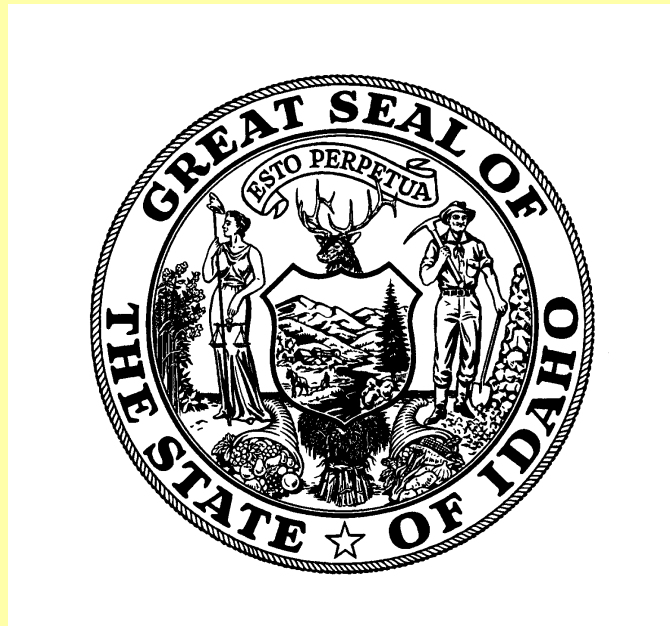


PENDING RULES COMMITTEE RULES REVIEW BOOK

Submitted for Review Before
**House Judiciary, Rules &
Administration Committee**

**64th Idaho Legislature
First Regular Session -- 2017**



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2017

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.03 – RULES OF THE CUSTODY REVIEW BOARD

DOCKET NO. 05-0103-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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 20-520(1)(r), 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 7, 2016 Idaho Administrative Bulletin, [Vol. 16-9, pages 40-44](#).

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Marc Crecelius, (208) 334-5100 x. 422.

DATED this 14th Day of December, 2016.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson, Boise, ID 83702
PO Box 83720, Boise, ID 83720-0285
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 Section 20-520(1)(r), 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 21, 2016.

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 minor changes made to this rule are in an effort to update code numbers and to clarify and refine the existing rules.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Custody Review Board is already familiar with the changes being made, which are minor and will only increase clarity.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marc Crecelius, (208) 334-5100 x. 422.

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 28, 2016.

DATED this 4th Day of August, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0103-1601

000. LEGAL AUTHORITY.

01. Section 20-520(1)(r), Idaho Code. Pursuant to Section 20-520(1)(r), Idaho Code, the Idaho Department of Juvenile Corrections shall adopt rules implementing the Custody Review Board and operations and procedures of such board. (3-5-08)

02. Section 20-532, Idaho Code. Pursuant to Section 20-532, Idaho Code, a juvenile offender committed to a secure facility shall remain until the offender reaches nineteen (19) years of age, is retained for extended custody pursuant to Section 20-520(1)(r), Idaho Code, or is released or discharged. (3-5-08)

03. Section 20-504(1+2), Idaho Code. Pursuant to Section 20-504(1+2), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Title 67, Chapter 52, Idaho Code, as are deemed necessary or appropriate for the function of the department and the implementation and administration of the Juvenile Corrections Act. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

- 01. Board.** The Custody Review Board of the Idaho Department of Juvenile Corrections. (5-3-03)
- 02. Case Management Team.** A team consisting of juvenile services coordinator (JSC), case manager, and juvenile probation officer (JPO) who provide input in setting and following through with treatment goals. (5-3-03)
- 03. Case Manager.** Department staff assigned to directly manage a juvenile's case, such as a group leader at a state institution; or, if a juvenile is placed at a contract program, the contract provider's employee assigned to directly manage a juvenile's case. (5-3-03)
- 04. Classification.** A process for determining the needs and requirements of juveniles for whom commitment has been ordered, and for assigning them to housing units or programs according to their needs and existing resources. (5-3-03)
- 05. Commit.** Commit means to transfer legal custody. (5-3-03)
- 06. Court.** Means any Idaho district court or magistrate's division thereof. (5-3-03)
- 07. Director.** The director of the Idaho Department of Juvenile Corrections. (5-3-03)
- 08. Department.** The Idaho Department of Juvenile Corrections. (5-3-03)
- 09. Extended Time in Custody.** Any period of time a juvenile remains in custody after age nineteen (19) and not to exceed age twenty-one (21). (5-3-03)
- 10. Incident Report.** A written document reporting an unusual occurrence or special event *such as the discovery of contraband, use of physical force, use of chemical agents, discharge of firearms,* and action taken *including notation of strip and cavity searches.* (5-3-03)()
- 11. 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. (5-3-03)
- 12. Juvenile Records.** Information concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, personal property receipts, visitors' lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. (5-3-03)
- 13. Juvenile Services Coordinator (JSC).** An employee of the department who is assigned to a particular juvenile as the case worker, licensed in social work. (3-5-08)
- 14. Legal Guardian.** A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner, or operator of a detention center, observation and assessment center, secure facility, residential facility, or other facility having temporary or long-term physical custody of the juvenile offender. (5-3-03)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

- 01. Hearings.** All matters and testimony concerning juveniles, before the Custody Review Board, are confidential and shall be conducted in accordance with Section 67-2341(1), (4), and (5), Idaho Code; Title 974, Chapters 3 1 and 2, Idaho Code; and Title 20, Chapter 5, Idaho Code, regarding juvenile records and proceedings. (5-3-03)()
- 02. Written Record.** A written record of the vote by the Custody Review Board shall be kept confidential and privileged from disclosure, to the extent allowed by law, and provided that the record, or portions

thereof, shall be made available upon request, for all lawful purposes or as required by the Idaho Public Records Act, Title ~~9~~⁷⁴, Chapter ~~3~~¹, Idaho Code. ~~(5-3-03)~~()

03. Confidentiality. Distribution of the record by the Custody Review Board or an employee of the Idaho Department of Juvenile Corrections to any person not specifically allowed by law to receive or read it may result in disciplinary action. (5-3-03)

04. Records of Hearings and Meetings. Summary minutes of individual hearings and case reviews will be approved and signed by the board members and maintained in the department office. (5-3-03)

101. POWERS AND DUTIES.

01. Review. The Custody Review Board is empowered by Sections 20-520(1)(r) and 20-532, Idaho Code, to review the cases of juveniles in the custody of the department whose cases have been referred to the board according to Section 201 of these rules. (3-5-08)

02. Board Determinations. After conducting its review, the Custody Review Board shall advise the department's director whether it has determined that the juvenile before it needs an extended time in custody to address accountability, community protection, and competency. (3-5-08)

03. ~~Indeterminate Sentence Remains~~ Placement. The Custody Review Board cannot direct the placement or treatment of a juvenile in the department's custody, ~~and any determination by the board that extended time in custody is needed by a juvenile shall not create a determinate sentence of any kind.~~ ~~(3-5-08)~~()

04. Release Date for Juveniles. If a juvenile has appeared before the Custody Review Board and the board has concluded that he not be retained in custody, the director shall set a release date for the juvenile, as follows: (4-6-05)

a. If a juvenile appears before the board prior to his nineteenth birthday, but before a reasonable and appropriate release plan has been finalized, the department may retain the juvenile long enough to finalize those plans, but not to exceed forty-five (45) days after the juvenile's nineteenth birthday. (4-6-05)

b. In all other cases, the department may retain the juvenile long enough to finalize a reasonable and appropriate release plan, but not to exceed forty-five (45) days after the director's signed order has been transmitted or delivered to the facility/JSC or any other department appointee. (3-5-08)

(BREAK IN CONTINUITY OF SECTIONS)

201. REFERRAL OF CASES TO THE BOARD.

The Custody Review Board shall review cases referred to it and will advise the director whether it has determined that extended time in custody is necessary for a juvenile to address competency, accountability and community protection. (3-5-08)

01. Cases Eligible for Referral. A juvenile's case is eligible for referral to the board in either of the following circumstances: (4-6-05)

a. If the juvenile is no more than six (6) months from his nineteenth birthday and one (1) or more members of the juvenile's case management team believes that the juvenile needs extended time in custody beyond that juvenile's nineteenth birthday; or (4-6-05)

b. If the juvenile, at the time of commitment to the Department, is past age nineteen (19), ~~has already been retained in the department's custody based on an earlier determination of the Custody Review Board, and one (1) or more members of a juvenile's case management team, the Custody Review Board, or the director of the department believes that an additional case review is in the best interest of the juvenile or others affected~~ or will reach age nineteen (19) prior to the next scheduled meeting of the Custody Review Board. ~~(3-5-08)~~()

02. Juvenile Has Not Appeared Before the Custody Review Board. Any juvenile who has not appeared before the Custody Review Board in person or by video conference prior to the date of his nineteenth birthday, excepting those juveniles described in Paragraph 201.01.b. above, shall be released from custody on that date or as soon thereafter as a reasonable release plan can be determined and finalized. The final release date shall not exceed forty-five (45) days after the juvenile's nineteenth birthday. (4-6-05)()

03. Hearing Schedules. Once a case is referred, the board shall set a date for the review hearing. ~~Unless the board decides otherwise, no case will be heard more often than every six (6) months.~~ (5-3-03)()

04. Written Submissions. All written documents and letters to be considered at a particular hearing must be submitted fourteen (14) calendar days in advance of the scheduled hearing in order to ensure that they will be considered. Other documents may be allowed after this deadline by unanimous consent of the board members present. Documents may include: (5-3-03)

- a. Progress reports to the courts pursuant to Sections 20-532 and 20-540, Idaho Code; (5-3-03)
- b. Report on original offenses leading to commitment plus order for commitment and orders of judgment; (5-3-03)
- c. Written recommendations from each member of the treatment team; (5-3-03)
- d. Polygraph results and written conclusions and recommendations from the professionals administering these tests; (5-3-03)
- e. Psychosocial or psychosexual evaluations; (5-3-03)
- f. Victim's written statement; (5-3-03)
- g. Juvenile's written statement; (5-3-03)
- h. Initial classification; (5-3-03)
- i. Custody level assessment at case review; and (5-3-03)
- j. Any other pertinent information. (5-3-03)

202. PERSONS TO ATTEND OR COMMENT.

01. Juvenile. The juvenile who is the subject of a custody review proceeding is required to appear either in person or by videoconference. (5-3-03)

02. Witnesses. The Custody Review Board allows for the participation of victims, attorneys, members of the case management team, and approved family members or others who have a direct relationship to the specific hearing or subject of the hearing. (5-3-03)

03. Participation. Persons who want to participate in hearings shall notify the Custody Review Board staff fourteen (14) calendar days in advance of the scheduled hearing. Children, including victims, under the age of fourteen (14), may not be allowed to attend the hearings without prior approval of the director or board. Parents or guardians of child victims in a case may appear and comment. (5-3-03)

04. Time Limited. At its discretion, ~~the board's presiding officer~~ may limit the time allotted to each participant during the proceeding. ()

05. Exclusion. ~~in~~ At its discretion, and, the board may exclude witnesses or participants for inappropriate or disruptive behavior, or other good cause. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

400. VICTIMS.

It is the policy of the Idaho Department of Juvenile Corrections and the Custody Review Board to respect the rights of victims of crime in Idaho, pursuant to the Idaho Constitution and statute. When a juvenile's case has been referred for review, the department shall be responsible for providing the board with a list of crime victims who were officially identified by the adjudicating court or prosecuting attorney. (5-3-03)

01. Notice to Victims. The board will notify identified victims of a juvenile's crime that a custody review hearing has been scheduled. These victims will also be notified of their right to submit written statements or information and their right to provide testimony. After the review proceeding, victims shall be notified of the board's determination regarding the custody of the juvenile. (5-3-03)

a. Notices of rights, hearings, the board's final determinations, and any anticipated release documents will be sent to the victim of record at the last known address. It is the responsibility of the victim to provide any change of address. (3-5-08)

b. Victims may request that they not be notified or contacted. (5-3-03)

02. Victim Testimony. A victim may attend any and all custody review hearings pertinent to their case and to provide testimony. The victim may be allowed to testify before the board members during a hearing session ~~but at a time separate from the actual hearing with~~ outside the juvenile's presence. ~~All testimony of a victim shall remain confidential.~~ (5-3-03)()

IDAPA 11 – IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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:

Section 010: Clarifies the definition of “Law Enforcement Profession” for the purpose of establishing and administering agreements to serve agreements with peace officers attending POST training programs.

Section 055: Establishes the minimum absolute prohibition of any marijuana use as one year, and the regular and confirmed use of marijuana as three years, prior to application for POST for training or certification.

Section 058: Simplifies the driver license status requirements for applicants for POST training or certification, with respect to suspensions which concluded within ten (10) years prior to application.

Section 081: Simplifies and clarifies the Agreement to Serve requirements of, exemptions from, and proration for reimbursement of training costs to POST for officers who do not remain in the Idaho law enforcement profession for a minimum of two (2) years.

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 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 342-349](#).

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

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

DATED this 8th day of December, 2016.

Victor McCraw
POST Division Administrator
Idaho 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 October 19, 2016.

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:

Section 010: Clarifies the definition of “Law Enforcement Profession” for the purpose of establishing and administering agreements to serve agreements with peace officers attending POST training programs.

Section 055: Establishes the minimum absolute prohibition of any marijuana use as one year, and the regular and confirmed use of marijuana as three years, prior to application for POST for training or certification.

Section 058: Simplifies the driver license status requirements for applicants for POST training or certification, with respect to suspensions which concluded within ten (10) years prior to application.

Section 081: Simplifies and clarifies the “Agreement to Serve” requirements of, exemptions from, and proration for reimbursement of training costs to POST for officers who do not remain in the Idaho law enforcement profession for a minimum of two (2) years.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Victor McCraw at (208) 884-7251.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1601

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 POST-accepted U.S. regional accrediting agency. (3-18-15)
- 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 must be under direct observation and control of the agency's full-time peace officer. (3-25-16)

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. 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)

26. 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~~ the positions that fulfill the agreement are Peace Officer, County Detention Officer, Communications Specialist, Juvenile Detention Officer, Juvenile Probation Officer, Correction Officer, Adult Probation and Parole Officer, Idaho Department of Juvenile Corrections Direct Care Staff, and Misdemeanor Probation Officer. (4-2-08)()

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

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

29. 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)

30. 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)

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

- 32. 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)
- 33. POST Certified Instructor.** Any person certified by the Idaho POST Council as being qualified to instruct or assess students in a course of instruction which meets POST standards for certification or training credit. (3-25-16)
- 34. 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)
- 35. 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 must be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (3-25-16)
- 36. 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)
- 37. School Director or Coordinator.** An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)
- 38. Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)
- 39. 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)
- 40. Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)
- 41. Trainee.** An officer participating in any POST approved training program. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

055. DRUG USE.

- 01. Marijuana.** An applicant must be rejected who has used marijuana: (4-11-15)
- 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~~ ~~three (3)~~ years. ~~(3-20-14)~~()
- d.** This prohibition includes use of cannabis, hashish, hash oil, and THC in both synthetic and natural forms. (4-11-15)
- 02. Other Controlled Substances.** An applicant 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: (4-11-15)

- 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 may be rejected who has unlawfully used any prescription drug or a legally obtainable controlled substance within the past three (3) years. (4-11-15)
- 04. Drug Trafficking, Manufacturing, and Related Offenses.** Subject to the rules above regarding use of controlled substances, an applicant must be rejected who has violated any provision of: (4-11-15)
- 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. (4-11-15)
- 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. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

058. TRAFFIC RECORD INVESTIGATION.

- 01. Requirements.** (7-1-93)
- a. The applicant ~~shall~~ **must** possess a valid driving license from his state of residence and qualify for an Idaho driver's license. ~~(3-15-02)()~~
- b. An applicant ~~with a record of~~ **may be rejected who has** a driver's license suspension in any jurisdiction, ~~or a driving without privileges conviction or an equivalent conviction in any other jurisdiction,~~ **within the ten (10) years immediately preceding application. If the suspension concluded within the ten (10) years prior to application, the applicant** may be accepted upon approval of the POST Division Administrator provided the ~~suspension concluded or conviction occurred more than two (2) years prior to application and the~~ applicant's agency head, with knowledge of the facts and circumstances concerning the suspension ~~or conviction,~~ recommends approval. The Division Administrator ~~shall have~~ **has** the discretion to refer the application to the POST Council. ~~If the suspension concluded or conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, or juvenile detention officer in the state of Idaho. This rule is not a basis for rejection of an applicant if the suspension concluded ten (10) or more years prior to application.~~ ~~(3-15-02)()~~
- c. Where the applicant's traffic record discloses the commission of five (5) or more moving traffic offenses during the three (3) years immediately preceding application, the POST Council ~~shall~~ **must** review the application and determine whether the individual ~~shall will~~ be certifiable ~~as a peace, detention, or juvenile detention~~

officer in the state of Idaho.

~~(3-15-02)~~()

02. Procedures. At a minimum, a check of driving records ~~shall~~ **must** be made of the Motor Vehicle Division, Highway Department, state of Idaho, and the files of the motor vehicle department in the states of the applicant's previous residences.

~~(3-15-02)~~()

(BREAK IN CONTINUITY OF SECTIONS)

081. AGREEMENT TO SERVE.

01. Agreement. Pursuant to Section 19-5112, Idaho Code, any *peace* officer attending ~~such schools or programs or directly or indirectly receiving the aid authorized by Section 19-5109, Idaho Code, shall~~ **a POST-funded Basic Training Academy must** execute an agreement ~~whereby said officer promises~~ **promising** to remain within the law enforcement profession, as defined in Subsection 010.26, ~~on a full-time basis,~~ in the state of Idaho ~~in a position approved by the Council~~ for two (2) years following graduation from the POST Basic Training Academy. **Violation of the terms of the agreement will give rise to a civil action which may be commenced by the council for and on behalf of the state of Idaho for restitution of any and all sums paid by the council plus costs and reasonable attorney's fees.**

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

02. Fulfillment of Agreement. The agreement will be considered fulfilled if the officer remains within the law enforcement profession, as defined in Subsection 010.26, in the state of Idaho as follows: ()

a. The officer serves on a full-time basis for two (2) years following graduation from the POST Basic Training Academy; or ()

b. The officer serves on a part-time basis and provides the Council with documentation substantiating service of 4,160 (four thousand one hundred sixty) hours following graduation from the POST Basic Training Academy. ()

03. Disqualifications. ()

a. An officer terminated by the appointing agency due to agency budget cutbacks or loss of funding for the position will not owe the Council the amount set forth in the agreement. The appointing agency must provide the Council with a letter stating the officer was terminated due to the agency's inability to fund the position. ()

b. An officer forced to resign due to his own or an immediate family member's terminal illness or prolonged debilitating condition will not owe the Council the amount set forth in the agreement. The officer must provide the Council with documentation from the attending physician substantiating the medical condition. ()

024. Pay Back Reimbursement. ~~Except as provided below, a~~ **Any** *peace* officer who ~~fails to remain within the law enforcement profession, as defined in Subsection 010.26, on a full-time basis, in the state of Idaho in a position approved by the Council for two (2) years following graduation~~ **graduates** from the POST Basic Training Academy, ~~shall be required to pay back to~~ **whose employment is terminated prior to their fulfillment of the agreement pursuant to Subsection 081.02 or does not qualify for disqualification pursuant to Subsection 081.03 must reimburse** the Council, ~~the full amount of money set forth in the agreement for their training expenses. For the purposes of this rule, an officer who leaves full-time employment in the law enforcement profession and has not worked four thousand one hundred sixty (4,160) or more hours during the two (2) years following graduation from the POST Basic Training Academy shall be deemed to have failed to remain within the law enforcement profession, on a full-time basis, for two (2) years following graduation from the POST Basic Training Academy. This includes, but is not limited to, any officer who resigns, does not pass his probationary period, resigns in lieu of termination, or is terminated for cause by the appointing agency.~~

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

05. Proration. ()

a. If the officer remains within the law enforcement profession, as defined in Subsection 010.26, in

the state of Idaho on a full-time basis for less than twelve (12) complete months following graduation from the POST Basic Training Academy, he must reimburse the Council the full amount of money set forth in the agreement. ()

~~**a.b.** If the officer remains within the law enforcement profession, as defined in Subsection 010.26, in excess of the state of Idaho on a full-time basis for a minimum of twelve (12) complete months following graduation from the POST Basic Training Academy but less than twenty-four (24) complete months and the officer's work within the law enforcement profession during that period averaged at least one hundred sixty (160) hours per month, the amount owed to the Council under Subsection 081.02 shall be prorated monthly and shall will be reduced proportionately for each complete month worked from the date of graduation in which the officer was employed within the law enforcement profession for at least one hundred sixty (160) hours per month to the date of termination.~~ (4-2-03)()

~~**b.** If the officer resigns or is terminated for cause by the appointing agency, he shall owe the Council the amount set forth in the agreement. (3-15-02)~~

~~**c.** If the officer is terminated through no fault of his own by the appointing agency, he shall not owe the Council the amount set forth in the agreement. The agency shall provide the Council a letter stating that the officer was terminated through no fault of his own remains within the law enforcement profession, as defined in Subsection 010.26, in the state of Idaho on a part-time basis, and provides the Council with documentation substantiating a minimum of 2,080 (two thousand eighty) hours service following graduation from the POST Basic Training Academy, but less than 4,160 (four thousand one hundred sixty) hours, the amount owed to the Council will be reduced proportionately for each one hundred seventy-three (173) hours worked from the date of graduation to the date of termination.~~ (3-15-02)()

~~**03. Pay Back, Part Time Basic Certificate.** Any peace officer who is awarded a part-time basic certificate who fails to remain employed within the law enforcement profession in a position approved by the Council for the same amount of hours required in Subsection 081.02, shall be required to pay back to the Council the full amount of money set forth in the agreement. (4-2-03)~~

~~**04. Position.** The Council shall approve or disapprove positions on a case-by-case basis, after affording officers the opportunity to present information as to the duties, nature, and scope of the position. (3-15-02)~~

~~**06. Multiple POST Basic Training Academies.** An officer who graduates from more than one (1) POST Basic Training Academy must fulfill a two-year agreement for each academy attended. ()~~

IDAPA 11 – IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1602

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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:

Establishes the requirement for a POST compliance review of each applicant to include a provision for inspection of the hiring agency's background investigation file for the purpose of fulfilling the requirements of Section 19-5109(1)(g), Idaho Code, which states: (1) It shall be the duty of and the council shall have the power: (g) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state."

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 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 350-352](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Victor McCraw at (208) 884-7251.

DATED this 8th day of December 2016.

Victor McCraw
POST Division Administrator
Idaho 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 September 1, 2016.

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 October 19, 2016.

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:

Establishes the requirement for a POST compliance review of each applicant to include a provision for inspection of the hiring agency's background investigation file for the purpose of fulfilling the requirements of Section 19-5109(1)(g), Idaho Code, which states: (1) It shall be the duty of and the council shall have the power: (g) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state."

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

The temporary rule will accommodate the recent determination of the FBI that POST, and other entities similar to POST in other states, are not a "law enforcement" entity and, as such, do not have access to the National Criminal Information Center (NCIC) to perform criminal history checks of POST applicants. The revision enhances POST's ability to maintain agency accountability in the short term and will still be applicable when POST is eventually granted criminal history access again.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Victor McCraw at (208) 884-7251.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1602

059. BACKGROUND INVESTIGATION.

01. Requirements. ()

a. The applicant ~~shall~~ **must** have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions. ~~(3-15-02)~~()

b. The appointing agency must collect and verify the necessary documents and compile and retain a comprehensive background investigation file establishing that the applicant meets all of the required minimum standards or provisions for employment as provided in Sections 050 through 065. ()

02. Procedures. (3-15-02)

a. The applicant ~~shall~~ **must** complete and submit to the appointing law enforcement agency a comprehensive application and personal history statement prior to the start of the background investigation. The history statement ~~shall~~ **must** contain questions which aid in determining whether the applicant is eligible for certified status as a peace, detention, juvenile detention, or juvenile probation officer. The background investigation ~~shall~~ **must** include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information ~~shall~~ **must** be recorded and retained by the appointing agency. ~~(4-2-08)~~()

b. The appointing agency ~~shall~~ **must** conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the law enforcement mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions ~~shall~~ **must** be asked about: ~~(3-15-02)~~()

i. Use of intoxicants, narcotics and drugs; (3-15-02)

ii. Physical, mental, and emotional history; (3-15-02)

iii. Family problems; (3-15-02)

iv. Moral outlook and habits; and (3-15-02)

v. Financial transactions. (3-15-02)

c. The appointing agency ~~shall~~ **must** have a thorough investigation into the character and reputation of the applicant conducted by an experienced investigator. The applicant's morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty ~~shall~~ **must** be explored. ~~(3-15-02)~~()

d. All results of the background investigation ~~shall~~ **must** be considered confidential and processed accordingly. ~~(3-15-02)~~()

e. The results of the background investigation ~~shall ultimately~~ **must** be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable prior to submission of the application to the POST Council for processing. ~~(3-15-02)~~()

f. The POST Council will perform a compliance review of the applicant, and may inspect the comprehensive background investigation file as it deems necessary to carry out the provisions of Section 19-5109(1)(g), Idaho Code, to certify peace officers as having completed all requirements established by the Council. ()

g. In the case the compliance review of the applicant reveals that information submitted to the POST Council may be falsified, inaccurate, or incomplete, the POST Division Administrator must inspect the comprehensive background investigation file. The applicant may be accepted upon approval of the POST Division Administrator, and the Division Administrator will have the discretion to refer the application to the POST Council. However, in the case of evident falsification, or of unresolved inaccuracies or omissions, the POST Council must review the application and determine whether the applicant will be certifiable in the State of Idaho. ()

IDAPA 11 – IDAHO STATE POLICE

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

DOCKET NO. 11-1102-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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:

Simplifies language and clarifies certification requirements for part-time juvenile detention officers, and eliminated the use of non-POST certified instructors for basic training.

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 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 353-355](#).

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

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

DATED this 8th day of December, 2016.

Victor McCraw
POST Division Administrator
Idaho 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 19-5109(6), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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:

Simplifies language and clarifies certification requirements for part-time juvenile detention officers, and eliminated the use of non-POST certified instructors for basic training.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Victor McCraw at (208) 884-7251.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1102-1601

034. THE PART-TIME JUVENILE DETENTION OFFICER CERTIFICATE.

The following requirements are necessary for award of the part-time juvenile detention officer certificate: (4-11-06)

01. Part-Time Juvenile Detention Officer Packet. Any part-time juvenile detention officer ~~desiring part-time juvenile detention officer certification~~ must submit a completed POST Part-Time Juvenile Detention Officer Certification Packet prior to attending any part-time juvenile detention officer training. (4-11-06)()

02. Employment. The applicant must have been employed by the agency at least six (6) months (may include part-time juvenile detention officer training time) prior to being awarded the part-time juvenile detention officer certification. Probationary period may be extended by the agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the department the officer is employed with when applying for certification. Probationary period may not extend over one (1) year for certification purposes. (4-11-06)

03. Basic Training. The applicant must have completed the POST Part-Time Juvenile Detention Officer Training and must have passed the POST part-time juvenile detention officer certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination with a minimum

score of seventy-five percent (75%). The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. (4-11-06)

a. Any part-time juvenile detention officer ~~desiring part-time juvenile detention officer certification~~ must successfully complete the POST Council-approved Part-Time Juvenile Detention Officer Training of no less than forty (40) hours, to include, but not be limited to, items outlined in IDAPA 05.01.02, "Rules of the Idaho Department of Juvenile Corrections, Secure Juvenile Detention Facilities," Subsection 212.05. (4-11-06)()

~~**b.** Portions of the core curriculum may be taught by uncertified instructors. However, Legal and Liability for Juvenile Detention Officers, Verbal Judo, and Appropriate Use of Force must be taught by POST-certified instructors. (4-11-06)~~

eb. The officer will be allowed two (2) attempts to pass the examination with a minimum score of seventy-five percent (75%) or better. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. (4-11-06)

~~**c.** The Council will accept written certification from the agency head as proof that a part-time juvenile detention officer has successfully completed the required core curriculum. (4-11-06)~~

04. Part-Time Juvenile Detention Orientation Training. Successful completion of supervised part-time juvenile detention orientation training in the employing department is required. Evidence of such training must be submitted by applicant's employer to POST Council. (4-11-06)

05. Applications for Certification. All applications for award of the Part-Time Juvenile Detention Officer Certificate must be completed on the prescribed form "Application for Certification" as provided by the POST Council. The Application for Certification form must be submitted by the officer/applicant to the applicant's department head, who will forward the application to the Council. Certificates will be issued to the department head for award to the applicant. (4-11-06)

06. Retaining Certification. A certified part-time juvenile detention officer must work sixty (60) hours annually in a juvenile detention officer capacity to retain certification. Documentation of hours worked must be kept on file at the appointing agency. Any part-time juvenile detention officer working less than sixty (60) hours annually must complete all requirements set forth in Section 033 to be recertified. (4-11-06)

07. Decertification. The Council may decertify any part-time juvenile detention officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (4-11-06)

08. Full-Time Juvenile Detention Officer Status. To be certified as a full-time juvenile detention officer, a certified part-time juvenile detention officer, upon appointment to full-time juvenile detention officer status, must comply with the requirements in Sections 030 and 031. (4-11-06)

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. 11-1104-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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:

Section 037 was inadvertently omitted from the proposed rule therefore, is now being published as stricken in the pending rule.

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 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 356-360](#).

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

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

DATED this 8th day of December 2016

Victor McCraw
POST Division Administrator
Idaho Peace Officer Standards & Training
700 S. Stratford Drive
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 October 19, 2016.

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 governed by POST, so the duplicative language was removed and the applicant referred to the Minimum Standards for Employment found in IDAPA 11.11.01, Sections 050 through 065.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Victor McCraw at (208) 884-7251.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1104-1601

031. MINIMUM STANDARDS FOR EMPLOYMENT FOR CORRECTION OFFICERS.

Every correction officer must meet the ~~requirements in~~ minimum standards for employment as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections ~~03750~~ through ~~04466~~.
(+2-08)()

032. CITIZENSHIP.

~~The applicant shall be a citizen of the United States. (4-2-08)~~

~~**01. Documentation.** Proof of citizenship shall not have been mutilated, altered, or damaged, and shall be in the form of one (1) of the following: (4-2-08)~~

~~**a.** Birth Certificate issued by the city, county, or state and filed within one (1) year of birth; (4-2-08)~~

~~**b.** Naturalization Certificate; (4-2-08)~~

~~**c.** U.S. Passport; (4-2-08)~~

~~**d.** Consular Report of Birth Abroad or Certification of Birth; or (4-2-08)~~

~~**e.** Certificate of Citizenship. (4-2-08)~~

~~**033. EDUCATION.**~~

~~The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 052. (4-11-15)~~

~~**034. AGE.**~~

~~The applicant shall be a minimum of twenty-one (21) years of age. (4-7-11)~~

~~**035. CHARACTER.**~~

~~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. The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming correction officers, and to protect against acts or conduct which may endanger the safety and welfare of the public. (4-11-06)~~

~~**036. CRIMINAL RECORD.**~~

~~**01. Fingerprints.** The applicant must be fingerprinted on the standard FBI Applicant fingerprint card, and a search made by the hiring agency of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results must be retained by the hiring agency. The hiring agency must verify the applicant's compliance with the minimum standards for employment outlined in this section to the POST Council upon submission of the appropriate notification of employment form designated by the Council. (3-25-16)~~

~~**02. Conviction.** The term "conviction" includes: (4-11-06)~~

~~**a.** Any conviction in a federal, tribal, state, county, or municipal court; (4-11-06)~~

~~**b.** A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court as final disposition; (4-11-06)~~

~~**c.** The payment of a fine; (4-11-06)~~

~~**d.** A plea of guilty, nolo contendere, or (4-11-06)~~

~~**e.** A finding of guilt regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (4-11-06)~~

~~**03. Misdemeanor Conviction.** A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-11-06)~~

~~a. An applicant must be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant's agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator will have the discretion to refer the application to the POST Council. In all other cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)~~

~~b. An applicant with any other misdemeanor conviction will be accepted upon approval of their agency head provided the conviction occurred more than two (2) years prior to application and the applicant's agency head submits written documentation that, with knowledge of the facts and circumstances concerning the offense or violation, he approves the applicant. If the conviction occurred during the two (2) years immediately preceding application, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)~~

~~04. **Felony Conviction.** An applicant must be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction will continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers will be granted by the POST Council, except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)~~

037. MILITARY RECORD.

~~01. **Discharge.** A "dismissal," "bad conduct discharge" (BCD), "dishonorable discharge" (DD), or administrative discharge of other than honorable (OTH) from the military service shall disqualify the applicant. The administrative discharge of "general under honorable conditions" (GEN), a "general" discharge, or an "uncharacterized" discharge may be grounds for rejection. In the case of a "general under honorable conditions" or "uncharacterized" discharge, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator shall have the discretion to refer the application to the POST Council. In the case of a "general" discharge, the POST Council shall review the application and determine whether the individual shall be certifiable as a correction officer in the state of Idaho. (4-7-11)~~

~~02. **Documentation.** Proof of military record shall not have been mutilated, altered, or damaged; shall indicate character of service; and shall be in the form of a photocopy of the following: (4-7-11)~~

~~a. DD-214 for any active military service; (4-7-11)~~

~~b. NGB Form 22 for any National Guard service; and (4-7-11)~~

~~c. AF-216 for any Air Force service. (4-7-11)~~

038. BACKGROUND INVESTIGATION.

~~01. **Requirements.** The applicant must have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the correction profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions. (4-11-06)~~

~~02. **Procedures.** (4-11-06)~~

~~a. The applicant must complete and submit to the appointing correction agency a comprehensive~~

~~application and personal history statement prior to the start of the background investigation. The history statement must contain questions which aid in determining whether the applicant is eligible for certified status as a correction officer. The background investigation must include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information must be recorded and retained by the appointing agency. (4-11-06)~~

~~**b.** The appointing agency must conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the correction mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions may include, but not be limited to: (4-11-06)~~

~~i. Use of intoxicants, narcotics and drugs; (4-11-06)~~

~~ii. Physical, mental, and emotional history; (4-11-06)~~

~~iii. Family problems; (4-11-06)~~

~~iv. Moral outlook and habits; and (4-11-06)~~

~~v. Financial transactions. (4-11-06)~~

~~**e.** The appointing agency must conduct a thorough investigation into the character and reputation of the applicant which may include, but not be limited to, the applicant's morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty. (4-11-06)~~

~~**d.** All results of the background investigation must be considered confidential and processed accordingly. (4-11-06)~~

~~**e.** The results of the background investigation must ultimately be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable. (4-11-06)~~

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. (4-11-15)~~

040. ~~MENTAL EXAMINATION.~~

~~**01. Requirement.** 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. (4-11-15)~~

041. ~~APTITUDE.~~

~~The applicant must be evaluated on the agency approved aptitude test to determine if the applicant possesses the aptitude, capacity, and adaptability for absorbing and understanding the training and skills which are essential to the performance of the correction function. (4-11-06)~~

042. ~~CODE OF CONDUCT/CODE OF ETHICS.~~

~~Each applicant must attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as found in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.04 and the Law Enforcement Code of Ethics as found in Section 064. (4-2-08)~~

043. ~~PROBATIONARY PERIOD.~~

~~**01. Probation.** Every officer appointed by an agency below the level of agency head must satisfactorily complete a probationary period of not less than six (6) months. This requirement must also apply to officers who transfer laterally into an agency. (4-11-06)~~

~~02. **Supervisor/Mid-Manager.** Every officer who is promoted or appointed to a supervisory, middle management, or assistant agency head position must satisfactorily complete a probationary period of not less than six (6) months in that position. (4-11-06)~~

~~03. **Extended.** No correction officer who lacks the training qualifications required by the Council will have his temporary or probationary employment extended beyond one (1) year by renewal of appointment or otherwise. (4-11-06)~~

~~044. **SPECIAL PROVISIONS:**~~

~~01. **Minimum Standards.** It is emphasized that these are minimum standards for employment. Higher standards are recommended whenever the availability of qualified applicants meets the demand. (4-11-06)~~

~~02. **No Discrimination.** No agency will discriminate as to employment against any persons on the basis of race, creed, color, or sex, pursuant to state or federal law. (4-11-06)~~

~~03. **Equal Opportunity Employer.** Every agency must be an equal opportunity employer. (4-11-06)~~

~~045~~~~32~~. -- 050. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

052. CORRECTION OFFICER CERTIFICATION.

01. Mandatory Certification. Every correction officer employed after July 1, 2005 must be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 030.11. (4-2-08)

02. Voluntary Certification. Correction officers employed prior to July 1, 2005, although specifically excluded by law from meeting the requirements set by the Council, may be certified provided they meet the minimum requirements for certification as prescribed in Sections 022, 031 ~~through 044~~, and 053 of these rules. However, the requirement for successful completion of the POST Basic Correction Academy will be waived if the officer scores a minimum of seventy-five percent (75%) on the POST correction certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he must successfully complete the POST Basic Correction Academy to be certified. This option closes on June 30, 2010. (4-2-08)()

053. THE BASIC CERTIFICATE.

In addition to the requirements set forth in Sections 022 and 031 ~~through 044~~ of these rules, the requirements in Section 053 of these rules are necessary for award of the Basic Correction Officer certificate. (4-2-08)()

01. Probation. The applicant must have satisfactorily completed at least a six (6) month probationary period, which may include basic correction academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the agency the officer is appointed to when applying for certification. The probationary period must not extend over one (1) year for certification purposes. (4-11-06)

02. Basic Training. The applicant must have satisfactorily completed: (4-11-06)

a. The POST Basic Correction Academy; or (4-11-06)

b. Be a graduate of a private prison contractor's correction officer training program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Correction Academy, and must have

passed the POST correction certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he must successfully complete the POST Basic Correction Academy to be certified. (4-11-06)

03. Correction Field Training Manual. The applicant must have satisfactorily completed forty (40) hours of POST-approved correction field training. (4-11-06)

04. Private Prison Contractor's Correction Officer Training Program. A graduate from an Idaho POST-certified private prison contractor's correction officer training program must also submit a completed POST Correction Officer Certification Packet. (4-11-06)

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

61.01.01 – RULES GOVERNING TRAINING REQUIREMENTS FOR DEFENDING ATTORNEYS AND THE ADMINISTRATION OF TRAINING FUNDS

DOCKET NO. 61-0101-1601 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This pending rule has been adopted by the agency and is now pending review by the 2017 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 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 Sections 19-850(1)(a)(i) and 19-850(2)(d), 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:

The State Public Defense Commission has been granted the authority and obligation to provide training to defending attorneys throughout the State. The legislature has appropriated training funds so the Commission may accomplish this task. It is necessary for the Commission to operate under temporary rules at this time to begin immediately providing the requisite training to ensure that defending attorneys are providing constitutional representation. Changes have been made to the rule to clarify some unclear language and cite the proper section of the statute that gives the Commission the authority to provide such training.

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 Commission 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 August 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8, pages 156-162](#).

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:

Promulgation of this rule will have no negative ongoing fiscal impact, but will allow the Commission to disburse appropriated funds immediately, conferring a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Kimberly Simmons at (208) 332-1735.

DATED this November 25, 2016.

Kimberly J. Simmons, Executive Director
State Public Defense Commission
816 W. Bannock St., Suite 201
Boise, ID 83702
Phone: (208) 332-1735
Fax: (208) 364-6147

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

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2016.

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 19-850(a)(i), 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 17, 2016.

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 State Public Defense Commission has been granted the authority and obligation to provide training to defending attorneys throughout the State. The legislature has appropriated training funds so the Commission may accomplish this task. It is necessary for the Commission to operate under temporary rules at this time to begin immediately providing the requisite training to ensure that defending attorneys are providing constitutional representation.

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

Promulgation of this rule will have no negative ongoing fiscal impact, but will allow the Commission to disburse appropriated funds immediately, conferring a benefit.

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

This rule will not require any additional expense beyond the already appropriated training funds.

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

There will be no negative fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the PDC needs the ability to use the funds appropriated by the legislature immediately. The PDC believes it is prudent to move forward without negotiated rulemaking to provide the requisite training rather than to continue to operate in the absence of any rules at all. The training is required under the statute and to ensure that the defending attorneys across the state are providing constitutional representation.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2016.

DATED this 20th Day of July, 2016.

LSO Rules Analysis Memo

Red text that is *italicized* is new text that has been added to the rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0101-1601

IDAPA 61
TITLE 01
CHAPTER 01

IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION

61.01.01 - RULES GOVERNING *TRAINING REQUIREMENTS FOR DEFENDING ATTORNEYS*
AND THE ADMINISTRATION OF TRAINING FUNDS

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(i), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding the training and continuing legal education requirements for defending attorneys. *Further, Section 19-850(a)(2)(d), Idaho Code, gives the PDC the authority to provide training and continuing legal education for indigent defense providers and defending attorneys in order to assist them in satisfying requirements promulgated pursuant to subsection (1)(a)(i) of 19-850, Idaho Code, and use moneys received from a grant or trust or otherwise received and appropriated to provide such training and continuing legal education.* ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 01, “Rules Governing *Training Requirements for Defending Attorneys and the Administration of Training Funds.*” ()

02. Scope. These rules contain the provision for the allocation of funding designated for training of defending attorneys and staff. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. ()

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to confer training funds is a discretionary exercise of its fiduciary duty to responsibly and prudently manage the funds on behalf of its intended recipients. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ()

004. INCORPORATION BY REFERENCE.

Documents that are referred to by these rules are incorporated by reference into these rules, and may be modified or amended as the Commissions deems necessary. ()

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

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit. The PDC's telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

007. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. Defending Attorney. Defined in Section 19-851, Idaho Code, as "any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense" in state courts. ()

02. Indigent Defense Provider. Any agency, entity, organization or person selected by a board of county commissioners in accordance with section 19-859, Idaho Code, or designee of the commission if the commission's action to remedy specific deficiencies pursuant to section 19-861A (11) (b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. ()

03. MCLE. Mandatory Continuing Legal Education credit as determined by the Idaho State Bar. ()

04. PDC. The State Public Defense Commission. ()

05. Scholarship. Any amount of training funds granted by the PDC to be used toward the costs of attending a training program. ()

06. Training Program. Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of those engaged in the representation of individuals at public expense. ()

07. Training Funds. An amount designated in the annual budget of the PDC designated for the benefit of defending attorneys and those under their employ or supervision. Those funds are dedicated to providing training and education for those servicing indigent clients as designated by law, statute, court rule, or appointment. ()

011. -- 019. (RESERVED)

020. RECIPIENTS OF TRAINING FUNDS.

01. Intended Recipients. Training *funds shall be used* to train defending attorneys, and those under their regular employ or supervision. With the approval of the PDC, non-attorney staff of *defending attorneys or other persons engaged in work related to the representation of indigent defendants*, may qualify *to attend* training programs or *for* scholarships. ()

02. Presumptive Qualification. It is presumed that any attorney who is included on the Public Defense Roster maintained by the PDC qualifies as an intended recipient of training funds for the purposes of these rules. ()

021. PUBLIC DEFENSE ROSTER.

01. Roster Membership. The PDC will create and maintain a roster of all *indigent defense providers, defending attorneys and non-attorney staff under their regular employ or supervision*. ()

a. Maintenance of Roster. *The roster will be updated in May of each year, but may be updated more frequently in order to accurately reflect staff changes at the county level.* ()

b. Roster Contents. The roster will include the name of each *defending attorney or non-attorney staff*, along with their professional contact information, including email address, physical address, and telephone number. ()

02. Application for Roster Inclusion. Any attorney who is not employed by an indigent defense provider, or who does not work under an existing indigent defense services contract may apply to the PDC for inclusion on the Public Defense Roster. ()

a. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. ()

022. -- 029. (RESERVED)

030. PDC TRAINING PROGRAMS.

01. Use of Training Funds. The PDC may choose to spend training funds to host its own training programs for the benefit of defending attorneys and their staff. ()

a. Equal Access to Training Funds. Where the PDC chooses to host a training program, when determining the allocation of training funds no distinction will be made as to whether the attorney is an employee of an institutional defender, a contract attorney, or an attorney who has qualified for training funds by application. ()

i. Registration Fees and Tuition. Where the PDC provides training programs without a registration fee or tuition, the PDC will provide the same discount to all qualifying attendees. ()

ii. Travel, Lodging, and Per Diem. Where the PDC agrees to provide travel subsidies to attendees, the PDC will establish a minimum travel distance. All those attendees whose residential or office address is located at a distance over the minimum travel distance from the location of the conference will qualify for the same travel subsidies as set forth in the training program announcement. ()

iii. Reimbursement of Expenses. The PDC may determine to provide services, lodging or food in lieu of reimbursement of the same. In the event the PDC determines that any expenses will be provided directly by the PDC, and notifies all registrants at the time of registration, subsequent application of expense reimbursements for the same may be denied. Reimbursement guidelines established by the State of Idaho will apply to all in-state travel. ()

02. Types of Training Programs. PDC Training Programs may be designated as (a) open enrollment, (b) restricted enrollment, (c) targeted enrollment, or (d) application enrollment. Notification will be by email for all training programs. ()

a. Open Enrollment Training Programs. The PDC may host a training program with an open enrollment. All those who qualify and register in advance will be allowed to attend. ()

i. Announcement. The PDC will post available open enrollment training programs on its website, and will notify members of the Public Defense Roster of the training location, dates, and any details regarding the applicability of training funds. ()

ii. Registration. The PDC will honor the registration of any qualifying recipient who registers prior to the deadline. The PDC will impose a registration deadline and may require advance registration. Any registration received by the PDC after the deadline may be rejected by the PDC. ()

b. Restricted Enrollment. The PDC may host a training program open to all qualifying defending attorney or staff, but impose a registration limit. Targeted invitations may be extended prior to the notification of members of the Public Defense Roster. ()

i. Announcement. The PDC will post available restricted enrollment training programs on its website, and will notify members of the Public Defense Roster of the training location, dates, and any details regarding the applicability of training funds. ()

ii. Registration. The PDC will impose a registration deadline and may require advance registration. The PDC will honor the registration of any qualifying recipient in the order received until the enrollment limit is reached. Any registration received by the PDC, either after the deadline or after the enrollment limit is reached, may be *declined*. ()

c. Targeted Enrollment. The PDC may host a training program that is open to qualifying recipients by email invitation only. The PDC may identify specific individuals for targeted invitations where the PDC believes that such a training program would be of particular benefit to the individual or where there is a specific desire to obtain broad geographic representation at the training program. ()

i. Invitation. The PDC may identify specific individuals for invitation to attend the training program due to the person's length or time of service, experience, the particular area of law or representation to be covered, the geographic location of the qualifying recipient, or because the individual has been designated as a representative of an institutional defender office. The PDC will inform the invited individual of the time and location of the training program, along with the availability of any training funds. Invitees will be notified of a registration deadline. ()

ii. Registration. Where an individual accepts an invitation to attend and registration materials are received by the registration deadline, that individual will be guaranteed a place in the training program. ()

iii. Announcement. If the registration deadline passes and the PDC determines that there is additional space, the PDC will treat the training program as a restricted enrollment program under Subsection 030.02.b. ()

d. Application Enrollment. The PDC may host a training program that is open only to those selected by the PDC after application materials are submitted. ()

i. Announcement. Where applications are sought for qualifying recipients, the PDC will post the training program on its website and will notify members of the Public Defense Roster of the training subject, location and dates, and the availability of any training funds. The PDC will also make available the application materials, establish an application deadline, decision deadline and notify applicants of how many places are available and whether non-attorney staff will be considered. ()

ii. Decisions. The PDC will evaluate all completed applications that are received by the deadline. The PDC will notify all applicants within fourteen (14) days of the application deadline as to its decision. The PDC will fill all available training program places as long as a sufficient number of completed applications are received. ()

iii. Registration. Where an individual accepts an invitation to attend and registration materials are received by the registration deadline, that individual will be guaranteed a place in the training program. ()

iv. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. ()

03. Non-Attorney Staff. Staff and others employed or supervised by a *defending attorney* may qualify as a recipient of *a scholarship*. Where a person is not on the Public Defense Roster, that person may still either be identified as a targeted recipient of training funds or apply to attend a training program. ()

a. Application Necessary. *If training funds are desired, the non-attorney individual must make an application to the PDC for a scholarship, in addition to other enrollment requirements in Subsection 030.03.b.* ()

b. Application criteria. The PDC will consider (1) whether the individual is full-time staff, (2) the position they hold and the type of assistance they provide in the representation of indigent clients, and (3) the relevance of the materials presented at the training program to their ability to fulfill their duties. ()

- i. Open Enrollment. Where a non-attorney's application for *a scholarship* is approved by the PDC in advance of the registration deadline, a completed registration will be treated if the registration was for an attorney. ()
 - ii. Restricted Enrollment. Where a non-attorney's application for *a scholarship* is approved by the PDC in advance of the registration deadline, a completed registration of an attorney will be given priority over a non-attorney. ()
 - iii. Targeted Enrollment. Where a non-attorney has been identified by the PDC as an individual to be invited to a specific training, their acceptance of the invitation will be honored. ()
 - iv. Application Enrollment. Where applications from non-attorneys is permitted by the PDC, and an application is received by the deadline, the PDC will consider the individual's position in determining whether to accept the application. ()
- c. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. ()

031. JOINT TRAINING PROGRAMS.

01. Joint Training Programs Permitted. The PDC may choose to partner with other organizations or agencies (*hereinafter referred to as "partner"*) in hosting and providing training programs to qualifying individuals. The nature of these designated training programs may *result in* non-qualifying individuals *being in attendance*. ()

a. Qualifying Individuals. In determining whether training funds can be used, the qualification for receipt of benefits will be the same as established in Sections 020 and 021. ()

b. Application of training funds. Qualified recipients will be treated in accordance with Subsection 030.01. ()

02. Exclusive Use of Training Funds. Where non-qualifying individuals register to attend a Joint Training Program, the PDC shall not use training funds to subsidize the cost of registration, travel, *lodging or per diem*, other than unavoidable costs of operation. ()

a. Training Program Fees and Costs. The PDC will *negotiate a reasonable* approximate cost per individual of the training program *with the partner and agree to pay that cost for all qualifying individuals to attend. If the PDC is responsible for collecting registration fees, each non-qualifying individual will be assessed the negotiated cost of attendance at the time of registration. If the partner is responsible for collecting registration fees, the partner organization may set the cost of attendance for non-qualifying individuals.* ()

03. Registration. No priority will be given to defending attorneys over non-qualifying individuals in determining which registrants fill the spaces available. ()

032. SCHOLARSHIPS.

01. Availability. The PDC may expend training funds on qualifying individuals to pay the cost to attend non-PDC training programs, in whole or in part. ()

a. Contingent on Funds. Scholarships in any given fiscal year will depend on the availability of training funds allocated outside of existing training programs. ()

b. Effect of scholarship. Any individual who receives a scholarship will not be eligible to receive a PDC scholarship in the same fiscal year. Preference given to applicants not receiving PDC scholarship in previous fiscal year. ()

02. Application. The PDC will post on its website an application for scholarship funding. ()

a. Deadline. All applications must be received by the PDC thirty (30) days before the end of the fiscal year in which funding is sought. All other scholarships will be considered in the following fiscal year. ()

b. Notification. All applications for scholarships will be reviewed by the PDC according to available funding. The PDC will notify applicants of any scholarship reward at least sixty (60) days before the date of the training program. In the event an application is submitted less than sixty (60) days prior to the training program, the PDC will notify the applicant within ten (10) days of the final application submission. ()

c. Non-Attorney *Persons*. Applications for scholarship will be accepted for non-attorneys in accordance with Subsections 030.03.a. and b. ()

d. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. ()

033. – 999. (RESERVED)

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

61.01.07 – RULES GOVERNING STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE IDAHO'S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM

DOCKET NO. 61-0107-1601 (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 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective May 1, 2017, 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 19-850(1)(a)(vii), Idaho Code.

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

The rule creates standards for attorneys who are appointed to represent indigent persons and other individuals who are entitled to be represented by an attorney at public expense. The standards take into account Idaho's Principles of an Indigent Defense Delivery System, Idaho Code 19-850(1)(a)(vii). The standards include requirements that such attorneys conform to performance standards, carry a caseload that permits constitutional and effective representation, and appear at initial appearances.

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. Changes made to the pending rule result from comments received during the proposed rule comment period. Comments included significant concern over the recommended maximum caseload figures without specific Idaho data being acquired to inform appropriate figures as well as the definition of a case.

The complete text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 787-792](#).

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

There is no fiscal impact on the state general fund as a result of this rulemaking

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kimberly Simmons, Executive Director, at (208) 332-1735 or Kimberly.Simmons@pdc.idaho.gov.

DATED this November 23, 2016.

Kimberly Simmons, Executive Director
State Public Defense Commission
816 W. Bannock St., Suite 201
Boise, ID 83702
Phone: (208) 332-1735
Fax: (208) 364-6147
Kimberly.Simmons@pdc.idaho.gov

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

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

ALL MEETINGS START AT 6:00 PM LOCAL TIME	
Monday, October 3, 2016	Monday, October 17, 2016
The Grove Hotel The Evergreen Room, 2nd Floor 245 South Capitol Blvd. Boise, ID 83702	Canyon County Administration Building 1st Floor Public Meeting Room 111 N. 11th Avenue Caldwell, ID 83605
Tuesday, October 18, 2016	Wednesday, October 19, 2016
Hilton Garden Inn Snake River Room 700 Lindsay Blvd. Idaho Falls, ID 83402	Hampton Inn & Suites Pocatello Pocatello Room 1551 Vista Drive Pocatello, ID 83201
Thursday, October 20, 2016	Tuesday, October 25, 2016
Holiday Inn Express 1554 Fillmore Street Twin Falls, ID 83301	Kroc Center - Cedar Room 1765 W. Golf Course Road Coeur d'Alene, ID 83815
Wednesday, October 26, 2016	

**Lewis-Clark State College
Sacajawea Hall, Room 115
500 8th Avenue
Lewiston, ID**

The hearing sites 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 rule creates standards for attorneys who are appointed to represent indigent persons and other individuals who are entitled to be represented by an attorney at public expense that take into account Idaho's Principles of an Indigent Defense Delivery System, Idaho Code 19-850(1)(a)(vii). The standards included in this rule include requirements that such attorneys conform to performance standards, carry a maximum number of cases per year, and appear at initial appearances.

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

There is no fee or charge imposed or increased as a result of this rulemaking.

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

There is no fiscal impact on the state general fund as a result of 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 in the August 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8 – page 163](#).

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 incorporated documents are the primary reference for defending attorneys and other stakeholders regarding the standards for defending attorneys established by the PDC based upon nationally recognized guidelines. A separate document is necessary for ease of reference, analysis and accessibility. Further, this document will be amended to include additional standards as created and established, increasing the length substantially. The republication of the text would be unduly cumbersome and expensive.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director, at (208) 332-1735 or Kimberly.Simmons@pdc.idaho.gov.

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 18, 2016. Written comments will also be accepted during the scheduled public hearings.

DATED this 1st day of September, 2016.

LSO Rules Analysis Memo

Red text that is *italicized* is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0107-1601

IDAPA 61
TITLE 01
CHAPTER 07

**61.01.07 - RULES GOVERNING THE STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE
IDAHO'S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(vii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing the standards for defending attorneys that utilize, to the extent reasonably practicable taking into consideration factors such as case complexity, support services and travel, Idaho's Principles of an Indigent Defense Delivery System (IPIDDS) as referenced in the same section. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 07, "Rules Governing Standards for Defending Attorneys That Utilize Idaho's Principles of an Indigent Defense Delivery System." ()

02. Scope. These rules establish the standards and guidelines for Indigent Defense Providers and defending attorneys practicing in the State of Idaho. *As section 19-859, Idaho Code, establishes that the board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney, these rules also apply to the delivery of such services by the county, section 19-862A(9), Idaho Code.* ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC's office. ()

003. ADMINISTRATIVE APPEALS.

The PDC's determination to set standards for defending attorneys is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: ()

01. Idaho's Principles of an Indigent Defense Delivery System. "Idaho's Principles of an Indigent Defense Delivery System," edition 2016, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov>. ()

02. Standards For Defending Attorneys. "Standards For Defending Attorneys," edition 2016, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov>. ()

005. OFFICE—OFFICE HOURS—MAILING AND STREET ADDRESS—TELEPHONE—INTERNET WEBSITE.

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit. The PDC's telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC's official website is: <https://pdc.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

007-009. (RESERVED)

010. DEFINITIONS.

01. Case. ()

a. A case consists of all related charges from a single incident, transaction or occurrence filed within a single case number, handled by one (1) defending attorney. A probation violation or motion for contempt is counted as a separate case. ()

b. A felony case is counted as follows: ()

i. A case filed as a felony is counted as one (1) felony, whether it is dismissed, remanded, pled, or tried to completion. ()

ii. A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. ()

iii. A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. ()

c. Post-judgment motions, such as those requesting early termination of probation or a reduction in sentence pursuant to Idaho Criminal Rule 35, are not counted as a case. ()

d. If two (2) or more cases are consolidated prior to significant representation being undertaken on each individual case, then the consolidated case is counted as one case. If significant representation has occurred prior to consolidation, the cases in which such representation has occurred shall be counted as separate cases. ()

02. Caseload. The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. ()

03. Defending Attorney. Defined in Section 19-851, Idaho Code, as “any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense” in state courts. ()

04. Established Standards. The “Standards For Defending Attorneys” as referenced in Section 004 of these rules and established pursuant to Section 19-850(1)(a), Idaho Code. ()

05. Fiscal Year. As referred to in this chapter, fiscal year refers to a county fiscal year beginning on October 1 and ending on September 30 of the following *calendar* year. ()

06. Indigent Defense Provider. Any agency, entity, organization or person selected by a board of county commissioners in accordance with section 19-859, Idaho Code, or designee of the commission if the commission’s actions to remedy specific deficiencies pursuant to section 19-861A (11) (b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. ()

07. Workload. The term workload recognizes that a caseload generally consists of a mix of case types that require differing amounts of time and resources. As used in this section, workload takes that fact into consideration. ()

011. ABBREVIATIONS

- 01. PDC.** The State Public Defense Commission. ()
- 02. IPIDDS.** Idaho's Principles of an Indigent Defense Delivery System. ()

012. – 019. (RESERVED)

020. PUBLIC DEFENSE ROSTER.

01. Roster Membership. The PDC will create and maintain a roster of all institutional defender attorneys, and defending attorneys included in primary or conflict contracts with the counties in the State. ()

a. Maintenance of Roster. The roster will be updated whenever there is a change, in May and may be updated more frequently in order to accurately reflect anytime there are staff changes at the county level. ()

b. Roster Contents. The roster will include the name of each *defending attorney or non-attorney staff*, their Idaho State Bar Number, and professional contact information, including email address, physical address, and telephone number. ()

c. Availability of Public Defense Roster. The roster will be made available from the PDC office upon request. ()

02. Application for Roster Inclusion. Any attorney who is not employed by an indigent defense provider, or who does not work under an existing indigent defense services contract may apply to the PDC for inclusion on the Public Defense Roster. ()

03. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. ()

021. APPLICATION OF ESTABLISHED STANDARDS.

The established standards *detailed in the incorporated document, "Standards for Defending Attorneys,"* shall apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who is assigned to represent at least one indigent defendant or is otherwise assigned to represent an adult or juvenile at public expense in state courts in a fiscal year. *Additionally, as Section 19-859, Idaho Code, establishes that the board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney, these standards also apply to the delivery of such services by the county, Section 19-862A(9), Idaho Code.* ()

021. – 099. (RESERVED)