADMISSION HEALTH SERVICES AND TREATMENT RECORDS.

01. Prior Approval. Prior approval or review from the department's regional R.N. is required for all health services, other than emergency services. Prior approval may be given for up to five (5) routine, pre-scheduled medical appointments. ()

02. Medical Records. The provider must assist the juvenile offender in organizing medical information, instructions, prescriptions and any necessary follow up papers in a designated medical folder. Any time a juvenile offender receives treatment under this section or for any health related service, the provider must retain the original medical record and must immediately send a copy to the department's regional R.N. ()

03. Medical Billing. The direct care provider must submit medical bills directly to the department's regional R.N. that approved the provision of services. ()

262. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

To the extent the provider has medical information, confidentiality of personal health information of each juvenile offender must be maintained in accordance with the Privacy Regulations promulgated under HIPAA of 1996 or, if more stringent, the laws of the applicable state. Compliance with these regulations is the responsibility of the provider. Staff shall be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the performance of their job duties. ()

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

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

263. NOTIFICATION OF CRITICAL HEALTH INCIDENTS.

The provider must immediately report critical medical and mental health incidents according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

264. INFECTIOUS DISEASES.

01. Policies. The provider must establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of infectious diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures

should be updated as new information becomes available. Individual health information or counseling will be made available by a medical health professional for juvenile offenders diagnosed with an infectious disease. ()

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

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

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

265. PREGNANCY.

01. Individual Medical Plan. Within the individual medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan must be based on the orders of the juvenile offender's licensed healthcare provider and must include special care, location for delivery, regular medical check-ups, and special dietary and recreational needs. A copy of the individual medical plan will be sent to the department's regional R.N. ()

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

03. Medicaid Reimbursement. Medical services relating to pregnancy must be provided by a licensed healthcare provider and facility accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. ()

04. Infant Care. When an infant is delivered and the mother continues in department custody, the infant must be placed with an appropriate family member or in the temporary care of the Family and Children Services Division of the Idaho Department of Health and Welfare, subject to any necessary court approval. At no time shall the infant remain in the provider's facility. ()

266. REFUSAL OF TREATMENT.

Refusal of medications or treatment recommended by a physician for three (3) days requires immediate notification to the department's regional R.N. according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. This refusal form must be sent from the direct care service provider to the regional R.N. ()

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the provider must issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. ()

267. USE OF MEDICATIONS.

The provider must have written policies and procedures governing the use and administration of medication to juvenile offenders. Policies must conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare. ()

01. Medication Management Upon Arrival. If the juvenile offender is taking medication, the supported living provider must schedule an initial medication management appointment for the juvenile offender within five (5) business days of arrival into the program. ()

02. Notification. If initiating or modifying any medication, the department's regional R.N. must be notified. Notification must include the following: ()

a. The name of the prescribed medication; ()

b. The name and phone number of the prescribing doctor, nurse practitioner, or physician's assistant;
and ()

c. The reason the medication is being prescribed. ()

268. FIRST AID KITS.

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

269. -- 999. (RESERVED)

IDAPA 11 - IDAHO STATE POLICE ISP FORENSIC SERVICES

11.03.01 - RULES GOVERNING ALCOHOL TESTING

DOCKET NO. 11-0301-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is December 1, 2014. This pending rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the state specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 67-2901, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary 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:

ISPFS held a public hearing on November 13, 2014, wherein public comments were received by a hearing officer on the proposed rules. Pursuant to recommendations of the hearing officer, ISPFS is amending the text of pending and temporary rule as follows:

- * The definition of “Waiting Period/Monitoring Period/Deprivation Period/Observation Period” in IDAPA 11.03.01.010.26 is deleted and a definition for “Monitoring period” and “Deprivation period” were added as IDAPA 11.03.01.010.19 and IDAPA 11.03.01.010.14, respectively, to clarify the meaning of the different periods of time involved in the testing. Additionally, the rule was amended for consistency throughout where either of these terms were used.
- * The second sentence of IDAPA 11.03.01.014.03(b) was removed as the statement does not add any meaning to the rule. Examples contained in this sentence were included in the definition of “Deprivation Period” and “Monitoring Period.” Further, the definition of “Observation Period” was updated.
- * IDAPA 11.03.01.014.03(c) was simplified due to the terms “deprivation period” and “monitoring period” being defined in sections 11.03.01.010 and 11.03.01.010.19.
- * IDAPA 11.03.01.014.03(d) was amended to clarify the procedure by adding the word “if” instead of “before” because that makes it so the monitoring period is required if the test is performed, but does not require that the test be performed. There were many circumstances discussed where another test would not be feasible or possible. Additionally, the word “officer” was amended to read “operator.”
- * IDAPA 11.03.01.014.03(e) was amended to clarify that the operator should switch mouthpieces between test subjects, not between test sequences issued to the same individual for hygienic reasons.
- * IDAPA 11.03.01.014.03(g) was amended to read “shall when possible” instead of “should” to give the operator the ability to explain the circumstances behind the lack of a third test being administered.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule as previously adopted while the pending rule awaits legislative approval, the Agency amended the temporary rule with the same revisions made to the pending rule. Only the sections that differ from the proposed rule text are printed in this Bulletin. The original text of the

temporary and proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, **Vol. 14-10, pages 171 through 178.**

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Matthew Gamette, Director of Forensic Services at (208) 884-7217.

DATED this 1st Day of December, 2014.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
Tel: (208) 884-7003
Fax: (208) 884-7090

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

EFFECTIVE DATE: The effective date of the temporary rule is September 2, 2014.

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 67-2901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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:

This rule adds current standard operating procedures published by Idaho State Police Forensic Services (ISPFS) for alcohol analysis and breath testing to administrative rule. These rules have previously been part of the standard operating procedure documents published by ISPFS for use in court testimony.

The following procedures will be added to administrative rule:

- Breath alcohol instrument training requirements for operators and specialists;
- Breath alcohol instrument performance verification and calibration requirements and rules;
- Breath alcohol testing requirements and procedures;
- Alcohol laboratory approval and operational standards;
- Minor in possession/minor in consumption (MIP/MIC) testing methods; and
- Passive testing procedures.

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

The need for the temporary rule change is due to ongoing criminal cases and appeals in the Idaho judicial system to suppress blood alcohol results based on the current process of having the rules governing breath alcohol testing in ISP Forensic Services' Standard Operating Procedure (SOP) rather than administrative rule. If the breath alcohol results are suppressed by the courts because of the current wording, DUI cases with breath test results would not be able to be prosecuted in Idaho. Not prosecuting DUI cases presents a significant public safety threat.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there is no change to the process for alcohol testing, the change is merely adding the current standard operation procedure to administrative 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Matthew Gamette, Director of Forensic Services at (208) 884-7217.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0301-1401

010. DEFINITIONS AND ABBREVIATIONS.

01. Alcohol. "Alcohol" shall mean the chemical compounds: of ethyl alcohol, methyl alcohol, or isopropyl alcohol. ~~(7-1-93)~~()

02. Approved Vendor. "Approved vendor" shall mean a source/provider/manufactureer of an approved standard. ()

023. Blood Alcohol Analysis. "Blood alcohol analysis" shall mean an analysis of blood to determine the concentration of alcohol present. (7-1-93)

034. Breath Alcohol Analysis. "Breath alcohol analysis" shall mean an analysis of breath to determine the concentration of alcohol present. (7-1-93)

05. Breath Alcohol Test. "Breath alcohol test" shall mean a breath sample or series of separate breath

samples provided during a breath testing sequence. ()

06. Breath Alcohol Testing Sequence. “Breath alcohol testing sequence” shall mean a sequence of events as determined by the Idaho State Police Forensic Services, which may be directed by the instrument, the Operator, or both, and may consist of air blanks, performance verification, internal standard checks, and breath samples. ()

07. Breath Testing Certification Class. “Breath testing certification class” shall mean a department approved training class for prospective or uncertified breath alcohol Operators/Breath Testing Specialists. ()

08. Breath Testing Specialist (BTS). “Breath Testing Specialist” shall mean an operator who has completed advanced training approved by the department and are certified to perform routine instrument maintenance, teach instrument operation skills, proctor proficiency tests for instrument Operators, and testifying as an expert on alcohol physiology and instrument function in court. ()

09. Calibration. “Calibration” shall mean a set of laboratory operations which establish under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement. ()

10. Certificate of Analysis. “Certificate of analysis” shall mean a certificate stating the standards used for performance verification have been tested and approved for use by the ISPFS or are manufactured by an ISO 17025:2005 vendor and are traceable to N.I.S.T. standards. ()

11. Certificate of Instrument Calibration. “Certificate of instrument calibration” shall mean a certificate stating that an individual breath alcohol testing instrument has been evaluated by the ISPFS and found to be suitable for forensic alcohol testing. The certificate bears the signature of the calibration analyst at Idaho State Police Forensic Services, and the effective date of the instrument approval. ()

12. Changeover Class. “Changeover class” shall mean a training class for currently certified Operators during which the Operator is taught theory, operation, and proper testing procedure for a new make or model of instrument being adopted by their agency. Breath Testing Specialists complete BTS training that qualifies them to perform BTS duties related to the new make or model instrument. ()

~~04~~**13. Department.** “Department” shall mean the Idaho State Police. (7-1-93)

14. Deprivation Period. “Deprivation period” shall mean a minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject/individual shall not be allowed to smoke, drink, or eat substances containing alcohol. ()

15. Evidentiary Test. “Evidentiary test” shall mean a blood, breath, or urine test performed on a subject/individual for potential evidentiary or legal purposes. A distinction is made between evidentiary testing and non-quantitative screening/monitoring. ()

16. Idaho State Police Forensic Services (ISPFS). “Idaho State Police Forensic Services” shall mean a division of the Idaho State Police. ISPFS is dedicated to providing forensic science services to the criminal justice system of Idaho. ISPFS is the administrative body for the alcohol testing programs in Idaho. ()

~~05~~**17. Laboratory.** “Laboratory” shall mean the place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, vitreous humor, or urine, or beverages for law enforcement purposes. (4-7-11)()

18. MIP/MIC. “MIP/MIC” shall mean an abbreviation used to designate minor in possession or minor in consumption of alcohol. ()

19. Monitoring Period. “Monitoring Period” shall mean a minimum deprivation period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject/individual should be observed by the officer and any belch/burp/vomit/regurgitation should be noted by the operator. ()

20. **Operator Certification.** “Operator certification” shall mean the condition of having satisfied the training requirements for administering breath alcohol tests as established by the department. ()

21. **Operator.** “Operator” shall mean an individual certified by the department as qualified by training to administer breath alcohol tests. ()

22. **Performance Verification.** “Performance verification” shall mean a verification of the accuracy of the breath testing instrument utilizing a performance verification standard. Performance verification should be reported to three decimal places. While ISPFs uses the term performance verification, manufacturers and others may use a term such as “calibration check” or “simulator check.” ()

23. **Performance Verification Standard.** “Performance verification standard” shall mean an ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. ()

0624. **Proficiency Testing.** “Proficiency testing” shall mean a periodic analysis of blood, urine, or other liquid specimen(s) whose alcohol content is unknown to the testing laboratory, to evaluate the capability of that laboratory to perform accurate analysis for alcohol concentration. (3-19-99)()

0725. **Quality Control.** “Quality control” shall mean an analysis of referenced samples whose alcohol content is known, which is performed with each batch of ~~urine or~~ blood, vitreous humor, urine or beverage analysis to ensure that the laboratory’s determination of alcohol concentration is reproducible and accurate. (3-19-99)()

26. **Recertification Class.** “Recertification class” shall mean a training class offered by the department for currently certified personnel, completion of which results in uninterrupted continuation of their BTO or BTS status for an additional 2 years. ()

0827. **Urine Alcohol Analysis.** “Urine alcohol analysis” shall mean an analysis of urine to determine the concentration of alcohol present. (7-1-93)

011. **ABBREVIATIONS (RESERVED)**
There are no abbreviations or acronyms in this chapter. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

013. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

01. **Laboratory.** Any laboratory desiring to perform urine alcohol, vitreous humor, ~~or~~ blood alcohol, or beverage analysis shall meet the following standards: (3-19-99)()

a. The laboratory shall prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing. A copy of the procedure shall be provided to ISPFs for initial approval. Whenever procedure, protocol, or method changes (however named) are adopted by a laboratory, a copy of the update with the changes clearly indicated shall be approved by ISPFs before implementation; (7-1-93)()

b. The laboratory shall provide adequate facilities and space for the procedure used. The laboratory alcohol related functions shall be subject to an assessment by either an accrediting body or the department each calendar year, and the results from the annual audit shall be submitted to the department. The assessment shall be at the expense of the laboratory; (7-1-93)()

c. Specimens shall be maintained in a limited access and secure storage area prior to analysis. A chain of custody shall be maintained while the evidence is in the laboratory; (7-1-93)()

d. All instrumentation, equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises. Instrument maintenance documentation shall be available for review by the department; (7-1-93)()

e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Laboratories must participate in proficiency testing from a department approved provider at least once a calendar year. Approved providers include National Highway Traffic Safety Administration (NHTSA) and Collaborative Testing Services (CTS). Each test consists of at least four (4) blood samples spiked with an unknown concentration of ethyl alcohol, and possibly other volatiles, for qualitative determination. Participating laboratories must obtain proficiency tests from approved providers and are responsible for all costs associated with obtaining and analyzing such tests. Results from proficiency tests must be submitted by the due date to the test provider and ISPFPS. Results not submitted to a test provider within the allowed time do not qualify as a proficiency test. An alcohol concentration range is determined from the target value and ± 3.0 standard deviations as provided by the proficiency test provider. Reported values must fall within this range. If a laboratory determines more than one (1) alcohol value for a given sample, the mean value of results will be submitted and evaluated. Upon satisfactory completion of an approved proficiency test, a certificate of approval will be issued by the department to the participating laboratory. Approval to perform legal blood alcohol determinations is continued until the results of the next proficiency test are reviewed and notification is sent to the respective laboratory by ISPFPS. Failure to pass a proficiency test shall result in ~~disapproval until the problem is corrected and a proficiency test is successfully completed~~ immediate suspension of testing by an analyst or laboratory in the form of a written inquiry from the department. The test is graded as unsuccessful when the mean results are outside the tolerance range established from the accepted mean values. The laboratory shall have thirty (30) calendar days to respond to the department inquiry. The department shall notify the laboratory within fourteen (14) calendar days regarding corrective action steps necessary to lift the testing suspension, or the department may issue a written revocation. The department shall not lift a proficiency testing related suspension or revocation until a successful proficiency test has been completed by the individual analyst or laboratory. (7-1-93)()

f. For a laboratory performing blood, ~~or~~ urine, vitreous humor, or beverage analysis for alcohol analysis, approval shall be awarded to the laboratory director or primary analyst responsible for that laboratory. The responsibility for the correct performance of tests in that laboratory rests with that person; however, the duty of performing such tests may be delegated to any person designated by such director or primary analyst. The department may temporarily suspend or permanently revoke the approval of a laboratory or analyst if the listed requirements are not met. The department will issue the suspension or revocation in writing to the laboratory director or primary analyst responsible; (3-19-99)()

g. ~~Urine samples shall be collected in clean, dry containers.~~ Reinstatement after revocation requires completed corrective action of any items listed on the revocation documentation issued by the department. Documentation of corrective actions taken to address the nonconformities shall be submitted to the department for review. Once the department is satisfied that the laboratory is in compliance with all requirements, the department will issue written approval for the resumption of testing by that laboratory or analyst. A laboratory may appeal a suspension or revocation to the Director of the department. (7-1-93)()

02. Blood Collection. Blood collection shall be accomplished according to the following requirements: (7-1-93)

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-93)

b. The skin at the area of puncture shall be cleansed thoroughly and disinfected with an aqueous solution of a nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (7-1-93)

c. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. (4-4-13)

03. Results Blood Reported. The results of analysis on blood for alcohol concentration shall be

reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. ~~(3-19-99)~~()

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

045. Urine Reported. The results of analysis on urine for alcohol concentration shall be reported in units of grams of alcohol per sixty-seven (67) milliliters of urine. Results of alcohol analysis of urine specimens shall be accompanied by a warning statement about the questionable value of urine alcohol results. ~~(3-19-99)~~()

056. Records. All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-93)

014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

01. Instruments. Each breath testing instrument model shall be approved by the department and shall be listed in the “Conforming Products List of Evidential Breath Measurement Devices” published in the Federal Register by the United States Department of Transportation as incorporated by reference in Section 004 of this rule. The department will maintain a list of benchtop and portable instruments approved for evidentiary testing use in Idaho. Each individual breath testing instrument must be certified by the department. The department may, for cause, remove a specific instrument by serial number from evidential testing and suspend or withdraw certification thereof. ~~(4-7-11)~~()

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-93)

03. Administration. Breath tests shall be administered in conformity with standards established by the department. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of Idaho administrative rules, ISPFs analytical methods, and ISPFs standard operating procedures. ~~(4-7-11)~~()

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

b. Prior to administering the *monitoring* period, any foreign objects/materials which have the potential to enter the instrument/breath tube or may present a choking hazard (e.g. gum, chewing tobacco, food) should be removed. ()

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

d. If mouth alcohol is suspected or indicated by the testing instrument, the operator shall begin another fifteen (15) minute *monitoring* period if repeating the testing sequence. If during the *monitoring* period the subject/individual vomits or regurgitates material from the stomach into the breath pathway, the *monitoring* period should start over. If there is doubt as to the events occurring during the *monitoring* period (e.g. silent burp, belch, vomit, regurgitation), the operator should evaluate the instrument results for any indication of mouth alcohol. ()

e. A complete breath alcohol test includes two (2) valid breath samples taken during the testing procedure and preceded by air blanks. The subsequent breath samples performed with a portable breath testing instrument should be approximately two (2) minutes apart or more. If the subject/individual fails or refuses to provide a subsequent, adequate sample as requested by the operator, the single test result shall be considered valid. If a single test result is used, then the subject must have been observed during the fifteen (15) minute *monitoring* period. For hygienic reasons, the operator should use a new mouthpiece for each *subject/individual* tested. ()

f. The operator has the discretion to end breath testing, repeat breath testing, or request a blood draw at any point during the testing process as the circumstances require (including but not limited to lack of sample correlation, lack of subject participation or cooperation, subject is incoherent or incapable of following instructions, subject incapacitation). If a subject/individual fails or refuses to provide a subsequent, adequate sample as requested by the operator, the results obtained are still considered valid, provided the failure to supply the requested samples

was the fault of the subject/individual and not the operator. ()

g. A third breath sample shall, when possible, be collected if the first two (2) results differ by more than 0.02 g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the monitoring period prior to obtaining a third breath sample. ()

h. The results for subsequent breath samples should correlate within 0.02 g/210L alcohol to show consistent sample delivery, indicate the absence of RFI, and to indicate the absence of alcohol contamination in the subject/individual's breath pathway as a contributing factor to the breath results. ()

i. In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn. ()

04. Training. Each individual operator (BTO or BTS) shall demonstrate ~~that he has~~ sufficient training to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department on each instrument model utilized by the operator. Officers must retrain periodically as required by the department. Operator certifications issued after July 1, 2013 are valid for two (2) calendar years from the course completion date. The department may revoke individual operator (BTO/BTS) certification for cause. (7-1-93)()

05. Performance Verification Checks. Each breath testing instrument shall be checked on a schedule established by the Department for accuracy with a simulator solution provided by or performance verification standard approved by the department. These Performance verification checks shall be performed according to a procedure established by the department and shall be documented. The official time and date of the performance verification is the time and date recorded on the printout, or the time and date recorded in the log. (4-7-11)()

a. A performance verification check shall occur within twenty-four (24) hours before or after an evidentiary test. The benchtop instrument requires a performance verification check as part of the testing sequence. On the portable instrument, multiple breath alcohol tests may be covered by a single performance verification.()

b. A performance verification on a portable instrument consists of two (2) samples at either the 0.08 or 0.20 level. Both samples must be run with the same performance verification standard. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument shall be taken out of service. The instrument shall not be returned to service until it has been calibrated and certified by ISPFS. ()

c. A performance verification acquired during a breath testing sequence on an approved benchtop instrument consists of one (1) sample at either the 0.08 or 0.20 level. A performance verification acquired outside the breath testing sequence on an approved benchtop instrument consists of two (2) samples at either the 0.08 or 0.20 level. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument must be taken out of service. The instrument must not be returned to service until it has been calibrated and certified by ISPFS. ()

d. Performance verification checks must be within +/- 10% of the performance verification standard target value. ()

e. A wet bath 0.08 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications or every calendar month, whichever comes first. For a closed loop, recirculating system (e.g. the Intox 5000 series), the 0.08 performance verification standard should be replaced with fresh standard approximately every one hundred (100) verifications or every calendar month, whichever comes first. ()

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

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

- h.** Performance verification standards should not be used beyond the expiration date. ()
- i.** If Section 18-8004C, Idaho Code, (excessive alcohol concentration) is applicable, then a 0.20 performance verification must be run and results documented once per calendar month. Failure to perform a 0.20 performance verification will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A performance verification with a 0.20 standard does not need to be performed within twenty-four (24) hours of an evidentiary breath test in excess of 0.20 g/210L alcohol. ()
- j.** Temperature of the wet bath simulator shall be between thirty-three point five degrees Celsius (33.5°C) and thirty-four point five degrees Celsius (34.5°C) in order for the performance verification results to be valid. ()
- k.** An agency may run additional performance verification standard levels at their discretion. ()
- 06. Records.** Operators must document and retain test results (i.e. written log, printout, or electronic database). All records regarding maintenance and results shall be retained for three (3) years. ISPFS is not responsible for storage of documentation not generated by ISPFS. (3-19-99)()
- 07. Deficiencies.** Failure to meet any of the conditions listed in Sections 013 and 014. Any laboratory or breath testing instrument may be disapproved for failure to meet one (1) or more of the requirements listed in Sections 013 and 014, and approval may be withheld until the deficiency is corrected. (4-7-11)
- 08. Standards.** Premixed alcohol simulator solutions shall be from an approved vendor and explicitly approved in writing by the department before distribution within Idaho. Dry gas standards from ISO 17025:2005 certified providers are explicitly approved by the department for use in Idaho without evaluation by the department. ()
- 09. MIP/MIC.** The presence or absence of alcohol is the determining factor in the evidence in an MIP/MIC case. The instrumentation used in obtaining the breath sample is often the same instrumentation utilized for acquiring DUI evidence. The different standard of evidence requires different standards for the procedure. ()
- a.** Fifteen (15) minute monitoring period: The monitoring period is not required for the MIP/MIC procedure. ()
- b.** The breath alcohol test must be administered by an operator currently certified in the use of that instrument. ()
- c.** The instrument used must be certified by ISPFS. The instrument only needs to be initially certified by ISPFS. Initial certification shows that the instrument responds to alcohols and not to acetone. The instrument does not need to be checked regularly or periodically with any of the 0.08 or 0.20 standard. ()
- d.** The officer should have the individual being tested remove all loose foreign material from their mouth before testing. False teeth, partial plates, or bridges installed or prescribed by a dentist or physician do not need to be removed to obtain a valid test. The officer may allow the individual to briefly rinse their mouth out with water prior to the breath testing. Any alcohol containing material left in the mouth during the entirety of the breath test sampling could contribute to the results in the breath testing sequence. ()
- e.** A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The subsequent breath samples do not need to be consecutive samples from the same subject. The individual breath samples should be approximately two (2) minutes apart or more. A deficient or insufficient sample does not automatically invalidate a test sample. The operator should use a new mouthpiece for each individual. ()
- f.** A third breath sample is required if the first two (2) results differ by more than 0.02 g/210L alcohol. In the event that all three (3) samples fall outside the 0.02 g/210L alcohol correlation, and testing indicates or the officer suspects mouth alcohol, they must administer a fifteen (15) minute monitoring period and then retest the subject. If mouth alcohol is not suspected or indicated by the test results, then the officer may retest the subject

without administering a *monitoring period*. ()

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

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

i. The passive mode of testing using the Lifeloc FC20 or ASIII should be used for testing liquids or containers of liquid for the presence or absence of alcohol. ()

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 6, 2014 Idaho Administrative Bulletin, [Vol. 14-8, pages 40 through 42](#).

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Rory Olsen at (208) 884-7256.

DATED this 28th Day of August, 2014.

Kevin Johnson
Interim POST Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7251
Fax: (208) 884-7295

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

EFFECTIVE DATE: The effective date of the temporary rule is June 5, 2014.

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 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 August 20, 2014.

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:

The proposed rulemaking updates the list of disciplines trained and certified by POST that must meet the minimum standards for employment; adds language to clarify that the minimum standards for employment that may be waived by the POST Division Administrator shall either be waived by him or referred to the POST Council for consideration; removes a reference to Black's Law Dictionary; and clarifies provisions in reference to moral turpitude and drug use.

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

During the 2014 session, the Legislature approved POST Rule Docket 11-1101-1301 on the condition that a temporary rulemaking be submitted making slight modifications.

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

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is temporary, the rule is simple in nature, and representatives of the affected interests 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rory Olsen at (208) 884-7256.

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 27, 2014.

DATED this 9th day of July, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1401

050. MINIMUM STANDARDS FOR EMPLOYMENT.

Every peace, county detention, juvenile detention, misdemeanor probation, and juvenile probation officer shall and Idaho Department of Juvenile Corrections direct care staff must meet the requirements in Sections 050 through 0645. In situations where the POST Division Administrator has the authority to grant a waiver, but chooses not to, he must refer the application to the POST Council for consideration. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

054. CHARACTER.

01. **Moral Turpitude.** The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. "Moral turpitude" is conduct that is contrary to justice, honesty, or morality. *BLACK'S LAW DICTIONARY 1030 (8th ed. 2004)*. The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming law enforcement officers, and to protect against acts or conduct that might endanger the safety and welfare of the public. (3-20-14)()

02. **Applicant May Be Rejected.** An applicant may be rejected who has committed any unlawful act involving moral turpitude, even though the applicant has never been charged by a law enforcement agency for such act. *Such an act can include, but is not limited to, an act involving fraud, larceny, or the intent to harm persons. Such an act can also encompass certain sexual acts or sex-related acts, such as rape, sexual assault, lewd conduct with a child, sexual abuse of a child or vulnerable adult, child pornography, bestiality, video voyeurism, and prostitution.* (3-20-14)()

03. **Applicant May Be Accepted.** If an applicant committed any unlawful act involving moral turpitude, 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 act, recommends approval. *The POST Division Administrator shall have the discretion to refer the application to the POST Council.* (3-20-14)()

055. DRUG USE.

01. **Marijuana.** An applicant shall must be rejected who has used marijuana: (3-20-14)

- a. Within the past three (3) years; (3-20-14)
- b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the use occurred; or (3-20-14)
- c. On a regular, confirmed basis within the past five (5) years. (3-20-14)
- d. This prohibition includes use of cannabis, hashish, hash oil, and THC in both synthetic and natural forms. (3-20-14)()

02. **Other Controlled Substances.** An applicant shall must be rejected who has illegally used any Schedule I through Schedule VI controlled substance, as defined in Sections 37-2705 through 37-2713A, Idaho Code, excluding marijuana: (3-20-14)()

- a. Within the past five (5) years; (3-20-14)
- b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the illegal use occurred; or (3-20-14)
- c. On more than a minimal and experimental basis during the applicant's lifetime. (3-20-14)

03. **Prescription Drugs.** An applicant shall may be rejected who has unlawfully used any prescription drug or a legally obtainable controlled substance *in a manner for which it was not intended* within the past three (3) years. (3-20-14)()

04. **Drug Trafficking, Manufacturing, and Related Offenses.** Subject to the rules above regarding use of controlled substances, an applicant shall must be rejected who has violated any provision of: (3-20-14)()

- a. The Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, including, but not limited to, the illegal sale or manufacture of a controlled substance or conspiring to illegally sell or manufacture a controlled substance; or (3-20-14)
- b. A comparable statute of another state or country. (3-20-14)
- c. Provided, however, that the POST Division Administrator may waive any misdemeanor conviction for violation of the Idaho Uniform Controlled Substances Act. *When considering whether to grant such a waiver, the POST Division Administrator shall have the discretion to refer the application to the POST Council.* (3-20-14)()

05. Juvenile Drug Offense Convictions. Any misdemeanor conviction of a drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, shall not be a basis for rejection of an applicant. However, an applicant may be rejected who has been convicted of a felony drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code. If an applicant has been convicted of such a felony drug offense, 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 POST Division Administrator shall have the discretion to refer the application to the POST Council.* (3-20-14)()

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1402

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 6, 2014 Idaho Administrative Bulletin, [Vol. 14-8, pages 43 and 44](#).

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Rory Olsen at (208) 884-7256.

DATED this 28th Day of August, 2014.

Kevin Johnson
Interim POST Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7251
Fax: (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 August 20, 2014.

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:

This rulemaking establishes a requirement for POST-certified instructors of Defensive Tactics, Firearms, and Emergency Vehicle Operations to update their training to remain current in their field of expertise by completing eight (8) hours of continuing instructor training every two years on use-of-force law, liability, and other instructor training specific to their topic area.

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

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rory Olsen at (208) 884-7256.

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 August 27, 2014.

DATED this 10th day of July, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1402

256. RENEWAL.

01. Notification. At the end of the certification period, the POST Council ~~shall~~ **will** send notification to the instructor, provided the instructor still meets the qualifications for instructor certification. (4-2-03)()

02. Requirements. To renew the certification, the instructor ~~shall~~ **must** submit the following to POST Council: (4-2-03)()

a. A teaching log indicating the instruction of at least one (1) class during the last certification period; (4-2-03)

b. An updated lesson plan, if any changes have been made since it was last submitted; and (4-2-03)

c. A firearms qualification score sheet witnessed by a **current** POST-certified firearms instructor other than the renewing instructor. The qualification course ~~shall~~ **must** be the POST Council-approved course pertinent to the topic the instructor is certified to teach. This requirement applies only to POST-certified firearms instructors who are renewing their firearms instructor certification. (4-7-11)()

d. Instructors ~~shall~~ **must** meet recertification requirements in compliance with Council and applicable industry standards. ~~(4-7-11)~~()

e. In addition to the above subsections, instructors of topics related to Defensive Tactics, Firearms, and Emergency Vehicle Operations must complete a minimum of eight (8) hours of continuing instructor training every two (2) years, to include use of force law, liability, and further instructor training specific to the knowledge and skills to teach in the certified instructional topic area. ()

~~ef.~~ Conducted Energy Device instructors ~~shall~~ **must** submit proof of successful completion of the manufacturer's recertification requirements for each Conducted Energy Device they are POST-certified to instruct. ~~(4-7-11)~~()

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1403

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 186 through 193](#).

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Rory Olsen at (208) 884-7256.

DATED this 24th Day of November, 2014.

Victor R. McCraw
POST Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7251
Fax: (208) 884-7295

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE
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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 15, 2014.

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:

This rulemaking adds language to address home schooling and foreign education, and clarifies what documentation is required as proof of education. The medical standards are being left up to the employing agencies, and language added to indicate applicants must be physically capable of passing all requirements while attending the academy or they will be disenrolled. Language was added to reflect all of the different disciplines trained by POST.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rory Olsen at (208) 884-7256.

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 22, 2014.

DATED this 25th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1403

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 POST-accepted U.S. regional 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.

(3-29-12)

19. Field Training. Training in which an individual receives formal instruction on the job for special and defined purposes.

(7-1-93)

20. Full Time. Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days.

(4-2-08)

~~**21. 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)~~

21. 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)

22. 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)

23. 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)

24. 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)

25. 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)

276. 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)

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

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

3029. 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)

340. 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)

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

332. 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)

343. 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)

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

365. 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)

376. 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)

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

~~398.~~ **Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

~~4039.~~ **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. (3-29-12)

~~410.~~ **Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

~~421.~~ **Trainee.** An officer participating in any POST approved training program. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

052. EDUCATION.

~~The applicant shall be a high school graduate or have earned a GED certificate. (4-2-08)~~

~~01. **Documentation Acceptable Education.** Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of one (1) of the following The applicant must: (4-7-11)()~~

~~a. **High school diploma** Be a high school graduate from a school accredited as a high school at the time of graduation by the Department of Education of the state in which the high school is located; (4-2-08)()~~

~~b. **GED certificate** Be a high school graduate from a school accredited as a high school at the time of graduation by the recognized regional accreditation body; (4-2-08)()~~

~~c. **High school transcript that indicates the date of graduation** Have passed GED testing; (4-7-11)()~~

~~d. **GED test report form** Have successfully completed a high school equivalency program and obtained a state-issued certificate; or (4-7-11)()~~

~~e. **High school equivalency certificate; or** Have successfully completed a minimum of fifteen (15) academic credits at a U.S. regionally-accredited college. The six (6) POST-accepted regional accreditation agencies are: (4-7-11)()~~

~~i. **Middle States Association of Schools and Colleges;** ()~~

~~ii. **New England Association of Schools and Colleges;** ()~~

~~iii. **North Central Association of Colleges and Schools (the Higher Learning Commission);** ()~~

~~iv. **Northwest Association of Colleges and Universities;** ()~~

~~v. **Southern Association of Colleges and Schools; and** ()~~

~~vi. **Western Association of Schools and Colleges.** ()~~

~~f. **Official college transcript indicating the successful completion of a minimum of fifteen (15) academic credits.** (4-7-11)~~

~~02. **Home Schooling.** Applicants who were home schooled must provide documentation of having passed GED testing. ()~~

03. Foreign Education. Applicants who were educated outside the U.S. must provide documentation of having passed GED testing or provide an evaluation from an evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE) showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ()

04. Documentation. Proof of education must not have been mutilated, altered, or damaged, and must be in the form of a photocopy of one (1) of the following: ()

a. High school diploma that indicates the date of graduation; ()

b. High school transcript that indicates the date of graduation; ()

c. Official transcript of GED results indicating a passing score; ()

d. State-issued high school equivalency certificate; ()

e. Official college transcript from a POST-accepted U.S. regionally-accredited college indicating the successful completion of a minimum of fifteen (15) academic credits; or ()

f. Official evaluation of foreign education by a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE) showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ()

(BREAK IN CONTINUITY OF SECTIONS)

060. PHYSICAL - MEDICAL.

01. Requirements. (7-1-93)

~~a. Hearing. The applicant shall have unaided or aided hearing between zero (0) and twenty five (25) decibels for each ear at the frequencies of five hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~b. Vision. (7-1-93)~~

~~i. The applicant shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There shall be no pathology of the eye; applicant shall possess a minimum seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~ii. The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye~~

~~examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ (4-7-11)

~~e. Disease/Condition. The applicant shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of the above may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections.~~ (4-7-11)

~~da. Agency Physical Readiness Test. To determine the applicant's physical capability, a physical readiness test based upon the job requirements of the appointing agency shall must be administered by the appointing agency to each applicant.~~ (4-7-11)()

~~b. Physical Capability Requirement. The applicant must be physically capable of passing all physically demanding tasks and tests while attending any Idaho POST Academy or any academy equivalent program approved by the POST Council. Any applicant who fails a required physical test while attending an Idaho POST Academy will be disenrolled from the academy and provided the option to attend a future academy session.~~ ()

~~02. Procedures.~~ (7-1-93)

~~a. A POST Council approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations.~~ (4-7-11)

~~b. A medical examination shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The physician shall record his findings on the appropriate form and shall note thereon any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown.~~ (3-27-13)

061. MENTAL EXAMINATION.

01. Requirement. Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation shall must be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, or juvenile probation, correction, adult probation and parole, juvenile corrections, or misdemeanor probation officer. (4-2-08)()

02. Procedure. During the interview, the examining psychiatrist or psychologist shall must evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination shall must be recorded and that record or a summary of recommendations shall must be forwarded to the appointing authority for review. (3-15-02)()

IDAPA 11 - IDAHO STATE POLICE

11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 194 through 197](#).

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Rory Olsen at (208) 884-7256.

DATED this 7th Day of November, 2014.

Kevin Johnson
Interim POST Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7256
Fax: (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 15, 2014.

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 Minimum Standards for Employment for Correction Officers and Adult Probation and Parole Officers are now identical to all other disciplines in the area of education and physical - medical, so the duplicative language was removed and the applicant referred to the Minimum Standards for Employment listed in 11.11.01.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rory Olsen at (208) 884-7256.

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 22, 2014.

DATED this 25th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1104-1401

033. EDUCATION.

The applicant ~~shall be a high school graduate or have earned a GED (General Education Development) certificate must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 052.~~ (4-2-08)()

~~01- Documentation. Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of one (1) of the following:~~ (4-7-11)

~~a- High school diploma;~~ (4-2-08)

~~b- GED certificate;~~ (4-2-08)

~~c- High school transcript that indicates the date of graduation;~~ (4-7-11)

~~d- GED test report form;~~ (4-7-11)

~~e- High school equivalency certificate; or~~ (4-7-11)

~~f. Official college transcript indicating the successful completion of a minimum of fifteen (15) academic credits. (4-7-11)~~

(BREAK IN CONTINUITY OF SECTIONS)

039. PHYSICAL -- MEDICAL.

01. Requirements. The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 060. (4-11-06)()

~~a. Hearing. The applicant shall have unaided or aided hearing between zero (0) and thirty (30) decibels for each ear at the frequencies of one thousand (1000) Hz and two thousand (2000) Hz; and unaided or aided hearing between zero (0) and fifty (50) decibels for each ear at the frequency of three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~b. Vision. The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~c. Disease/Condition. The applicant shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of Subsection 039.01.c. may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a correction officer. (4-7-11)~~

~~d. Physical Readiness Test. The applicant shall pass the POST Physical Readiness Test for Correction Officers. (4-7-11)~~

~~02. Procedures. (4-11-06)~~

~~a. A POST Council approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations. (4-7-11)~~

~~b. A medical examination shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. The physician shall record his findings on the appropriate form or letter and shall note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown. (4-4-13)~~

040. MENTAL EXAMINATION.

~~01. Requirement. Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation must be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 061.~~

~~(4-11-06)()~~

~~02. Procedure. During the interview, the examining psychiatrist or psychologist must evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination must be recorded and that record or a summary of recommendations must be forwarded to the appointing authority for review.~~

~~(4-11-06)~~

(BREAK IN CONTINUITY OF SECTIONS)

061. MINIMUM STANDARDS FOR EMPLOYMENT FOR ADULT PROBATION AND PAROLE OFFICERS.

Every adult probation and parole officer ~~shall~~ must meet the minimum standards for employment as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections 050 through 065, ~~with the exception of hearing, vision, and physical agility.~~

~~(4-7-11)()~~

~~01. Hearing. An applicant for adult probation and parole officer certification shall have unaided or aided hearing between zero (0) and twenty five (25) decibels for each ear at the frequencies of one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~

~~(4-7-11)~~

~~02. Vision.~~

~~(4-11-06)~~

~~a. An applicant for adult probation and parole officer certification shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There shall be no pathology of the eye; applicant shall possess a minimum of seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~

~~(4-7-11)~~

~~b. The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~

~~(4-7-11)~~

~~03. Physical Readiness Test. An applicant for adult probation and parole officer certification shall pass the POST Physical Readiness Test for Adult Probation and Parole officers.~~

~~(4-7-11)~~

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE
50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE
DOCKET NO. 50-0101-1401
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 20-223, Idaho Code.

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

Revise and update the rule to clarify and update outdated language to include changing inmate to offender, remove the minimum time to be served to hearing, to expedite hearings, remove early discharge language, replace the initial hearing being scheduled within 6 months prior to parole eligibility date when a fixed term has been specified, remove existing language regarding general conditions of parole and replace with consolidated language, grant authority to the executive director to add special conditions, remove outdated language on detainer to replace with new language to allow the holding institution to hold the offender until the felony charges or federal holds have been adjudicated. The offender will not be able to bond out on the parole violation hearings, remove and clarify language regarding Interstate Compact procedures, add additional language to the section on victims for public safety, to include victims not included in the instant offense and those removed from the instant offense as a result of a plea bargain, to include additional language to the Intermediate Sanctions on Violations that limit the time of jail time served on the first and each subsequent offense.

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 October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 493 through 525](#).

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mary Schoeler.

DATED this 19th Day of November, 2014.

Sandy Jones
Executive Director
Commission of Pardons and Parole
3056 Elder Street
Boise, Idaho 83705
Tel: (208) 334-2520
Fax: (208) 334-3501

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 20-223, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Friday, October 24, 2014 - 2:00 p.m.

Commission of Pardons and Parole
3056 Elder Street
Boise, Idaho 83705

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:

Revise and update the rule to clarify and update outdated language; change term “inmate” to “offender; expedite hearings; remove early discharge language; replace the initial hearing being scheduled within 6 months prior to parole eligibility date when a fixed term has been specified; remove existing language regarding general conditions of parole and replace with consolidated language; grant authority to the executive director to add special conditions; remove outdated language on detainer to replace with new language to allow the holding institution to hold the offender until the felony charges or federal holds have been adjudicated - the offender will not be able to bond out on the parole violation hearings; remove and clarify language regarding Interstate Compact procedures; add additional language to the section on victims for public safety; include victims not included in the instant offense and those removed from the instant offense as a result of a plea bargain; and to include additional language to the Intermediate Sanctions on Violations that limit the time of jail time served on the first and each subsequent offense.

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 as a result of this rulemaking:

There will be no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because interested persons and stakeholders are very unlikely to reach consensus on the changes being proposed due to the nature of the rules and the circumstances of those affected by them.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Schoeler.

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 24, 2014.

DATED this 29th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 50-0101-1401

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 20-223(a), Idaho Code, which provides that the Commission shall have the power to establish rules, policies, or procedures in compliance with Title 67, Chapter 52, Idaho Code.

~~(5-3-03)~~()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 50.01.01, "Rules of the Commission of Pardons and Parole."

(5-3-03)

02. Scope. The rules govern parole, pardons, and commutations for the state of Idaho; and other matters within the authority of the Commission.

~~(5-3-03)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Abscond. ~~Depart secretly or to avoid supervision~~ An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested.()

02. Case Worker/Manager. For purposes of reference, the case worker/manager is an Idaho ~~Department of~~ Correction employee who is involved with assisting ~~inmates~~ offenders/parolees regarding their problems, needs, and adjustments. Such case worker/manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician, ~~or other.~~

~~(5-3-03)~~()

03. Commission. The Idaho Commission of Pardons and Parole. ()

034. Commission Warrant. Warrant of arrest for alleged parole violation issued by the executive director or a commissioner. This warrant is a non-bondable warrant.

(3-23-98)

045. Commutation. Clemency powers granted to the commission, ~~and~~ or the governor, or both, which allow for a sentence to be modified.

~~(3-23-98)~~()

056. Concurrent Sentence. Sentence served at the same time as another. (3-23-98)

067. Conditions of Parole. Conditions under which ~~an prisoner~~ offender is released to parole supervision.

~~(3-23-98)~~()

078. Confidential. Privileged from disclosure. (3-23-98)

089. Consecutive Sentence. Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)

0910. Decision. A determination arrived at after consideration, a conclusion. (3-23-98)

- ~~101.~~ **Detainer.** ~~Implementation of constitutional duty and interstate compact to hold in custody for another jurisdiction.~~ A document authorizing the detention of an offender in custody for a new felony crime or parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. ~~(3-23-98)()~~
- ~~12.~~ **Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. ()
- ~~143.~~ **DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. ~~(3-23-98)()~~
- ~~124.~~ **Early Parole Discharge.** Release from further custody of parole supervision prior to the maximum expiration date and after statutory minimum of one (1) year of their sentence has been completed. ~~(3-23-98)()~~
- ~~135.~~ **Escape.** Flight from confinement. (3-23-98)
- ~~16.~~ **Evidence Based Program.** A treatment program evaluated using an experimental methodological design, with outcomes reviewed by a variety of scientific professionals, and deemed effective in the delivery method and the desired participant population outcomes. ()
- ~~17.~~ **Executive Session.** Any meeting or part of a meeting of the commission which is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. ()
- ~~148.~~ **Fixed Term.** Portion of sentence during which the convicted person is not eligible for parole. (3-23-98)
- ~~159.~~ **Full Term Release Date.** The date an ~~prisoner~~ offender completes the term of sentence without good time credits. ~~(3-23-98)()~~
- ~~1620.~~ **Good Time Release Date.** The date a ~~prisoner~~ offender completes the term of sentence, minus statutory good time credits when applicable. Good time credit applies to offenses committed prior to July 1, 1986, and for which an offender is confined to a correctional institution for a definite term other than life. ~~(3-23-98)()~~
- ~~1721.~~ **Hearing.** ~~A proceeding in which evidence, including file material, letters, and/or testimony, is considered for use in decision-making~~ The opportunity to be interviewed by the commission, a commissioner, or other designated commission staff. ~~(3-23-98)()~~
- ~~22.~~ **Hearing Officer.** An impartial person employed by the commission and selected by the executive director to conduct an interview and take testimony from an offender regarding offender's history, criminal record, social history, present condition of offender, and offense. ()
- ~~1823.~~ **Hearing Session.** A series of hearings conducted by the commission. (3-23-98)
- ~~24.~~ **Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. ()
- ~~1925.~~ **Institutional Parole.** Parole granted ~~to~~ on one (1) or more consecutive sentences ~~or terms~~ where the ~~inmate~~ offender/parolee remains incarcerated on other consecutive sentences. If released to parole on the remaining consecutive sentences, the parole becomes ~~a~~ regular parole. ~~(3-23-98)()~~
- ~~206.~~ **Jacket, File, or Case Review.** Review of central file, commission file, and/or additional information submitted, without testimony or interview of ~~inmate~~ offender or parolee. ~~(3-23-98)()~~
- ~~217.~~ **NCIC.** National Crime Information Center. (3-23-98)
- ~~228.~~ **Non Restricted Sentence.** Sentence not restricted by statute. (3-23-98)
- ~~29.~~ **Non Technical Violation.** Violation of parole by absconding or a new felony or violent

misdemeanor or infraction. ()

30. Offender. A person under the legal care, custody, supervision, or authority of the board or correction, including a person within or without Idaho pursuant to agreement with another state or contractor. ()

231. On-Site Parole Violation Hearing. Parole violation hearing to determine guilt or innocence which ~~may~~ **must** be held reasonably near the site of the alleged violation(s). (3-23-98)()

2432. Open Parole Date. Tentative parole granted without setting an actual tentative parole release date and subject to release by commission authorization; offender's parole eligibility date has passed when a tentative parole date is granted. ~~A~~ tentative parole date will become an open parole date if the tentative parole date passes without the subject offender being released to an acceptable plan on the specific date. (3-23-98)()

2533. Pardon. Clemency powers granted to the commission and or the governor that allows release from consequences of conviction of a crime and restores a persons' civil rights. (3-23-98)()

2634. Parole. Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and ~~a convicted felon~~ offender. Parole is not a right, but is a matter of grace. (3-23-98)()

35. Parole Eligibility Date. The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. ()

36. Parole Hearing Interview. An interview conducted by a hearing officer for the purpose of gathering information and testimony from the offender regarding the offender's history, criminal record, social history, present condition, instant offense, and other factors, when the offender is scheduled for a forthcoming parole consideration hearing. ()

37. Parole Violation Hearing. A fact-finding hearing conducted by a hearing officer to determine a subject's guilt or innocence of alleged violations of parole. The hearings are conducted for both technical and non-technical violations, and may be held on-site, or at a location as determined by the executive director or the hearing officer. ()

38. Parolee. Offender being supervised on parole. ()

2739. Permanently Incapacitated. As defined in Section 20-223, Idaho Code, permanently incapacitated ~~shall~~ **means** a person who, by reason of an existing physical condition which is not terminal, is permanently and irreversibly physically incapacitated. (3-23-98)()

2840. Rescission. Cancellation of a previous decision. (3-23-98)()

2941. Reprieve. Temporary suspension of the execution of sentence; delay a punishment. (3-23-98)

3042. Restricted Sentence. Sentence restricted by Idaho Statutes, by carrying a mandatory minimum to be served prior to parole eligibility. (3-23-98)()

~~3143. Return of Service.~~ ~~Documents required to be served on an alleged parole violator at the time he is served with specific charges of parole violation. Describes hearings and rights the subject is entitled to~~ The document that establishes what legal documents were served on whom, by whom, and when. (3-23-98)()

3244. Revocation/Violation File. File containing the documents pertinent to a particular violation/revocation proceeding. (3-23-98)()

45. Risk Assessment. Validated tool developed to determine risk of recidivating based on offender

criminogenic needs. ()

3346. **Session.** See “Hearing Session.” (3-23-98)

347. **Statutory Release Date.** Maximum full-term expiration date, minus any good time credits accumulated during incarceration. The maximum full-term date may change upon forfeiture of time on parole due to a violation of that parole. (3-23-98)()

3548. **Substantive Conditions of Parole.** Conditions of parole which relate to the rehabilitation of a parolee including, but not limited to, performance of community service, use of alcohol, use of a motor vehicle, limitations on financial matters, use of drugs, associations with other felons, employment requirements, residence requirements, traveling outside of their district, etc. (3-23-98)()

3649. **Technical Violation.** Violation of parole by not conforming to ~~rules~~ conditions of parole, but not to include absconding ~~and~~ or a new criminal conviction or infraction. (3-23-98)()

3750. **Terminally Ill.** As defined by Section 20-223, Idaho Code, terminally ill shall mean a person who has an incurable condition caused by illness or disease and who is irreversibly terminally ill. (3-23-98)

3851. **Victim.** As described by Section 19-5304, Idaho Code, “shall will mean a person or entity, named in the complaint, information or indictment, who suffers economic loss or injury as the result of the defendant’s criminal conduct and shall will also include the immediate family of a minor and the immediate family of the actual victim in homicide cases.” (3-23-98)()

3952. **Witness.** Anyone who observes a hearing, appears as attorney for the subject of a hearing, or others who provide written or verbal testimony. (3-23-98)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

The rules contained herein govern practice and procedure of the Idaho Commission of Pardons and Parole, hereafter referred to as the commission. The commission reserves the right to deviate from established rules whenever special circumstances warrant, and to act, at its discretion, in circumstances not specifically outlined but within confines established by the constitution and ~~statutes~~ Idaho Code. (3-23-98)()

101. HEARINGS.

All hearings of the Commission shall be conducted in accordance with the open meeting law as provided in Chapter 23, Title 67 Idaho Code and as modified by Section 20-213A, Idaho Code. The commission will conduct each hearing assigned and scheduled before them. Each commissioner will have an opportunity to ask questions or provide comments, or both. The executive director or commission staff may provide information during the hearing or ask questions. (3-23-98)()

a01. **Deliberations.** Deliberations concerning the granting, revoking, reinstating or refusing of paroles, or related decisions, to include commutations and pardons, ~~may~~ will be made in executive session. (3-30-01)

b- Votes of individual members will not be made public. (3-23-98)

i- A written record of the vote by each commission member shall will be kept confidential and privileged from disclosure, provided the record shall will be made available upon request to the governor and the chairman of the senate judiciary and rules committee and the chairman of the house of representatives judiciary and rules and administration committee, for all lawful purposes as outlined by Section 20-213A. (3-23-98)()

ii.a. Distribution of the record by a commissioner or an employee of the commission to any person not specifically listed in this section shall will be a misdemeanor offense. (3-23-98)

e- Any person can obtain the results of any action taken by the commission without reference to the manner in which any individual ~~member~~ commissioner voted, and such information shall will be public information.

(3-23-98)()

102. HEARING SESSIONS.

~~The Commission may schedule regular monthly hearings but will meet at least quarterly.~~ (3-23-98)

a01. Number of Hearings Scheduled. The executive director will schedule hearing sessions according to the number of hearings scheduled for the specific month. (3-23-98)()

b02. Designation of Presiding Officer. The executive director may designate one (1) of the members of the commission as the presiding officer to conduct individual hearings or a hearing session, or a business meeting. (3-23-98)()

103. BUSINESS MEETINGS.

The commission schedules a business meeting at least quarterly or at the call of the executive director and notice of such meetings ~~will~~ must comply with the open meeting law requirements. Such meetings ~~may~~ be cancelled at the vote of a majority of the commission or by the executive director if the scheduled business cannot be conducted. (5-3-03)()

104. RECORD OF HEARINGS AND MEETINGS.

a01. Minutes of Hearings and Case Reviews. Summary minutes of individual hearings and case reviews will be maintained in the commission office and will be approved and signed by the executive director, or a commissioner, or designee of the executive director. (3-30-01)()

b02. Minutes Reviewed and Approved. Summary minutes of business meetings are reviewed by commissioners who are present at the next subsequent business meeting. The summary minutes as approved by the commissioners will be signed by the executive director or designee. Summary minutes of business meetings ~~will be~~ are maintained in the commission office and published on the commission's website when the summary minutes are approved. (3-23-98)()

~~i. The summary minutes of the business meetings will be reviewed by the commissioners who are present at a subsequent business meeting.~~ (3-23-98)

~~ii. The summary minutes as approved by the commissioners will be signed by the executive director or designee.~~ (3-30-01)

105. PREVIOUS DECISIONS.

The commission reserves the right to review or reconsider any previous decision for any reason and to take whatever action is agreed upon. The executive director may bring forward any case determined to need review before the next hearing session. Information may be sent by electronic mail if considered an emergency. (3-23-98)()

106. INDIVIDUAL POLLING OF THE COMMISSION.

The executive director may conduct an individual poll of the commission to obtain a majority vote regarding a case or business matter in which a decision must be made prior to the next session or meeting. (3-23-98)

107. APA APPLICABILITY.

The commission shall have the power to establish rules under Chapter 52, Title 67, Idaho Code (Administrative Procedures Act). No other provision or requirement of the Administrative Procedures Act shall apply to the commission. (3-23-98)

108. RIGHTS, POWERS, AND AUTHORITY OF THE COMMISSION.

a01. Commutation, Pardon, and Remission. The commission succeeds to and has all rights, powers and authority of the Board of Pardons as granted and provided by the provision of the constitution of the state of Idaho, in reference to commutation, pardon, and remission of fines. (3-23-98)()

b02. Decision to Release to Parole. The commission has the power to decide whether or not any

~~prisoner who is~~ offender eligible for parole may be released to parole. (3-23-98)()

e03. Advisory Commission to Board of Correction. The commission may act as the advisory commission to the board of correction. The commission has any and all authority necessary to fulfill the duties and responsibilities and other duties imposed upon it by law under Section 20-201, Idaho Code and other applicable provisions of Idaho law. (3-30-01)()

~~1049.~~ -- 149. (RESERVED)

150. COMMISSION AND STAFF.

01. Commission Members. (3-23-98)

a. The commission is composed of five (5) members appointed by the governor for three (3) year terms; vacancies for unexpired terms will be for the remainder of the term and appointees may be reappointed. (3-30-01)()

i. No more than three (3) members ~~shall~~ will be from one (1) political party. (3-23-98)()

~~ii. Appointments are for three (3) year terms; vacancies for unexpired terms will be for the remainder of the term; and appointees may be reappointed.~~ (3-30-01)

~~iii.~~ Appointments are subject to the advice and consent of the senate. (3-23-98)

b. The commissioners are compensated as provided by Sections 20-210, 59-509(I), and 67-2008, Idaho Code ~~and Section 20-210, Idaho Code.~~ (3-23-98)()

02. Commission Staff. (3-23-98)

a. The executive director is the official representative for the commission and is responsible for the managing and administration of ~~the~~ commission business and ~~shall~~ will have other duties and responsibilities as assigned by the governor. (3-30-01)()

i. The commission has delegated to the executive director the authority to approve recommended conditions of parole following the hearing process, issue commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to: paroles, commutations, pardons, and remissions of fines. (3-23-98)

ii. The executive director shall assume all authority and duties as may be delegated by the commission and the governor. (3-30-01)

b. The commission, the executive director, and all staff will maintain professional integrity in all matters of commission business. (3-23-98)

151. -- 199. (RESERVED)

200. HEARING PROCESS.

01. Information for Scheduled Commission Hearings. (3-30-01)

a. A schedule of commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. (3-30-01)

~~i.~~ The hearing schedule will be available ~~one (1) week~~ five (5) business days prior to a hearing session. (3-23-98)

~~ii.~~ The hearing schedule ~~will reflect the date, location and starting time of each hearing session~~ may

be revised due to offender movement between institutions or other circumstances and may not be published earlier. A person may obtain the offender's hearing date by contacting the commission office. (3-23-98)()

~~iii. The schedule is subject to change at any time due to circumstances beyond the control of the Commission.~~ (3-23-98)

~~b. A list of inmates~~ The hearing schedule will reflect the date, location and starting time of each hearing session and a list of offenders scheduled for hearings ~~may be prepared for district judges, county prosecutors, sheriffs, legislators, and others as requested~~ and will be published on the commission website. (3-30-01)()

02. Location of Hearings. The executive director will determine the location of hearings, based upon available information when the schedule is set. (3-23-98)

~~a.~~ Due to circumstances beyond the commission's control, it may be necessary to change the location and date of a hearing or hearing session. (3-30-01)()

~~ba.~~ It may be necessary to continue a hearing to a later date to allow for the ~~inmate's~~ offender's personal appearance or for other unforeseen reasons. (3-30-01)()

03. Hearing/Interview Method. ~~A hearing~~ For parole hearing, commutation hearings, and pardon hearings, an interview may be conducted by ~~a personal interview~~ face-to face, by telephone, or by other electronic means. (3-23-98)

~~a.~~ The interview ~~of an inmate being considered for parole~~ may be conducted by a hearing officer or other designee of the executive director. If an interview is not required, the offender may simply appear before the commission for a hearing. (3-30-01)()

i. An in-depth investigational report explaining the offender's social history, criminal history, present condition, and offense will be prepared for the commission. (3-30-01)()

ii. The commission will determine if they will conduct another hearing or make a decision based upon the report. (3-30-01)

04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), or Other. (3-23-98)()

a. A psychological report, or SORA, or both, will be ~~reviewed by~~ prepared for the commission for all ~~inmates~~ offenders serving a commitment for a sex offense, or whose history and conduct indicate an offender may be a sexually dangerous person as described in Section 20-223, Idaho Code. (3-23-98)()

b. The commission, the executive director, or a hearing officer can order any psychological report, evaluation, or assessment for an ~~inmate~~ offender serving a commitment for any crime. (3-23-98)()

c. All psychological or SORA reports will be maintained in a confidential manner. (3-23-98)()

05. Interview/Hearing. The offender who is the subject of an interview/hearing may be required to be present at a scheduled interview/hearing. (3-23-98)()

a. Parole Consideration Hearing. If the ~~inmate~~ offender declines to be present at a parole consideration hearing, the ~~inmate~~ offender is encouraged required to complete and submit ~~a statement~~ the Inmate Refusal to Participate in Parole Interview/Hearing Process form and state the reason for not participating to the commission ~~stating that he declines attending the hearing;~~ a decision may be made by the commission based upon available information. (3-23-98)()

b. Parole Revocation/Violation. The parolee/~~inmate~~ is required to be present at the revocation/violation hearing, with the exception of an absentia revocation hearing as explained in Subsection 400.046.h. (3-23-98)()

c. Commutation. The subject offender is encouraged required to be present at the scheduled commutation hearing, unless the commission determines otherwise. (3-23-98)()

d. Pardon and Remission of Fine. The subject offender of the hearing is encouraged to be present at the hearing; the commission may make such appearance mandatory or may make a final decision based upon the information which is available. (3-23-98)

e. Medical Parole. The offender is encouraged to be present at the hearing; the commission may make such an appearance mandatory or may make a final decision based on information available. ()

06. Witnesses and Documents. The commission allows for the offender/parolee participation of attorneys, families of the subject, victims, and others who have a direct relationship to the specific hearing or subject offender/parolee of the hearing. (3-23-98)()

a. Persons who want to participate in a hearing shall must notify the commission staff five (5) days in advance of the scheduled hearing, but eChildren under the age of sixteen (16) may will not be allowed to attend the hearings without prior approval of the executive director. (3-23-98)()

b. All written documents and letters to be considered at a particular hearing must be submitted seven (7) days in advance of the scheduled hearing in order to ensure that # they will be considered; other documents may be allowed by unanimous consent of from the commissioners present. (3-23-98)()

c. An attorney or others as determined by the executive director or commission may be seated with the subject of offender/parolee at the hearing. (3-23-98)

d. Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. The commission will allow the attorney representing the offender/parolee a designated time frame to provide information to the commission. Victims will be allowed to testify. Victim testimony is normally taken following comments of offender's attorney and family or friends of the offender/parolee. All persons who testify will direct their comments to the commission. Persons will keep their comments to the relevance of parole. (3-23-98)()

e. Contacts from the public to an individual commissioner outside of the hearing process, are to be forwarded to the executive director in order that all commissioners will receive the information. (3-23-98)

07. Conflict of Interest. A commissioner who has personal knowledge of a case will make such knowledge available to the sitting commissioners prior to the scheduled hearing, and the sitting members of the commission will make the decision if decide whether that commissioner should be disqualified from participating in deliberation and voting. (3-23-98)()

08. Decisions. (3-23-98)

a. Any decision of the commission requires a majority vote of three (3) or more commissioners, which is a majority decision. (3-23-98)()

b. As a rule, dDecisions will be given orally following the interview hearing and deliberation of a case by the commission; and wWritten notice of the decision may be submitted at a later date. The decision may be sent to the offender in writing with specific information/conditions. (3-30-01)()

c. Following the decision being given orally, further testimony is allowed only at the discretion of the commission, or the executive director, or hearing officer. ()

d. In the case of a review by the commission without a commission hearing, the decision will be published within a reasonable time. (3-30-01)

#: Individual written decisions may not be submitted, but will be available on the commission's

website in a published list of a session's action taken. (3-30-01)()

~~e. Following the decision being given orally, further testimony is allowed only at the discretion of the commission, executive director, or hearing officer.~~ (3-23-98)

d. Any decision made by the commission may be reconsidered at any time. (3-23-98)

09. Rules of Conduct at Hearings. (3-23-98)

a. All persons attending any hearing will conduct themselves in a manner which does not disrupt the proceedings or they may be removed from the hearing room and/or facility. (3-23-98)

b. All persons attending a hearing or hearing session, must abide by security policies of the department of correction, the facility where the hearing is being held, and pertinent statutes; ~~to include but not be limited to: no smoking; no unauthorized food or drink in the hearing room; no purses or other belongings; follow department of correction dress code;~~ number of witnesses allowed in the hearing room will be in line with life and safety codes; and all persons may be screened through metal detectors or similar technology and will be subject to search. (3-23-98)()

c. Tape Audio recording or video taping recording of any hearing or any hearing session may be allowed at the discretion of the commission or the executive director; such recordings will proceed only at the direction of the commission or the executive director as to the placement, ~~and~~ manner and type of equipment. (3-23-98)()

d. The media is invited to attend any hearing or session of the commission. (3-23-98)

i. Interviews with inmates offenders or witnesses will not be allowed during the hearing process and the commission and staff will not be responsible for arranging any interviews. (3-23-98)()

ii. During the hearing process, interviews with victims are not allowed without the express consent of the victim. (3-23-98)

iii. Arrangements for interviewing the commission or staff should be made in advance. (3-23-98)()

10. Official Record of Hearing/Review. The official record of a hearing or case review will be the summary minutes of that hearing or review, once signed, and the original record will be maintained in the commission office. (3-30-01)

201. -- 249. (RESERVED)

250. PAROLE.

01. Parole Determination. ~~Parole determination is at the complete discretion of the Commission. The commission will use clear, evidence-based parole guidelines in making parole determinations, while still maintaining discretion of individual cases.~~ (3-23-98)()

a. The commission may release an inmate offender to parole on or after the date of parole eligibility, or not at all. During a minimum term of confinement, an offender will not be eligible for parole, discharge, credit, or reduction of sentence for good conduct, except for meritorious conduct reduction service, or as provided in Section 20-101D, Idaho Code. (3-23-98)()

b. Parole consideration is evaluated determined by the individual merits of each case. (3-23-98)()

c. The commission ~~allows for parole consideration criteria, but no prediction regarding the granting of parole can be based upon any hearing standard or criteria~~ uses evidence based parole consideration factors that are embedded in the clear parole guidelines; these guidelines will include the use of a validated risk and needs

assessment. The commission still retains the discretion to deny parole of individual cases based on countervailing, discrete, individual case factors. Factors considered include, but are not limited to: (3-23-98)()

- i. Seriousness and aggravation and/or mitigation involved in the crime. (3-23-98)
- ii. Prior criminal history of the inmate offender. (3-23-98)()
- iii. Failure or success of past probation and parole. (3-23-98)
- iv. Institutional history to include conformance to established rules, involvement in programs and jobs custody level at time of the hearing, and overall behavior. (3-23-98)
- v. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. (3-23-98)
- vi. Information or reports regarding physical or psychological condition. (3-23-98)
- vii. The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. (3-23-98)
- viii. Outcome of a validated risk and needs assessment. ()

02. Primary Review. A review for the purpose of setting the initial parole hearing will be conducted on all inmates offenders, except those serving a court-retained jurisdiction and those inmates offenders sentenced to death; the commission is not responsible for the setting of a hearing until an official sentence calculation sheet document has been received. (3-23-98)()

a. The executive director or a designee will conduct the review following receipt of the sentence calculation from the department of correction, records office. (3-23-98)

b. The month and year of the initial parole hearing will be established based upon the sentence calculation. (3-23-98)()

i. In cases of offenses committed prior to February 1, 1987 or offenses committed after February 1, 1987 with no specified fixed minimum term, the following guideline outlined in "Table 1" will be utilized in scheduling the initial hearings specified minimum terms, the initial hearing will be set approximately six (6) months prior to the offender's parole eligibility date based on the sentence calculation.

TABLE 1	
Length Of Sentence	Minimum Time To Be Served Before Initial Hearing
<i>Three (3) years or less</i>	<i>Nine (9) months</i>
<i>More than three (3) years to less than five (5) years</i>	<i>Twelve (12) months</i>
<i>Five (5) years to less than seven (7) years</i>	<i>Fifteen (15) months</i>
<i>Seven (7) years to less than ten (10) years</i>	<i>Twenty (20) months</i>
<i>Ten (10) years to less than sixteen (16) years</i>	<i>Twenty-four (24) months</i>
<i>Sixteen (16) years to less than twenty-six (26) years</i>	<i>Thirty-six (36) months</i>
<i>Twenty-six (26) years up to life sentence</i>	<i>Forty-eight (48) months</i>
<i>Life sentence</i>	<i>Sixty (60) months</i>

(3-23-98)()

- ii. In cases of offenses committed on or after February 1, 1987, and a minimum fixed term has been specified, the initial hearing may be scheduled six (6) months prior to the parole eligibility date, during the month of parole eligibility, or as noted in Subsection 250.02.b.vi. (3-30-01)()
- iii. Consecutive Sentences. All fixed terms will be served before the indeterminate terms commence. (3-23-98)
- iv. ~~When more than one (1) sentence is being served e~~Concurrently, Sentences. fThe initial hearing will not be scheduled until all fixed terms have been served. (3-23-98)()
- v. If an inmate offender escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the inmate's offender's return to custody, taking into consideration any additional commitments and the time to conduct an interview and report. (3-23-98)()
- vi. If an inmate offender is committed to the department of correction and such inmate offender is eligible for parole immediately ~~or within a short period of time,~~ or within the first six (6) months of their incarceration, the initial parole hearing will be scheduled six (6) months from the month the commission was notified of the commitment. (4-5-00)()
- c. The commission is not responsible for the accuracy of the sentence calculation as determined by the department of correction, records office. ~~The commission utilizes the documents as being accurate.~~ (3-30-01)()
- 03. General Conditions of Parole.** The commission establishes rules and conditions for every inmate offender released to parole, ~~and those conditions are.~~ Conditions of parole include: (3-23-98)()
- a. The parolee is required to enter into and comply with an agreement of supervision with the board of correction. ()
- ~~#b.~~ Parolee will go directly to the destination approved by the commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the commission staff. (3-23-98)
- ~~b.c.~~ The parolee ~~shall.~~ will: (3-23-98)()
- i. Work diligently in a lawful occupation or a program approved by the commission or supervising officer and not change employment or designated program without written permission from the commission or supervising officer. (3-23-98)
- ii. Support dependents to the best of his parolee's ability. ()
- iii. Live within lawful income without incurring unnecessary indebtedness. (3-23-98)
- c. The parolee ~~shall~~ must submit a complete and truthful report to the assigned parole officer, ~~or other person designated by the Commission, on forms available, before the fifth day of each month, or as otherwise instructed.~~ (3-23-98)()
- d. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee ~~and he~~ who is unavailable, communication will be directed to the district section supervisor. (3-23-98)()
- e. The parolee will: (3-23-98)
- i. Obey all municipal, county, state, and federal laws. (3-23-98)
- ii. Conduct himself or herself in a manner that is not, nor intended to be, harmful to himself or herself

- or others. (3-23-98)()
- iii. Follow written or oral instructions of the parole officer or commission. (3-23-98)
 - iv. Not purchase, own, sell, or have in ~~his~~ the parolee's control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. (3-23-98)()
 - v. Not have any dangerous weapons used or intended to be used for other than normal purposes, such as knives for household use. (3-23-98)
- f.** The parolee ~~shall~~ will: (3-23-98)()
- i. Abstain from excessive use of alcoholic beverages. (3-23-98)
 - ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (3-23-98)
 - iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, ~~or~~ narcotics, or other substances, which may be at the parolee's expense. (3-23-98)()
 - iv. Participate in treatment programs as specified by the commission or ordered by the parole officer. (3-23-98)
- g.** The parolee will submit to a search of person ~~and~~ or property, or both, to include residence and vehicle, at any time and place by any agent of field services or the commission, and ~~the parolee does~~ waive ~~his~~ the constitutional right to be free from such searches. (3-23-98)()
- h.** The parolee is fully advised that written permission is required to: (3-23-98)
- i. Willfully change employment; (3-23-98)
 - ii. Willfully change residence; and (3-23-98)
 - iii. Leave the assigned district. (3-23-98)
- i.** The parolee will make himself available for supervision and will not actively avoid supervision. (3-23-98)
- 04. Special Conditions of Parole.** (3-23-98)
- a.** In addition to general ~~rules~~ conditions of parole, the commission may add special conditions appropriate to the individual case. (3-23-98)
- b.** The commission delegates the authority to the executive director to add special conditions, before an inmate offender has been released to parole or while on parole, once the subject offender has signed a statement agreeing to the special conditions. The commission will establish the special conditions of parole using the offender's most current risk and needs assessment to guide the imposition of necessary conditions. (3-23-98)()
- 05. Institutional Parole.** (3-23-98)
- a.** An inmate offender committed to the department of correction, who has a consecutive sentence and one (1) or more commitments do not have a fixed minimum term to serve prior to parole eligibility, may be considered for institutional parole while remaining incarcerated. (3-23-98)()
- b.** Institutional parole may be considered at the discretion of the commission. (3-23-98)

c. While serving institutional parole, the parolee/~~inmate~~ offender is subject to all the rules of the housing facility and conditions ordered by the commission, to include, but not be limited to, submitting monthly reports as directed. (3-23-98)()

d. If rules of the institution or orders of the commission are violated, the executive director or a commissioner will determine when a report of conduct/violation should be submitted. (3-23-98)

i. In the case of a report of violation, established rules of the violation/revocation process will apply. (3-23-98)()

ii. ~~The executive director will determine the site of all hearings.~~ (3-23-98)

iii. ~~If institutional parole is revoked, the time spent on institutional parole may be forfeited in whole or in part, and may not be deemed a part of the sentence for which the offender was committed; however, time served on the consecutive sentence will be credited once that sentence commences to be served.~~ (3-30-01)

e. Conversion. Upon release from custody on any subsequent parole or upon completion of the consecutive sentence, and if any time remains on the institutional parole sentence, there will be an automatic conversion from institutional parole to regular parole, subject to all regular and special conditions of parole. (3-23-98)()

~~06. **Unsupervised Parole.** The Commission may elect to grant an unsupervised parole in extraordinary cases; when the parolee has met the minimum discharge requirements but still owes restitution or other court assessments; or if the parolee is medically unable to fulfill the parole obligations.~~ (3-20-04)

~~a. In extraordinary cases, the Commission may elect to grant an unsupervised parole.~~ (3-20-04)

~~i. The parolee will be subject to all regular conditions of parole and any ordered special conditions, with the exception of the regular supervision of a parole officer.~~ (3-20-04)

~~ii. Monthly reports may be required at the discretion of community corrections.~~ (3-20-04)

~~iii. Communication from the parolee is to be directed to the district office where last supervised, or as otherwise directed after initial contact.~~ (3-20-04)

~~iv. At any time, the parolee may be placed under the regular supervision of a parole officer.~~ (3-20-04)

~~b. The Commission may elect to place a parolee, who still owes restitution or other court assessments, on unsupervised parole once the minimum discharge requirements have been met.~~ (3-20-04)

~~i. The parolee must have served at least one (1) year on parole.~~ (3-20-04)

~~ii. Monthly payments will be monitored. Such monitoring will usually be accomplished by community corrections.~~ (3-20-04)

~~iii. At any time, the parolee may be placed under the regular supervision of a parole officer.~~ (3-20-04)

~~e. If a parolee is medically unable to fulfill the obligations of parole, the Commission may suspend any or all parole obligations.~~ (3-20-04)

076. Medical Parole. The commission may parole an inmate offender for medical reasons during the determinate portion of a sentence. (3-23-98)()

a. Consideration will occur when the prisoner offender is permanently incapacitated or terminally ill and when the commission reasonably believes the prisoner offender no longer poses a threat to the safety of society. (3-23-98)()

b. An ~~inmate~~ **offender** or designated department of correction personnel may petition the commission to consider medical parole. (3-23-98)()

~~e. For any consideration or hearing to consider medical parole, the Commission will require specific medical information reference the condition, the treatment or care plan if released, and any other information as deemed necessary. (3-23-98)~~

~~dc.~~ The commission may conduct an actual hearing or review of the case, or may designate commission staff to provide additional information **and will require specific medical information in reference to the condition, the treatment or care plan if released, and any other information deemed necessary.** (3-23-98)()

~~ed.~~ An annual report will be submitted to the house and senate judiciary committees **of the legislature** and will contain ~~the inmates'~~ **aggregate health information and the** names, medical condition, current status, and crime **for which the inmates were incarcerated of all persons granted medical parole.** (3-23-98)()

~~08. Intensive Supervision. The Commission may order a program of intensive supervision which has been designed by and may be amended by the department of correction. (3-23-98)~~

~~09g.~~ **Discharge from Parole.** (3-23-98)

a. When the maximum sentence has expired, a final discharge will be issued by the commission, unless a commission warrant was issued before the full term ~~or the good time~~ release date. (3-23-98)()

b. The commission may ~~make issue~~ a final order of discharge prior to completion of the maximum sentence when the commission believes such a discharge is compatible with the parolee's welfare and that of society, and subject to the following requirements. **When notification of a discharge is received, the victims will be notified of the request and allowed to respond. The commission may, without a hearing, consider the request.** (3-23-98)()

i. The commission will not consider an early discharge from parole in any case until the parolee has served at least one (1) year on parole **as outlined in Section 20-233, Idaho Code.** (3-23-98)()

ii. The commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to the maximum expiration date has been served on parole; or until five (5) years have been served on parole on a life sentence for any crime. (3-23-98)

iii. A parole officer or other designated agent ~~may~~ **can** petition the commission to consider an early discharge **upon reaching the timelines established in Subsection 250.09.b.i.** (3-23-98)()

iv. Any decision by the commission to grant an early discharge will not be effective until the official discharge document has been signed by the executive director or a commissioner. (3-23-98)

~~vc.~~ If a decision has been made by the commission to grant an early discharge, and adverse information is received that was not previously available, the document will not be signed and the discharge will not be effective. (3-23-98)

~~vi.~~ The executive director may issue a commission warrant based upon the new information and the discharge grant will automatically be voided without further action by the commission. **Such adverse information will be submitted to the commission at the next available hearing session for reconsideration.** (3-23-98)

~~vii.~~ If the executive director does not issue a warrant, the information will be referred to the commission for reconsideration. (3-23-98)()

~~ed.~~ If the parolee is incapacitated, the commission may consider ~~and~~ or grant, **or both,** an early discharge after one (1) year for any crime. (3-30-01)()

10. Detainers. (3-23-98)

a. The commission may grant a parole to any county, state, or federal detainer which has been lodged against an ~~inmate~~ offender. (3-23-98)()

i. While in the custody of the detaining jurisdiction, the parolee is servicing parole and is subject to all rules of the housing facility and ~~must~~ may be required to submit monthly reports to commission staff or ~~others as designated~~ the supervising authority. (3-23-98)()

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must contact the commission office immediately and must report to the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. (3-23-98)

~~iii. If the parolee is released from custody by the detaining jurisdiction,~~ The parolee must abide by all regular rules of parole and any special conditions ordered by the commission. (3-23-98)()

b. The commission may grant a parole to a federal immigration detainer in order that the ~~inmate~~ offender may be deported to the country of citizenship. (3-23-98)()

i. If the parolee is granted a release on bond or ~~it is determined by the federal authorities that the parolee can~~ is allowed to remain in the United States, the parolee must contact the commission office immediately and must contact the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. (3-23-98)()

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States; ~~any such return to the United States during the parole period and after deportation,~~ and doing so is considered a violation of the parole contract. (3-23-98)()

iii. The commission considers this type of parole grant an unsupervised parole, but the parolee is not obligated to submit monthly reports nor maintain contact with the commission as long as he remains outside of the United States. (3-23-98)()

11. Special Progress Reports. A special progress report may be submitted by ~~field supervision personnel~~ the supervising authority to request modification of a special condition of parole; or advise of problems that have developed; ~~or to request interstate transfer of a case.~~ (3-23-98)()

12. Interstate Compact. The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision outlined in Section 20-301, Idaho Code. ()

a. An offender must be eligible for transfer of supervision to another state under the Interstate Compact and the receiving state must accept the transfer before the offender is released on parole. ()

i. Any person under state parole who applies for a transfer of supervision to another state shall be required to post an application fee pursuant to Section 20-225A, Idaho Code, payable to Idaho Department of Correction, in addition to the commission's bond. ()

b. Any offender granted parole under the Interstate Compact may be required to post a bond prior to release or prior to such acceptance under the Interstate Compact. The amount of the bond set by the commission is five hundred dollars (\$500.) ()

i. A bond may be posted by the offender, the offender's family, or other interested party. The bond must be posted at the commission office. A cashier check or money order shall be the only acceptable means of posting bond. ()

ii. Failure to successfully complete parole may be grounds for forfeiture of the bond. ()

iv. Upon successful completion of parole, the amount of the bond may be returned to payee, less an

amount for administrative costs as determined by the commission rule. ()

v. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. ()

251. -- 299. (RESERVED)

300. VICTIMS.

01. **Program for Victims.** The commission has established a program for victims of criminal offenses for which an ~~inmate has been committed to the institution~~ offender is currently incarcerated and is not serving a court-~~retained~~ ordered jurisdiction-~~term~~. Victims of non-adjudicated cases may be given courtesy treatment. This includes victims who may not be in the instant offense and those removed from the instant offense as a result of the plea bargain process. The victims may be located in the hearing officer report or from another victim coordinator or the prosecutor. The Victim Witness Coordinator will verify the victims with the prosecutor when not included with the instant offense. (5-3-03)()

a. The commission will establish a record for victims of inmates offenders who may be considered for parole, early discharge, commutation, or pardon. (3-23-98)

i. To establish a victim record, the commission must receive official written notice from the clerk of the sentencing court or the county prosecutor's office; the commission will ~~not be responsible~~ use all tools at its disposal and will exercise all due diligence to notify victims of their rights if this official notice has not been received. (3-23-98)

ii. If the commission has not received official notice of the victim, the commission or staff may be advised of the victim's identity directly by the victim, victim's family or other ~~individual~~. Commission staff will verify the name or names of the victim(s) with the county prosecutor and a record will be established. (3-23-98)()

b. The commission will notify legal victims of offenders of the instant offense of their right to be notified of parole, early discharge, and commutation, ~~and pardon~~ hearings and the decision of these hearings; their right to submit written statements or information; and, their right to provide testimony. (3-23-98)()

c. Notice of rights, hearings, decisions, early discharges, and parole releases will be sent to the victim of record to the last known address, and it is the responsibility of the victim to provide any change of address. (3-23-98)()

d. A victim may request ~~that he~~ not be notified or contacted. (3-30-01)()

e. Victims will receive notices of releases to parole and offenders who have absconded, but the commission is not responsible to advise of any other releases such as inmate offender transfers to other facilities, release by completion of the sentence, or escapes from custody as these are not under the authority of the commission. (3-23-98)()

02. **Confidentiality of Victim's Address and Written Testimony.** The victim's record maintained by the commission to include the address and written testimony or information will be maintained in a confidential manner and is not subject to disclosure to anyone for any reason. (3-23-98)

03. **Testimony of Victim.** (3-23-98)

a. The victim is invited to attend any and all hearings, except executive sessions, pertinent to the case and to provide testimony. (3-23-98)()

b. The executive director and the commission may ~~choose~~ consent to allow for the victim's testimony away from the actual hearing process. (3-23-98)

~~i. The victim may give information to~~ Testimony may be given to the executive director or commissioner(s) at the commission office or other locations, ~~or as determined and such information may be maintained in a confidential manner.~~ (3-23-98)

~~ii.~~ The victim may be allowed to testify before the commission during a hearing session, but at a time separate from the actual hearing with the ~~inmate, offender, and s~~Such testimony will be made a part of the record. (3-23-98)()

c. If the commission was not officially notified of the victim and does become aware of the victim's desire to be heard following a hearing, any scheduled release to parole may be held in abeyance until a decision is made by the commission. (3-23-98)

i. The commission may review any written testimony by the victim and may elect to take no further action, or may schedule another hearing, or may void the release date and reconsider the parole grant. (3-23-98)()

ii. The executive director may schedule a hearing without the vote of the commission to allow for the victim's testimony. (3-23-98)

301. -- 349. (RESERVED)

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. The parole plan needs to provide ~~for the positive re-entry of the inmate back~~ a positive re-entry of the offender into the community. (3-23-98)()

a. The case ~~worker~~ manager will discuss the parole plan with the ~~inmate~~ offender ~~and may direct that the proposed parole plan be submitted on designated forms.~~ (5-3-03)()

b. The proposed parole plan must be available at the parole hearing interview and parole consideration hearing, ~~either presented verbally or in writing if instructed by the case worker or hearing officer,~~ and must address the following: (5-3-03)

~~i.~~ A include a stable residence, ~~must be developed which will provide for the most positive re-entry into the community if a release to parole is granted.~~ (3-23-98)

~~ii.~~ ~~If the inmate is unable to work, information must be provided as to the~~ employment, or a maintenance and care plan, ~~which will be provided.~~ (3-23-98)

~~iii.~~ ~~The particular needs of the offender must be addressed, such as~~ and treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. This plan will be formulated using the validated risk and needs assessment that is used by the department of correction. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. (3-23-98)()

c. Educational programs may be considered, but the offender must demonstrate how normal living, treatment, and transportation expenses, etc., will be paid for. (3-30-01)()

d. In cases where the commission does not approve the proposed parole plan and a tentative parole date is granted, the executive director can approve or deny a subsequent plan. (3-30-01)

e. All parole plans will be investigated by ~~field services staff~~ the supervising authority in the area in which the prospective parolee plans to reside, and necessary information will be submitted along with the investigation request. ~~The Commission may waive such investigation in a special case.~~ (5-3-03)

~~i.~~ An Idaho parole plan may can take a minimum of six (6) weeks and an out of state plan up to three (3) months to submit ~~the information,~~ investigate ~~the plan,~~ and plan for release. (3-23-98)()

~~ii. An out of state plan may take at least three (3) months to investigate and process the plan. (3-23-98)~~

02. Interstate Compact Parole Plan. ~~Any offender who is granted parole through the interstate compact may be required to post a bond prior to release from incarceration or prior to such acceptance under the compact. The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision Act, as outlined in Subsection 250.12. (3-30-01)(____)~~

~~a. The bond fee shall be used for the purpose of returning offenders who are charged with violating conditions of their parole. (3-30-01)~~

~~b. The amount of the bond is set by the Commission at five hundred dollars (\$500). (3-30-01)~~

~~i. The bond shall be posted at the commission office by the offender, the offender's family, or other interested party. A cashier check or money order shall be the only acceptable means of posting bond. (3-30-01)~~

~~ii. The amount of the bond includes an indigent fee of sixty dollars (\$60) to provide for offenders without financial means or support to post the bond. (3-30-01)~~

~~iii. The amount of the bond includes an administrative fee of thirty five dollars (\$35) to operate this program. (3-30-01)~~

~~e. Upon successful completion of parole, the amount of the bond will be returned, less the amount for administrative costs and the indigent fee. (3-30-01)~~

~~d. An application for bond fee exemption may be filed if an offender has no ability to post the bond. (3-30-01)~~

~~i. An application form may be obtained from the commission office. (3-30-01)~~

~~ii. The application shall be reviewed by the Commission and their decision will be final. (3-30-01)~~

03. Tentative Parole Dates. All parole release dates granted by the commission are tentative. (3-23-98)

a. The parole plan must be approved and received at the commission office before the actual release date can be set to allow time for processing the release. ~~An exception would be such case as the Commission waived the parole plan investigation. (5-3-03)(____)~~

b. If the inmate offender should have disciplinary problems following the parole grant hearing, or the commission receives information that was not available at the time of the hearing. the commission may reconsider the decision, and the tentative parole date may be voided. (3-23-98)(____)

~~e. If the Commission receives information that was not available at the time of the parole grant hearing, the Commission may review the information or may schedule another hearing, and the tentative parole date may be voided. (3-23-98)~~

04. Contract. Prior to any release to parole, the prospective parolee offender must sign a contract with the commission and must agree to all general and special conditions of parole. (3-23-98)(____)

05. Reporting and Release Instructions. (3-23-98)

a. The parolee will be given reporting instructions ~~who to report to, which that~~ will include the address and the telephone number of the supervising office. (3-23-98)(____)

b. It is the responsibility of the parolee to arrange for transportation upon release. (3-23-98)

~~i.~~ ~~T and~~ the parolee must go directly to the destination approved by the commission or executive director. (3-23-98)

~~ii.~~ The parolee must request permission to deviate from direct travel to the approved location, and such request must be in writing to the commission office at least two (2) weeks in advance of the established release date. (3-23-98)()

351. -- 399. (RESERVED)

400. PAROLE REVOCATION PROCESS.

01. Initiated. The parole revocation process is initiated by a written or verbal report describing the ~~rules conditions~~ of parole which are alleged to have been violated. ~~The parolee is required to be present at the violation or revocation hearing, unless waived by the offender with the exception of an absentia revocation hearing as explained in Subsection 400.06.h.~~ (3-23-98)()

~~a. Verbal information may be provided to the executive director. (3-23-98)~~

~~b. A progress report may be submitted to the executive director. (3-23-98)~~

~~c. A report of violation may be submitted to the executive director. (3-23-98)~~

02. Warrants. A warrant may be issued for the offender's arrest. (3-23-98)

a. A supervising agency may issue an investigative warrant ~~which may be~~ referred to as an agent's warrant. ~~The agent's warrant authorizes local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the commission.~~ (3-23-98)()

b. A commission warrant may be ~~issued signed~~ by the executive director or ~~by~~ a ~~member or members~~ of the commission ~~or and i.~~ Issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. (3-23-98)()

~~i. If the location of the parolee is known, the warrant may be served on the offender or placed as a detainer. (3-23-98)~~

~~ii.~~ If the location of the offender is unknown, the warrant will be entered into NCIC, ~~or~~ I-HOT, ~~or~~ other law enforcement data base and will designate which states the commission will extradite the offender from once arrested. ~~At any time the executive director or designee may change the area of extradition.~~ (3-23-98)()

~~iii.~~ If ~~another state is holding the an~~ offender ~~is being held~~ in custody on new charges ~~in their state~~, the warrant may be placed as a detainer only and written notice of this action will be submitted to the holding facility; if the detainer is officially served on the offender without notice of this action to the commission, the commission will not be held responsible for the time limits prescribed by law for service of charges. (3-23-98)()

~~iv.~~ ~~ii.~~ If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant; during the time period in which the subject refuses to waive extradition, time incarcerated will not be credited toward the sentence. (3-23-98)

03. Due Process. Every parolee arrested on a commission warrant for alleged violation(s) of parole is entitled to pertinent due process. (3-23-98)

~~a. The alleged parole violator is entitled to reasonable including~~ notice of the date, time and location of any and all hearings involved in the revocation process. (3-23-98)

~~b. The alleged parole violator has~~ the right to appear at a hearing and address the allegations. ~~and to~~ (3-23-98)

~~e.~~ ~~The alleged parole violator may~~ confront and cross-examine person(s) who have given adverse information on which the charges have been based. (3-23-98)()

04. Intermediate Sanctions on Technical Violations and Absconding Supervision. If the violation does not result from a conviction of a new felony or violent misdemeanor, then the parolee will be afforded the opportunity to serve an intermediate sanction rather than proceeding through the formal parole violation process. ()

a. The commission will cause the parolee to be confined for a period of up to ninety (90) days effective immediately upon entering the decision on the initial violation. ()

b. For a second parole violation, the commission will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision. ()

c. For a third or subsequent parole violation, a dispositional hearing will be convened during a regular session of the commission to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. ()

d. If the member or members or hearing officer, having heard the matter, should conclude that the allegations of violation of parole by absconding supervision have been proven by a preponderance of the evidence, the commission will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision. ()

e. For a second or subsequent parole violation by absconding supervision, a dispositional hearing during a regular session of the commission will be convened to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. ()

f. During any period of confinement on an intermediate sanction, the commission may reduce the period of confinement by up to thirty (30) days if the commission finds that there has been no instance of misconduct during the period of time the parolee is confined. ()

g. Upon successful completion of a term of intermediate sanctioning under this section, the parolee will be released to parole supervision. ()

h. The commission will establish criteria to determine the necessary length of confinement up to the allowed periods of time. The criteria may include the parolee's supervision history, stability in the community, severity and type of violation(s), risk and needs assessment score, and the violations report by the parole officer. ()

i. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of evidence, or those that have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee will be reinstated on parole on the same or modified conditions of parole. The commission will consider alternatives to revocation for offenders whose violations do not require reincarceration. ()

045. Witnesses. The alleged parole violator or the accusing parole officer may present witnesses in support of the claims of the allegations or in defense of the charges. (3-23-98)

a. The commission has no subpoena power to compel any witness to attend a hearing. (3-23-98)

~~b.~~ The alleged parole violator may make a timely written request to the commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. (3-23-98)()

~~eb.~~ If it is determined by the hearing officer or the executive director that the identification of an

informant or the personal appearance of a witness would subject such person to risk or harm, confrontation or cross-examination will not be allowed and the record will reflect such determination. (3-23-98)

~~d. The personal appearance of a witness may not be feasible; the hearing officer may determine if the witness should be interviewed by telephone and whether the information specifically addresses the allegations.~~ (3-23-98)

ec. It is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify the ir witnesses of the date, time, and location of any and all hearings or change of hearings. (3-23-98)()

056. Attorney. The alleged parole violator may utilize the services of an attorney at any hearing conducted during the revocation process. (3-23-98)

a. An attorney will be paid at the alleged parole violator's expense unless it is determined by a hearing officer for the commission, the executive director, or the commission that there is a colorable claim that the alleged violation(s) did not occur, that the alleged parole violator does not understand the proceedings, or is otherwise incapable of representing himself. (3-23-98)

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. (3-23-98)

~~e.~~ It is the alleged parole violator's responsibility to The alleged parole violator's attorney may make a request of the commission office of any hearings and provide the attorney with any and all reports and documents; in addition, the subject's attorney may also obtain copies by making a request to the commission office. (3-23-98)()

067. Hearings. The alleged parole violator will be advised of any and all hearing dates and locations within a reasonable time frame. (3-23-98)

~~a.~~ The hearing officer or executive director will determine the location of all hearings. (3-23-98)()

ba. The subject may request continuance or waiver of any hearing which is subject to the final determination of the hearing officer, executive director, or the commission. (3-23-98)

eb. The type of charges addressed in the allegations will determine the kinds of hearings available to the alleged parole violator. (3-23-98)

i. Non-technical Violations. If the alleged parole violator is charged with a conviction for a violent misdemeanor, or new felony criminal conviction, or is charged with absconding from supervision, the subject is not entitled to a preliminary or on-site hearing, and but is entitled to a hearing to determine guilt or innocence within a reasonable time following service of the charges. (3-23-98)()

ii. Technical Violations. If the alleged parole violator is charged with a violation of the rules conditions of parole other than a violent misdemeanor, or new felony criminal conviction, or absconding from supervision, the subject is entitled to a preliminary hearing and conducted by the supervising authority within a reasonable amount of time. ~~a~~An on-site hearing, ~~and is entitled to a~~ will be conducted by a hearing officer. The hearing is to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. (3-23-98)()

dc. Preliminary Hearing. A technical parole violator is entitled to a preliminary hearing to establish whether or not there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of field and community services the supervising authority or as otherwise directed by the executive director. The alleged parole violator is entitled to a verbal or written decision within a reasonable time following the preliminary hearing. (3-23-98)()

ed. On-Site Hearing. A technical parole violator is entitled to an on-site hearing conducted by a hearing

officer. (3-23-98)

~~i.~~ The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The executive director or hearing officer will determine where the hearing will be conducted. (5-3-03)

~~ii.~~ In situations where the violation(s) occurred outside the state of Idaho, the executive director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than Idaho. (3-23-98)()

~~fe.~~ Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence and may dismiss some or all allegations. If a hearing officer is unavailable, the executive director will appoint someone to conduct the hearing. The offender is entitled to a verbal or written decision within twenty (20) days of the violation hearing. (3-23-98)()

~~gf.~~ Revocation. Pursuant to a violation hearing or waiver of such hearing and a finding of guilt was made on one (1) or more of the violations, the commission will consider whether or not parole will be revoked. (5-3-03)

i. The commission has full discretion in granting reinstatement on parole or revocation of parole. A ~~commission~~ hearing with the offender may be conducted or the decision may be made along with deliberation on an Absentia Parole Revocation. (see Subsections 400.06.h.i. and 400.06.h.ii.) (3-30-01)

~~ii.~~ The Commission will consider whether the parole will be reinstated or revoked. (3-23-98)

~~iii.~~ The Commission and will ~~consider parole and~~ state the reasoning if parole is not granted ~~revoked.~~ (3-23-98)()

~~hg.~~ Absentia Hearing. The commission can revoke parole without the subject's appearance if the subject has signed the proper commission form waiving the right to appear before the commission. The commission will determine if parole will be considered once the revocation decision has been made. (3-23-98)

i. If new criminal charges result in a new commitment and incarceration, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

ii. If the subject has absconded supervision and is reincarcerated in another state without a new conviction, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

~~078.~~ Miscellaneous Revocation Information. (3-23-98)

a. The executive director will determine who will conduct all hearings involved in the revocation process. (3-23-98)

b. The commission, through the executive director shall designate the county, state, or other facility where the alleged parole violator shall be held. The commission's order shall be sufficient authority by law to direct any county sheriff or the board of correction to hold an alleged parole violator in custody until such time as the commission directs his removal or transfer. (3-23-98)

c. The alleged parole violator can request a continuance of any hearing. (3-23-98)

~~i.~~ The hearing officer, executive director, or the commission will determine if the continuance will be granted. (3-23-98)

~~ii.~~ If the alleged parole violator requests a continuance of any hearing, he, thereby, waives said request will constitute a waiver of any and all time limits involved. (3-23-98)()

~~089.~~ Inability to Assist in Defense. (3-23-98)

- a. Specific time limits pertinent to the case may be waived. (3-23-98)
- b. At the hearing officer or executive director's discretion, an attorney may be appointed for the offender at commission expense. ~~(3-23-98)~~()
- c. A psychological evaluation may be requested by the commission and mental health treatment may be deemed appropriate. ~~(3-23-98)~~()
- d. A status update of the case will be made at regular intervals, and the executive director will determine how the case will proceed. (3-23-98)

100. Findings/Decisions. (3-23-98)

- a. At any time following arrest on a commission warrant, the executive director or the commission will decide if the parolee will be released to continue parole. (5-3-03)
- b. If it is determined at the preliminary hearing that there is no probable cause to support the charges, the parolee will be released to continue parole. (3-23-98)
- c. After a violation hearing, the hearing officer will prepare a report of findings- ~~(3-23-98)~~
 - i. ~~The report will be a summary of~~ summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. ~~(3-23-98)~~()
 - ii. The hearing officer may make a finding of guilt but may recommend to the executive director that the offender be reinstated on parole without further proceedings. (3-23-98)
 - iii. The offender is entitled to receive a copy of all reports of findings of hearings. (3-23-98)
 - iv. ~~The offender is entitled to a verbal or written decision within twenty (20) days of the hearing.~~ ~~(3-23-98)~~

101. Forfeiture of Time on Parole. If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on an investigative agent's warrant and/or commission warrant may be forfeited, in whole or in part, and may not be deemed a part of the sentence for which the offender was committed. ~~(4-5-00)~~()

- a. The time the offender is incarcerated on an investigative agent's warrant and a commission warrant will be credited toward the sentence. ~~(3-23-98)~~()
- b. If the offender was incarcerated at any time during the parole period and such incarceration was on an agent's warrant and/or commission warrant, this time will be credited toward the sentence; this includes a reinstatement case. (3-23-98)
- c. The offender will not receive credit for incarceration time if the incarceration was for a new crime and the commission and parole officer did not initiate violation proceedings. (3-23-98)
- d. The offender must provide the hearing officer or the executive director with dates of incarceration and the location of the incarceration. (3-23-98)

401. -- 449. (RESERVED)

450. COMMUTATION.

Commutation is a process whereby clemency may be considered and granted to modify a sentence imposed by the sentencing jurisdiction. (3-30-01)

- 01. Petition.** A petition must be submitted to initiate the process. (3-30-01)

- a.** The only acceptable form is the one provided by the commission, and it must be signed by the petitioner. (3-23-98)
- b.** The petition must be completed correctly per instructions on the form or it may be returned. (3-23-98)
- c.** The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. (3-23-98)
- i.** Change a consecutive sentence to concurrent. (3-23-98)
- ii.** Reduce the maximum length of sentence. (3-23-98)
- iii.** Reduce the minimum fixed term of a sentence. (3-30-01)
- iv.** Change a fixed sentence to indeterminate. (3-23-98)
- v.** Change a sentence in any other manner not described. (3-23-98)
- d.** The commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (3-23-98)
- e.** Petitions may be considered at any time by the commission, but are usually scheduled for consideration for the quarterly sessions of January, April, July, and October. (3-23-98)
- f.** Petitions must be received no later than the first day of the month of a prior to the next designated quarterly hearing session for which the offender is applying. (~~3-23-98~~)()
- g.** Review or deliberation on the petition by the commission will be conducted in executive session. (3-23-98)
- h.** Any petition may be continued for additional information or for further consideration. (3-23-98)
- i.** The petitioner will be sent written notice of the decision. (3-23-98)
- j.** The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (3-23-98)
- k.** The petition must be readable or it may be returned. (5-3-03)
- l.** A parole violator is not eligible to file a petition until the violation has been heard and a decision made by the violation hearing officer. ()
- 02. Hearing.** The scheduling of a hearing is at the complete discretion of the commission; if a commutation hearing is scheduled, the commission will determine the date of the hearing. (3-23-98)
- a.** Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)
- b.** A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. (3-23-98)
- c.** All rules of procedure governing hearings will apply to a commutation hearing. (3-23-98)
- d.** The decision and supporting documents regarding a commutation will be filed with the secretary of state. (3-30-01)

i. All written material considered in the decision process of a commutation will be a matter of public record with the exception of the presentence investigation report, and victim information, or other documents determined by the executive director or commissioners as confidential. (3-30-01)()

ii. Dissenting votes of the commissioners voting will be a matter of public record. (3-23-98)

03. Approving and Granting. Only rarely will circumstances be extraordinary enough to approve a petition for a commutation hearing or to grant a commutation. (3-23-98)

a. The granting of a commutation hearing shall not be interpreted as intent to commute a sentence. (3-23-98)

b. Habilitative progress alone will not be regarded as sufficient to grant a commutation hearing or to commute a sentence. (3-23-98)

04. Authority to Grant. The commission has full and final authority to grant commutations except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of a controlled substance. (3-23-98)

a. In the cases of offenses listed in this section, the commission's decision shall constitute a recommendation only to the governor. (3-23-98)

b. Following such hearing, the commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-23-98)

c. No commutation for the offenses listed in this section will be effective until presented to and approved by the governor, and any commutation recommendations not so approved within thirty (30) days of the commutation hearing commission's recommendation shall be deemed denied. (3-23-98)()

05. Death Sentence. (3-23-98)

a. An individual file of each inmate offender under sentence of death may be maintained in the commission office. (5-3-03)()

b. At any time, the commission may review a file, information, or interview an inmate offender without activating the commutation process. (3-23-98)()

c. Commutation consideration must be initiated by the petitioner or his legal counsel. (3-30-01)

i. The petition must contain the signature of the petitioner, unless the petitioner is unable to sign the petition. In this case, the executive director will determine if it is the desire of the person to submit a petition. (3-23-98)()

ii. Legal counsel must provide verification that he has been retained by the petitioner or his family to prepare and submit the petition. (3-30-01)

d. The commission may elect to receive and consider a petition for a death penalty modification at any time. (3-23-98)

451. -- 499. (RESERVED)

500. SELF-INITIATED PROGRESS REPORT.

An inmate offender may appeal the last parole decision of the commission. (3-23-98)()

01. Petition. An inmate offender making a request for reconsideration of parole denial must initiate the process by submitting an application. (3-23-98)()

- a. The only acceptable form is the one provided by the commission, and it must be signed by the petitioner. (3-23-98)
- i. The petition must be the original petition. ()
- ii. The Case Manager is to include with the petition, once signed by the offender and the Case Manger, the disciplinary history, classes history, and the assessments. ()
- b. The petition must be completed correctly per instructions on the form or it may be returned. (3-23-98)
- c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (3-23-98)
- d. A petition may be filed by any offender who is currently incarcerated. ()
- de. Following the initial submission, the commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (3-23-98)()
- i. A petition may be submitted six (6) months after a qualified hearing. A qualified hearing includes: ()
- (a) Regular parole hearings; ()
- (b) Parole revocation hearings; ()
- (c) Hearing officer reviews; and ()
- (d) SIPR hearings. ()
- ii. A petition may be submitted once every twelve (12) months if a hearing is not granted. ()
- ef. Petitions may be considered at any time by the commission. (3-30-01)
- fg. Petitions must be received no later than the first day of the month prior to the next hearing session. (3-30-01)()
- g. ~~The petition may be submitted no sooner than six (6) months following the last hearing.~~ (3-23-98)
- h. Review or deliberation on the petition by the commission will be conducted in executive session. (3-23-98)
- i. Any petition may be continued for additional information or for further consideration. (3-23-98)
- j. The petitioner will be sent written notice of the decision. (3-23-98)
- k. The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (3-23-98)
- l. The petition must be readable or it may be returned. (5-3-03)
- 02. Hearing.** The scheduling of a hearing is at the complete discretion of the commission. (3-23-98)
- a. If a special hearing is scheduled, the commission will determine the date of the hearing. (3-23-98)
- b. If a special hearing is scheduled, the previous decision of the commission may be considered null

and void. (3-23-98)

03. Amended Decision. The commission may elect to amend any decision without conducting another hearing. (3-23-98)

501. -- 549. (RESERVED)

550. PARDON.

A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. (3-23-98)

01. General. An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. (3-23-98)

a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than three (3) years after completion of the sentence. (3-23-98)

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted five (5) years after completion of the sentence. (3-23-98)

02. Application. A pardon application can be obtained from the commission office or on the commission website. ~~(3-23-98)~~()

a. The application must be completed and returned to the commission office. (3-23-98)

i. The completed application must include the reasons why the pardon is requested. (3-23-98)

ii. The applicant may attach letters of recommendation or other documents to support the request. (3-23-98)

iii. The applicant must include copies of all court judgment and conviction documents for each crime a pardon is requested for. ()

iv. A pardon may be requested only once during a twelve-month (12) period unless otherwise stated by the commission. ()

b. Following receipt of the completed application, a request for an investigation will be made of correctional field personnel in the area in which the applicant resides, and the report shall include, but shall not be limited to the following: (3-23-98)

i. A criminal record check of the applicant. (3-23-98)

ii. The applicant's employment history since completion of sentence. (3-23-98)

iii. The applicant's status as a good citizen. (3-23-98)

iv. An interview with the applicant should be conducted and a summary of the interview provided. (3-23-98)

v. Any additional information as deemed necessary or appropriate. (3-23-98)

c. If the applicant is residing in a jurisdiction which refuses to conduct an investigation of the case, the applicant may be required to come to Idaho for an interview with a parole officer or hearing officer, or the interview may be conducted by electronic means. A normal investigation will then be completed. ~~(5-3-03)~~()

03. Report. Pursuant to the receipt of the completed report, a review ~~will~~ may be conducted at the next scheduled hearing session of the commission. Once the report is received, staff may determine if additional information is needed. ~~(3-23-98)~~()

- a. The commission will conduct such review in executive session. (3-23-98)
- b. The commission will determine whether a hearing will be granted and the applicant will be advised of the decision. (3-23-98)
- c. Any application may be continued for further consideration or additional information. (3-23-98)

04. Hearing. The scheduling of a hearing is at the complete discretion of the commission ~~or the executive director.~~ If a pardon hearing is scheduled, the commission will determine the date of the hearing. (3-23-98)()

a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

c. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. (3-23-98)

i. The applicant's appearance at the hearing is not mandatory but is encouraged. (3-23-98)

ii. The commission may continue the hearing to a later date in order for the applicant to make a personal appearance and such continuance will not require additional publication of the hearing. (3-23-98)

d. All rules of procedure governing hearings will apply at a pardon hearing. (3-23-98)

e. The decision and supporting documents regarding the decision to grant or deny a pardon will be filed with the secretary of state. (3-23-98)

i. Dissenting votes of the commissioners voting are submitted to the office of the secretary of state and become a matter of public record. (3-23-98)

ii. All written material considered in the decision process with the exception of the presentence investigation report and victim information will be submitted to the office of the secretary of state and will be a matter of public record. (3-23-98)

f. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-23-98)

05. Authority to Grant. The commission has full and final authority to grant pardons, except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances. (3-23-98)

a. In the cases listed in this section, the commission's decision to grant a pardon shall constitute a recommendation only to the governor. (3-23-98)

b. Following such hearing, the commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-23-98)

c. No pardon for the offenses listed in this section will be effective until presented to and approved by the governor, and any pardon recommendations not so approved within thirty (30) days of the pardon hearing shall be deemed denied. (3-23-98)

551. RESTORATION OF FIREARMS RIGHTS UNDER SECTION 18-310, IDAHO CODE.

01. General. An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(3), Idaho Code. This is not a pardon for the conviction of a crime. ()

02. Application. An application may not be made until five (5) years after the date of final discharge. ()

a. An application may be obtained from the commission office or on the commission website. ()

b. The application must be the original and returned to the commission office. ()

i. The application must request the restoration of the right to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. ()

ii. The application must be in writing and legible. ()

iii. All court conviction and dismissal documents must accompany the application. ()

iv. An application may be submitted once every twelve (12) months, or at the commission's discretion. ()

v. The petition must state the reason for the request. ()

vi. Review or deliberation on the petition will be conducted in executive session. ()

03. Hearing. The scheduling of a hearing is at the complete discretion of the commission or the executive director. ()

a. If a hearing is scheduled, the commission will determine the date of the hearing. ()

b. Any petition may be continued for additional information. ()

04. Authority to Grant. The commission has the full and final authority and discretion to grant restoration of civil rights to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. ()

05. Exceptions. See the exceptions listed in Section 18-310, Idaho Code. ()

a. Persons convicted of the felonies enumerated in Sections 18-310(2)(s) and (t), Idaho Code, for any degree of murder or voluntary manslaughter, shall not be restored the right to ship, transport, possess, or receive a firearm regardless of the date of their conviction if the conviction was the result of an offense committed by the use of a firearm. ()

b. The commission shall not restore the right to ship, transport, possess, or receive a firearm to any person convicted of murder in the first degree (Section 18-4003, Idaho Code), murder in the second degree (Section 18-4003, Idaho Code), or any felony enumerated in Sections 18-310(2)(a) through (jj), Idaho Code, upon which the sentence was enhanced for the use of a firearm during the commission of said felony. ()

552. STAFF PROGRESS REPORT.
A staff member making a request for parole must initiate the process by submitting an application. ()

01. Acceptable Form. The only acceptable form is the one provided by the commission, and it must be signed by the offender and staff member. ()

a. The petition must be the original petition. ()

b. The petition must be completed correctly per instructions on the form or it may be returned. ()

- c.** The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. ()
- d.** The application must include progress reports, C-notes, and other documents to support the request. ()
- 02. Time of Consideration.** Petitions may be considered at any time by the commission. ()
- a.** Petitions must be received no later than the first day of the month. ()
- b.** Review or deliberation on the petition by the commission will be conducted in executive session. ()
- c.** The staff member and offender will be sent written notice of the decision. ()
- d.** The petition is limited to no more than four (4) pages. The petition may be returned before submission to the commission if the document exceeds this number. ()
- e.** The petition must be legible or it may be returned. ()
- 03. Case Manager Guidelines.** ()
- a.** The staff member will identify an offender using the following criteria: ()
- i.** The offender must not have any assaults on staff members in the last twenty-four (24) months. ()
- ii.** The offender must not have been charged with any new crimes during his current incarceration. ()
- iii.** The offender must have been medication compliant for the last six (6) months. ()
- iv.** The offender must not have introduced any contraband in the last eighteen (18) months. ()
- v.** The offender must have a written verified parole plan. ()
- b.** Timeline for consideration of petition for parole. The following timeline is for determining the eligibility of the offender: ()
- i.** The staff member identifies the offender twenty-four (24) to thirty-one (31) months prior to his full term release date. ()
- ii.** The parole hearing officer is notified of the offender to be interviewed when offender is twenty (20) months from full term date. ()
- iii.** When the offender has eighteen (18) months remaining on his sentence, the offender will be interviewed by a parole hearing officer. ()
- iv.** The offender will be scheduled for a hearing before the commission when there are fifteen (15) months until his full term release date. ()
- v.** The commission will grant a release date twelve (12) months prior to offender's full term date. ()
- 04. Exceptions to the Staff Progress Report.** An offender will not be seen by the commission if the offender has the following on his record: ()

- a. Class A DOR in the last six (6) months: ()
- b. Sexual DOR's in the last six (6) months including physical touching: ()
- c. Is in segregation status: ()
- d. Offender has refused to participate in the hearing/interview process: ()
- e. Offender has refused programming and has a tentative parole date: ()
- f. The offender has a parole eligibility date: ()
- g. The offender is a parole violator: or ()
- h. The offender has a violent crime, including injury to a person, has a sexual crime involving statutory rape or a property offense that was pled down, but which had a violent component. ()

05. Hearing. The scheduling of a hearing is at the complete discretion of the commission. If a special hearing is scheduled, the commission will determine the date of the hearing. ()

06. Amended Decision. The commission may elect to amend any decision without conducting another hearing. ()

~~554~~3. -- 599. (RESERVED)

600. REMISSION OF FINE OR PENALTY.

- 01. Request.** An application for remission of fine or penalty must be made to the commission. (3-23-98)
 - a. The application must be in writing. (3-23-98)
 - b. The application must outline the reasons action is requested to remit such fine or penalty. (3-23-98)
 - c. The ~~Commission will obtain~~ applicant must submit a certified copy of the fine or penalty from the jurisdiction which assessed such penalty. ~~(3-23-98)~~()
- 02. Review.** The commission will review the request to remit a fine or penalty. (3-23-98)
 - a. The commission will usually review such application on a month designated as a quarterly session, but may make such review during any session. The review will be conducted by the full commission. ~~(3-23-98)~~()
 - b. The commission will conduct such review in executive session. (3-23-98)
 - c. Any application may be continued for further consideration or additional information. (3-23-98)
 - d. The commission will determine whether a hearing will be granted and the applicant will be advised of the decision in writing. (3-23-98)
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the commission. (3-23-98)
 - a. If a hearing is scheduled, the commission will determine the date of the hearing. (3-23-98)
 - b. If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing.

(3-23-98)

c. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

d. All rules of procedure governing hearings will apply to such scheduled hearing. (3-23-98)

e. The decision and supporting documents regarding the remission will be filed with the *secretary of state* clerk of the court where said fine or penalty or forfeiture was assessed. This will constitute a satisfaction of the judgment. (3-23-98)()

i. All written material considered in the decision process will be a matter of public record. (3-23-98)

ii. Dissenting votes of the commissioners voting will be a matter of public record. (3-23-98)

f. Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. (3-23-98)

i. The applicant's appearance at the hearing is not mandatory; however, appearance may be required and the applicant will be notified. (3-23-98)

ii. The commission may continue the hearing to a later date for any reason and such continuance will not require notice to be published again. (3-23-98)

04. Satisfaction of Judgment. If the commission determines that such fine or penalty is to be remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. (3-23-98)

601. -- 9799. (RESERVED)

800. FOREIGN NATIONAL TREATY.

801. -- 999. (RESERVED)

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD

57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD

DOCKET NO. 57-0101-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 18-8314, Idaho Code.

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

This rulemaking was initiated to implement procedures that were mandated of the Sexual Offender Management Board by Idaho's 2011 Legislature.

The incorporated document, "Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders" 2004 edition, November 2014 revision was updated to include the optional use of polygraphy with psychosexual evaluations with the addition of a polygraphy statement in the psychosexual evaluation standards; reordering of categories in psychosexual evaluations; and a modified juvenile sex offender risk variables and protective factors checklist. Some of these changes were made as a result of public comments received by the Board.

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 September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 367 through 377](#).

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

No negative fiscal impact on state general funds is anticipated with this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kathy Baird at (208) 954-8511.

DATED this 17th Day of November, 2014.

Kathy Baird
Management Assistant
Sexual Offender Management Board
IDOC Clinical Services Annex
3125 S. Shoshone St.
Boise, ID 83705
Phone: (208) 954-8511
Fax: (208) 954-8519

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 18-8314, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Information on date, time and location for public meeting(s) will be posted on the agency website: www.somb.idaho.gov.

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 Sexual Offender Management Board is responsible for developing, advancing and overseeing sound sexual offender management practices statewide. This rulemaking applies to practitioners who provide services to juveniles who have been adjudicated for sexual offenses by establishing standards and qualifications for psychosexual evaluations and evaluators, as well as sexual offender treatment and treatment providers. The adopted standards document will be incorporated into this rulemaking.

The chapter is also being modified for applicability to sexual offender management practices and practitioners for juveniles who have been adjudicated for sexual offenses.

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

There is no change to fees currently established in IDAPA 57.01.01.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: There is no negative fiscal impact on general funds with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published as Docket No. 57-0102-1401 in the June 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, page 103**.

The juvenile practice standards and certification documents are posted on the agency website for public review and comment. Public meetings will be conducted for additional comments.

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:

The practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are compiled and incorporated into IDAPA 57.01.01. With this rulemaking, new documents entitled "Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders" 2014 edition, and the Sexual Offender Management Board's "Required Format for Juvenile Psychosexual Evaluation Reports" effective 2015, are incorporated by reference to give them the force and effect of law. These documents are not being reprinted in this chapter of rules due to their length and format and because of the cost for republication. They can be found on the agency's website.

Also incorporated by reference into this chapter are professional and ethical standards from nationally recognized organizations, as applicable to sexual offender management. The following citation is updated in this

rulemaking:

“Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers” 2014 edition. This document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication. It is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Baird, (208) 954-8511.

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 14, 2014.

DATED this eleventh day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 57-0101-1401

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-20-14)

01. “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, Website <http://www.atsa.com/>. (3-20-14)

02. “Association for the Treatment of Sexual Abusers Practice ~~Standards and~~ Guidelines for the ~~Evaluation Assessment~~, Treatment and Management of ~~Adult~~ Male ~~Adult~~ Sexual Abusers,” ~~2005 revision~~ 2014 edition, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, website <http://www.atsa.com/>. ~~(3-20-14)~~ ()

03. “Bylaws and Constitution of the American Association of Police Polygraphists,” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)

04. “Bylaws of the American Polygraph Association,” effective January 2012, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. (3-20-14)

05. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” edition 2013 November 2013 revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <http://somb.idaho.gov/>. (3-20-14)

06. “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,” ~~November~~ 2014 edition, is herein incorporated by reference and is available from the Board’s office and on the Board’s website, <http://somb.idaho.gov/>. ()

07. The Sexual Offender Management Board’s “Required Format for Juvenile Psychosexual Evaluation Reports,” effective 2015, is herein incorporated by reference and is available from the Board’s office and

on the Board's website, <http://somb.idaho.gov/>. ()

068. The Sexual Offender Management Board's "Required Format for Psychosexual Evaluation Reports," effective 2013, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. (3-20-14)()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

The office of the Sexual Offender Management Board is located within the Idaho Department of Correction Clinical Services Annex, 3125 S. Shoshone St., Boise, Idaho 83705. Business hours are typically 8 a.m. to 5 p.m. Monday through Friday except legal holidays. The Board's telephone number is (208) 954-8511 and the FAX number is (208) 954-8518. The Board's official website is <http://somb.idaho.gov/>. (3-20-14)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Board. The Sexual Offender Management Board described in Section 18-8312, Idaho Code. (3-20-14)

02. Central Roster. A roster of evaluators, treatment providers and polygraph examiners, who meet the qualifications and are certified by the Board to conduct psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

03. Certificate Holder. A person who has been approved by the Board and certified as meeting qualifications to conduct or assist in the conduct of psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

04. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 18, 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 sexual offenders, shall meet the qualifications and shall be approved by the Board to perform psychosexual evaluations in this state, as described in Section 18-8314, Idaho Code. A person meeting this definition may be certified by the Board as either a senior/approved certified evaluator or an associate/supervised certified evaluator. (3-20-14)

05. Certified Polygraph Examiner. A polygraph examiner who has received specialized post conviction sex offender testing training, and who is certified by the Board to conduct post conviction sexual offender polygraph examinations as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole. (3-20-14)

06. Certified Treatment Provider. A person who has been certified by the Board as meeting qualifications to provide sexual offender treatment as ordered by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or Idaho Department of Juvenile Corrections. Such person shall be licensed by this state or another state or jurisdiction as a psychiatrist, or a master's or doctoral level mental health professional, and who has by education, experience and training, expertise in the treatment of sexual offenders. A person meeting this definition may be certified by the Board as either a senior/approved sex offender treatment provider or an associate/supervised sex offender treatment provider. (3-20-14)

067. Client. An person adult or juvenile receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. (3-20-14)()

08. Established Standards. The "Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices," and the "Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders" as referenced in

Section 004 of these rules and established pursuant to Section 18-8314, Idaho Code.

~~(3-20-14)~~()

09. Provisional/Supervised Psychosexual Evaluator. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to assist with the conduct of psychosexual evaluations under the direct supervision of a senior/approved psychosexual evaluator. A person with a provisional/supervised psychosexual evaluator certificate is not considered to be a certified evaluator as defined in Section 18-8303, Idaho Code or for the purposes of conducting a psychosexual evaluation in accordance with Section 18-8316, Idaho Code. Certification approval is specific to adult or juvenile clients.

~~(3-20-14)~~()

10. Provisional/Supervised Sex Offender Treatment Provider. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to provide sexual offender treatment under the direct supervision of a senior/approved sex offender treatment provider. Certification approval is specific to adult or juvenile clients.

~~(3-20-14)~~()

11. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing a person's sexual development, sexual deviancy, sexual history and risk of re-offense. A psychosexual evaluation for the purpose of these rules is conducted post conviction, as ordered by the court pursuant to Section 18-8316, Idaho Code, or Title 20, Chapter 5, Idaho Code, by a person who has been certified by the Board.

~~(3-20-14)~~()

12. Quality Assurance. Processes established by the Board to review psychosexual evaluations and sexual offender treatment procedures to assure minimum standards and certificate holder qualifications are met. All quality assurance reviews will be conducted under the direction of the Board.

(3-20-14)

13. Sexual Offender. A person adjudicated or 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; or who has been adjudicated or convicted of a sexual offense-related crime.

~~(3-20-14)~~()

14. 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.

(3-20-14)

15. Supervision.

(3-20-14)

a. For purposes of clinical practice supervision for associate/supervised psychosexual evaluator or associate/supervised sex offender treatment provider certification, supervision is generally considered as face-to-face direct contact, documented teleconferencing, or interactive video conferencing with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every twenty (20) hours of direct service provided; or

(3-20-14)

b. For purposes of clinical practice supervision for provisional/supervised psychosexual evaluator or provisional/supervised treatment provider certification, supervision is considered as continual face-to-face direct contact with a Board-approved supervisor.

(3-20-14)

16. Treatment. For purposes of certification eligibility 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 or sexual offense-related crime. Treatment must be directly relevant to the client's sexually offending behavior.

(3-20-14)

17. Violent Sexual Predator. A person 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.

(3-20-14)

011. ABBREVIATIONS.

- 01.** ATSA. The Association for the Treatment of Sexual Abusers. (3-20-14)
- 02.** DSM. The “Diagnostic and Statistical Manual of Mental Disorders,” published by the American Psychiatric Association. (3-20-14)
- 03.** IDOC. The Idaho Department of Correction. (3-20-14)
- 04.** IDJC. The Idaho Department of Juvenile Corrections. ()
- 045.** PCSOT. “Post conviction sex offender testing” is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sex offenders. (3-20-14)
- 056.** SOCB. The Sexual Offender Classification Board. (3-20-14)
- 067.** SOMB. The Sexual Offender Management Board. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

040. CERTIFIED EVALUATOR QUALIFICATIONS.

01. Certified Evaluators. Each evaluator who conducts or assists with the conduct of a psychosexual evaluation pursuant to Section 18-8316, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (3-20-14)

- a.** Certification approval is specific to adult or juvenile clients. ()
- b.** A certificate holder may be separately approved to provide services to both adult and juvenile clients. ()

02. Certification Requirements. Minimum requirements for certification as a psychosexual evaluator include criteria, requirements, and expectations in the following categories: (3-20-14)

- a.** Formal educational requirements; (3-20-14)
- b.** Professional licensure requirements; (3-20-14)
- c.** Clinical experience requirements; (3-20-14)
- d.** Specialized training requirements; and (3-20-14)
- e.** Continuing education and professional development requirements. (3-20-14)

041. LEVELS OF PSYCHOSEXUAL EVALUATOR CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person’s training and experience specific to the population to be served: (3-20-14)()

- 01. Senior/Approved Psychosexual Evaluator.** (3-20-14)
- a.** Possesses a valid Idaho license to practice as a psychiatrist or master’s or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)
- b.** Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 1500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and (3-20-14)

c. Has conducted a minimum of nine (9) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level. (3-20-14)

02. Associate/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; (3-20-14)

c. Has conducted a minimum of six (6) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level; and (3-20-14)

d. Shall only conduct psychosexual evaluations under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; (3-20-14)

c. May assist with the conduct of psychosexual evaluations only under the direct supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

080. SEXUAL OFFENDER TREATMENT PROVIDER QUALIFICATIONS.

01. Certified Sexual Offender Treatment Provider. Each person who provides treatment to sexual offenders as ordered or required by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or the Idaho Department of Juvenile Corrections, in accordance with Section 18-8314, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (3-20-14)

a. Certification approval is specific to adult or juvenile clients. ()

b. A certificate holder may be separately approved to provide services to both adult and juvenile clients. ()

02. Certification Requirements. Minimum requirements for certification as a sexual offender treatment provider include criteria, requirements, and expectations in the following categories: (3-20-14)

a. Formal educational requirements; (3-20-14)

b. Professional licensure requirements; (3-20-14)

- c. Clinical experience requirements; (3-20-14)
- d. Specialized training requirements; and (3-20-14)
- e. Continuing education and professional development requirements. (3-20-14)

081. LEVELS OF SEXUAL OFFENDER TREATMENT PROVIDER CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person's training and experience specific to the population to be served: ~~(3-20-14)~~ ()

01. Senior/Approved Sexual Offender Treatment Provider. (3-20-14)

a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; and (3-20-14)

b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 1500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board. (3-20-14)

02. Associate/Supervised Sexual Offender Treatment Provider. (3-20-14)

a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and (3-20-14)

c. Shall only provide treatment services under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Sexual Offender Treatment Provider. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; and (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

c. Shall only provide treatment services under the direct supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

100. SPECIALIZED TRAINING FOR PSYCHOSEXUAL EVALUATORS AND SEXUAL OFFENDER TREATMENT PROVIDERS.

For initial certification as a psychosexual evaluator or sexual offender treatment provider, an applicant must have

participated in specialized training in the field of sexual abuse, as set forth in the established standards issued by the Board. Sources for such training may be formal conferences, symposia, seminars and workshops in areas such as: (3-20-14)

01. **Sexually Abusive Behavior.** Contemporary research regarding the etiology of sexually abusive behavior; (3-20-14)
02. **Offending Behavior.** Research-identified risk factors for the development and continuation of sexually abusive/offending behavior; (3-20-14)
03. **Assessment, Treatment, and Management of Adult or Juvenile Sex Offenders.** Contemporary research and practice in the areas of assessment, treatment, and management of adult or juvenile sex offenders; ~~(3-20-14)~~()
04. **Specific Risk Assessment Tools.** Research-supported, sex offender-specific risk assessment tools; and (3-20-14)
05. **Deviant Sexual Arousal and/or Interests.** Physiological assessment of deviant sexual arousal and/or interests. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

200. POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINER QUALIFICATIONS.

01. **Certified Examiner.** Each person who conducts post conviction sexual offender polygraphs as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole, in accordance with Section 18-8314, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. There shall not be a separate certification specific to adult or juvenile clients. ~~(3-20-14)~~()
02. **Certification Requirements.** Minimum requirements for certification as a sexual offender treatment provider include criteria and requirements in the following categories: (3-20-14)
 - a. Educational requirements; (3-20-14)
 - b. Experience requirements; (3-20-14)
 - c. Specialized training requirements; and (3-20-14)
 - d. Continuing education and professional development requirements. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

300. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

01. **General Considerations for Certified Evaluators and Certified Treatment Providers.** Each person who is certified by the Board to conduct or assist with the conduct of psychosexual evaluations or provide sexual offender treatment shall: (3-20-14)
 - a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's respective discipline and area of professional licensure; (3-20-14)
 - b. Adhere 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; (3-20-14)()

c. Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment; (3-20-14)

d. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; (3-20-14)

e. Be committed to community protection and safety; (3-20-14)

f. Provide services in a manner that ensures humane and ethical treatment of clients; (3-20-14)

g. Conduct testing in accordance with the person's licensing body, qualifications and experience, and in a manner that ensures the integrity of testing data; (3-20-14)

h. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (3-20-14)

i. Have no sexual relationships with any client. (3-20-14)

02. General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners.

Each person who is certified by the Board to conduct post conviction sexual offender polygraph examinations shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's discipline, area of professional practice, or licensure as promulgated by any applicable regulatory board or licensing authority; (3-20-14)

b. Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the American Polygraph Association; (3-20-14)

c. Adhere to the ethical principles and codes, and all practice standards and guidelines for the administration of polygraph examinations generally, as promulgated by the American Polygraph Association or the American Association of Police Polygraphists, as referenced in Section 004 of these rules; (3-20-14)

d. Adhere to the current practice standards and guidelines pertaining to post conviction sexual offender polygraphs within the context of sexual offender management as established by the Association for the Treatment of Sexual Abusers, as referenced in Section 004 of these rules; (3-20-14)

e. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; ~~and~~ (3-20-14)()

f. Have no sexual relationships with any client; ~~and~~ (3-20-14)()

g. Take factors such as age, mental capacity and co-occurring mental health concerns into consideration when utilizing polygraphy with juvenile offenders. ()

(BREAK IN CONTINUITY OF SECTIONS)

330. INITIAL CERTIFICATION APPLICATION.

An applicant seeking certification by the Board must submit a completed application on forms provided by the Board for the applicant's area of practice and client population if applicable, accompanied by documentation as outlined in the established standards issued by the Board and an initial certification application fee made payable to the Board. (3-20-14)()

331. EXPIRATION AND RENEWAL OF CERTIFICATION.

No certification shall be renewed, except as follows:

(3-20-14)

01. Renewal. At least thirty (30) days prior to the expiration of a certification, a certificate holder shall apply for renewal of the certification on forms provided by the Board for the applicant's area of practice and client population if applicable, accompanied by documentation as outlined in the established standards issued by the Board and a renewal certification application fee made payable to the Board. ~~(3-20-14)~~()

02. Removal from the Roster. A certificate holder who has not renewed his certification shall be removed from the central roster thirty (30) days after his certification has expired. (3-20-14)

03. Renewal After Certification Expiration. A certificate holder whose certification has expired may reapply at any time for certification as follows: (3-20-14)

a. A certificate holder whose certification has been expired for less than three hundred sixty-five (365) days may reapply following the certification renewal process as referenced in Subsection 331.01 of these rules. (3-20-14)

b. A certificate holder whose certification has been expired for three hundred sixty-five (365) days or longer may reapply for certification following the initial certification process as referenced in Section 330 of these rules. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

350. CENTRAL ROSTER OF PSYCHOSEXUAL EVALUATORS, SEXUAL OFFENDER TREATMENT PROVIDERS AND POST CONVICTION SEXUAL OFFENDER POLYGRAPH PROVIDERS.

01. Identification. The Board shall publish a central roster of psychosexual evaluators, sexual offender treatment providers and post conviction sexual offender polygraph providers pursuant to Sections 18-8312 through 18-8316, Idaho Code. The central roster shall indicate: (3-20-14)

a. The certificate holder's name; (3-20-14)

b. The certificate holder's business address and telephone number; (3-20-14)

c. Whether the certificate holder is certified or approved by conditional waiver; (3-20-14)

d. The category and applicable level of certification; (3-20-14)

e. The expiration date of the certification or conditional waiver; ~~and~~ ~~(3-20-14)~~()

and **f.** Whether the certificate holder is approved to provide services to adult or juvenile clients, or both; ()

fg. Current formal disciplinary action imposed on a certificate holder by the Board. (3-20-14)

02. Availability. A copy of the central roster may be obtained from the Board, and shall be posted on the Board's website. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

450. PSYCHOSEXUAL EVALUATIONS.

01. Adult Psychosexual Evaluations. Pre-sentence psychosexual evaluations on adult sexual offenders shall be conducted pursuant to the established standards issued by the Board and written utilizing the “Required Format for Psychosexual Evaluation Reports,” as referenced in Section 004 of these rules. (3-20-14)()

02. Juvenile Psychosexual Evaluations. Psychosexual evaluations on juveniles adjudicated for sexual offenses shall be conducted in accordance with the established standards issued by the Board and written utilizing the “Required Format for Juvenile Psychosexual Evaluation Reports,” incorporated by reference in Section 004 of these rules. ()

03. Testing. The evaluator shall utilize testing instrumentation and assessment measures as outlined in the established standards issued by the Board. (3-20-14)

04. Client Participation. The client being evaluated may refuse or decline to participate in any testing, assessment measure, or physiological measure used for the pre-sentence psychosexual evaluation. The evaluator shall document the client’s refusal or declination in the psychosexual evaluation report. (3-20-14)