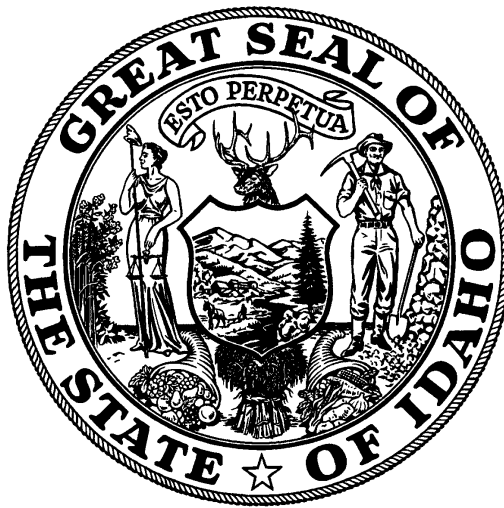


PENDING RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
**House Judiciary, Rules &
Administration Committee**
64th Idaho Legislature
Second Regular Session – 2018



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2018

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 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 20-504a(2), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 24-44](#).

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:

There is no impact to the general fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Karen Skow, (208) 884-7323.

DATED this 2nd day of November, 2017.

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

<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

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 20-504a(2), 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 18, 2017.

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:

Definitions were clarified, procedures were updated, several sections were combined or reorganized into lists and a few renamed, and law enforcement officers were added to any list of allowed confidential visitors.

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

There are no fees or charges being imposed through this rulemaking.

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

There is no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the detention centers and staff that this rule affects helped develop these changes.

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

No documents are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Skow, (208) 884-7323.

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 25, 2017.

DATED this September 1, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0102-1701

010. DEFINITIONS.

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

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

02. Body Cavity Search. The manual internal examination and possible intrusion into the rectal or vaginal cavities to detect contraband; ~~it is~~ performed only by ~~the~~ a medical authority. ~~(4-5-00)~~ ()

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

04. Classification. A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and/or programs according to their needs and existing resources, while addressing the safety and security of all detained juveniles. (3-20-14)

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

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

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

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

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

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

11. Day Room/Multi-Purpose Room. That portion of the housing unit used for varied juvenile offender activities which is separate and distinct from the sleeping rooms. (3-30-07)

12. Department. The Idaho Department of Juvenile Corrections. (3-30-07)

13. Detention. Detention means the temporary placement of juvenile offenders who require secure custody for their own or the community's protection in physically restricting facilities. (3-30-07)

14. Detention Center. A facility established pursuant to Title 20, Chapter 5, Sections 20-517 and 20-518, Idaho Code, for the temporary placement of juvenile offenders who require secure confinement. (3-30-07)

15. Detention Records. Information regarding the maintenance and operation of the detention center including but not limited to correspondence, memorandums, complaints regarding the detention center, daily activity logs, security and fire safety checks, head counts, health inspection records, and safety inspection records, use of physical force records and use of restraints records, incident reports, employee training and certification for use of security equipment. (3-30-07)

16. **Direct Care Staff.** Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. (3-30-07)
17. **Director.** The Director of the Idaho Department of Juvenile Corrections. (3-30-07)
18. **Electroshock ~~Weapons~~ Device.** ~~Weapons used for subduing a person by administering~~ A device which delivers an electric shock ~~which~~ designed to temporarily disrupts muscle function. (3-29-12)()
19. **Emergency Care.** Care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call. Emergency care shall be provided to the juvenile offender population by the medical staff, physician, other appropriately trained staff, local ambulance services or outside hospital emergency rooms. (3-30-07)
20. **Emergency Plans.** Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. (4-5-00)
21. **Health Appraisal.** An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. (3-30-07)
22. **Health Authority.** The physician, health administrator, or agency responsible for the provision of health care services at the detention center. (3-30-07)
23. **Health-Trained Employee.** A person who operates within the limits of any license or certification to provide assistance to a physician, nurse, physician's assistant, or other professional medical staff. Duties may include preparing and reviewing screening forms for needed follow-up; preparing juvenile offenders and their records for sick call; and assisting in the implementation of medical orders regarding diets, housing, and work assignments. (3-29-12)
24. **Housing Unit.** The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. (3-30-07)
25. **Incident Report.** A written document reporting any occurrence or event, or ~~any other an~~ incident which threatens the safety and security of direct care staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (3-30-07)()
26. **Judge.** A district judge or a magistrate. (4-5-00)
27. **Juvenile.** A person less than eighteen (18) years of age. (3-30-07)
28. **Juvenile Detention Records.** Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. (3-30-07)
29. **Juvenile Offender.** A person who was under the age of eighteen (18) at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (3-30-07)
30. **Legal Custody.** The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. (3-30-07)
31. **Legal Guardian.** A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender. (4-5-00)

32. **Mechanical Restraints.** Devices used to restrict physical activity. (3-30-07)
33. **Medical Employee.** A certified or licensed person such as a physician, nurse, physician's assistant, or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. (3-29-12)
34. **Medical Records.** ~~Separate records of~~ maintained by the health authority, to include medical examinations, ~~and diagnoses, maintained by the health authority and any medical care provided.~~ (4-5-00) ()
35. **Intake Medical Screening.** A system of structured observation/initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a medical employee or health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. (3-29-12)
36. **Observation and Assessment Program.** A residential or nonresidential program designed to complete assessments of juvenile offenders. (3-30-07)
37. **Pat Search.** ~~The touching or feeling of a subject's clothed body to detect contraband~~ A passing of the hands over the clothed body of a person by direct care staff to determine whether the individual possesses contraband. (4-5-00) ()
38. **Perimeter Security.** A system that controls ingress and egress to the interior of a detention center or institution. The system may include electronic devices, walls, fence, patrols or towers. (3-30-07)
39. **Perimeter Security Check.** Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breach. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas as designated by detention center policy and procedures. (3-30-07)
40. **Petition for Exemption.** A formal written document addressed to the Director of the Idaho Department of Juvenile Corrections requesting exception from a detention center standard. ~~The petition for exemption must contain written justification why the petitioner should be relieved from enforcement of specific detention standard(s).~~ (3-30-07) ()
41. **Physical Intervention.** ~~Appropriate physical control used in instances of justifiable self defense, protection of others, protection of property, or prevention of escapes~~ Physical contact to guide, restrict, or prevent movement in order to take immediate control of a situation. (3-30-07) ()
42. **Policy and Procedures.** Standard operating strategies and processes developed by the administrative authority governing detention center operations. (3-30-07)
- a. Policy is a course of action that guides and determines present and future decisions and actions. Policies indicate the general course or direction of an organization within which the activities of the direct care staff must operate. (3-30-07)
- b. Procedure is the detailed and sequential action which must be executed to ensure that policy is implemented. It is the method of performing an operation or a manner of proceeding on a course of action. It differs from a policy in that it directs actions required to perform a specific task within the guidelines of the policy. (4-5-00)
43. **Prison Rape Elimination Act (PREA).** A federal act promulgating standards that promote zero (0) tolerance toward sexual abuse of juvenile offenders by staff or by other juvenile offenders. Also known as Public Law 108-79 or PREA. (3-20-14)
44. **Rated Capacity.** The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. (3-30-07)
45. **Renovation.** The alteration of the structure of any existing juvenile detention center, or portion

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

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

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

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

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

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

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

52. Strip Search. A visual examination of a juvenile offender's naked body for weapons, contraband, injuries, ~~or vermin infestations~~ or a medical condition that may require further attention. This also includes a thorough search of the juvenile offender's clothing while such is not being worn. (3-29-12)()

53. Volunteer. A person who freely chooses to provide services to juvenile offenders or staff at a juvenile detention center, and is not compensated for the services or time. Volunteers are supervised by direct care staff. Volunteers shall not be unsupervised with juvenile offenders and will be supervised by direct care staff at the detention center. (3-29-12)

011. -- 199. (RESERVED)

200. INSPECTION PROVISIONS.

The Department or its designee shall have the authority to visit and inspect all juvenile detention facilities to assess such facilities' compliance with these rules and any other standards outlined in Title 20, Chapter 5, Section 20-518, Idaho Code. (3-29-12)

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

02. Review of Logs, Records, Policy and Procedure Manuals, Memorandums and Reports. All logs, records, policy and procedures manuals, memorandums, training records, and incident and other reports shall be available for review excluding medical records, personnel records and personnel action reports. Department representatives shall be allowed to observe and privately interview juvenile offenders and staff concerning any matter pertaining to these rules. Department representatives shall further have access to all parts of the detention center for the purpose of inspecting the physical plant. (3-29-12)()

(BREAK IN CONTINUITY OF SECTIONS)

204. STANDARDS COMMITTEE.

A standing committee shall be created for the purpose of reviewing the standards, petitions for exemption from

standards and requests for modification of standards. The committee will be made up of three committee members: one (1) representative and one (1) alternate from the detention center administrators, one (1) representative and one (1) alternate county commissioner, and one (1) representative from the Department. Final appointment of all Standards Committee members and alternates are made by the Director. The detention center representative of detention center administrators and county commissioner representative should not be from the same judicial district. Alternates should not be from the same judicial district as their corresponding representative. Committee members' terms will run two (2) years starting on October 1 of the year in which the member is nominated and approved. If the petition for exemption or request for modification is initiated from the same district as a committee representative, that committee representative will abstain and the alternate will serve in place of said representative. (3-30-07)

~~**01. Petition for Exemption.** When an exemption from a standard is desired, the detention center administrator shall submit a request, in writing, to the Director outlining the proposed alternative arrangement together with documentation showing how such arrangement will provide conditions at least equivalent to the corresponding standard. The Director will then make determinations as to the necessity, scheduling and convening of a special meeting of the Standards Committee. The Standards Committee will review the petition, prepare and submit its written recommendations to the Director. The Director retains the authority to make the final decision to approve or deny the petition. The petition for exemption, if granted, shall apply only to the petitioner for the specific detention center cited. An indemnification agreement will be entered into between the detention center and the Department in the event the petition for exemption is granted.~~ (3-30-07)

041. Standards Committee Meetings. The Standards Committee will meet at least ~~bi-annually~~ biennially to review the Juvenile Detention Center Standards, requests for modification of standards, or petitions for exemptions. The Standards Committee shall also meet when the Director determines that a special meeting is necessary to review the juvenile detention center standards, requests for modification of standards, or petitions for exemptions. (3-30-07) ()

02. Requests for Modification of Standards. In the event a standard becomes obsolete or unworkable, a request for modification may be filed with the Director. The request letter must represent the views of at least three detention center administrators and contain their signatures. The Director will then make determinations as to the necessity, scheduling and convening of a special meeting of the Standards Committee. If convened, the Standards Committee will review the request, prepare and submit its written recommendations to the Director. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. (3-30-07)

03. Modification of Standards by the Standards Committee. In the event that the Standards Committee determines that a standard is obsolete, unworkable, unclear, or otherwise unreasonable, the committee may submit written recommendations to the Director for changes to the standards, along with explanations regarding the reasons for the requested changes. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. Any modification of the standards must be promulgated as rules in accordance with the Idaho Administrative Procedures Act. (3-30-07)

205. -- 209. (RESERVED)

210. DETENTION CENTER ADMINISTRATION.

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

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

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

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

05. Policy and Procedures. The detention center administrator shall develop and maintain written policy and procedures which shall safeguard the basic rights of juvenile offenders and shall safeguard the juvenile offenders' freedom from discrimination based upon sex, race, creed, religion, national origin, disability, or political belief and establish practices that are consistent with fundamental legal principles, sound correctional practices, and humane treatment. These written policy and procedures shall be reviewed on a regular basis, updated as needed and made available to all detention center employees. The policy and procedures manual shall be submitted to the prosecuting attorney or other legal authority for review and approved by county commissioners or other governing authority ~~on an annual basis~~. After such approval, a copy of the policy and procedures manual shall be submitted to the Department. (3-29-12)()

(BREAK IN CONTINUITY OF SECTIONS)

212. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.

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

02. Staffing. The detention center shall have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center shall have policy and procedures in place governing staffing and shall submit a staffing plan to the Department ~~prior to licensing and renewal as requested. The following staffing plan is a recommendation only, and is not mandatory.~~ It is recommended that each secure juvenile facility shall maintain staff ratios of a minimum of one to eight (1:8) plus one (1) during resident waking hours and one to sixteen (1:16) during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. (3-20-14)()

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

b. If the detention center houses more than eight (8) juvenile offenders, there should be one (1) direct care staff for each eight (8) juvenile offenders plus one (1) additional staff awake at all times. Example: if the detention center houses thirty-two (32) juvenile offenders, four (4) direct care staff would be recommended (one (1) staff to eight (8) juvenile offenders), plus one (1) additional staff for a total of five (5) staff. (3-29-12)

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

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

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

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

c. The agency shall conduct criminal background records checks at least every five (5) years of current employees, contractors, and volunteers who may have contact with residents as outlined in PREA Standard Section 115.317. (3-20-14)

05. Training and Staff Development Plan. Each juvenile detention center shall develop a staff training and development plan based on the policy and procedures of the detention center. The plan shall also ensure

that all juvenile detention officers earn the juvenile detention officer certificate as mandated in IDAPA 11.11.02, “Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers.” (3-30-07)

a. All new direct care staff shall be provided orientation training- ~~that~~ *The orientation and training plan shall* address ~~es~~ areas including, but not limited to: (3-29-12)()

- i. First aid/CPR; (3-30-07)
- ii. Security procedures; (3-30-07)
- iii. Supervision of juvenile offenders; (3-30-07)
- iv. Suicide prevention; (3-20-14)
- v. Fire and emergency procedures; (3-30-07)
- vi. Safety procedures; (3-30-07)
- vii. Appropriate use of physical intervention, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified appropriate use of force instructor using a P.O.S.T. approved grading matrix; (3-25-16)
- viii. Report writing; (3-30-07)
- ix. Juvenile offender rules of conduct; (3-30-07)
- x. Rights and responsibilities of juvenile offenders; (3-30-07)
- ~~xi. Fire and emergency procedures;~~ (3-30-07)
- ~~xii. Safety procedures;~~ (3-30-07)
- ~~xiii. Key control;~~ (3-30-07)
- ~~xiv. Interpersonal relations;~~ (3-30-07)
- ~~xv. Social/cultural life styles of the juvenile population;~~ (3-30-07)
- ~~xvi. Communication skills;~~ (3-29-12)
- ~~xvii. Mandatory reporting laws and procedures;~~ (3-20-14)
- ~~xviii. Professional boundaries; and~~ (3-20-14)
- ~~xix. All training as outlined in section 115.331 of the PREA Standards.~~ (3-20-14)

b. All direct care staff who are considered part-time, on-call, or working fewer than forty (40) hours per week and any direct care staff who works in a facility classified as Rural Exception, must obtain a part-time juvenile detention officer certification as mandated by IDAPA 11.11.02, “Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers.” (3-25-16)

c. Ongoing training shall be provided at the minimum rate of twenty-eight (28) hours for each subsequent year of employment, which shall include, but not be limited to: (3-20-14)

i. A total of eight (8) hours of appropriate use of force, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified appropriate use of force instructor using a P.O.S.T. approved grading matrix; and (3-25-16)

- ii. All ongoing training as outlined in section 115.331 of the PREA Standards; and (3-25-16)
- iii. All other trainings that require recertification. (3-20-14)
- d. Volunteers and contractors shall be trained commensurate to their level of contact with juvenile offenders. (3-29-12)
- e. Each facility shall maintain accurate training documentation. (3-20-14)

213. -- 214. (RESERVED)

215. DETENTION CENTER INFORMATION SYSTEMS.

01. ~~Written Policy and Procedures~~ Records. The detention center shall have written policy and procedures to govern the collection, management, and retention of information pertaining to juvenile offenders and the operation of the detention center. Written policy and procedures shall address, at a minimum, the following:

(3-30-07)()

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

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

03. Access to Records. Parents, legal guardians, legal representatives, and staff shall be permitted access to information in the juvenile offender's files and records as authorized by law. Absent a court order to the contrary, the detention center administrator may restrict access to certain information, or provide a summary of the information when its disclosure presents a threat to the safety and security of the detention center or may be detrimental to the best interests of the juvenile offender. If access to records is denied or restricted, documentation that states the reason for the denial or restriction shall be maintained by the detention center administrator. (3-29-12)

216. DOCUMENTATION.

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

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

- e. Time of meals served; (4-5-00)
 - f. Times and shift activities, including any action taken on the handling of any routine incidents; (3-29-12)
 - g. Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; (4-5-00)
 - h. Notations and times of unusual incidents, problems, disturbances, escapes; (3-29-12)
 - i. Notations and times of any use of emergency or restraint equipment; and (4-5-00)
 - j. Notation and times of perimeter security checks. (4-5-00)
- 02. Housing Assignment Roster.** The detention center shall maintain a master file or roster board indicating the current housing assignment and status of all juvenile offenders detained. (3-30-07)
- 03. Visitor's Register.** The detention center shall maintain a visitor's register in which the following will be recorded: (3-30-07)
- a. Name of each visitor; (4-5-00)
 - b. Time and date of visit; (4-5-00)
 - c. Juvenile offender to be visited; and (3-30-07)
 - d. Relationship of visitor to juvenile offender and other pertinent information. (3-30-07)
- 04. Juvenile Detention Records.** The detention center shall classify, retain and maintain an accurate and current record for each juvenile offender detained in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record shall contain, at a minimum, the following: (3-30-07)
- a. Booking and intake records; (4-5-00)
 - b. Record of court appearances; (4-5-00)
 - c. Documentation of authority to hold; (4-5-00)
 - d. Probation officer or caseworker, if assigned; (4-5-00)
 - e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; (3-30-07)
 - f. Classification records and information about a resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident; (3-20-14)
 - g. Documentation of education as outlined in PREA Standard Section 115.333; (3-20-14)
 - h. Rule infraction reports; (4-5-00)
 - i. Records of disciplinary actions; (4-5-00)
 - j. Grievances filed and their dispositions; (4-5-00)
 - k. Release records; (4-5-00)

- l. Personal information and emergency contact information; (4-5-00)
- m. Documentation of a completed intake medical screening; (3-29-12)
- n. Visitor records; (4-5-00)
- o. Incident reports; (4-5-00)
- p. Photographs. (4-5-00)

05. Incident Reports. Any person involved in or witness to an incident shall write an individual incident report. The incident report shall include, at a minimum, who, what, when, where, why, how, and action taken. Incidents reports shall be written for situations including but not limited to the following: ()

- a. Any criminal act; ()
- b. Use of force; ()
- c. Use of restraints, except for transfer; ()
- d. Suicide or attempted suicide; ()
- e. Escape or attempted escape; ()
- f. Emergencies; ()
- g. Serious rule violations; ()
- h. Cross-gender searches; ()
- i. Body cavity searches; ()
- j. Seizure and disposition of contraband; and ()

k. Any incident deemed serious enough to disrupt or disturb the security, safety, and orderly operations or well-being of the center, staff, juveniles, or public. ()

06. Incident Report Review. All incident reports shall be reviewed by the detention center administrator, or designee, and shall be maintained as part of the detention center records. ()

(BREAK IN CONTINUITY OF SECTIONS)

223. SAFETY AND EMERGENCY PROCEDURES.

01. ~~Written Policy and Procedures~~ Emergency Plan. The detention center shall have written policy and procedures that address ~~fire~~ safety plans for responding to emergency situations. (3-25-16)()

02. Compliance with Fire Code. The detention center shall comply with local and state fire codes. A request for an annual inspection shall be made to the local fire marshal or authorized agency. The detention center shall maintain documentation of this inspection. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

225. PHYSICAL INTERVENTION.

01. **Appropriate Use of Physical Intervention.** The detention center shall have written policy and procedures which govern the use of physical intervention. ()

a. The use of physical intervention shall be restricted to the following situations, and then only to the degree necessary to restore order: ()

i. ~~Instances of justifiable self-protection;~~ ()

ii. ~~The protection of others;~~ ()

iii. The protection of property; ()

iv. ~~The prevention of escapes;~~ and ()

v. ~~The suppression of disorder and then only to the degree necessary to restore order.~~ (3-30-07) ()

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

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

02. **Use of Chemical Agents.** The detention center shall have written policy and procedures which govern the use of chemical agents, if approved for use in the detention center. ()

a. The use of chemical agents shall be restricted to the following situations, and then only to the degree necessary to restore order: ()

i. ~~Instances of justifiable self-protection;~~ ~~and~~ ()

ii. ~~The protection of others and then only to the degree necessary to restore order;~~ (3-29-12) ()

iii. The prevention of escapes; and ()

iv. The suppression of disorder. ()

b. Chemical agents shall ~~not only~~ be administered by ~~any~~ individual who has ~~not successfully completed a P.O.S.T. certified training course taught by a P.O.S.T. certified trainer~~ been certified in its use by a qualified instructor. (3-29-12) ()

b. Oleoresin Capsicum shall be the only chemical agent approved for use in juvenile detention centers. (3-29-12)

03. **Use of Electroshock ~~Weapons~~ Devices.** The use of electroshock ~~weapons~~ devices is prohibited in juvenile detention centers unless used by law enforcement officers responding to a call for assistance initiated by detention staff. (3-29-12) ()

04. **Use of Mechanical Restraints.** The detention center shall have written policy and procedures which govern the use of mechanical restraints, including notification of medical or mental health professionals. ()

a. The use of restraints shall be restricted to justifiable: ()

i. ~~Instances, during of~~ transfer; ~~and for medical reasons under the direction of medical staff.~~

~~Justifiable instances shall be specifically defined in each detention center's policy and procedures. Written policy and procedures shall provide that instruments of restraint are never applied as punishment and are applied only with the approval of the detention center administrator or designee, and that juvenile offenders in mechanical restraints are not left unattended.~~ (3-29-12)()

~~ii. Instances of justifiable self-protection; ()~~

~~iii. The protection of others; ()~~

~~iv. The protection of property; ()~~

~~v. Medical reasons under the direction of medical staff; ()~~

~~vi. The prevention of escapes; and ()~~

~~vii. The suppression of disorder. ()~~

~~a.b. Restraints shall not be used as punishment or for the convenience of staff. (4-5-00)~~

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

~~c. Juvenile offenders in mechanical restraints shall not be left unattended except in documented exigent circumstances. ()~~

(BREAK IN CONTINUITY OF SECTIONS)

227. SEARCH AND SEIZURE.

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

02. Personal Searches. The detention center shall have written policy and procedures governing the ~~searching~~ personal searches of juvenile offenders, to include pat, strip, visual body cavity, and body cavity searches for the control of contraband and weapons ~~which~~ and provides for unannounced and irregularly timed searches of juvenile offenders. Said policies and procedures shall includes, at a minimum, ~~the following provisions~~ requirements that: (3-30-07)()

~~a. Search of juvenile offenders upon entering the security perimeter; (3-30-07)~~

~~b. Search of newly admitted juvenile offenders; (3-30-07)~~

~~c. Periodic unannounced and irregularly timed searches of juvenile offenders; (3-30-07)~~

~~d. Provision for strip searches and body cavity searches at such times when there exists reasonable belief that the juvenile offender is in the possession of contraband or weapons or other prohibited material and shall only be conducted as described in Subsections 227.02.f. and 227.02.g.; (3-30-07)~~

~~e. Pat searches. Except in cases of emergency, pat searches shall be conducted by direct care personnel of the same sex; (3-29-12)~~

~~f. Strip searches. All strip searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. All strip searches shall~~

~~be conducted by direct care personnel of the same sex as the juvenile offender or by the health authority or medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during the strip search; and~~ (3-30-07)

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

~~h. Prohibition on searches or physical examinations of transgender or intersex residents for the sole purpose of determining genital status;~~ (3-20-14)

~~i. Prohibition of cross gender strip searches or cross gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners;~~ (3-20-14)

~~j. Prohibition of cross gender pat down searches except in exigent circumstances;~~ (3-20-14)

~~k. The documentation and justification for all cross gender strip searches, cross gender visual body cavity searches, and cross gender pat down searches.~~ (3-20-14)

a. All searches be performed under sanitary conditions in a manner which protects the dignity of the juvenile to the greatest extent possible; ()

b. All pat searches be performed by direct care personnel of the same sex as the juvenile, except under exigent circumstances; ()

c. All strip or visual body cavity searches be performed by direct care personnel of the same sex as the juvenile with the exception of the health authority or medical personnel; ()

d. No person of the opposite sex of the juvenile shall be allowed to observe any unclothed search of the juvenile, including strip, visual body cavity, or body cavity searches with the exception of the health authority or medical personnel; ()

e. All body cavity searches shall be conducted only by the health authority or by medical personnel; ()

f. An initial pat search must be performed at the intake process prior to the removal of any mechanical restraints; and ()

g. Any search or physical examination of transgender or intersex residents for the sole purpose of determining genital status is prohibited. ()

03. ~~All Body Cavity Searches Shall Be~~ Documentation of Certain Searches. The detention center shall have policies and procedures which govern the documentation of certain searches. Documentation ~~of body cavity searches~~ shall be maintained in detention center records and in the juvenile offender's record, and shall include justification and any exigent circumstances surrounding the search. Searches which must be documented include, but are not limited to; (3-30-07)()

a. Any search performed by direct care personnel of the opposite sex as the juvenile; ()

b. Any strip or visual body cavity search performed or observed by direct care personnel of the opposite sex of the juvenile; ()

c. Any body cavity search observed by direct care personnel of the opposite sex of the juvenile; or ()

- d. Any strip, visual body cavity or body cavity search performed. ()

04. Seizure and Disposition of Contraband. The detention center shall have written policy and procedures which explains the chain of custody to govern the handling and/or disposal of contraband. All contraband found during detention center or juvenile offender searches shall be seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband shall be documented. When a crime is suspected to have been committed within the detention center, all evidence shall be maintained and made available to the proper authorities. (3-29-12)()

(BREAK IN CONTINUITY OF SECTIONS)

235. FOOD SERVICE SANITATION.

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

~~a. Food service and related sanitation practices shall comply with the requirements of the state health department or other appropriate regulatory body. The detention center's food service operation shall be inspected in the manner and frequency mandated by local health authorities. The detention center administrator shall solicit at least an annual sanitation inspection by a qualified entity. The results of such inspections shall be documented and the detention center administrator shall take prompt action to correct any identified problems;~~ (3-29-12)()

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

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

245. PERSONAL HYGIENE.

01. Personal Hygiene Items. The detention center shall have written policy and procedures which shall govern the provision of, without charge, the following articles necessary for maintaining proper personal hygiene: (3-30-07)

- a. Soap; (4-5-00)
- b. Toothbrush; (4-5-00)
- c. Toothpaste; (4-5-00)
- d. Comb or brush; (3-30-07)

- e. Shaving equipment ~~upon request~~; (3-30-07)()
- f. Products for female hygiene needs; and (3-30-07)
- g. Toilet paper. (3-30-07)

02. Removal of Personal Hygiene Items. The detention center shall have written policy and procedures that govern the removal of personal hygiene items from juvenile offenders' sleeping areas. Removal must be based upon sufficient reason to believe that the juvenile offender's access to the items poses a risk to the safety of juvenile offenders, staff or others, or poses a security risk to the detention center. (3-30-07)

03. Clothing and Linens. The detention center shall provide for the issue of clean clothing, bedding, linens, and towels to new juvenile offenders held overnight. At a minimum, the following shall be provided: (3-30-07)

- a. A set of standard detention center clothing or uniform; (3-30-07)
- b. A set of standard detention center bedding and linens; (3-25-16)
- c. Fire-retardant mattress; (4-5-00)
- d. Sufficient blankets to provide comfort under existing temperature conditions; and (4-5-00)
- e. One (1) clean towel. (4-5-00)

04. Laundry Services. Laundry services shall be sufficient to allow required clothing, bedding, and towel exchanges for juvenile offenders. (3-30-07)

a. Clothing and towels used by the juvenile offender while in the detention center shall be laundered or exchanged at least twice each week. (3-30-07)

b. Linen shall be changed and laundered or exchanged at least once weekly or more often, as necessary. (4-5-00)

c. Blankets in use shall be laundered or exchanged at least monthly, or before re-issue to another juvenile offender. (3-30-07)

05. Clothing and Linen Supplies. The detention center inventory of clothing, bedding, linen, and towels shall exceed the maximum population to ensure that a reserve is always available. (3-30-07)

246. -- 249. (RESERVED)

250. HEALTH SERVICES.

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

a. Intake medical screening must be documented and performed on all juvenile offenders upon admission to the detention center. (3-29-12)

i. The medical screening should include inquiry of current illness and health problems, dental problems, sexually transmitted and other infectious diseases, medication taken and special health requirements, if any, the use of alcohol or drugs, mental illness and/or suicidal behavior. (3-29-12)

ii. The screening should also include observations of ~~unusual behavior, including state of~~

~~consciousness, mental status, appearance, conduct, tremor, sweating, body deformities, physical injuries, trauma markings, bruises, rashes, evidence of body vermin, and ease of movement;~~ the physical condition, mental condition, and/or behavior. (3-29-12)()

- b. Handling of juvenile offenders' requests for medical treatment; (3-30-07)
- c. Non-emergency medical services; (4-5-00)
- d. Emergency medical and dental services; (4-5-00)
- e. Use of a vehicle for emergency transport; (3-25-16)
- f. Emergency on-call physician and dental services when the emergency health care facility is not located nearby; (4-5-00)
- g. ~~First-aid and CPR instructions and training, including:~~ The availability of first-aid supplies; (4-5-00)()
- h. Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; (3-30-07)
- i. Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; (3-30-07)
- j. Delousing; (3-29-12)
- ~~k. Infectious disease control and medical isolation;~~ (4-5-00)
- ~~l. Temporary, immediate~~ Medical isolation, and proper examination ~~by the medical employee~~ of juvenile offenders suspected of having contagious or infectious diseases; (3-30-07)()
- ~~m.~~ Management of pharmaceuticals, including storage in a secure location; and (3-30-07)
- ~~n.~~ Notification of next of kin or appropriate authorities in case of serious illness, injury or death. (3-30-07)

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

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

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

251. -- 254. (RESERVED)

255. RULES AND DISCIPLINE.

01. ~~Written Policy and Procedures~~ Behavioral Management. The detention center shall have written policy and procedures for maintaining discipline and regulating juvenile offenders' conduct. The following general principle shall apply: (3-30-07)()

- a. The conduct of juvenile offenders shall be regulated in a manner which encourages and supports appropriate behavior, with penalties for negative behavior; (3-30-07)

- b. The detention center shall have written rules of conduct which specify prohibited acts, the penalties that may be imposed for various degrees of violation, and the disciplinary procedures to be followed; (3-30-07)
- c. Disciplinary action shall be of a nature to regulate juvenile offenders' behavior within acceptable limits and shall be taken at such times and in such degrees as necessary to accomplish this objective; (3-30-07)
- d. The behavior of juvenile offenders shall be controlled in an impartial and consistent manner; (3-30-07)
- e. Disciplinary action shall not be arbitrary, capricious, retaliatory, or vengeful; (4-5-00)
- f. Corporal or unusual punishment is prohibited, and care shall be taken to insure juvenile offenders' freedom from personal abuse, humiliation, mental abuse, personal injury, disease, property damage, harassment, or punitive interference with daily functions of living, such as eating or sleeping; (3-30-07)
- ~~g. Use of restraints or use of physical force as punishment is prohibited; (3-30-07)~~
- ~~h. Withholding of meals or variation of diet as punishment is prohibited; and (3-25-16)~~
- ~~ig.~~ Juvenile offenders shall not be subject to any situation in which juvenile offenders impose discipline on each other. (3-30-07)

02. Resolution of Rule Infractions. The detention center shall have written policy and procedures to define and govern the resolution of rule infractions. (3-30-07)

03. Grievance Procedures. The detention center shall have written policy and procedures for juvenile offenders which will identify grievable issues and define the grievance process. (3-30-07)

04. Criminal Law Violations. The detention center shall have written policy and procedures to govern the handling of incidents that involve the violation of federal, state, or local criminal law, including prompt referral to the appropriate authority for possible investigation and prosecution. (3-30-07)

256. ~~MAIL, VISITING, TELEPHONE~~ COMMUNICATION AND CORRESPONDENCE.

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

02. Resident Access to Outside Support Services. The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse as outlined by PREA Standard Section 115.353. (3-20-14)

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

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

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

b. The detention center may require that any costs for telephone calls be borne by the juvenile

offender or the party called. (3-30-07)

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

d. Juvenile offenders shall be allowed to make a reasonable number of telephone calls to their attorneys. (3-30-07)

i. Telephone calls to attorneys shall be of reasonable duration. (4-5-00)

ii. Telephone calls to attorneys shall not be monitored. (4-5-00)

iii. Telephone calls to attorneys shall not be revoked as a disciplinary measure. (4-5-00)

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

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

07. Confidential Visits. The detention center shall provide juvenile offenders adequate opportunities for confidential access to courts, attorneys, and their authorized representatives, probation and parole officers, law enforcement, counselors, caseworkers, and the clergy. ~~(3-30-07)~~()

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

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

b. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, or clergy should be of the contact type unless otherwise indicated by the juvenile offender or visitor, or the detention center administrator determines there is a substantial security justification to restrict the visit to a non-contact type. ~~(3-29-12)~~()

257. -- 260. (RESERVED)

261. ADMISSION.

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

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

a. Determination that the juvenile offender is lawfully detained in the detention center; (3-29-12)

b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; (3-30-07)

c. ~~If the~~ Any juvenile offender showsing signs of ~~illness, injury, is incoherent, or unconscious, he~~

~~shall~~ impairment should not be admitted to the detention center ~~until the detaining officer has provided written~~
without documentation from medical personnel or a physician of examination, treatment, and fitness for confinement;
(3-29-12)()

- d. A complete search of the juvenile offender and possessions; (3-30-07)
- ~~e.~~ Pat searches shall be performed before mechanical restraints are removed at the admissions
process; ()
- ~~ef.~~ The care and disposition of personal property; (3-25-16)
- ~~fg.~~ Provision of shower and the issuance of detention clothing and personal hygiene articles; (3-30-07)
- ~~gh.~~ The provision of medical, dental and mental health screening; (3-30-07)
- ~~hi.~~ Male and female juvenile offenders shall not occupy the same sleeping room; (3-30-07)
- ~~ij.~~ The recording of basic personal data and information; (3-30-07)
- ~~jk.~~ Providing assistance to juvenile offenders in notifying their families of their admission and the
discussion of procedures for mailing and visiting; (3-29-12)
- ~~kl.~~ The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8),
Idaho Code; and (3-29-12)
- ~~lm.~~ The administration of the MAYSI or other approved risk tool. (3-29-12)

03. Court Appearance Within Twenty-Four Hours. According to Title 20, Chapter 5, Section 20-516(4), Idaho Code, written policy and procedures shall ensure that any juvenile offender placed in detention or shelter care be brought to court within twenty-four (24) hours, excluding Saturdays, Sundays and holidays for a detention hearing to determine where the juvenile offender will be placed until the next hearing. ~~Status offenders shall not be placed in any jail or detention center, but instead may be placed in juvenile shelter care facilities.~~
(3-30-07)()

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

262. RELEASE.

01. Release of Offender. Written policy and procedures shall govern the release of any juvenile offender and the release process including, but not limited to: (3-20-14)()

- a. Verification of juvenile offender's identity; (3-20-14)
- b. Verification of release papers; (3-20-14)
- c. Completion of release arrangements, including the person or agency to whom the juvenile offender
is being released: (3-20-14)
- d. Return of personal effects; and (3-20-14)
- e. Completion of any pending action. (3-20-14)

02. ~~Community Leaves~~ Temporary Release. Written policy and procedures shall govern escorted and unsecured day leaves into the community. (3-30-07)()

03. Personal Property Complaints. Written policy and procedures shall govern a procedure for

handling complaints about personal property.

(4-5-00)

04. Disposal of Property. Property not claimed within four (4) months of a juvenile offender's discharge may be disposed of by the detention center in accordance with Title 55, Chapter 14, Section 55-1402, Idaho Code. (3-29-12)

263. -- 264. (RESERVED)

265. PROGRAMS AND SERVICES AVAILABLE.

01. ~~Written Policies and Procedures Governing Available~~ Programs and Services. The detention center shall have written policy and procedures which govern what programs and services will be available to juvenile offenders. These programs and services shall include, at a minimum, the following: ~~(3-29-12)~~ ()

- a.** Access or referral to counseling; (3-29-12)
- b.** Religious services on a voluntary basis; (3-29-12)
- c.** One (1) hour per day, five (5) days per week of large muscle exercise; (3-29-12)
- d.** Passive recreational activities; (3-29-12)
- e.** Regular and systematic access to reading material; (3-29-12)
- f.** Work assignments; and (3-29-12)
- g.** Educational programs according to the promulgated rules of the Idaho State Department of Education. (3-29-12)

02. Records of Participation in Programs and Services. Records of participation in programs and services must be recorded in daily shift log or juvenile offender's file or program records. (3-20-14)

03. Limitations and Denial of Services. Access to services and programs will be afforded to all juvenile offenders, subject to the limitations necessary to maintain detention center security and order. Any denial of services must be documented. (3-29-12)

**IDAPA 11 – IDAHO STATE POLICE
PEACE OFFICER STANDARDS AND TRAINING (POST) COUNCIL**

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

DOCKET NO. 11-1101-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 19-5107, Idaho Code.

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

The pending rule was adopted to align applicable IDAPA 11.11.01 rules to support House Bill 1083, which became effective July 1, 2017, mandating certification of Emergency Communications Officers by the Peace Officer's Standards and Training Council (POST). The rule, in its current form, fails to support the new statutory mandates governing Emergency Communications Officers (ECO) certification. Defines minimum age requirements at the time of application for applicants of POST certification for each respective discipline. Defines the forms of proof of military record documentation, adds language in reference to the POST Code of Ethics/Standards of Conduct. Adds disqualifier of active military service for requirement of reimbursement of Agreement to Serve requirement. Removes the POST Firearms Qualification Course from the Detention Officer certification exam requirement. A minor grammatical correction was also made to the pending rule in Section 081.

The complete text of the proposed rule was published in the November 1, 2017 Idaho Administrative Bulletin, [Vol.17-11, pages 51-73](#).

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 29th day of November, 2017.

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

<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

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 November 15, 2017.

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:

To align applicable IDAPA 11.11.01 rules to support House Bill 1083, which became effective July 1, 2017, mandating certification of Emergency Communications Officers by the Peace Officer's Standards and Training Council (POST). The rule, in its current form, fails to support the new statutory mandates governing Emergency Communications Officers (ECO) certification. Defines minimum age requirements at the time of application for applicants of POST certification for each respective discipline. Defines the forms of proof of military record documentation, adds language in reference to the POST Code of Ethics/Standards of Conduct. Adds disqualifier of active military service for requirement of reimbursement of Agreement to Serve requirement. Removes the POST Firearms Qualification Course from the Detention Officer certification exam requirement.

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: 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 November 22, 2017.

DATED this 17th day of October, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-1701

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council,” IDAPA 11, Title 11, Chapter 01. (3-15-02)

02. Scope. These rules constitute the minimum standards of training, education, employment, and certification ~~of peace officers, county detention officers, juvenile detention officers, juvenile probation officers, correction officers, and adult probation and parole officers in Idaho~~ for any discipline certified by the POST Council. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

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; a Public-Safety Answering Point (PSAP), as defined in IDAPA rule; 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; the chief administrator of a PSAP, as defined in IDAPA rule; 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 recommended by the Correction Standards and Training Council and~~ recognized and approved by POST Council. (4-2-08)()

07. Basic Correction Academy. A basic course of instruction for Correction Officers ~~as recommended by the Correction Standards and Training Council and~~ recognized and approved 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 Corrections Academy. A basic course of instruction for Juvenile Corrections

Officers recommended by the Juvenile Training Council and recognized and approved by POST Council. ()

~~9~~**10.** **Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers ~~as recommended by the Juvenile Training Council and~~ recognized and approved by POST Council. ~~(4-2-08)~~()

~~1~~**1.** **Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers ~~as recommended by the Juvenile Training Council and~~ recognized and approved by POST Council. ~~(4-2-08)~~()

12. **Basic Misdemeanor Probation Academy.** A basic course of instruction for Misdemeanor Probation Officers recommended by the Misdemeanor Probation Training Council and recognized and approved by POST Council. ()

~~1~~**3.** **Basic Patrol Academy.** A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)

~~1~~**4.** **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)

~~1~~**5.** **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)

~~1~~**6.** **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)

~~1~~**7.** **Council.** The Idaho Peace Officer Standards and Training Council. (4-2-08)

~~1~~**8.** **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)

~~1~~**9.** **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)

1820. 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)

21. Emergency Communications Officer. Any emergency call taker or dispatcher who is employed by a Public Safety Answering Point (PSAP) and whose responsibilities include receiving or dispatching 9-1-1 calls.

()

1822. Field Training. Training in which an individual receives formal instruction on the job for special and defined purposes.

(7-1-93)

203. Full Time. Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days.

(4-2-08)

214. 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)

25. Juvenile Corrections Direct Care Staff. Any full or part-time employee of the department whose primary job duties include providing for the safety, care, education, protection, or supervision of juveniles committed to the custody of the department. Job titles are defined in IDAPA 11.11.05, "Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff," Subsection 010.06.

()

226. 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)

237. 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)

248. 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)

259. 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)

2630. Law Enforcement Profession. As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; an employee in

a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center; an employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (4-2-08)

~~27~~**31.** **Manual.** This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (4-5-00)

~~32.~~ **Misdemeanor Probation Officer.** Any employee of a misdemeanor probation department who is responsible for preparing reports to the court, making recommendations regarding conditions of probation, and the supervision of misdemeanor offenders' compliance with court orders. ()

~~28~~**33.** **Part Time.** Employment of less than one hundred sixty (160) hours per month for ninety (90) consecutive calendar days. (4-2-08)

~~29~~**34.** **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~~**5.** **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~~**6.** **POST.** The Idaho Peace Officer Standards and Training Program. (7-1-93)

~~327.~~ **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~~ A POST-approved training program that meets the requirements for basic certification for any discipline certified by the POST Council. (4-2-08)()

~~338.~~ **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)

~~349.~~ **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)

~~40.~~ **Public Safety Answering Point (PSAP).** Any city, county, or state emergency call center that receives direct or transferred 9-1-1 calls for police, firefighting, and ambulance services. ()

~~3541.~~ **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)

~~3642.~~ **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~~**43.** **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~~**44.** **Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

~~39~~**45.** **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~~**6.** **Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

~~41~~**7.** **Trainee.** An officer participating in any POST-approved training program. (3-15-02)

011. -- 029. (RESERVED)

030. GENERAL AND INCIDENTAL POWERS AND DUTIES.

Besides those enumerated previously (those in Title 19, Chapter 51, Idaho Code), the duties of the Council shall be to do and perform all other acts and things required by law or which may be necessary to the full discharge of the duties of said Council, and shall include, but not be limited to the following: (4-5-00)

01. Issue Certification. To issue certification to law enforcement and emergency communications officers when they meet the requirements as established by the POST Council. (~~4-2-08~~)()

02. Maintain Files. To maintain files on all certified officers, instructors, and schools; and furnish information from files upon request in accordance with the Idaho Public Records Law. (4-2-08)

03. Maintain Records. To receive and maintain as trustees for the state of Idaho in accordance with the Idaho State Police and POST retention schedules all physical properties and records which shall come into the possession of the Council by virtue of its existence. (4-2-08)

04. Establish Committees. To establish such committees, both permanent and temporary, as may be necessary to more fully carry out the administrative duties of the Council. (4-2-08)

05. Elect Vice-Chairman. Pursuant to Idaho Code, the Council shall elect a Vice-Chairman annually from among its membership. (4-2-08)

06. Adopt Rules. To adopt and amend rules and procedures consistent with law for the internal management of POST and the operation of a law enforcement and emergency communications training program. (~~4-2-08~~)()

07. Assist Departments. Upon request, to assist departments and directors of training in administration and training problems encountered in complying with the various aspects of the Act as well as the ultimate objective of the Act, i.e., raising the level of competence of law enforcement and emergency communications officers in Idaho. (~~4-2-08~~)()

08. Study Training Methods. To study law enforcement and emergency communications training methods to enable POST to provide current and updated training. (~~4-2-08~~)()

09. Consult and Cooperate with Agencies. To consult and cooperate with recognized law enforcement agencies or educational institutions concerned with law enforcement and emergency communications training. (~~4-2-08~~)()

10. Make Recommendations. To make recommendations concerning any matter within its

jurisdiction.

(4-2-08)

11. Grant Additional Time to Complete POST Training and Certification. The Council, for good cause and in writing, may grant additional time to complete POST training and certification. Good cause may include, but is not limited to, sickness or physical disability of officer or immediate family member, cancellation of Basic Academy, natural disaster, or reapplication to the Academy after failing or being unable to complete a previous Basic Academy Session.

(4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

041. THE RECORDS SYSTEM.

01. Training File. The Idaho Peace Officer Standards and Training Council will maintain a training file on all Idaho law enforcement and emergency communications officers. Officer certifications granted and POST-approved training schools attended by officers will be recorded in these files.

~~(3-25-16)~~ ()

02. Notification of Employment/Termination. The agency head of any agency whose officers are required to attend a POST Basic Training Academy must notify the Council of all presently employed officers every January and July. The names of all officers hired after submission of the original list must be submitted to the Council within fifteen (15) days of employment. The termination of an officer's employment must also be relayed to the Council within fifteen (15) days of such action on an appropriate form designated by the Council.

(3-25-16)

03. Training Record. A training record listing all POST-approved courses an officer has completed, the hours credit, and other pertinent data will be kept along with the officer's file.

(3-25-16)

04. Instructors. Names of certified instructors will be maintained.

(4-5-00)

05. Instructors and Schools. A list of approved instructors and schools will be maintained.

(4-5-00)

042. PROCEDURE.

01. Application. Each individual officer may apply for certification when they have met the requirements. When they are certified by the Council, this is entered into their file. ~~(Refer to "Certification of Peace, Detention, Juvenile Detention, and Juvenile Probation Officers.")~~

~~(4-2-08)~~ ()

02. Roster. School coordinators will furnish to the Council a "Course Attendance Roster" on the appropriate form designated by the Council upon the completion of each certified training school. (Refer to "Required Documentation for School or Course Approval.")

(3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

050. MINIMUM STANDARDS FOR EMPLOYMENT.

Every ~~peace, county detention, juvenile detention, misdemeanor probation, and juvenile probation officer and Idaho Department of Juvenile Corrections direct care staff~~ applicant requesting certification must meet the requirements in Sections 050 through 065. In situations where the POST Division Administrator has the authority to grant a waiver, but chooses not to, he must refer the application to the POST Council for consideration.

~~(4-11-15)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

053. AGE.

~~The applicant shall be a minimum of twenty-one (21) years of age.~~ Applicants for POST certification must meet the

following minimum age requirements at the time of application for each respective discipline: ~~(4-7-11)~~()

- a. Patrol Officer applicants must be twenty-one (21) years of age. ()
- b. Detention Officer applicants must be twenty-one (21) years of age. ()
- c. Correction Officer applicants must be eighteen (18) years of age. ()
- d. Felony Probation and Parole Officer applicants must be twenty-one (21) years of age. ()
- e. Misdemeanor Probation Officer applicants must be twenty-one (21) years of age. ()
- f. Juvenile Detention Officer applicants must be twenty-one (21) years of age. ()
- g. Juvenile Probation Officer applicants must be twenty-one (21) years of age. ()
- h. Juvenile Corrections Direct Care Staff applicants must be twenty-one (21) years of age. ()
- i. Communications Officer applicants must be eighteen (18) years of age. ()

(BREAK IN CONTINUITY OF SECTIONS)

057. MILITARY RECORD.

01. Military 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 peace, detention, juvenile detention, juvenile probation, adult probation and parole, or adult misdemeanor probation officer or as a direct care staff member of the Idaho Department of Juvenile Corrections 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~~ Official Military Discharge Documentation. ~~(4-7-11)~~()

(BREAK IN CONTINUITY OF SECTIONS)

059. BACKGROUND INVESTIGATION.

01. Requirements. (3-29-17)

a. 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 law enforcement or emergency communications

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. (3-29-17)()

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. (3-29-17)

02. Procedures. (3-15-02)

a. The applicant 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 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 must include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency or PSAP records in jurisdictions where the applicant has lived or worked. This information must be recorded and retained by the appointing agency. (3-29-17)()

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 law enforcement mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions must be asked about: (3-29-17)

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 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 must be explored. (3-29-17)

d. All results of the background investigation must be considered confidential and processed accordingly. (3-29-17)

e. The results of the background investigation 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. (3-29-17)

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. (3-29-17)

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. (3-29-17)

060. PHYSICAL - MEDICAL.

01. Requirements.

(7-1-93)

a. Agency Physical Readiness ~~Test~~ Assessment. To determine the applicant's physical capability, a physical readiness ~~test~~ assessment based upon the job requirements of the appointing agency must be administered by the appointing agency to each applicant. ~~(3-18-15)~~()

b. Physical Capability Requirement. The applicant must be physically capable of passing all physically demanding tasks and tests while attending any Idaho POST Academy or any academy equivalent program approved by the POST Council. Any applicant who fails a required physical test while attending an Idaho POST Academy will be disenrolled from the academy and provided the option to attend a future academy session.

(3-18-15)

(BREAK IN CONTINUITY OF SECTIONS)

064. CODE OF ETHICS/STANDARDS OF CONDUCT.

Each applicant shall attest that he has read, understands, and will abide by the POST Council's Code of Ethics as standards of professional conduct and that he has read and understands the conduct that may constitute cause for decertification as found in the POST Council's Code of Ethics and Subsections 091.03 and 091.04. (3-27-13)

01. Fundamental Duty. As a law enforcement or emergency communications officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice. ~~(3-21-12)~~()

02. Personal and Official Life. I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret, unless revelation is necessary in the performance of my duty. (3-21-12)

03. Appropriately Enforce the Law. I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and the relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. (3-21-12)

04. Public Trust. I recognize the badge or position of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of law enforcement/public service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other law enforcement or emergency communications officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. ~~(3-21-12)~~()

05. Professional Performance. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself ~~before God~~ with sincere and unfaltering commitment to my chosen profession – law enforcement/public safety. ~~(3-21-12)~~()

065. PROBATIONARY PERIOD.

01. Probation. Every officer appointed by an agency below the level of agency head shall satisfactorily complete a probationary period of not less than six (6) months. This requirement shall also apply to officers who transfer laterally into an agency. (3-15-02)

02. Supervisor/Mid-Manager. Every officer who is promoted or appointed to a supervisory, middle

management, or assistant agency head position shall satisfactorily complete a probationary period of not less than six (6) months in that position. (3-15-02)

03. Extended. No ~~peace, detention, juvenile detention, or juvenile probation~~ officer who lacks the training qualifications required by the Council for certification shall have his temporary or probationary employment extended beyond ~~one (1) year~~ the time specified in Title 19, Chapter 51, Idaho Code, by renewal of appointment or otherwise. ~~(4-2-08)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

081. AGREEMENT TO SERVE.

01. Agreement. Pursuant to Section 19-5112, Idaho Code, any officer attending a POST-funded Basic Training Academy must execute an agreement promising to remain within the law enforcement profession, as defined in Subsection 010.26, in the state of Idaho 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. (3-29-17)

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: (3-29-17)

a. The officer serves on a full-time basis for two (2) years following graduation from the POST Basic Training Academy; or (3-29-17)

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. (3-29-17)

03. Disqualifications. (3-29-17)

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. (3-29-17)

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. (3-29-17)

c. An officer ordered into full-time active military service will not owe the Council the amount set forth in the agreement. The officer must provide the Council with documentation of official military order documents. ()

04. Pay Back Reimbursement. Any officer who graduates from the POST Basic Training Academy 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 for their training expenses. 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. (3-29-17)

05. Proration. (3-29-17)

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.

(3-29-17)

b. 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 a minimum of twelve (12) complete months following graduation from the POST Basic Training Academy but less than twenty-four (24) complete months the amount owed to the Council will be reduced proportionately for each complete month worked from the date of graduation to the date of termination.

(3-29-17)

c. If the officer 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.

(3-29-17)

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.

(3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

090. **CERTIFICATION OF ~~PEACE, DETENTION, JUVENILE DETENTION, AND JUVENILE PROBATION~~ OFFICERS.**

091. **INTRODUCTION.**

01. **Certificates and Awards.** Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of ~~law enforcement~~ officers and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals.

~~(3-20-97)~~ ()

02. **Property.** Certificates and awards remain the property of the Council and are only valid as long as the officer has not been decertified and ~~is appointed as an Idaho peace, county detention, juvenile detention, juvenile probation, correction, adult probation and parole, or misdemeanor probation officer, or an Idaho Department of Juvenile Corrections Direct Care Staff member~~ the certifications have not expired, lapsed, or been suspended.

~~(3-29-10)~~ ()

03. **Decertification – Mandatory, Discretionary, Reporting, Eligibility.** (3-27-13)

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

(3-27-13)

b. The Council may decertify any officer who is convicted, as defined in Section 19-5109, Idaho Code, of any misdemeanor; willfully or otherwise falsifies or omits any material information to obtain any certified status; or for any of the causes set forth in Subsection 091.04.

(3-27-13)

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

(3-27-13)

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

(3-27-13)

e. Any officer decertified by the Council shall not be eligible for POST certification of any kind for ten (10) years following the date of decertification. An agency head intending to hire an officer who has been decertified shall request a waiver from the POST Council. No decertified officer shall exercise any law enforcement or emergency communications authority until recertified by the POST Council. Any officer who is the subject of a POST decertification investigation shall not be eligible for POST certification of any kind while under investigation.

~~(3-27-13)~~()

04. POST Council's Code of Ethics, Additional Cause for Decertification. In addition to decertifying officers for violating the POST Council's Code of Ethics, the Council may also decertify any officer who engages in any of the following conduct which shall be considered a violation of the POST Council's Code of Ethics and standards of professional conduct: (3-27-13)

- a.** Engages in criminal conduct whether charged or not. (3-27-13)
- b.** Consumes alcoholic beverages on duty, except as necessary for the lawful performance of duties. (3-27-13)
- c.** Illegal or unlawful harassment or intimidation of another. (3-27-13)
- d.** Lying or falsifying official written or verbal communications. (3-27-13)
- e.** Engages in inappropriate sexual conduct while on duty. (3-27-13)
- f.** Engages in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication. (3-27-13)
- g.** Acts of corruption or bribery. (3-27-13)
- h.** Unauthorized use or unlawful conversion of the property, equipment, or funds of his agency. (3-27-13)
- i.** Intentional and unauthorized disclosure of confidential information or information that may compromise an official investigation. (3-27-13)
- j.** Failure to report being charged with a felony or misdemeanor within five (5) business days. (3-27-13)
- k.** Refusal to respond or failure to respond truthfully to questions asked in relation to an investigation or legal proceeding. (3-27-13)

(BREAK IN CONTINUITY OF SECTIONS)

096. LAPSE OF PEACE OFFICER CERTIFICATION.

The certification of any peace officer will be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified peace officer who remains in an administrative, jail, emergency communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein will be tolled during any time period that a peace officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(3-25-16)~~()

01. Three to Five Years. A peace officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements: (3-25-16)

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

b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

c. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)

d. Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (3-21-12)

ii. The POST Firearms Qualification Course; and (3-25-16)

e. Satisfy the probationary period requirement of Section 065. (4-2-08)

02. Over Five Years. A peace officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Patrol Academy to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Patrol Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (3-25-16)

a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

b. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)

c. Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)

d. Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (3-21-12)

ii. The POST Firearms Qualification Course; and (3-25-16)

e. Satisfy the probationary period requirement of Section 065. (4-2-08)

03. Over Eight Years. A peace officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Patrol Academy to be recertified. No waiver of this requirement will be granted by the Council. (3-25-16)

04. Exception. The provisions of Subsections 096.01 through 096.03 do not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

099. LAW ENFORCEMENT EXPERIENCE - PEACE OFFICER CERTIFICATION.

01. Law Enforcement Experience. Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement or PSAP agency as a peace officer, county detention officer, or emergency communications specialist officer. The acceptability of time served as a peace officer, county detention officer, or emergency communications specialist officer in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through

065, shall be subject to the determination of the Council.

~~(3-29-12)~~()

02. Military Law Enforcement Service and Education. An applicant who has served in the military as a full-time military law enforcement officer may be awarded partial credit toward law enforcement experience and training. (3-29-12)

a. The applicant shall have served in the military as a full-time military law enforcement officer for the period of time he is requesting credit for. Regular guard duty does not qualify. (3-29-12)

b. Education shall be military law enforcement schools successfully completed. All certificates, course outlines, diplomas, DD-214's, and certificates of completion showing length of school shall accompany an appropriate application form designated by the Council. (3-29-12)

c. Credit shall be awarded as follows: (3-29-12)

i. One (1) year of accepted military law enforcement service shall equal three (3) months of law enforcement experience. (3-29-12)

ii. Eight (8) hours of accepted military law enforcement training shall equal four (4) hours of law enforcement training. (3-29-12)

d. No applicant shall be awarded more than two (2) years of law enforcement experience or more than one thousand (1,000) hours of law enforcement training. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

116. CAREER-LEVEL CERTIFICATION.

01. General Provisions. (4-2-03)

a. To be eligible for the award of a Supervisor, Master, or Management certificate, each applicant shall be a full-time peace officer, county detention officer, or emergency communications specialist officer appointed by a duly constituted Idaho law enforcement agency, PSAP, or a professional member of the POST Council staff. To be eligible for the award of an Executive certificate, each applicant shall be a full-time peace officer appointed by a duly constituted Idaho law enforcement agency, PSAP, or a professional member of the POST Council staff. ~~(4-2-03)~~()

b. All applications for award of the Supervisor, Master, Management, or Executive Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

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

d. Each applicant for the Master and Supervisor certificates shall meet the minimum standards for employment and basic training as provided in Sections 050 through 065 and 070 through 076. Each applicant for the Management and Executive certificates shall meet the minimum standards for employment as provided in Sections 050 through 065. (4-2-08)

117. SUPERVISOR CERTIFICATE.

01. Requirements. For purposes herein, the term "first-line supervision position" means a position above the operational level which is occupied by an individual who holds the rank of sergeant or equivalent title and, in the upward chain of command, principally is responsible for the direct supervision of non-supervisory personnel of

an agency. A candidate for the Supervisor Certificate shall: (4-7-11)

a. Possess the Intermediate or Advanced Certificate, Level II or III Detention Officer Certificate, or ~~Level II or III~~ Intermediate or Advanced Communications Specialist Certificate. (3-30-07)()

b. Have satisfactorily completed one hundred (100) hours of POST-certified supervisory-level training, of which fifty (50) hours shall have been completed within three (3) years prior to submitting an application for the Supervisor Certificate. (4-7-11)

c. Be presently appointed to a first-line supervision position with an Idaho law enforcement agency or PSAP, and shall have served satisfactorily in that position for a minimum of one (1) year prior to application. Proof of position responsibilities shall be submitted to the POST Council in the form of a job description or other documentation from the hiring authority. (4-7-11)()

118. MASTER CERTIFICATE.

01. Requirements. The Master Certificate is for individuals below the rank of sergeant or equivalent title, who have consciously decided to focus career efforts on line functions such as patrol, investigations, detention, or ~~dispatch~~ emergency communications. A candidate for the Master Certificate shall: (4-2-03)()

a. Possess the Advanced Certificate, Level III Detention Officer Certificate, or ~~Level III~~ Advanced Communications ~~Specialist~~ Officer Certificate. (4-2-03)()

b. Have satisfactorily completed one thousand five hundred (1,500) hours of POST-certified training. Academic college credits in law enforcement subjects may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. (4-2-03)

c. Have completed a minimum of fifteen (15) years of full-time law enforcement or emergency communications service in assignments which did not include full-time supervisory, management, or executive positions. (4-2-03)()

119. MANAGEMENT CERTIFICATE.

01. Requirements. For purposes herein, the term “middle-management position” means a position between a first-line supervision position and an executive position which is occupied by an individual who holds the rank of lieutenant or higher, or equivalent title and, in the upward chain of command, principally is responsible for the direct supervision of supervisory personnel of an agency and/or command duties. A candidate for the Management Certificate shall: (4-7-11)

a. Possess peace officer certification, detention officer certification, or emergency communications ~~specialist~~ officer certification from Idaho; certification from another state that has minimum peace officer standards; or a certificate of completion from a city, county, state, or federal law enforcement academy. The academy attended shall meet or exceed that state's minimum training standards. (4-2-03)()

b. Submits a POST Certification Patrol Challenge Packet to POST Council, which shall include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience. Subsection 119.01.b. applies only to an officer who is uncertified in Idaho. (4-7-11)

c. Attend an approved course of study in Idaho law and pass the POST Idaho law exam. Subsection 119.01.c. applies only to an officer who is uncertified in Idaho. (4-2-03)

d. Have satisfactorily completed one hundred (100) hours of POST-certified management-level training, of which fifty (50) hours shall have been completed within three (3) years prior to submitting an application for the Management Certificate. (4-2-03)

e. Be presently appointed to a middle-management, management, or executive position wherein the

predominance of responsibilities are administrative or managerial in nature, and shall have served satisfactorily in that position for a period of six (6) months. Proof of position responsibilities shall be submitted to the POST Council in the form of a job description or other documentation from the hiring authority. (4-2-03)

02. City Police Chiefs. City police chiefs or administrators within state agencies having law enforcement powers, who, because of the number of full-time peace officers they supervise, have duties which are primarily administrative may satisfy the certification requirement of Section 19-5109(2), Idaho Code, by obtaining this certificate. All other city police chiefs or state agency administrators having law enforcement powers may be awarded this certificate upon meeting the requirements, but shall also complete the requirements necessary to obtain a Basic Certificate. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

171. LAPSE OF DETENTION OFFICER CERTIFICATION.

The certification of any county detention officer will be considered lapsed if the officer does not serve as a county detention officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified county detention officer who remains in an administrative, patrol, emergency communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein will be tolled during any time period that a county detention officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (3-25-16)()

01. Three to Five Years. A county detention officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements: (3-25-16)

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

~~i.~~ The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; and (4-2-08)()

~~ii.~~ The POST Firearms Qualification Course; and (3-25-16)

- e. Satisfy the probationary period requirement of Section 065. (4-2-08)

02. Over Five Years. A county detention officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Detention Academy to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Detention Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (3-25-16)

- a. Disclose information regarding any decertification investigation or proceeding or the substantial

equivalent from any other jurisdiction and the results thereof. (3-29-10)

b. Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)

c. Attend and pass Idaho POST-certified courses in Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)

d. Pass the following tests administered by a ~~POST Training Specialist~~ POST-approved proctor: (4-2-03)

~~i.~~ ~~The~~ POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; and (4-2-08)()

~~ii.~~ ~~The POST Firearms Qualification Course; and~~ (3-25-16)

e. Satisfy the probationary period requirement of Section 065. (4-2-08)

03. Over Eight Years. A county detention officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Detention Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

177. CHALLENGING THE BASIC DETENTION ACADEMY.

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

01. Submission of Challenge Packet. Submits a POST Certification Detention Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-6-05)

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

03. Detention Legal Issues Course Attendance. Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-6-05)

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

~~i.~~ ~~The~~ POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; and (4-2-08)()

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

05. Completes Probationary Period. Completes his probationary period as required by Subsection 176.01. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

196. **EMERGENCY COMMUNICATIONS ~~SPECIALIST~~ OFFICER CERTIFICATION.**

197. **GENERAL PROVISIONS.**

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of ~~law enforcement~~ emergency communications officers and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. Emergency Communications ~~Specialist~~ Officer Certification is ~~not~~ statutorily mandated for officers hired after July 1, 2012, but is voluntary for officers hired prior to July 1, 2012. (4-2-03)()

02. Purpose. Basic, Intermediate, and Advanced Certificates are established for the purpose of fostering professionalism, education, and experience necessary to perform adequately the duties of an emergency communications officer. ()

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

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

045. Applications. All applications for award of the ~~Level I, Level II, Level III, or Advanced~~ Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)()

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

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

078. Minimum Standards. Each applicant shall meet the minimum standards for employment as provided in Sections 050, ~~051, 052, 054, 055, 056, 057, and 059~~ through 065. (3-29-12)()

198. **EMERGENCY COMMUNICATIONS ~~SPECIALIST~~ OFFICER EXPERIENCE.**

Emergency ~~Communications~~ ~~specialist~~ officer experience, as used herein, means actual time served as a full-time emergency communications ~~specialist~~ officer with a duly constituted law enforcement or PSAP agency. To be eligible for the award of a Basic certificate, each applicant shall be a emergency communications officer appointed by a duly constituted Idaho law enforcement agency or PSAP. The acceptability of time served as an emergency communications ~~specialist~~ officer in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050, ~~051, 052, 054, 055, 056, 057, and 059~~ through 065, shall be subject to the determination of the Council. (3-29-12)()

199. **EMERGENCY COMMUNICATIONS OFFICER CERTIFICATION.**

01. Decertification. The council may decertify any emergency communications officer in the same manner as provided in Section 091 of these rules. ()

02. Certification. ()

a. Any full-time or part-time emergency communications officer employed on or after July 1, 2017 shall be certified by the Peace Officer Standards and Training Council within eighteen (18) months of their initial hire

date as a full-time or part-time emergency communications officer. ()

b. Any full-time or part-time emergency communications officer employed between July 1, 2012 and July 1, 2017 shall be certified by the Peace Officer Standards and Training Council by January 1, 2019. ()

c. Any full-time or part-time emergency communications officer employed before July 1, 2012, although specifically excluded by law from meeting the requirements set by the Council, may be certified provided they meet the minimum requirements. ()

~~199~~**200. ~~LEVEL-I~~ BASIC CERTIFICATE.**

01. Requirements. In addition to the requirements set forth in Section 197 of these rules, the requirements in Section ~~199~~ **200** are necessary for award of the ~~Level-I~~ **Basic** certificate. ~~(4-2-03)~~()

~~a. The applicant shall have satisfactorily completed a minimum of eighty (80) hours of POST-certified communications-related training, which shall include the ILETS Classification Level-I certificate. Submits a POST Emergency Communication Officer Challenge Packet to POST Council, which shall include copies of training records, transcripts, certificates, diplomas, or other documents that substantiate the officer's training, education, and experience;~~ ~~(4-2-03)~~()

~~b. The applicant shall have at least one (1) year of communications specialist experience. Completes the POST-approved basic training; and~~ ~~(4-2-03)~~()

~~c. Passes the POST emergency communications officer certification examination approved by the POST Council, administered by a POST approved proctor. The applicant shall be allowed two (2) attempts to pass the examination with a minimum score of seventy-five percent (75%). If the applicant fails the certification exam on the first attempt, the second attempt must be made within six (6) months of the date of the first attempt. If an applicant fails both attempts or fails to retake the examination within six (6) months, he shall reapply and successfully complete the Idaho Public Safety Communications Commission recommended and POST-approved training prior to taking the certification examination again.~~ ()

~~d. Satisfactorily completes a probationary period as set forth in Section 065 of these rules.~~ ()

~~200~~**1. ~~LEVEL-II~~ INTERMEDIATE CERTIFICATE.**

01. Requirements. In addition to the requirements set forth in Section 197 of these rules, the requirements in Section ~~200~~ **201** are necessary for award of the ~~Level-II~~ **Intermediate** certificate. ~~(4-2-03)~~()

~~a. The applicant shall be a full-time emergency communication officer.~~ ()

~~b. The applicant shall possess, or be eligible to possess, a ~~Level-I~~ Basic certificate.~~ ~~(4-2-03)~~()

~~c. The applicant shall have satisfactorily completed a minimum of one hundred twenty (120) hours of POST-certified training, which must include the POST-approved basic training.~~ ~~(4-2-03)~~()

~~d. The applicant shall have at least ~~three (3)~~ ten (10) years of communications specialist experience.~~ ~~(4-2-03)~~()

~~201~~**2. ~~LEVEL-III~~ ADVANCED CERTIFICATE.**

01. Requirements. In addition to the requirements set forth in Section 197 of these rules, the requirements in this section are necessary for award of the ~~Level-III~~ **Advanced** certificate. ~~(4-2-03)~~()

~~a. The applicant shall be a full-time emergency communication officer.~~ ()

~~b. The applicant shall possess, or be eligible to possess, a ~~Level-II~~ Intermediate certificate.~~ ~~(4-2-03)~~()

~~bc.~~ The applicant shall have satisfactorily completed a minimum of ~~two~~ five hundred ~~(200)~~ (500) hours of POST-certified training, which must include POST-approved basic training. ~~(4-2-03)~~ ()

~~ed.~~ The applicant shall have at least ~~six (6)~~ ten (10) years of communications specialist experience. ~~(4-2-03)~~ ()

202. ADVANCED CERTIFICATE.

~~01. **Requirements.** The Advanced Certificate is for individuals who have consciously decided to focus career efforts on public safety communications. A candidate for the Advanced Certificate shall:~~ ~~(3-29-12)~~

~~a. Possess the Level III Communications Specialist Certificate. (4-2-03)~~

~~b. Have satisfactorily completed five hundred (500) hours of POST-certified communications-related training. (4-2-03)~~

~~c. Have satisfactorily completed the POST Basic Dispatch Academy. (3-29-12)~~

~~d. Have a minimum of ten (10) years of communications specialist experience. (4-2-03)~~

~~02. **Exception.** An applicant who has a minimum of twenty (20) years of communications specialist experience but has not satisfactorily completed the POST Basic Dispatch Academy shall be eligible for the Advanced Certificate without attending the academy provided he meets all other requirements as set forth in Section 202 of these rules and can pass the final examination for the academy with a minimum score of seventy-five percent (75%). The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If an applicant fails both attempts or fails to retake the examination within six (6) months, he shall successfully complete the POST Basic Dispatch Academy to be eligible for the Advanced Certificate. (3-29-12)~~

203. LAPSE OF EMERGENCY COMMUNICATIONS OFFICER CERTIFICATION.

The certification of any emergency communications officer will be considered lapsed if the officer does not serve as an emergency communications officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified emergency communications officer who remains in a patrol, administrative, jail, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho, or any political subdivision thereof, will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year (3) period provided herein will be tolled during any time period that an emergency communications officer is the subject of a POST decertification investigation and is no longer employed in law enforcement or with a primary or secondary PSAP. ()

01. **Three to Five Years.** An emergency communications officer who has been out of emergency communications from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements: ()

a. Submit a POST Challenge Packet; ()

b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

c. Pass the POST emergency communications officer certification examination approved by the Council, conducted in the manner set forth in Subsection 200.01.c., and administered by a POST-approved proctor. ()

d. Satisfy the probationary period requirement as set forth in Section 065 of these rules. ()

02. **Over Five Years.** An emergency communications officer who has been out of emergency

communications for over five (5) years must complete the Idaho Public Safety Communications Commission's recommended and POST-approved training to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of emergency communications, the officer was engaged in an occupation requiring emergency communications training, skill, and experience. This evidence must be submitted with a POST Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: ()

a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

b. Pass the POST emergency communications officer certification examination approved by the Council, conducted in the manner set forth in Subsection 200.01.c., and administered by a POST-approved proctor. ()

c. Satisfy the probationary period requirement as set forth in Section 065 of these rules. ()

03. Over Eight Years. An emergency communications officer who has been out of full-time emergency communications for over eight (8) years must complete the POST-approved training. No waiver of this requirement will be granted by the Council. ()

2034. -- 209. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

361. REQUIREMENTS.

01. Requirements to Retain Certification. To retain certification from and after January 1, 2004, every peace officer and county detention officer appointed by an agency must satisfactorily complete forty (40) hours of continuing training related to law enforcement every two (2) calendar years beginning January 1 following the date the officer was certified. The continuing training completed does not have to be POST-certified training. (4-6-05)()

02. Retaining Certification From and After July 1, 2017. To retain certification from and after July 1, 2017, every emergency communications officer appointed by a Public Safety Answering Point (PSAP) must satisfactorily complete forty (40) hours of continuing training related to public safety emergency communications every two (2) calendar years beginning January 1 following the date the emergency communications officer was certified. The continuing training completed does not have to be POST-certified training. ()

362. DOCUMENTATION.

01. Submission of Written Certification. In January of each year, the law enforcement agency head or Public Safety Answering Point (PSAP) agency head shall submit written certification to the Council of the number of hours of continuing training each officer within his agency has completed during the previous calendar year. (4-7-11)()

02. No Credit on POST Training Record. The Council shall accept written certification from the agency head as proof that an officer has satisfactorily completed the required forty (40) hours of continuing training every two (2) calendar years. However, no officer shall be awarded training hours on his POST training record for any training completed which has not been certified by the Council as set out in Sections 281 through 311 of these rules. (4-7-11)

03. Non-Compliance With Continuing Training Requirement. Any peace or county detention officer, or emergency communications officer out of compliance with the continuing training requirement shall be notified in writing, along with his agency head. After notice and an opportunity to be heard, if compliance is still not achieved, the Council may suspend the officer's certification, which shall be immediately restored as soon as

compliance is achieved.

~~(4-7-H)~~()

04. Exception for Active Duty Military Service. The two (2) calendar year continuing training period shall be tolled during a peace or county detention, or emergency communications officer's active duty military service, and shall recommence upon the officer's return to peace, ~~or~~ county detention, or emergency communications officer duties with his appointing agency. The appointing agency shall complete and submit to the Council a Notice of Separation/Change in Status form designated by the Council upon the officer's departure from and return to the agency.

~~(4-7-H)~~()

**IDAPA 11 – IDAHO STATE POLICE
PEACE OFFICER STANDARDS AND TRAINING (POST) COUNCIL**

**11.11.05 – RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL
FOR IDAHO DEPARTMENT OF JUVENILE CORRECTIONS DIRECT CARE STAFF**

DOCKET NO. 11-1105-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 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 Sections 19-5109(6), Section 20-504(3), Section 20-504(11), Section 20-531(4), Idaho Code.

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

The pending rule adds two specific job titles to definition of Juvenile Corrections Direct Care Staff: Rehabilitation Technician Trainee and Safety and Security Supervisor.

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 November 1, 2017 Idaho Administrative Bulletin, [Vol.17-11, pages 74-75](#).

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 29th day of November, 2017.

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

<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

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), Section 20-504(3), Section 20-504(11), Section 20-531(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 15, 2017.

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: Adds two specific job titles to definition of Juvenile Corrections Direct Care Staff: Rehabilitation Technician Trainee and Safety and Security Supervisor

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: 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 November 22, 2017.

DATED this 17th day of October, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1105-1701

010. DEFINITIONS.

01. **Basic Juvenile Corrections Academy.** A basic course of instruction for direct care staff of the Idaho Department of Juvenile Corrections as recognized by POST Council. (5-8-09)

02. **Challenge Exam.** A test to determine an IDJC staff's competence for waiver of successful completion of the basic Juvenile Corrections Academy. (5-8-09)

03. **Council.** As used in this chapter, refers to the POST Council. (5-8-09)

04. **Department.** As used in this chapter, refers to the Idaho Department of Juvenile Corrections, IDJC. (5-8-09)

05. **Director.** As used in this chapter, refers to the Director of the Idaho Department of Juvenile Corrections. (5-8-09)

06. **Juvenile Corrections Direct Care Staff.** Any full or part-time employee of the department whose primary job duties include providing for the safety, care, education, protection, or supervision of juveniles committed to the custody of the department. ~~Current;~~ Job titles specifically included in this definition are, but are not limited to: ~~(5-8-09)~~ ()

~~a.~~ Rehabilitation Technician Trainee; ()

~~b.~~ Rehabilitation Technician; (5-8-09)

~~b.c.~~ Rehabilitation Technician Supervisor; (5-8-09)

~~d.~~ Rehabilitation Specialist; (5-8-09)

~~e.~~ Rehabilitation Specialist Associate; (5-8-09)

~~f.~~ Instructor - DJC; (5-8-09)

~~g.~~ Instructor Specialist; (5-8-09)

~~h.~~ Instructor Assistant; ~~and~~ ~~(5-8-09)~~ ()

~~i.~~ Safety and Security Officer; ~~and~~ ~~(5-8-09)~~ ()

j. Safety and Security Supervisor. ()

07. **Juvenile Training Council.** An advisory group to the POST Council that is represented by 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. (5-8-09)

08. **Mandatory Certification.** To issue a certificate to an IDJC direct care staff based upon successful completion of the mandatory training requirements established by POST Council. (5-8-09)

09. **Voluntary Certification.** To issue a certificate to an IDJC direct care staff based upon successful completion of the voluntary training requirements established by POST Council. (5-8-09)

IDAPA 50 – IDAHO COMMISSION OF PARDONS AND PAROLE

50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE

DOCKET NO. 50-0101-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 20-223, Idaho Code.

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

The proposed amendments change the structure of the Commission, including decision making; update alternative placement options for parole violators; provide for the review of firearm restoration applications in executive session; clarify victim's services; update definitions; address technological advancements for use in hearings; establish the number of commissioners required for parole proceedings and decisions. Adding language to the Foreign National Treaty giving the Commission discretion to make recommendations to the Governor, and implement statutory amendments from the 2016-2017 session.

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 November 1, 2017 Idaho Administrative Bulletin, [Vol. 17-11, pages 123-155](#).

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 Mary Schoeler (208) 334-2520.

DATED this 27th day of November, 2017.

Sandy Jones, Executive Director
Idaho Commission of Pardons and Parole
3056 Elder Street
Boise, ID 83705
Phone: (208) 334-2520
Fax: (208) 334-3501

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 20-223, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 15, 2017.

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 proposed amendments include the following: increases the number of members making up the Commission; amends the Commission decision-making processes; updates alternative placement options for parole violators; provides for the review of firearm restoration applications in executive session; clarifies victim's services; updates definitions; addresses technological advancements for use in hearings; establishes the number of Commissioners required for parole proceedings and decisions; adds language to the Foreign National Treaty giving the Commission discretion to make recommendations to the Governor; implements statutory amendments from the 2017 session.

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:

There will be no fiscal impact resulting from 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 September 6, 2017 Idaho Administrative Bulletin, [Vol. 17-9, page 293](#).

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 Mary Schoeler (208) 334-2520.

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 22, 2017.

DATED this 15th day of September.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 50-0101-1701

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 50.01.01, “Rules of the Commission of Pardons and Parole.” (5-3-03)

02. Scope. The rules govern parole, pardons, firearm rights restoration, and commutations for the state of Idaho; and other matters within the authority of the Commission. (4-11-15)()

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records subject to the disclosure provisions of Title 74, Chapter 1, Idaho Code. (5-3-03)()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Absconder. An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. (4-11-15)()

02. Case Worker/Manager. For purposes of reference, the case worker/manager is an Idaho Department of Correction employee who is involved with assisting offenders/parolees regarding their problems, needs, and adjustments. Such case worker/manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician. (4-11-15)

03. Commission. The Idaho Commission of Pardons and Parole. (4-11-15)

04. Commission Warrant. Warrant of arrest for alleged parole violation issued by the Executive Director or a Commissioner. This warrant is a non-bondable warrant. (3-23-98)

05. Commissioner. A member of the Commission who is appointed by the Governor to carry out decision-making functions regarding parole, parole revocations, pardons, commutations, remission of fines, and firearm rights restoration. ()

056. Commutation. Clemency powers granted to the Commission, or the Governor, or both, which allow for a sentence to be modified. (4-11-15)

067. Concurrent Sentence. Sentence served at the same time as another. (3-23-98)

078. Conditions of Parole. Conditions under which an offender is released to parole supervision. (4-11-15)

089. Confidential. Privileged from disclosure. (3-23-98)

0910. Consecutive Sentence. Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)

- 141. Decision.** A determination arrived at after consideration, a conclusion. (3-23-98)
- 142. Detainer.** A document authorizing the detention of an offender in custody for a new felony crime or parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. (4-11-15)
- 143. Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (4-11-15)
- 144. DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)
- 145. Early Parole Discharge.** Release from further custody of parole supervision prior to the maximum expiration date and after statutory minimum of one (1) year of their sentence has been completed. (4-11-15)
- 146. Escape.** Flight from confinement. (3-23-98)
- 147. Evidence Based Program.** A treatment program evaluated using an experimental methodological design, with outcomes reviewed by a variety of scientific professionals, and deemed effective in the delivery method and the desired participant population outcomes. (4-11-15)
- 148. Executive Session.** Any meeting or part of a meeting of the Commission that is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. (4-11-15)
- 149. Fixed Term.** Portion of sentence during which the convicted person is not eligible for parole. (3-23-98)
- 150. Full Term Release Date.** The date an offender completes the term of sentence without good time credits. (4-11-15)
- 201. Good Time Release Date.** The date an offender completes the term of sentence, minus statutory good time credits when applicable. Good time credit applies to offenses committed prior to July 1, 1986, and for which an offender is confined to a correctional institution for a definite term other than life. (4-11-15)
- 242. Hearing.** The opportunity to be interviewed by the Commission, a Commissioner, or other designated Commission staff. (4-11-15)
- 243. Hearing Officer.** An impartial person employed by the Commission and selected by the Executive Director to conduct an interview and take testimony from an offender regarding offender's history, criminal record, social history, present condition of offender, and offense. (4-11-15)
- 244. Hearing Session.** A series of hearings conducted by the Commission. (3-23-98)
- 25. Inclusive Gender.** For all administrative rules in Idaho, the terms and references used in the masculine include the feminine and vice versa, as appropriate. ()
- 246. Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (4-11-15)
- 25. Institutional Parole.** Parole granted on one (1) or more consecutive sentences where the offender/parolee remains incarcerated on other consecutive sentences. If released to parole on the remaining consecutive sentences, the parole becomes regular parole. (4-11-15)
- 267. Jacket, File, or Case Review.** Review of central file, Commission file, and/or additional information submitted, without testimony or interview of offender or parolee. (4-11-15)
- 28. Member or Members.** A member of the Commission, Commissioner, or Commissioners. ()

- ~~279~~. **NCIC.** National Crime Information Center. (3-23-98)
- ~~2830~~. **Non Restricted Sentence.** Sentence not restricted by statute. (3-23-98)
- ~~2931~~. **Non-Technical Violation.** Violation of parole by absconding or a new felony or misdemeanor conviction. (3-8-16)
- ~~302~~. **Offender.** A person under the legal care, custody, supervision, or authority of the board ~~or~~ of correction, including a person within or without Idaho pursuant to agreement with another state or contractor. (4-11-15)()
- ~~313~~. **On-Site Parole Violation Hearing.** Parole violation hearing to determine guilt or innocence of the alleged parole violator, which must be held reasonably near the site of the alleged violation(s). (4-11-15)()
- ~~324~~. **Open Parole Date.** Tentative parole granted without setting an actual tentative release date and subject to release by Commission authorization; offender's parole eligibility date has passed when a tentative parole date is granted. A tentative parole date will become an open parole date if the tentative parole date passes without the offender being released to an acceptable plan on the specific date. (4-11-15)
- ~~335~~. **Pardon.** Clemency powers granted to the Commission or the Governor that allows the applicant to be released from the consequences of conviction of a crime and restores ~~a persons'~~ the applicant's civil rights. (4-11-15)()
- ~~346~~. **Parole.** Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and offender. Parole is not a right, but is a matter of grace. (4-11-15)
- ~~357~~. **Parole Eligibility Date.** The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. (4-11-15)
- ~~368~~. **Parole Hearing Interview.** An interview conducted by a hearing officer for the purpose of gathering information and testimony from the offender regarding the offender's history, criminal record, social history, present condition, instant offense, and other factors, when the offender is scheduled for a forthcoming parole consideration hearing. (4-11-15)
- ~~39~~. **Parole Revocation Hearing.** A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. ()
- ~~3740~~. **Parole Violation Hearing.** A fact-finding hearing conducted by a hearing officer to determine a subject's parolee's guilt or innocence of alleged violations of parole. The hearings are conducted for both technical and non-technical violations, and may be held on-site, or at a location as determined by the Executive Director or the hearing officer. (4-11-15)()
- ~~3841~~. **Parolee.** Offender being supervised on parole. (4-11-15)
- ~~3942~~. **Permanently Incapacitated.** As defined in Section 20-223, Idaho Code, permanently incapacitated means a person who, by reason of an existing physical condition that is not terminal, is permanently and irreversibly physically incapacitated. (4-11-15)
- ~~43~~. **Preliminary Hearing.** A hearing conducted by an objective representative of the supervising authority or an individual appointed by the Executive Director to determine if there is probable cause to believe the alleged violations of the parole contract occurred. ()
- ~~404~~. **Rescission.** Cancellation of a previous decision. (4-11-15)

- ~~445~~. **Reprieve.** Temporary suspension of the execution of sentence; delay a punishment. (3-23-98)
- ~~426~~. **Restricted Sentence.** Sentence restricted by Idaho Statutes, by carrying a mandatory minimum to be served prior to parole eligibility. (4-11-15)
- ~~437~~. **Return of Service.** The document that establishes what legal documents were served on whom, by whom, and when. (4-11-15)
- ~~448~~. **Revocation/Violation File.** File containing the documents pertinent to a particular violation/revocation proceeding. (4-11-15)
- ~~459~~. **Risk Assessment.** Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)
- ~~50~~. **Self-Initiated Parole Reconsideration (SIPR).** A process in which an offender may request reconsideration of the last hearing decision of the Commission. ()
- ~~4651~~. **Session.** See “Hearing Session.” (4-11-15)
- ~~52~~. **Special Meeting.** A hearing called by the Commission or the Executive Director outside of the regularly scheduled hearing session. The Commission will consider whether to reinstate, modify, or revoke parole when the parole violation decision is not unanimous between the two (2) Commissioners. ()
- ~~4753~~. **Statutory Release Date.** Maximum full-term expiration date, minus any good time credits accumulated during incarceration. The maximum full-term date may change upon forfeiture of time on parole due to a violation of that parole. (4-11-15)
- ~~4854~~. **Substantive Conditions of Parole.** Conditions of parole which relate to the rehabilitation of a parolee including, but not limited to, performance of community service, use of alcohol, use of a motor vehicle, limitations on financial matters, use of drugs, associations with other felons, employment requirements, residence requirements, traveling outside of their district, etc. (4-11-15)
- ~~55~~. **Supervising Authority.** The agency responsible for community supervision of parolees which is Idaho Department of Correction. ()
- ~~4956~~. **Technical Violation.** Violation of parole by not conforming to conditions of parole, but not to include absconding or a new criminal conviction. (3-8-16)
- ~~507~~. **Terminally Ill.** As defined by Section 20-223, Idaho Code, terminally ill shall mean a person who has an incurable condition caused by illness or disease and who is irreversibly terminally ill. (3-23-98)
- ~~548~~. **Victim.** As defined by Section 19-5306, Idaho Code, “Any individual who suffers direct or threatened physical, financial or emotional harm as the result of the Commission of a crime or juvenile offense.” Including as defined by Section 19-5304, Idaho Code, “will mean a person or entity, who suffers economic loss or injury as the result of the defendant’s criminal conduct and will also include the immediate family of a minor and the immediate family of the actual victim in homicide cases.” (3-8-16)
- ~~529~~. **Witness.** Anyone who observes a hearing, appears as attorney for the subject of a hearing, or others who provide written or verbal testimony. (3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

101. HEARINGS.

All hearings of the Commission shall be conducted in accordance with the open meeting law as provided in Chapter 23, Title 67 Idaho Code and as modified by Section 20-213A, Idaho Code. The Commission will conduct each

hearing assigned and scheduled before them. Each Commissioner will have an opportunity to ask questions or provide comments, or both. The Executive Director or Commission staff may provide information during the hearing or ask questions. (4-11-15)

01. Deliberations. ~~Deliberations~~ Receipt and exchange of information or opinion relating to a decision concerning the granting, revoking, reinstating, or ~~refusing denial~~ of paroles, or related decisions, to include commutations, ~~and~~ pardons, ~~and restoration of firearm rights.~~ ~~Deliberations~~ will be made in executive session. Votes of individual members will not be made public. A written record of the vote by each Commission member will be kept confidential and privileged from disclosure and, provided, for all lawful purposes as outlined by Section 20-213A, Idaho Code. ~~The record will be made available upon request to;~~ ()

a. The ~~g~~Governor or Governor's representative; ()

b. The most senior minority member of the of the House of Representatives Judiciary, Rules and Administration committee; ()

c. The chairman of the House of Representatives' Judiciary, Rules and Administration committee, and; ()

d. The chairman of the Senate Judiciary and Rules Committee and the most senior minority member of the Senate Judiciary and Rules Committee ~~for all lawful purposes as outlined by Section 20-213A.~~ (4-11-15) ()

#02. Distribution of Record. Distribution of the record by a Commissioner or an employee of the Commission to any person not specifically listed in this section will be a misdemeanor offense. Any person can obtain the results of any action taken by the Commission without reference to the manner in which any individual Commissioner voted, and such information will be public information. (4-11-15) ()

(BREAK IN CONTINUITY OF SECTIONS)

104. RECORD OF HEARINGS AND BUSINESS MEETINGS.

01. Minutes of Hearings and Case Reviews. ()

a. Summary minutes of individual hearings and case reviews will be maintained in the Commission office and will be approved and signed by the Executive Director, or a Commissioner, or designee of the Executive Director. (4-11-15)

b. Audio recordings of open hearings may be made and will be maintained by Commission office in digital format. The recordings will be subject to disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. Executive sessions will not be recorded. ()

02. Minutes ~~Reviewed and Approved~~ of Business Meetings. Summary minutes of business meetings are reviewed by Commissioners who are present at the next ~~subsequent~~ business meeting. The summary minutes as approved by the Commissioners will be signed by the Executive Director or designee. Summary minutes of business meetings are maintained in the Commission office and published on the Commission's website when the summary minutes are approved. (4-11-15) ()

03. Official Record of Parole Hearing or Case Review. The official record of a parole hearing or case review will be the summary minutes, once signed, of that hearing or review. The official record will be maintained in the Commission office and subject to public disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

108. RIGHTS, POWERS, AND AUTHORITY OF THE COMMISSION.

01. Commutation, Pardon, Restoration of Firearms ~~Rights~~, and Remission of Fines. The Commission succeeds to and has all rights, powers, and authority of the Board of Pardons as granted and provided by ~~the provision of the~~ Article 4, Section 7 of the Constitution of the state of Idaho and Sections 18-310, 20-210A, and 20-240, Idaho Code, in reference to commutation, pardon, restoration of firearms rights, and remission of fines. (3-8-16)()

02. Decision to Release to Parole. The Commission has the power to decide whether or not any offender eligible for parole may be released to parole. (4-11-15)

03. Advisory Commission to Board of Correction. The Commission may act as the advisory Commission to the board of correction. The Commission has any and all authority necessary to fulfill the duties and responsibilities and other duties imposed upon it by law under Section 20-201, Idaho Code and other applicable provisions of Idaho law. (4-11-15)

109. -- 149. (RESERVED)

150. COMMISSION AND STAFF.

01. Commission Members. (3-23-98)

a. The Commission is composed of ~~five (5)~~ seven (7) members appointed by the governor for three (3) year terms. Vacancies for unexpired terms will be for the remainder of the term and appointees may be reappointed. (4-11-15)()

i. No more than ~~three (3)~~ four (4) members will be from one (1) political party. (4-11-15)()

ii. Appointments are subject to the advice and consent of the senate. (3-23-98)

b. The Commissioners are compensated as provided by Sections 20-210, 59-509(I), and 67-2008, Idaho Code. (4-11-15)

02. Commission Staff. (3-23-98)

a. The Executive Director is the official representative for the Commission and is responsible for the managing and administration of Commission business and will have other duties and responsibilities as assigned by the governor. (4-11-15)

i. The Commission has delegated to the Executive Director the authority to approve recommended conditions of parole following the hearing process, issue Commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to paroles, commutations, pardons, ~~restoration of~~ rights restoration, and remissions of fines. (3-8-16)()

ii. The Executive Director shall assume all authority and duties as may be delegated by the Commission and the governor. (3-30-01)

b. The Commission, the Executive Director, and all staff will maintain professional integrity in all matters of Commission business. (3-23-98)

151. -- 199. (RESERVED)

200. HEARING PROCESS.

01. Information for Scheduled Commission Hearings. (3-30-01)

a. A schedule of Commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. The hearing schedule will be available five (5) business days prior to a hearing session. The hearing schedule may be revised due to offender movement between institutions or other circumstances and may not be published earlier. A person may obtain the offender's hearing date by contacting the Commission office. (4-11-15)

b. The hearing schedule will reflect the date, location and starting time of each hearing session and a list of offenders scheduled for hearings and will be published on the Commission website. (4-11-15)

02. Location of Hearings. ()

a. The Executive Director will determine the location of hearings, based upon available information when the schedule is set. Due to circumstances beyond the Commission's control, it may be necessary to change the location and date of a hearing or hearing session. (4-11-15)

#b. It may be necessary to continue a hearing to a later date to allow for the offender's personal appearance or for other unforeseen reasons. (4-11-15)

03. Interview Method. For parole hearings, commutation hearings, pardon hearings, remission of fines hearings, and restoration of firearms rights hearings, an interview may be conducted by face-to-face, by telephone, or by other electronic means. The interview may be conducted by a hearing officer or other designee of the Executive Director. If an interview is not required, the offender may simply appear before the Commission for a hearing. (3-8-16)()

#a. An in-depth investigational report explaining the offender's social history, criminal history, present condition, and offense will be prepared for the Commission. The in-depth investigational report is exempt from public disclosure pursuant to Section 20-223, Idaho Code. (3-8-16)

#b. The Commission will determine if they it will conduct another hearing or make a decision based upon the report. (3-30-01)()

04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), Substance Abuse Evaluation, or Other. (3-8-16)

a. A psychological report, or SORA, or both, will be prepared for the Commission for all offenders serving a commitment for a sex offense, or whose history and conduct indicate an offender may be a sexually dangerous person as described in Section 20-223, Idaho Code. (4-11-15)

b. The Commission, the Executive Director, or a hearing officer can order any psychological report, evaluation, or assessment for an offender serving a commitment for any crime. (4-11-15)

c. All psychological, SORA, substance abuse evaluations, and mental health reports will be maintained in a confidential manner. (3-8-16)

05. Interview/Hearing. The offender who is the subject of an interview/hearing may be required to be present at a scheduled interview/hearing. (4-11-15)

a. Parole Consideration Hearing. The offender who is the subject of a hearing may be required to be present at a scheduled hearing. If the offender declines to be present at a parole consideration hearing, the offender is required to complete and submit the "Inmate Refusal to Participate in Parole Interview/Hearing Process" form and state the reason for not participating to the Commission. A decision may be made by the Commission based upon available information. (3-8-16)

b. Parole Revocation/Violation. The parolee is required to be present at the revocation/violation hearing, with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

c. Commutation. The offender is required to be present at the scheduled commutation hearing, unless the Commission determines otherwise. (4-11-15)

d. Pardon and Remission of Fine. The offender is encouraged to be present at the hearing; the Commission may make such appearance mandatory or may make a final decision based upon the information which is available. (3-8-16)

e. Medical Parole. The offender is encouraged to be present at the hearing; the Commission may make such an appearance mandatory or may make a final decision based on information available. (4-11-15)

f. Restoration of Firearms Rights. The offender is encouraged to be present at the hearing. The Commission may make such appearance mandatory or may make a final decision based upon the information that is available. ~~(3-8-16)~~ ()

06. Witnesses and Documents. The Commission allows for the participation of attorneys, families of the subject offender, parolee, victims, and others who have a direct relationship to the specific hearing or offender/parolee of the hearing. ~~(3-8-16)~~ ()

a. Persons who want to participate in a hearing must notify the Commission staff five (5) days in advance of the scheduled hearing. Children under the age of sixteen (16) will not be allowed to attend the hearings without prior approval of the Executive Director. (4-11-15)

b. All written documents and letters to be considered must be submitted seven (7) days in advance of the scheduled hearing to ensure they will be considered; other documents may be allowed by unanimous consent from the Commissioners present. (4-11-15)

c. An attorney or others as determined by the Executive Director or Commission may be seated with the offender/parolee at the hearing. (3-23-98)

d. Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. The Commission will allow the attorney representing the offender/parolee a designated time frame to provide information to the Commission. Victims will be allowed to testify. Victim testimony is normally taken following comments of offender's attorney and family or friends of the offender/parolee. All persons who testify will direct their comments to the Commission. Persons will keep their comments to the relevance of parole. (4-11-15)

e. Contacts from the public to an individual Commissioner outside of the hearing process, are to be forwarded to the Executive Director in order that all Commissioners will receive the information. (3-23-98)

07. Conflict of Interest. A Commissioner who has personal knowledge of a case will make such knowledge available to the sitting Commissioners prior to the scheduled hearing, and the sitting members of the Commission will decide whether that Commissioner should be disqualified from participating in deliberation and voting. (4-11-15)

a. A Commissioner may remove themselves from the hearing. The Commissioner may step down from the panel and leave the room during the hearing and deliberations. (3-8-16)

08. Decisions. (3-23-98)

a. Any decision of the Commission requires a majority vote of three (3) or more Commissioners. (4-11-15)

i. Two (2) members of the Commission may meet to make decisions on the disposition of parole violations. Such decisions must be unanimous. In the event they are not unanimous, then the parole violation disposition decision will be made by a majority of the full Commission at the next quarterly meeting or a special meeting, pursuant to Section 20-210, Idaho Code. ()

ii. Three (3) members of the Commission may meet to make decisions to grant or deny parole. Such decisions must be unanimous. In the event they are not unanimous, then the decision to grant or deny parole will be

made by a majority of the full Commission at the next quarterly meeting, pursuant to Section 20-210, Idaho Code.

()

b. Decisions will be given orally following the hearing and deliberation of a case by the Commission. ~~Written notice of the decision may be submitted at a later date.~~ The decision may be sent to the offender in writing with specific information/conditions. (4-11-15)()

c. Following the decision being given orally, further testimony is allowed only at the discretion of the Commission, or the Executive Director, or hearing officer. (4-11-15)

d. In the case of a review ~~by the commission~~ without a Commission hearing, the decision will be published within a reasonable time on the Commission website. ~~Individual written decisions may not be submitted, but will be available on the commission's website in a published list of a session's action taken.~~ (4-11-15)()

e. Any decision made by the Commission may be reconsidered at any time. The Commission or Executive Director may bring forward any case determined to need reconsideration before the next hearing session as described in Section 105. (3-8-16)

09. Rules of Conduct at Hearings. (3-23-98)

a. All persons attending any hearing will conduct themselves in a manner that does not disrupt the proceedings or they may be removed from the hearing room and/or facility. (3-23-98)

b. All persons attending a hearing or hearing session, must abide by security policies of the department of correction, the facility where the hearing is being held, and pertinent statutes. The number of witnesses allowed in the hearing room will be in line with life and safety codes follow the security policies of the institution; and all persons may be screened through metal detectors or similar technology and will be subject to search. (4-11-15)()

c. Audio recording or video recording of any hearing or any hearing session may be allowed at the discretion of the Commission or the Executive Director; such recordings will proceed only at the direction of the Commission or the Executive Director as to the placement, manner and type of equipment. (4-11-15)

d. The media is invited to attend any open hearing ~~or session~~ of the Commission. (3-23-98)()

i. Interviews with offenders or witnesses will not be allowed during the hearing process and neither the Commission ~~and nor its~~ staff will ~~not~~ be responsible for arranging ~~any~~ such interviews. (4-11-15)()

ii. During the hearing process, interviews with victims are not allowed without the express consent of the victim. (3-23-98)

iii. Arrangements for interviewing the Commission or staff should be made in advance. (4-11-15)

~~10. Official Record of Hearing/Review. The official record of a hearing or case review will be the summary minutes of that hearing or review, once signed, and the original record will be maintained in the commission office.~~ (3-30-01)

201. -- 249. (RESERVED)

250. PAROLE.

01. Parole ~~Determination~~ Consideration. The Commission will use clear, evidence-based parole guidelines in making parole ~~determinations~~ decisions, while still maintaining discretion ~~of in~~ individual cases. (4-11-15)()

a. The Commission may release an offender to parole on or after the date of parole eligibility, or not at all. During a minimum term of confinement, an offender will not be eligible for parole, discharge, credit, or reduction

of sentence for good conduct, except for meritorious conduct reduction service, or as provided in Section 20-101D, Idaho Code. (4-11-15)

b. Parole consideration is determined by the individual merits of each case. (4-11-15)

c. The Commission uses evidence-based parole consideration factors, ~~that~~ which are embedded in ~~the~~ clear parole guidelines. These guidelines will include the use of a validated risk and needs assessment. The Commission still retains the discretion to grant or deny parole ~~of in~~ individual cases based on countervailing, discrete, individual case factors. Factors to be considered include, but are not limited to: (4-11-15)()

i. Seriousness of and ~~aggravation and/or mitigation~~ aggravating factors involved in the crime.()

ii. Mitigating factors involved in the crime or related to the offender's circumstances. (3-23-98)()

iii. Prior criminal history of the offender. (4-11-15)

~~iv.~~ Failure or success of past probation and parole. (3-23-98)

~~iv.~~ Institutional history to include conformance to established rules, involvement in programs, ~~and~~ jobs, and custody level at time of the hearing, and overall behavior. (3-23-98)()

~~v.~~ Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. (3-23-98)

~~vi.~~ Information or reports regarding physical or psychological condition. (3-23-98)

~~vii.~~ The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. (3-23-98)

~~viii.~~ Outcome of a validated risk and needs assessment. (4-11-15)

~~ix.~~ Compliance with any order of restitution entered pursuant to Section 19-5304, Idaho Code. ()

02. Primary Review. For all offenders eligible for parole, a review for the purpose of setting the initial parole hearing will be conducted ~~on all offenders. The commission is not responsible for the setting of a hearing until an official sentence calculation document has been received.~~ (3-8-16)()

a. The Executive Director or a designee will conduct the primary review following receipt of the sentence calculation from the Department of Correction's ~~central~~ records office unit. The month and year of the initial parole hearing will be established based upon the sentence calculation. The Commission is responsible for conducting the primary review to set the initial hearing once an official sentence calculation document has been received from the Department of Correction (4-11-15)()

i. In cases ~~of where~~ an offender is serving both a court-ordered retained jurisdiction period and ~~have~~ a current sentence of imprisonment, the primary review will not be ~~scheduled~~ conducted on ~~that~~ the imprisonment case until the court-retained jurisdiction case has been adjudicated concluded. (3-8-16)()

ii. In cases where the offender has a death sentence, or a life without parole sentence, a primary hearing review will not be ~~scheduled~~ conducted. (3-8-16)()

iii. In cases ~~of with~~ specified ~~minimum~~ fixed terms, the initial hearing will be ~~set~~ scheduled approximately six (6) months prior to the offender's parole eligibility date based on the sentence calculation. An initial hearing will not be scheduled until all fixed terms (consecutive and concurrent) the offender is currently serving are within six (6) months of completion. (4-11-15)()

~~iv. In cases of offenses committed on or after February 1, 1987, and a minimum fixed term has been specified, the initial hearing may be scheduled six (6) months prior to the parole eligibility date, during the month of~~

~~parole eligibility, or as noted in Subsection 250.02.b.vi.~~

~~(4-11-15)~~

~~v. Consecutive Sentences. All fixed terms will be served before the indeterminate terms commence.~~

~~(3-23-98)~~

~~vi. Concurrent Sentences. The initial hearing will not be scheduled until all fixed terms have been served.~~

~~(4-11-15)~~

~~iv#.~~ If an offender escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the offender's return to custody, taking into consideration any additional commitments and the time to conduct an interview and report. (4-11-15)

~~viii.~~ If an offender is committed to the department of correction and such offender is eligible for parole immediately, or within the first six (6) months of their incarceration, the initial parole hearing will be scheduled within six (6) months from the month the Commission was notified of the commitment. (3-8-16)

~~ix. The commission is not responsible for the accuracy of the sentence calculation as determined by the department of correction, records office.~~

~~(4-11-15)~~

vi. Initial parole hearings will be scheduled based on the sentence calculation prepared by Idaho Department of Correction.

()

03. General Conditions of Parole. The Commission establishes rules and conditions for every offender released to parole. Rules and conditions of parole will be provided in writing and acknowledged by the parolee. Parolee will sign the agreement indicating the parolee's understanding of the conditions of parole. Conditions of parole include: (3-8-16)

a. The parolee is required to enter into and comply with an agreement of supervision with the board Idaho Department of eCorrection. The agreement of supervision shall include provisions setting forth potential sanctions for a violation of the conditions imposed and potential rewards for compliance with the conditions imposed, as such sanctions and rewards are set forth in rules of the Board. ~~(3-8-16)~~ ()

b. The Pparolee will go directly to the destination approved by the Commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the Commission staff. ~~(3-23-98)~~ ()

c. The parolee will: (4-11-15)

i. Work diligently in a lawful occupation or a program approved by the Commission or supervising officer and not change employment or designated program without written permission from the Commission or supervising officer. (3-23-98)

ii. Support dependents to the best of parolee's ability. (4-11-15)

iii. Live within lawful income without incurring unnecessary indebtedness. (3-23-98)

d. The parolee must submit a complete and truthful report to the assigned parole officer. (4-11-15)

e. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee who is unavailable, communication will be directed to the district section supervisor. (4-11-15)

f. The parolee will: (3-23-98)

i. Obey all municipal, county, state, and federal laws. (3-23-98)

ii. Not engage in Cconduct himself or herself in a manner that is ~~not~~, ~~nor~~ or is intended to be, harmful to himself ~~or herself~~ or others. ~~(4-11-15)~~ ()

- ~~iii. Follow written or oral instructions of the parole officer or commission. (3-23-98)~~
- ~~iii.~~ Not purchase, own, sell, or have in the parolee's control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. (4-11-15)
- iv. Not have in the parolee's control any dangerous weapons used, or intended to be used, for other than normal purposes, such as knives for household use. ~~(3-23-98)~~()
- g. The parolee will: (4-11-15)
- i. Abstain from use of alcoholic beverages. (3-8-16)
- ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (3-23-98)
- iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, narcotics, or other substances, which may be at the parolee's expense. (4-11-15)
- iv. Participate in treatment programs as specified by the Commission or ordered by the parole officer. (3-23-98)
- h. ~~The~~ A parolee will submit to a search of person or property, or both, to include residence and vehicle, at any time and place by ~~any agent of field services~~ the supervisory authority or the Commission, and the parolee waives the constitutional right to be free from such searches. ~~(4-11-15)~~()
- i. The parolee is fully advised that written permission is required to: (3-23-98)
- i. Willfully change employment; (3-23-98)
- ii. Willfully change residence; ~~and~~ or ~~(3-23-98)~~()
- iii. Leave the assigned district. (3-23-98)
- j. The parolee will ~~make himself~~ be available for supervision and will not actively avoid supervision. ~~(3-23-98)~~()
- 04. Special Conditions of Parole.** (3-23-98)
- a. In addition to general conditions of parole, the Commission may add special conditions appropriate to the individual case. (3-23-98)
- b. The Commission delegates the authority to the Executive Director to add additional special conditions, before an offender has been released to parole or while on parole, after the offender has signed a statement acknowledging the special conditions. The Commission will establish the special conditions of parole using the offender's most current risk and needs assessment to guide the imposition of necessary conditions. (3-8-16)
- ~~05. Institutional Parole. (3-23-98)~~
- ~~a. An offender committed to the department of correction, who has a consecutive sentence and one (1) or more commitments do not have a fixed minimum term to serve prior to parole eligibility, may be considered for institutional parole while remaining incarcerated. (4-11-15)~~
- ~~b. Institutional parole may be considered at the discretion of the commission. (3-23-98)~~
- ~~c. While serving institutional parole, the parolee/offender is subject to all the rules of the housing~~

~~facility and conditions ordered by the commission, to include, but not be limited to, submitting monthly reports as directed.~~ (4-11-15)

~~d. If rules of the institution or orders of the commission are violated, the executive director or a commissioner will determine when a report of conduct/violation should be submitted. In the case of a report of violation, established rules of the violation/revocation process will apply.~~ (4-11-15)

~~e. Conversion. Upon release from custody on any subsequent parole or upon completion of the consecutive sentence, and if any time remains on the institutional parole sentence, there will be an automatic conversion from institutional parole to regular parole, subject to all regular and special conditions of parole.~~ (4-11-15)

065. Medical Parole. The Commission may parole an offender for medical reasons ~~during the determinate portion of a sentence~~ pursuant to Section 20-223(8), Idaho Code. (4-11-15)()

a. Consideration will occur when the offender is permanently incapacitated or terminally ill and when the Commission reasonably believes the offender no longer poses a threat to the safety of society. (4-11-15)

b. An offender or designated department of correction personnel may petition the Commission to consider medical parole. (4-11-15)

c. The Commission may conduct an actual hearing or review of the case, or may designate Commission staff to provide additional information, and which will require specific medical information in reference to the offender's condition, as well as a ~~the~~ treatment or care plan if released, and any other information deemed necessary. (4-11-15)()

d. An annual report will be submitted to the house and senate judiciary committees of the legislature and will contain aggregate health information and the names, medical condition, current status, and crime of all persons granted medical parole, as required by Section 20-223(9), Idaho Code. (4-11-15)()

076. Discharge from Parole. (3-23-98)

a. When the maximum sentence has expired, a final discharge will be issued by the Commission, unless a Commission warrant was issued before the full term release date. (4-11-15)

b. The Commission may issue a final order of discharge prior to completion of the maximum sentence when the Commission believes such a discharge is compatible with the parolee's welfare and that of society, and subject to the following requirements. When notification of a discharge is received, the victims will be notified of the request and allowed to respond. The Commission may, without a hearing, consider the request. (4-11-15)

i. The Commission will not consider an early discharge from parole in any case until the parolee has served at least one (1) year on parole as outlined in Section 20-233, Idaho Code. (4-11-15)

ii. The Commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to the maximum expiration date has been served on parole; or until five (5) years have been served on parole on a life sentence for any crime. (3-23-98)

iii. A parole officer ~~or other designated agent~~, parole officer designee, or parole officer supervisor can petition the Commission to consider an early discharge upon reaching the timelines established in Subsection 250.07.b.i. (4-11-15)()

iv. Any decision by the Commission to grant an early discharge will not be effective until the official discharge document has been signed by the Executive Director or a Commissioner. (3-23-98)

c. If a decision has been made by the Commission to grant an early discharge, and adverse information is received that was not previously available, the document will not be signed and the discharge will not be effective. The Executive Director may issue a Commission warrant based upon the new information and the

discharge grant will automatically be voided without further action by the Commission. Such adverse information will be submitted to the Commission at the next available hearing session for reconsideration. If the Executive Director does not issue a warrant, the information will be referred to the Commission for reconsideration. (4-11-15)

d. If the parolee is permanently incapacitated or terminally ill, the Commission may consider ~~or~~ and grant ~~or both~~ an early discharge after one (1) year for any crime. (4-11-15)()

~~007.~~ Detainers. (3-23-98)

a. The Commission may grant a parole to any county, state, or federal detainer that has been lodged against an offender. (4-11-15)

i. While in the custody of the detaining jurisdiction, the parolee is serving parole and is subject to all rules of the housing facility and may be required to submit monthly reports to Commission staff or the supervising authority. (4-11-15)

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must contact the Commission office immediately and must report to the nearest probation and parole office within five (5) days of release or as otherwise instructed by the Commission staff. The parolee must abide by all regular rules of parole and any special conditions ordered by the Commission. (4-11-15)

b. The Commission may grant a parole to a federal immigration detainer in order that the offender may be deported to the country of citizenship. (4-11-15)

i. If the parolee is granted a release on bond or is allowed to remain in the United States, the parolee must contact the Commission office immediately and must contact the nearest probation and parole office within five (5) days of release or as otherwise instructed by the Commission staff. (4-11-15)

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States and doing so is considered a violation of the parole contract. (4-11-15)

iii. The Commission considers this type of parole grant an unsupervised parole, but the parolee is not obligated to submit monthly reports nor maintain contact with the Commission as long as he remains outside of the United States. (4-11-15)

~~008.~~ Special Progress Reports. A special progress report may be submitted by the supervising authority to request modification of a special condition of parole or advise the Commission of problems that have developed. (4-11-15)()

~~402.~~ Interstate Compact. The Commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision outlined in Section 20-301, Idaho Code. (4-11-15)

a. An offender must be eligible for transfer of supervision to another state under the Interstate Compact and the receiving state must accept the transfer before the offender is released on parole. (4-11-15)

i. Any person under state parole who applies for a transfer of supervision to another state shall be required to post an application fee pursuant to Section 20-225A, Idaho Code, payable to Idaho Department of Correction, in addition to the Commission's bond. (4-11-15)

b. Any offender granted parole under the Interstate Compact may be required to post a bond prior to release or prior to such acceptance under the Interstate Compact. The amount of the bond set by the Commission is five hundred dollars (\$500). (4-11-15)

i. A bond may be posted by the offender, the offender's family, or other interested party. The bond must be posted at the Commission office. A cashier check or money order shall be the only acceptable means of posting bond. (4-11-15)

- ii. Failure to successfully complete parole may be grounds for forfeiture of the bond. (4-11-15)
- iii. Upon successful completion of parole, the amount of the bond may be returned to payee less an amount for administrative costs as determined by the Commission rule. (4-11-15)
- iv. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. (4-11-15)

251. -- 299. (RESERVED)

300. VICTIMS.

01. Process for Victims. The Commission has established a process for victims of criminal offenses for which an offender is currently incarcerated and is not serving a retained jurisdiction. Victims of non-adjudicated cases may be given courtesy ~~treatment~~ notification. This includes victims who may not be in the instant offense and those removed from the instant offense as a result of the plea bargain process. The victims may be located in the hearing officer report or from another victim coordinator or the prosecutor. The Victim Coordinator will verify the victims with the prosecutor when not included with the instant offense. (3-8-16)(____)

a. The Commission will establish a record for victims of offenders who may be considered for parole, early discharge, ~~or~~ commutation, restoration of firearm rights, or pardon. To establish a victim record, the Commission must receive official written notice from the clerk of the sentencing court or the county prosecutor's office; ~~the commission will use all tools at its disposal and will exercise all due diligence to notify victims of their rights if this official notice has not been received.~~ If the Commission has not received official notice of the victim, the Commission or staff may be advised of the victim's identity directly by the victim, victim's family or other individual. Commission staff will verify the name or names of the victim(s) with the county prosecutor and a record will be established. (3-8-16)(____)

b. The Commission will notify advise the victims of their constitutional and statutory rights to be notified of Parole Commission proceedings; ~~early discharge, and commutation hearings and the decision. Notification will inform victims of right to submit written statements or information and their right to provide testimony~~ The Commission will use all tools at its disposal and will exercise all due diligence to notify victims of their rights if this official notice has not been received. (3-8-16)(____)

c. ~~Notice of rights, hearings schedules and Commission decisions, early discharges, and parole releases will be sent to the victim of record to the last known address, and it is the responsibility of the victim to provide any change of address~~ will be made available on the Commission website. (4-11-15)(____)

d. ~~A victim may request not be notified or contacted~~ Hearing notifications can be discontinued at the victims' request. (4-11-15)(____)

e. Victims will ~~receive notices of~~ be notified when an offender has been released ~~to parole and offenders who have or has absconded from supervision. The commission is not responsible to advise of any other releases such as offender transfers to other facilities, release by completion of the sentence, or escapes from custody as these are not under the authority of the commission.~~ (3-8-16)(____)

02. Confidentiality of Victim's Address and Written Testimony. The victim's record maintained by the Commission will include contact information and written testimony or information, which will be maintained in a confidential manner. The Commission may only release ~~to the Idaho Department of Corrections~~ the victim's contact information to the Department of Correction. (3-8-16)(____)

03. Testimony of Victim. (3-23-98)

a. The victim is invited to attend any and all hearings, except executive sessions, pertinent to the case and to provide testimony. (4-11-15)

b. The Executive Director and the Commission may ~~consent to~~ allow for the victim's testimony away from the actual hearing process. Testimony may be given to the Executive Director or Commissioner(s) at the Commission office or other locations, or the victim may ~~be allowed to~~ testify before the Commission during a hearing session, but at a time separate from the actual hearing with the offender. ~~Such testimony will be made a part of the record in a hearing is not subject to disclosure.~~ ~~(4-11-15)~~ ~~()~~

c. If the Commission was not officially notified of the victim and does become aware of the victim's desire to be heard following a hearing, any scheduled release to parole may be held in abeyance until a decision is made by the Commission. (3-23-98)

i. The Commission may review any written testimony by the victim and may elect to take no further action, or may schedule another hearing, or may void the release date and reconsider the parole grant. (4-11-15)

ii. The Executive Director may schedule a hearing without the vote of the Commission to allow for the victim's testimony. (3-23-98)

301. -- 349. (RESERVED)

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. ~~A~~ ~~IDOC~~ ~~parole plan~~ approved ~~parole plan~~ by ~~Department of Correction probation and parole staff~~ should provide a positive re-entry into the community for the offender. ~~(3-8-16)~~ ~~()~~

a. The proposed parole plan should be available at the parole hearing interview and parole consideration hearing and should include a stable residence, employment, ~~or a~~ maintenance and care plan, ~~and as well as~~ treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. This plan will be formulated using the validated risk and needs assessment ~~that is used~~ prepared by the Department of Correction. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. ~~(3-8-16)~~ ~~()~~

b. Educational programs may be considered, but the offender must demonstrate how normal living, treatment, and transportation expenses, etc., will be paid for. (4-11-15)

c. All parole plans will be investigated by the supervising authority in the area in which the prospective parolee plans to reside, and necessary information will be submitted along with the investigation request. An Idaho plan can take a minimum of six (6) weeks and an out of state plan up to three (3) months to submit, investigate, and plan for release. (4-11-15)

~~**02. Interstate Compact Parole Plan.** The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision Act, as outlined in Subsection 250.10. (4-11-15)~~

~~**032. Tentative Parole Dates.**~~ All parole release dates granted by the Commission are tentative. (3-23-98)

a. The parole plan must be approved and received at the Commission office before the actual release date can be set to allow time for processing the release. (4-11-15)

b. ~~If the~~ ~~Should the~~ offender should have disciplinary problems following the parole hearing, or the Commission receives information that was not available at the time of the hearing, the Commission may reconsider the decision, and the tentative parole date may be voided ~~or changed~~. ~~(4-11-15)~~ ~~()~~

~~**043. Contract.**~~ Prior to any release to parole, the offender must sign a contract with the Commission and must acknowledge all general and special conditions of parole. (3-8-16)

a. The parolee will be issued reporting instructions that will include the address and the telephone number of the supervising office. (3-8-16)

351. -- 399. (RESERVED)

400. PAROLE REVOCATION PROCESS.

01. **Initiated.** The parole revocation process is initiated by a written or verbal report describing the conditions of parole that are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender, with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

02. **Warrants.** A warrant may be issued for the offender's arrest. (3-23-98)

a. A supervising ~~agency~~ authority may issue an investigative warrant referred to as an agent's warrant. The agent's warrant authorizes local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the Commission, pursuant to Section 20-227, Idaho Code. ~~(4-11-15)~~ ()

b. A Commission warrant may be signed by the Executive Director or by a member or members of the Commission. Issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. (4-11-15)

i. If the location of the offender is unknown, the warrant will be entered into NCIC, ~~I-HOT~~, or other law enforcement database and will designate from which states the Commission will extradite the offender from once arrested. At any time the Executive Director or designee may change the area of extradition. ~~(4-11-15)~~ ()

ii. If an offender is being held in custody on new charges in a state ~~other than~~ outside of Idaho, the warrant may be placed as a detainer only, and written notice of this action will be submitted to the holding facility. If the detainer is officially served on the offender without notice of this action to the Commission, the Commission will not be held responsible for the time limits prescribed by law for service of ~~charges~~ the factual allegations of the violation of the conditions of parole. ~~(3-8-16)~~ ()

iii. If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant. During the time period in which the subject refuses to waive extradition, time incarcerated will not be credited toward the sentence. (3-23-98)

c. Parolees who have allegedly absconded from supervision are considered to be a Fugitive from Justice, starting from the day a Fugitive Warrant is issued by the Commission and ending upon the day of arrest on that warrant. Per Idaho Code Section 20-228, upon issuance of a Fugitive Warrant, parole is suspended, ~~and that~~ The time that a parolee is considered to be a Fugitive from Justice will not be counted towards the time on parole or as part of the sentence. ~~(3-8-16)~~ ()

03. **Due-Process Notice of Hearing Rights.** Every parolee arrested on a Commission warrant for alleged violation(s) of parole is entitled to ~~pertinent due process including notice of the date, time and location of any and all hearings involved in the revocation process, the right to appear at a hearing and address the allegations, and to confront and cross-examine person(s) who have given adverse information on which the charges have been based~~ a fair and impartial hearing of the factual allegations of violation of the conditions of parole. ~~(4-11-15)~~ ()

a. The parolee shall be provided written, pertinent due process including notice of the date, time and location of any and all hearings involved in the revocation process. ()

b. The parolee shall have the right to appear at a hearing and personally address the allegations of violation of the conditions of parole at said hearing. ()

c. The parolee may confront and cross-examine adverse witnesses who have given information on which the charges have been based. ()

04. **Intermediate Sanctions on Alternative Options for Parole Violations and Absconding.** ~~If the violation does not result from a conviction of a new felony or violent misdemeanor, then the parolee will be afforded~~

~~the opportunity to serve an intermediate sanction rather than proceeding through the formal parole violation process.~~
~~The Commission will consider alternative options on a case by case basis.~~ (3-8-16)()

~~a. For a first parole violation other than absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to ninety (90) days effective immediately upon either: When the member or members or hearing officer, having heard the matter conclude that the allegations of violation of the conditions of parole are not sufficient cause for the revocation of parole, the parolee will be reinstated on parole on the same or modified conditions of parole.~~ (3-8-16)()

~~i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing; or~~ (3-8-16)

~~ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing.~~ (3-8-16)

~~b. For a second parole violation other than absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon either:~~ (3-8-16)

~~i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing or entering the decision; or~~ (3-8-16)

~~ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing.~~ (3-8-16)

~~c. For a third or subsequent parole violation other than by absconding, a dispositional hearing will be convened during a regular session of the commission to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody.~~ (3-8-16)

~~d. For a first violation by absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon either:~~ (3-8-16)

~~i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing or entering the decision; or~~ (3-8-16)

~~ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing.~~ (3-8-16)

~~e. For a second or subsequent parole violation by absconding, a dispositional hearing during a regular session of the commission will be convened to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody.~~ (3-8-16)

~~f. During any period of confinement on an intermediate sanction, the commission or hearing officer may reduce the period of confinement by up to thirty (30) days if the commission or hearing officer finds that there has been no instance of misconduct during the period of time the parolee is confined.~~ (3-8-16)

~~g. Upon successful completion of a term of intermediate sanctioning under this section, the parolee will be released to parole supervision unless prior to completing the sanction, the parolee is convicted of a violent misdemeanor or felony crime. If convicted of a violent misdemeanor or felony crime, the parolee will proceed through the formal violation process.~~ (3-8-16)

~~h. The commission or hearing officer will use the intermediate sanctions pursuant to Section 20-229B, Idaho Code, to determine length of confinement. The criteria may include the parolee's supervision history; stability in the community; severity and type of violation(s); risk and needs assessment score, and the violations report by the parole officer.~~ (3-8-16)

~~i. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of evidence, or those that have been proven by a preponderance of the evidence and are not sufficient cause for the revocation of parole, then the alleged parolee violator will may be reinstated on parole on the same or modified conditions of parole~~

considered for alternative options to revocation.

~~(3-8-16)~~()

i. Any decision made by the Commission may be reconsidered at any time. The Commission or Executive Director may bring forward any case determined to need reconsideration before the next hearing session as described in Section 105.

()

ii. The Commission may review the parole violator's status while serving alternative options. In the case of non-compliance with the alternative options, the Commission may review the parole violator's status which may result in additional alternative options or revocation.

()

c. When the member or members or hearing officer, having heard the matter conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then a dispositional hearing shall be convened during the regular session of the Commission for consideration of revocation of parole.

()

05. Witnesses. The ~~alleged parole violator or the~~ accusing parole officer or alleged parole violator may present witnesses in support of the claims ~~sed of the~~ allegations of parole violation or in defense of the charges.

~~(3-23-98)~~()

a. The Commission has no subpoena power to compel any witness to attend a hearing. The alleged parole violator may make a timely written request to the Commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation.

(4-11-15)

b. If it is determined by the hearing officer or the Executive Director that the identification of an informant or the personal appearance of a witness would subject such person to potential risk or harm, confrontation or cross-examination will not be allowed, and the record will reflect such determination.

~~(3-23-98)~~()

c. It is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings.

(4-11-15)

06. Attorney. The alleged parole violator may utilize the services of an attorney at any hearing conducted during the revocation process.

(3-23-98)

a. An attorney will be paid at the alleged parole violator's expense ~~unless it is determined by a hearing officer for the commission, the executive director, or the commission that there is a colorable claim that the alleged violation(s) did not occur, that the alleged parole violator does not understand the proceedings, or is otherwise incapable of representing himself.~~

~~(3-23-98)~~()

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the Commission office of any hearings and if requested in writing, the Commission office will provide the attorney with copies of reports or documents that are public records subject to disclosure according to the public records act.

~~(3-8-16)~~()

c. Commission Provided Attorney. Prior to a hearing, the alleged parole violator may request legal representation be provided by the Commission. The Executive Director or Deputy Director will determine if the facts presented by the alleged parole violation or the circumstances of the alleged parole violator demonstrate that alleged parole violator has presented a colorable claim that the alleged violation(s) did not occur or that the alleged parole violator does not understand the proceedings or is otherwise incapable of representing himself.

()

i. If a hearing officer, after meeting with the alleged parole violator, believes that the individual is not able to fully understand the hearing proceedings or is otherwise incapable of representing himself, the hearing officer shall notify the Executive Director. Upon receipt of such notification, the Executive Director or the Commission will make an attorney available to assist the alleged parole violator at the Commission's expense if the facts presented demonstrate that the alleged parole violator meets the criteria for Commission-provided attorney. In reaching this decision, the Executive Director or Commission shall:

()

(1) Review the case file and documents regarding the alleged parole violator's personal history, including his physical and mental health status. ()

(2) Consider the alleged parole violator's ability and capacity to understand the proceedings. ()

(3) Order a current or competency assessment if such would be helpful in making a decision regarding the request for counsel. ()

ii. Specific time limits provided for in these rules may be waived at the discretion of the Executive Director when an attorney is requested or provided, or both, at Commission expense. ()

07. Violations and Revocation Hearings. The alleged parole violator will be ~~advised~~ notified of any and all hearing dates and locations ~~within a reasonable~~ in advance of the hearing time frame. The hearing officer or Executive Director will determine the location of all hearings. (4-11-15)()

a. The ~~subject~~ alleged parole violator may request a continuance of, or waiver ~~of~~ any hearing, ~~which is~~ subject to the final determination of the hearing officer, Executive Director, or the Commission. (3-23-98)()

b. The type of ~~charges addressed~~ violations raised in the allegations will determine the ~~kinds~~ type of hearings available to the alleged parole violator. (3-23-98)()

i. Non-technical violations. If the alleged parole violator is ~~convicted of a misdemeanor, or charged or convicted of a~~ new felony, ~~or is charged with absconding,~~ the subject is not entitled to a preliminary or on-site hearing, but is entitled to a hearing to determine guilt or innocence of the alleged parole violation within a reasonable time following service of a copy of the charges ~~factual basis of the allegations~~. (3-8-16)()

ii. Technical violations. If the alleged parole violator is charged with a technical violation of the conditions of parole ~~other than a misdemeanor, or new felony criminal conviction, or absconding,~~ the ~~subject~~ alleged parole violator is entitled to a preliminary hearing by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a Commission hearing officer to determine guilt or innocence within thirty (30) days from the date the accused was served with the ~~charges~~ notice of the violation allegations. (3-8-16)()

c. Preliminary hearing. A technical parole violator is entitled to a preliminary hearing to establish whether or not there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of the supervising authority or as otherwise directed by the Executive Director. The alleged parole violator is entitled to a verbal or written decision within a reasonable time following the preliminary hearing. (4-11-15)

d. On-Site Violation Hearing. A technical parole violator is entitled to an on-site fact-finding hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The Executive Director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the Executive Director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than Idaho. (4-11-15)()

e. Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence of the alleged parole violator and may dismiss some or all allegations. If a hearing officer is unavailable, the Executive Director will appoint someone to conduct the hearing. The ~~offender~~ alleged parole violator is entitled to a verbal or written decision. When a verbal decision is rendered, such finding will be noted in the report submitted to the Commission for the revocation hearing. When a written decision is rendered, such decision will issue within twenty (20) days of the violation hearing. (4-11-15)()

f. Revocation. Pursuant to a violation hearing or waiver of such hearing and a finding of guilt was made on one (1) or more of the violations, the Commission will consider whether or not parole will be revoked. (5-3-03)

i. The revocation hearing will include personal attendance of the alleged parole violator. ()

ii. The Commission has full discretion ~~in granting to~~ reinstate ~~the offender on to~~ parole, impose alternative options to or revocation, including sanctions, of or revoke parole. ~~A hearing with the offender may be conducted or the decision may be made along with deliberation on an Absentia Parole Revocation. (see Subsections 400.07.g.i. and 400.07.g.ii.) Unless the offender has waived his right to be present and the Commission accepts such waiver as set forth in Subsection 400.07.g. of these rules, the alleged parole violator will appear before the Commission at the revocation hearing.~~ The Commission will consider ~~whether the parole will be reinstated or revoked~~ all options available, and will state ~~the~~ its reasoning if parole is revoked. (3-8-16)()

g. Absentia Hearing. The Commission can ~~revoke parole without the subject's~~ hold a revocation hearing without the alleged parole violator's appearance if the ~~subject~~ alleged parole violator has signed the proper ~~commission form~~ document waiving the right to appear before the Commission, and the Commission accepts such a waiver. The Commission will determine if parole will be considered once the revocation decision has been made. (3-23-98)()

i. If new criminal charges result in a new commitment and incarceration, the ~~subject~~ alleged parole violator can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)()

ii. If the ~~subject~~ alleged parole violator has absconded supervision, and is re-incarcerated in another state without a new conviction, the ~~subject~~ alleged parole violator can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)()

08. Miscellaneous Revocation Information. (3-23-98)

~~a. The executive director will determine who will conduct all hearings involved in the revocation process.~~ (3-23-98)

~~ba.~~ ba. The Commission, through the Executive Director, shall designate the county, state, or other facility where the alleged parole violator shall be held. The Commission's order shall be sufficient authority by law to direct any county sheriff or the Board of Correction to hold an alleged parole violator in custody until such time as the Commission directs his removal or transfer. (3-23-98)

~~eb.~~ eb. The alleged parole violator can request a continuance of any hearing. The hearing officer, Executive Director, or the Commission will determine if the continuance will be granted. If the alleged parole violator requests a continuance of any hearing, said request will constitute a waiver of any and all time limits involved. (4-11-15)

09. ~~Inability to Assist in Defense~~ Competency to Assist in Defense. (3-23-98)()

a. Specific time limits pertinent to the case may be ~~waived~~ stayed. (3-23-98)()

~~b. At the hearing officer or executive director's discretion, an attorney may be appointed for the offender at commission expense.~~ (4-11-15)

~~eb.~~ eb. A psychological competency evaluation may be requested by the Commission and mental health treatment may be deemed appropriate. (4-11-15)()

~~dc.~~ dc. A status update of the case will be made at regular intervals, and the Executive Director will determine how the case will proceed. (3-23-98)

10. Findings/Decisions. (3-23-98)

a. At any time following arrest on a Commission warrant, ~~the Executive Director or~~ the Commission will decide if the parolee will be released to continue parole or be considered for alternative options to revocation. (5-3-03)()

b. If it is determined at the preliminary hearing that there is no probable cause to support the charges, the parolee will be released to continue parole. (3-23-98)

c. After a violation hearing, the hearing officer will prepare a report of findings summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. (4-11-15)

i. ~~If the hearing officer may makes a finding of guilt, the hearing officer but~~ may recommend to the Executive Director ~~that the offender be reinstated on parole or the Commission immediate reinstatement or reinstatement upon successful completion of an alternative option to revocation~~ without further proceedings. (3-23-98)()

ii. Two (2) members of the Commission may meet to make decisions on the disposition of parole violations. Such decisions must be unanimous, and in the event they are not unanimous, then the parole violation disposition decision will be made by a majority of the full Commission at the next quarterly meeting or a special meeting pursuant to Section 20-210, Idaho Code. ()

iii. The ~~offender~~ alleged parole violator is entitled to receive a copy of all reports of findings of hearings. (3-23-98)()

11. Forfeiture of Time on Parole. If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on an agent's warrant or Commission, or both, warrant may be forfeited, in whole or in part, and may not be deemed a part of the sentence for which the offender was committed. (4-11-15)

a. ~~The Any~~ time the offender is incarcerated on an agent's warrant and a Commission warrant will be credited toward the sentence, including discretionary jail time. (4-11-15)()

~~b. If the offender was incarcerated at any time during the parole period and such incarceration was on an agent's warrant and/or commission warrant, this time will be credited toward the sentence; this includes a reinstatement case.~~ (3-23-98)

~~eb.~~ The offender will not receive credit for incarceration time if the incarceration was for a new crime and the Commission and parole officer did not initiate violation proceedings. (3-23-98)

~~ec.~~ The offender must provide the hearing officer or the Executive Director with dates of incarceration and the location of the incarceration. (3-23-98)

401. -- 449. (RESERVED)

450. COMMUTATION PURSUANT TO SECTION 20-240, IDAHO CODE.

Commutation is a process whereby clemency may be considered and granted to modify a sentence imposed by the sentencing jurisdiction. (3-30-01)()

01. Petition. A petition must be submitted to initiate the process. (3-30-01)

a. The only acceptable form is the one provided by the Commission, and it must be signed by the petitioner and the case manager. (3-23-98)()

b. The petition must be typed and completed correctly, per the instructions on the form, or it may will not be returned considered. (3-23-98)()

c. The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. (3-23-98)

i. Change a consecutive sentence to concurrent. (3-23-98)

- ii. Reduce the maximum length of sentence. (3-23-98)
- iii. Reduce the minimum fixed term of a sentence. (3-30-01)
- iv. Change a fixed sentence to indeterminate. (3-23-98)
- v. Change a sentence in any other manner not described. (3-23-98)
- d. The Commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (3-23-98)
- e. Petitions may be considered at any time by the Commission, but are usually scheduled for consideration ~~for~~ in the quarterly sessions ~~of~~ in January, April, July, and October. ~~(3-23-98)~~ ()
- f. Petitions must be received no later than the first day of the month prior to the next designated quarterly hearing session for which the offender is applying. ~~(4-11-15)~~ ()
- g. Review or deliberation on the petition by the Commission will be conducted in executive session. (3-23-98)
- h. Any petition may be continued for additional information or for further consideration. (3-23-98)
- i. The petitioner will be sent written notice of the decision. (3-23-98)
- j. The petition is limited to no more than ~~four (4)~~ six (6) pages; the petition ~~may be returned before submission to the commission if the~~ will not be considered if the document exceeds this number. ~~(3-23-98)~~ ()
- ~~k. The petition must be readable or it may be returned. (5-3-03)~~
- ~~k. A parole violator is not eligible to file a petition until the violation has been heard and a decision made by the violation hearing officer adjudicated. (4-11-15)~~ ()
- 02. **Commutation Hearing.** The scheduling of a hearing is at the complete discretion of the Commission; if a commutation hearing is scheduled, the Commission will determine the date of the hearing. ~~(3-23-98)~~ ()
- a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)
- b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. (3-23-98)
- c. All rules of procedure governing hearings will apply to a commutation hearing. (3-23-98)
- d. The decision and supporting documents regarding a commutation will be filed with the ~~S~~Secretary of ~~S~~State. ~~(3-30-01)~~ ()
- fi. The fact and number of ~~D~~dissenting votes of the Commission~~ers voting~~ will be a matter of public record. The dissenting votes of any Commissioner voting shall be separately reduced to writing with the reason for said dissent and signed by the dissenting Commissioner. The written dissent shall be submitted to the Office of the Secretary of State. Disclosure of the dissenting vote(s) and reason(s) shall be maintained and disclosed in accordance with the Idaho Public Records Act, Section 74-101, Idaho Code, et seq. ~~(3-23-98)~~ ()
- ii. All written material considered in the decision process of a commutation will be a matter of public record with the exception of the pre-sentence investigation report, victim information, mental health records, criminal history information, medical records, or other documents determined by the Executive Director or Commissioners or designee as confidential, will be submitted to the Office of the Secretary of State and will be a matter of public record.

(4-11-15)()

03. Approving and Granting. Only rarely will circumstances be extraordinary enough to approve a petition for a commutation hearing or to grant a commutation. (3-23-98)

a. The granting of a commutation hearing shall not be interpreted as intent to commute a sentence. (3-23-98)

b. Habitative progress alone will not be regarded as sufficient to grant a commutation hearing or to commute a sentence. (3-23-98)

04. Authority to Grant. The Commission has full and final authority to grant commutations except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of a controlled substance pursuant to Section 20-240, Idaho Code. (3-23-98)()

a. In the cases of offenses listed in this section, the Commission's decision on the commutation application shall only constitute a recommendation only to the GGovernor. (3-23-98)()

b. Following such the hearing, the Commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-23-98)()

c. No commutation for the offenses listed in this section will be effective until presented to, and approved by the governor, and any commutation recommendations not so approved within thirty (30) days of the Commission's recommendation shall be deemed denied. (4-11-15)

05. Death Sentence. (3-23-98)

a. An individual file of each offender under sentence of death may be maintained in the Commission office. (4-11-15)

b. At any time, the Commission may review a file, information, or interview an offender without activating the commutation process. (4-11-15)

c. Commutation consideration must be initiated by the petitioner or his legal counsel. (3-30-01)

i. The petition must contain the signature of the petitioner, unless the petitioner is unable to sign the petition. In this such a case, the Executive Director will determine if it is the desire of the person to submit a petition. (4-11-15)()

ii. Legal counsel must provide verification that he has been retained by the petitioner or his family to prepare and submit the petition. (3-30-01)

d. The Commission may elect to receive and consider a petition for a death penalty modification at any time. (3-23-98)

451. -- 499. (RESERVED)

500. SELF-INITIATED ~~PROGRESS REPORT~~ PAROLE RECONSIDERATION. An offender may appeal the last parole hearing decision of the Commission. (4-11-15)()

01. Petition. An offender making a request for reconsideration of parole denial must initiate the process by submitting an application. (4-11-15)

a. The only acceptable form is the one provided by the Commission, and it must be signed by the petitioner and case manager. (3-23-98)()

- ~~i. The petition must be the original petition. (4-11-15)~~
- ~~ii. The Case Manager is to include with the petition, once signed by the offender and the Case Manager, the disciplinary history, classes history, and the assessments. (4-11-15)~~
- b. The petition must be typed and completed correctly, per the instructions on the form, or it may will not be returned considered. (3-23-98)()
- c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (3-23-98)
- d. A petition may be filed by any offender who is currently incarcerated. (4-11-15)
- e. Following the initial submission, the Commission may consider but one (1) application from any one (1) person in any twelve-month (12) period. (4-11-15)
- i. A petition may be submitted six (6) months after a qualified hearing. A qualified hearing includes: (4-11-15)
- (a) Regular parole hearings; (4-11-15)
- (b) Parole revocation hearings; (4-11-15)
- (c) Hearing officer reviews; and (4-11-15)
- (d) SIPR hearings. (4-11-15)
- ii. A petition may be submitted once every twelve (12) months if a hearing is not granted. (4-11-15)
- f. Petitions may be considered at any time by the Commission. (3-30-01)
- g. Petitions must be received no later than the first day of the month prior to the next month's hearing session. (3-8-16)
- h. Review or deliberation on the petition by the Commission will be conducted in executive session. (3-23-98)
- i. Any petition may be continued for additional information or for further consideration. (3-23-98)
- j. The petitioner will be sent written notice of the decision. (3-23-98)
- k. The petition is limited to ~~no more than~~ four (4) pages; the petition ~~may be returned before submission to the commission~~ will not be considered if the ~~document~~ petition exceeds this number. (3-23-98)()
- ~~l. The petition must be readable or it may be returned. (5-3-03)~~
- 02. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. (3-23-98)
- a. If a hearing is scheduled, the Commission will determine the date of the hearing. (3-8-16)
- b. If a hearing is scheduled, the previous decision of the Commission is considered null and void. (3-8-16)
- 03. Amended Decision.** The Commission may elect to amend any decision without conducting another hearing. (3-23-98)
- 501. -- 549. (RESERVED)**

550. PARDON PURSUANT TO SECTION 20-240, IDAHO CODE.

A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. A pardon does not expunge or remove the crime from the applicant's criminal history. (3-23-98)()

01. General. An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. (3-23-98)

a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than three (3) years after ~~completion of the sentence~~ discharge from supervision or incarceration. (3-23-98)()

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted for consideration no sooner than five (5) years after ~~completion of the sentence~~ discharge from supervision or incarceration. (3-23-98)()

c. A pardon application will not be considered while an offender is incarcerated. ()

d. The Commission will determine whether a hearing will be granted and the applicant will be advised notified of the decision in writing. ()

02. Application. A pardon application can be obtained from the Commission office or on the Commission website. (4-11-15)

a. The application must be completed and returned to the Commission office. (3-23-98)

i. The completed application must include the reasons why the pardon is requested. (3-23-98)

ii. The applicant may attach letters of recommendation or other documents to support the request. (3-23-98)

iii. The applicant must include copies of all court judgments and conviction documents, as well as police reports for each crime for which a pardon is requested~~for~~. (4-11-15)()

iv. A pardon may be requested only once during a twelve-month (12) period unless otherwise stated by the Commission. (4-11-15)

v. An application may not be considered if there is significant law enforcement contact since sentence or discharge. ()

b. ~~Following Upon receipt of the completed application, a request for an investigation will be made of correctional field personnel or hearing officer in the area in which the applicant resides, and the report shall include, but shall not be limited to~~ and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report will contain the following: (3-8-16)()

i. A ~~criminal~~ records check ~~of the applicant~~ will be conducted to include any law enforcement contact since the release from supervision or incarceration. (3-23-98)()

ii. The applicant's employment history since ~~completion of sentence~~ discharge from supervision or incarceration. (3-23-98)()

iii. The applicant's ~~status as a good citizen~~ willingness to fulfill the obligations of a law abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. (3-23-98)()

iv. The applicant's employment and education status, including any professional or vocational

achievements, training, and any additional information as deemed necessary or appropriate. ()

iv. Confirmation that all restitution and fines as ordered by the sentencing court are paid. ()

iv. An interview with the applicant ~~should~~ may be conducted and a summary of the interview provided. Said interview may be conducted in person or by electronic means. (3-23-98)()

v. ~~Evidence of all restitution and fines as ordered by the sentencing court are paid.~~ (3-8-16)

vi. ~~Any additional information as deemed necessary or appropriate.~~ (3-23-98)

e. ~~If the applicant is residing in a jurisdiction which refuses to conduct an investigation of the case, the applicant may be required to come to Idaho for an interview with a parole officer or hearing officer, or the interview may be conducted by electronic means. A normal investigation will then be completed.~~ (4-11-15)

~~03. Report. Pursuant to the receipt of the completed report, a review may be conducted at the next scheduled hearing session of the commission. Once the report is received, staff may determine if additional information is needed.~~ (4-11-15)

a. ~~The commission will conduct such review in executive session.~~ (3-23-98)

b. ~~The commission will determine whether a hearing will be granted and the applicant will be advised of the decision.~~ (3-23-98)

e. ~~Any application may be continued for further consideration or additional information.~~ (3-23-98)

043. Hearing. The scheduling of a hearing is at the complete discretion of the Commission. If a pardon hearing is scheduled, the Commission will determine the date of the hearing. (4-11-15)

a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

c. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. (3-23-98)

i. The applicant's appearance at the hearing is not mandatory but is encouraged. If appearance is not possible or the applicant decides not to attend the hearing, the applicant must notify the Commission in writing. (3-23-98)()

ii. Upon request, ~~the~~ Commission may continue the hearing to a later date in order for the applicant to attend; ~~make a personal appearance and~~ such continuance will not require additional publication of the hearing. (3-23-98)()

d. All rules of procedure governing hearings will apply at a pardon hearing. (3-23-98)

e. The decision and supporting documents regarding the decision to grant or deny a pardon will be filed with the secretary of state. (3-23-98)

i. ~~Dissenting votes of the commissioners voting are submitted to the office of the secretary of state and become a matter of public record~~ The fact and number of dissenting votes of the Commissioners voting will be a matter of public record. The dissenting votes of any Commissioner voting shall be separately reduced to writing with the reason for said dissent and signed by the dissenting Commissioner. The written record of the vote by each voting Commission dissent shall be submitted to the Office of the Secretary of State. Disclosure of the dissenting vote(s) and reason(s) shall be maintained and disclosed in accordance with the Idaho Public Records Act, Section 74-101, Idaho

Code, et seq.

~~(3-23-98)~~()

ii. All written material considered in the decision process, with the exception of the pre-sentence investigation report, victim information, mental health records, criminal history information, and medical records, or other documents determined by the Executive Director or Commissioners or designee as confidential, will be submitted to the office of the ~~S~~Secretary of ~~S~~State and will be a matter of public record. ~~(3-8-16)~~()

f. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-23-98)

05. Authority to Grant. The Commission has full and final authority to grant pardons, except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances pursuant to Section 20-240, Idaho Code. ~~(3-23-98)~~()

a. In the cases listed in this section, the Commission's decision to grant a pardon shall only constitute a recommendation ~~only~~ to the governor. ~~(3-23-98)~~()

b. Following such hearing, the Commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-23-98)

c. No pardon for the offenses listed in this section will be effective until presented to and approved by the governor, and any pardon recommendations not so approved within thirty (30) days of the pardon hearing shall be deemed denied. (3-23-98)

d. The granting of a pardon does not expunge the crime from the ~~Idaho~~ applicant's criminal history. ~~(3-8-16)~~()

551. RESTORATION OF FIREARMS RIGHTS ~~UNDER~~ PURSUANT TO SECTION 18-310, IDAHO CODE.

01. General. An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(3), Idaho Code. This is not a pardon for the conviction of a crime, nor is the ~~Idaho~~ applicant's criminal record expunged. ~~(3-8-16)~~()

02. Application. An application may not be made until five (5) years after the date of final discharge from supervision or incarceration. ~~(4-11-15)~~()

a. An application may be obtained from the Commission office or on the Commission website. (4-11-15)

b. The application must be the original and returned to the Commission office. (4-11-15)

i. The application must request the restoration of the right to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. (4-11-15)

ii. The application must be in writing and legible. (4-11-15)

iii. All court convictions, judgment orders, including any and dismissal documents, as well as police reports related to said convictions must accompany the application. ~~(4-11-15)~~()

iv. An application may be submitted once every twelve (12) months, or at the Commission's discretion. (4-11-15)

v. The petition must state the reason for the request. (4-11-15)

vi. Review or deliberation on the petition will be conducted in executive session. (4-11-15)

v. The Commission will determine whether a hearing will be granted and the applicant will be advised of the decision. ()

vi. An incarcerated offender is not eligible to apply for the restoration of gun rights until completion of sentence or supervision after 5 years have elapsed. ()

c. Following Upon receipt of the completed application, a request for an investigation will be made of correctional field personnel or hearing officer in the area where the applicant resides and required documentation. eligible applications will be reviewed by the Commission. The Commission may request and investigation of the applicant by Commission staff. The report shall include, but shall not be limited to, the following: (3-8-16)()

i. A ~~criminal~~ records check ~~of the applicant~~ will be conducted to include any law enforcement contact since release from supervision or incarceration. (3-8-16)()

ii. The applicant's employment history since ~~completion of sentence~~ discharge from supervision or incarceration. (3-8-16)()

~~iii. The applicant's status as a good citizen.~~ (3-8-16)

iii. The applicant's willingness to fulfill the obligations of a law abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. ()

iv. The applicant's employment and education status, including any professional or vocational achievements, training and any additional information as deemed necessary or appropriate. ()

v. Evidence of Confirmation that all restitution and fines as ordered by the sentencing court have been paid. (3-8-16)()

~~vi.~~ An interview with the applicant ~~should~~ may be conducted and a summary of the interview provided. The interview may be conducted in person or by electronic means. (3-8-16)()

~~03. Report. Pursuant to the receipt of the completed report, a review may be conducted at the next scheduled hearing session of the commission. Once the report is received, staff may determine if additional information is needed.~~ (3-8-16)

~~a. The commission will conduct such review in executive session.~~ (3-8-16)

~~b. The commission will determine whether a hearing will be granted and the applicant will be advised of the decision.~~ (3-8-16)

~~c. Any application may be continued for further consideration or additional information.~~ (3-8-16)

~~043.~~ **Hearing.** The scheduling of a hearing is at the complete discretion of the Commission or the Executive Director. (4-11-15)

a. If a hearing is scheduled, the Commission will determine the date of the hearing. (4-11-15)

b. Any ~~petition~~ hearing may be continued for additional information. (4-11-15)()

c. Notice of a restoration of firearm rights hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()

d. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. ()

e. Written notice of the hearing date, time, and location will be sent to the applicant at the address

given on the application or as otherwise requested. ()

i. The applicant's appearance at the hearing is not mandatory but is encouraged. If the applicant decides not to attend the hearing, the applicant must notify the Commission in writing. ()

f. The decision and supporting documents regarding the decision to grant or deny an application to restore firearms rights will be filed with the Secretary of State. ()

i. The fact and number of dissenting votes of the Commissioners voting will be a matter of public record. The dissenting votes of any Commissioner voting shall be separately reduced to writing with the reason for said dissent and signed by the dissenting Commissioner. The written record of the vote by each voting Commission dissent shall be submitted to the office of the Secretary of State. Disclosure of the dissenting vote(s) and reason(s) shall be maintained and disclosed in accordance with the Idaho Public Records Act, Idaho Code Section 74-101 et seq. ()

ii. All written material considered in the decision process, with the exception of the pre-sentence investigation report, victim information, mental health records, criminal history information, medical records, or other documents determined by the Executive Director or Commissioners or designee as confidential, will be submitted to the Office of the Secretary of State and will be a matter of public. ()

g. The applicant will be given written notice of the decision and such notice will be sent to the last known address. ()

054. Authority to Grant. The Commission has the full and final authority and discretion to grant restoration of civil rights to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. (4-11-15)()

065. Exceptions. See the exceptions listed in Section 18-310, Idaho Code. (4-11-15)

552. -- 599. (RESERVED)

600. REMISSION OF FINE OR PENALTY PURSUANT TO SECTION 20-210A, IDAHO CODE.

01. Request. An application for remission of fine or penalty must be made to the Commission. (3-23-98)

a. The application must be in writing. (3-23-98)

b. The application must outline the reasons action is requested to remit such fine or penalty. (3-23-98)

c. The applicant must submit a certified copy of the judgment or order assessing said fine or penalty from the jurisdiction that assessed such penalty. (4-11-15)()

02. Review. The Commission will review the request to remit a fine or penalty. (3-23-98)

a. The Commission will usually review such application on a month designated as a quarterly session, but may make such review during any session. The review will be conducted by the full Commission. (4-11-15)

b. The Commission will conduct such review in executive session. (3-23-98)

c. Any application may be continued for further consideration or additional information. (3-23-98)

d. The Commission will determine whether a hearing will be granted and the applicant will be advised notified of the decision in writing. (3-23-98)()

03. Hearing. The scheduling of a hearing is at the complete discretion of the Commission. (3-23-98)

- a. If a hearing is scheduled, the Commission will determine the date of the hearing. (3-23-98)
- b. If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)
- c. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)
- d. All rules of procedure governing hearings will apply to such scheduled hearing. (3-23-98)
- e. The decision and supporting documents regarding the remission will be filed with the clerk of the court where said fine or penalty or forfeiture was assessed. ~~This will constitute a satisfaction of the judgment.~~ (4-11-15)()
- i. The fact and number of dissenting votes of the Commission will be a matter of public record. The written record of the vote by each voting Commission member shall be kept confidential and privileged from disclosure, provided the record shall be made available, upon request, to the Governor or chairman of the Senate Judiciary and Rules Committee and the chairman of the House of Representatives Judiciary, Rules and Administration Committee, pursuant to Section 20-213A(2), Idaho Code. ()
- ii. All written material considered in the decision process, with the exception of the pre-sentence investigation report, victim information, mental health records, criminal history information, medical records or other documents determined by the Executive Director or Commissioners or designee as confidential, will be submitted to the Office of the Secretary of State and will be a matter of public record. (3-23-98)()
- ~~ii. Dissenting votes of the commissioners voting will be a matter of public record.~~ (3-23-98)
- f. Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. (3-23-98)
- i. The applicant's appearance at the hearing is not mandatory; however, appearance may be required and the applicant will be notified. (3-23-98)
- ii. The Commission may continue the hearing to a later date for any reason and such continuance will not require notice to be published again. (3-23-98)
- 04. Satisfaction of Judgment.** If the Commission determines that such fine or penalty is to be remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. (3-23-98)

601. -- 799. (RESERVED)

800. FOREIGN NATIONAL TREATY TRANSFER PURSUANT TO SECTION 20-104, IDAHO CODE.

Under Section 20-104, Idaho Code, an offender may be transferred, upon request, to his country of citizenship if a treaty exists between his country and the United States. The Commission's decision is only a recommendation to the Governor as the Governor will have final approval of the transfer. (3-8-16)

01. Request for Transfer. An offender may request a transfer to his country of citizenship. The Commission will receive the application and relevant documents from the Department of Correction. The Commission may request additional information from the applicant, the victim, the Department, or any other source the Commission deems appropriate. (3-8-16)()

a. The offender makes an application and a release request to the Idaho Department of Correction's central records. The release shall provide consent to the release of medical, psychological, programming, educational records, and other such information as relevant. The Attorney General will request the PSI. The offender must be a citizen of the country to which he is requesting a transfer. (3-8-16)()

b. The United States and the foreign country must be parties to a treaty that provides for the transfer or exchange of convicted offenders. ()

c. The offender must not be serving a life sentence. ()

d. The offender cannot be less than two (2) years from his parole eligibility date. ()

e. The offender must meet the Department of Justice's guidelines for international transfer applications as follows: ()

i. The offender must not have a death sentence. ()

ii. The offender must be serving determinate sentence. ()

iii. The offender must not be serving a sentence for an immigration offense. ()

~~b.~~ Upon gathering the documentation, central records will forward the application and packet to the commission. (3-8-16)

~~#2.~~ **Schedule for Review of Application.** The Commission will ~~set the matter for consideration~~ schedule the application for review during a scheduled hearing session at a time and place of its choosing. (3-8-16)()

~~(1)a.~~ The Commission has complete discretion and authority to make a recommendation to the Governor. (3-8-16)

~~(2)~~ ~~The commission may request additional information from the parties, the offender making the application, the offender's victim, or any other source the commission deems appropriate.~~ (3-8-16)

~~(3)b.~~ The offender is not entitled to be personally present, to have counsel, to present witnesses or evidence, to have any particular evidence considered or to designate the location or time. (3-8-16)()

~~#3.~~ **Issuance of Written Recommendation.** Following the Commission's consideration, a non-binding written recommendation will be issued to the Governor for his consideration. A copy of the recommendation will be sent to the Department's central records. (3-8-16)()

~~(1)a.~~ The offender is not entitled to appeal the Commission's recommendation or the Governor's decision. (3-8-16)()

~~(2)b.~~ The offender may reapply two (2) years from the date of denial by either the Governor or the Commission. (3-8-16)

~~##4.~~ **Approval of Transfer Request.** If the Governor approves the transfer request, and the receiving state country accepts the offender for transfer, the request packet is sent to the Department of Justice for consideration and approval. Once the Department of Justice approves the transfer, the offender is under the jurisdiction of the Department of Justice. (3-8-16)()

~~02-~~ ~~Eligibility Requirements for Transfer.~~ (3-8-16)

~~a.~~ The offender must be a citizen of the country to which he is requesting a transfer. (3-8-16)

~~b.~~ The offender must not have a life sentence. (3-8-16)

~~c.~~ The offender cannot be less than two (2) years from his parole eligibility date. (3-8-16)

IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD
57.01.01 – RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD
DOCKET NO. 57-0101-1701
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 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 18-8314, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule and reasoning was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 541-544](#).

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

The SOMB does not anticipate any fiscal impact to the state general fund resulting from this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Nancy Volle at (208) 658-2002.

DATED this 20th day of November, 2017.

Nancy Volle, Program Manager
Sexual Offender Management Board
1299 N. Orchard St., Ste 110
Boise, ID 83706
(208) 658-2002
E-mail: somb@idoc.idaho.gov

<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 18-8314, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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:

IDAPA 57.01.01, “Rules of the Sexual Offender Management Board,” will be modified to eliminate the following documents that are incorporated by reference: “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision, and “Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,” 2014 revision. References to “ATSA” will also be eliminated from administrative rule language. Similarly, references to the Association for the Treatment of Sexual Abusers and “ATSA” will be removed from the SOMB’s Standards and Guidelines for Adult Sexual Offender Management Practices and the Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders which are incorporated by reference into IDAPA 57.

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:

The SOMB does not anticipate any fiscal impact to the state general fund from the Rule changes resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, formal negotiated rulemaking was not conducted as the change is simple in nature. This rulemaking eliminates references and incorporated by reference documents related to the Association for the Treatment of Sexual Abusers.

However, the agency directly notified the impacted SOMB-certified psychosexual evaluators, sexual offender treatment providers and post-conviction sex offender polygraph examiners soliciting and reviewing feedback on emerging concerns prior to the decision to go forward with this rulemaking.

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 Sexual Offender Management Board is legislatively mandated to establish standards, qualification and certification procedures for post-conviction psychosexual evaluations/evaluators; sexual offender treatment and the providers who offer these services; and post-conviction sexual offender polygraph examiners. Rulemaking authority was granted to the board to carry out these provisions.

The practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are compiled into documents entitled “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices;” and “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders;” which are both incorporated by reference into this rulemaking to give them the force and effect of law. These documents are not

being reprinted in this chapter of rules due to their length and format as well as the cost for republication. They can be found on the agency's website: <http://somb.idaho.gov>.

Previously incorporated by reference materials – “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision; and “Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,” 2014 are being eliminated in the proposed rulemaking. While the Association for the Treatment of Sexual Abusers remains a highly regarded international organization among the sexual offender management community, trending philosophical changes in methodologies utilized in the treatment and management of both adults and juveniles who have been convicted of committing sexual offenses seem to be trending away from standards compatible with Idaho practices. The SOMB does not view these trends as being beneficial to the safety and security of the citizens of Idaho, the criminal justice system or potential liabilities to the providers who are certified by this board. While certificate holders are not required by the standards and guidelines of the SOMB to be members of ATSA, the SOMB's standards require certificate holders to adhere to ATSA's standards.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Volle at (208) 658-2002.

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 25, 2017.

DATED this 29th day of August, 2017.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 57-0101-1701

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-20-14)

~~01. “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, Website <http://www.atsa.com/>. (3-20-14)~~

~~02. “Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,” 2014 edition, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, website <http://www.atsa.com/>. (4-11-15)~~

~~03. “Bylaws and Constitution of the American Association of Police Polygraphists,” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)~~

~~04. “Bylaws of the American Polygraph Association,” effective September 2015, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. (3-24-17)~~

~~05. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” December 2016 revision, is herein incorporated by reference and is available~~

from the Board's office and on the Board website, <http://somb.idaho.gov/>.

~~(3-24-17)~~ ()

~~064.~~ **"Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,"** December 2016~~67~~ revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>.

~~(3-24-17)~~ ()

~~075.~~ **The Sexual Offender Management Board's "Required Format for Juvenile Psychosexual Evaluation Reports,"** December 2016 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>.

(3-24-17)

~~086.~~ **The Sexual Offender Management Board's "Required Format for Adult Psychosexual Evaluation Reports,"** December 2016 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>.

(3-24-17)

(BREAK IN CONTINUITY OF SECTIONS)

011. ABBREVIATIONS.

01. APA. The American Polygraph Association.

(3-24-17)

~~02.~~ ~~ATSA. The Association for the Treatment of Sexual Abusers.~~

~~(3-20-14)~~

~~032.~~ **DSM.** The "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association.

(3-20-14)

~~043.~~ **IDOC.** The Idaho Department of Correction.

(3-20-14)

~~054.~~ **IDJC.** The Idaho Department of Juvenile Corrections.

(4-11-15)

~~065.~~ **PCSOT.** "Post conviction sexual offender testing" is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sexual offenders.

(3-24-17)

~~076.~~ **SOCB.** The Sexual Offender Classification Board.

(3-20-14)

~~087.~~ **SOMB.** The Sexual Offender Management Board.

(3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

300. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

01. General Considerations for Certified Evaluators and Certified Treatment Providers. Each person who is certified by the Board to conduct or assist with the conduct of psychosexual evaluations or provide sexual offender treatment shall:

(3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's respective discipline and area of professional licensure;

(3-20-14)

~~**b.** Adhere to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Guidelines, as referenced in Section 004 of these rules;~~

~~(4-11-15)~~

~~**e.b.** Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment;~~

(3-20-14)

~~d.c.~~ Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; (3-20-14)

~~e.d.~~ Be committed to community protection and safety; (3-20-14)

~~f.e.~~ Provide services in a manner that ensures humane and ethical treatment of clients; (3-20-14)

~~g.f.~~ Conduct testing in accordance with the person's licensing body, qualifications and experience, and in a manner that ensures the integrity of testing data; (3-20-14)

~~h.g.~~ Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (3-20-14)

~~i.h.~~ Have no sexual relationships with any client. (3-20-14)

02. General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners.
Each person who is certified by the Board to conduct post conviction sexual offender polygraph examinations shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's discipline, area of professional practice, or licensure as promulgated by any applicable regulatory board or licensing authority; (3-20-14)

b. Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the APA; (3-24-17)

c. Adhere to the ethical principles and codes, and all practice standards and guidelines for the administration of polygraph examinations generally, as promulgated by the APA or the American Association of Police Polygraphists, as referenced in Section 004 of these rules; (3-24-17)

~~**d.** Adhere to the current practice standards and guidelines pertaining to post conviction sexual offender polygraphs within the context of sexual offender management as established by the ATSA, as referenced in Section 004 of these rules;~~ (3-24-17)

~~**e.d.** Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation;~~ (4-11-15)

~~**f.e.** Have no sexual relationships with any client;~~ (3-24-17)

~~**g.f.** Take factors such as age, mental capacity and co-occurring mental health concerns into consideration when utilizing polygraphy with juvenile offenders;~~ (4-11-15)

~~**h.g.** Be committed to community protection and safety; and~~ (3-24-17)

~~**i.h.** Provide services in a manner that ensures humane and ethical treatment of clients.~~ (3-24-17)

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

61.01.06 – RULES GOVERNING PROCEDURES FOR THE OVERSIGHT, IMPLEMENTATION, ENFORCEMENT, AND MODIFICATION OF INDIGENT DEFENSE STANDARDS

DOCKET NO. 61-0106-1701 (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 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective May 1, 2018, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 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)(vi).

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 Public Defense Commission has been directed to create procedures for the oversight, implementation, enforcement and modification of indigent defense standards. The PDC intends on focusing on the portion of this rule that provides for the oversight and enforcement of the standards. The Public Defense Commission must ensure compliance through these two mechanisms so that the representation of indigent persons in Idaho is constitutionally sound.

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 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 545-553](#).

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 at (208) 332-1735.

DATED this November 24, 2017.

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

THE FOLLOWING NOTICE 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)(vi).

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

PUBLIC HEARINGS	
Wednesday, October 11, 2017 4:00 p.m. (MDT) The Grove Hotel The Riverfork Room, 3rd Floor 245 South Capitol Blvd. Boise, ID 83702	Thursday, October 12, 2017 6:00 p.m. (MDT) Canyon County Administration Building 1st Floor Public Meeting Room 111 N. 11th Avenue Caldwell, ID 83605
Tuesday, October 17, 2017 6:00 p.m. (MDT) Residence Inn 635 West Broadway Idaho Falls, ID 83402	Tuesday, October 17, 2017 6:00 p.m. (PDT) Red Lion Hotel Lewiston Port 1 Room 621 21st Street Lewiston, ID 83501
Wednesday, October 18, 2017 6:00 p.m. (MDT) Holiday Inn Express & Suites Scout Mountain Room 200 Via Venitio Pocatello, ID 83201	Wednesday, October 18, 2017 6:00 p.m. (PDT) Best Western Plus Idaho Room 506 W. Appelway Coeur d'Alene, ID 83814
Thursday, October 19, 2017 - 6:00 p.m. (MDT) Hilton Garden Inn I.B. Perrine Room 1741 Harrison Street North Twin Falls, ID 83301	

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 Public Defense Commission has been directed to create procedures for the oversight, implementation, enforcement and modification of indigent defense standards. The PDC intends on focusing on the portion of this rule that provides for the oversight and enforcement of the standards. The Public Defense Commission must ensure compliance through these two mechanisms so that the representation of indigent persons in Idaho is constitutionally sound.

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 as a result of this rulemaking: N/A

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 April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, page 52](#).

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 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 3, 2017. Written comments will also be accepted during the scheduled public hearings.

DATED this 1st day of September, 2017.

LSO Rules Analysis Memo

Italicized red text is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0106-1701

IDAPA 61 TITLE 01 CHAPTER 06

61.01.06 – RULES GOVERNING PROCEDURES FOR THE OVERSIGHT, IMPLEMENTATION, ENFORCEMENT, AND MODIFICATION OF INDIGENT DEFENSE STANDARDS

000. LEGAL AUTHORITY.

Section 19-850(1)(a)(vi), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding procedures for the oversight, implementation, enforcement and modification of indigent defense standards so that the right to counsel of indigent persons is constitutionally delivered to all indigent persons in Idaho. Additionally, Section 19-850(1)(c), Idaho Code, directs the PDC to review indigent defense providers and defending attorneys to evaluate compliance with indigent defense standards and the terms of state indigent defense grants.

()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards.” ()

02. Scope. These rules establish the procedures by which the PDC will oversee, implement, enforce and modify indigent defense standards. ()

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 create procedures for the oversight, implementation, enforcement, and modification of Indigent Defense Standards 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.

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter. ()

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESSES – 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 *operation*. 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 AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” for definitions of the terms and abbreviations used in this Rule. ()

011. – 019. (RESERVED)

020. OVERSIGHT PROGRAM.

The PDC shall oversee compliance with Indigent Defense Standards by Idaho’s counties and defending attorneys. PDC staff shall act as advisors to the PDC, to oversee and monitor the public defense delivery systems provided by the counties to assure compliance with Indigent Defense Standards. ()

021. PARTICIPANTS AND ROLES.

01. The PDC. It is the responsibility of the PDC to oversee compliance with Indigent Defense

Standards. The PDC is required to develop and adopt such standards to establish an indigent defense delivery system in Idaho that *ensures constitutional representation*. Other responsibilities of the PDC include, but are not limited to the following: ()

a. Assess county and defending attorney compliance with Indigent Defense Standards; and ()

b. File compliance report with state. ()

02. PDC Staff. PDC staff shall: ()

a. Review Indigent Defense Providers, defending attorneys and counties for compliance *with Indigent Defense Standards*; ()

b. Identify and investigate reports of non-compliance; ()

c. Prepare and assist in the implementation of corrective action plans; ()

d. Report to the PDC with respect to oversight activities; ()

e. Review Indigent Defense Grant Applications and prepare recommendations for PDC; ()

f. Review *Defending Attorney* Annual Reports and prepare recommendations for PDC; ()

g. At the request of county commissioners or indigent defense providers, review and assist with the creation of county indigent defense budgets; and ()

h. Prepare recommendations to the PDC based upon review of the above. ()

03. Indigent Defense Providers and Defending Attorneys. Indigent Defense Providers and defending attorneys are subject to the oversight program described herein. It is the responsibility of indigent defense providers and defending attorneys to cooperate and participate in compliance review. See Section 19-862A(1), Idaho Code. Other responsibilities of indigent defense providers and defending attorneys include but are not limited to the following: ()

a. Participate meaningfully in the PDC *oversight* review process; ()

b. Report to the PDC all compliance *issues* as soon as reasonably practicable *and without violating any attorney-client privilege*; ()

c. Report to the PDC all barriers to compliance despite efforts to comply; and ()

d. Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. ()

04. Counties. Counties, through each board of county commissioners, and other county staff necessary for the administration of indigent defense services, including but not limited to elected county clerks, are subject to the oversight program described herein. It is the responsibility of counties to cooperate and participate in compliance review. See Section 19-862A(1), Idaho Code. Other responsibilities of the counties include but are not limited to: ()

a. Anticipate review and be prepared to enable reviewer to issue a report within thirty (30) days of the review date; ()

b. Report to the PDC all compliance *issues* as soon as reasonably practicable; ()

c. Report to the PDC all barriers to compliance despite efforts to comply; and ()

d. Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. ()

022. MINIMUM STANDARDS.

The minimum standards for review are *Indigent Defense Standards, promulgated pursuant to Section 19-850(1)(a), Idaho Code, and* contained in IDAPA 61.01.01 through IDAPA 61.01.08 and all documents incorporated by reference. *The PDC does not have the authority to enforce compliance with any standard other than current Indigent Defense Standards.* ()

023. OVERSIGHT PROGRAM MANAGEMENT.

At a minimum, the oversight program must determine if *Indigent Defense Standards* are being met, determine if deficiencies are being identified in a timely manner, and determine if deficiencies are being cured in a timely manner or by a schedule implemented by the PDC. ()

01. Applicability of Oversight Program. The PDC shall monitor the provision of indigent defense services in Idaho. Pursuant to Section 19-850(1)(a), Idaho Code, the PDC has the duty and authority to monitor the following entities: counties, indigent defense providers and defending attorneys, and other stakeholders, as allowed by law. Such monitoring shall include, but is not limited to a review of indigent defense contracts, Compliance Proposals, indigent defense budgets, annual reports of defending attorneys, court proceedings, court and defending attorney meeting facilities, defending attorney compliance with membership in the Idaho State Bar and “Standards for Defending Attorneys,” current edition, to ensure compliance with Indigent Defense Standards. ()

a. The PDC delegates such duty and authority to PDC staff, however, the ultimate *determination* of compliance is *solely* the responsibility of the PDC. ()

02. Ongoing Coordination with Counties, Indigent Defense Providers, and Defending Attorneys. PDC staff will conduct meetings and correspond with counties, indigent defense providers, defending attorneys and other indigent defense stakeholders as needed. PDC staff will conduct formal status meetings with counties once each quarter (every three months) and defending attorneys once a year (every twelve months). More frequent meetings may be conducted if needed. ()

a. *Institutional Public Defender Office meetings:* If a defending attorney is an employee of an institutional public defender office, a formal status meeting with the chief public defender of that office satisfies the formal status meeting requirement as to that defending attorney. ()

b. *Contract Public Defender meetings:* If a county contracts with a law firm or more than one defending attorney on a single contract, a formal status meeting with one of the defending attorneys working under that contract satisfies the formal status meeting requirement as to every defending attorney working under that contract. ()

c. Meetings and correspondence are intended to ensure ongoing communications between the PDC and Stakeholders to ensure the best possible Indigent Defense Delivery System is in place to *ensure* constitutional *representation*. ()

03. PDC Staff Reporting to PDC. PDC staff must make regular reports to the PDC. All reports must be submitted electronically using a reporting system specified by the executive director, as approved by the PDC. The objective of these reporting requirements is to provide the PDC with information regarding the *compliance status* of *each* of Idaho’s Indigent Defense Delivery Systems. ()

a. Periodic Reviews. ()

i. Initial Review. PDC staff shall conduct an initial review of each Indigent Defense Delivery System. Subsequent initial reviews shall occur upon a policy change that modifies the method of delivery in a county. An initial review should be submitted to the PDC within ninety (90) days of the implementation of this rule or when a change in delivery method is instituted, and must include: ()

(1) A description of the review process; ()

- (2) A list of documents reviewed; ()
 - (3) Persons interviewed, observations made, and facilities inspected; ()
 - (4) Completed compliance checklists; ()
 - (5) Findings of Non-compliance if any; and ()
 - (6) Findings of Compliance with Recommendations, if any. ()
 - ii. Other periodic reviews. If significant compliance issues arise within a county or upon request of the PDC, PDC staff shall conduct a review. A periodic review report should be submitted to the PDC within thirty (30) days of notice of the *compliance issue* or of request and must include: ()
 - (1) Date the PDC became aware of the *compliance issue*, or date request was made by the PDC for the review; ()
 - (2) Parties contacted during the review; ()
 - (3) Reason the review was conducted; ()
 - (4) Steps taken to resolve the issue; ()
 - (5) The *corrective action plan*, if one was created; ()
 - (6) Date of next review or follow-up. ()
 - b. Annual Reviews. *On or before* April 15 of each year, PDC staff must submit to the PDC a report for each county that must include: ()
 - i. A summary of oversight activities for the immediately preceding compliance period, including a description of the provision of indigent defense services; ()
 - ii. A summary of compliance successes, deficiencies and issues; ()
 - iii. Review of implementation of prior year's Compliance Proposal; and ()
 - iv. Any changes to the provision of indigent defense services during the immediately preceding compliance period. ()
 - c. Ongoing Consultation with the PDC. PDC staff shall consult with the PDC regarding appropriate handling of issues within counties that have remained unresolved after the review process or with counties which have not complied with or have disregarded Indigent Defense Standards. At a minimum, PDC staff shall notify the PDC within ten (10) business days of compliance issues that affect the provision of indigent defense services. ()
 - i. PDC staff must ensure that an effective process is in place to identify and record compliance issues. PDC staff should assess the implementation of this identification in an ongoing manner and during oversight review. The executive director will informally assess this identification in the ongoing review of reports provided to the PDC. ()
- 04. PDC Reporting to Executive and Legislative Branches.** PDC provides annual reports to the governor of the state of Idaho and the Idaho Legislature. These presentations include updates on the provision of indigent defense delivery in Idaho and makes recommendations for legislation on indigent defense system issues. See Section 19-850(1)(b), Idaho Code. ()
- 05. PDC Reporting to Counties.** The PDC will provide ongoing feedback to counties through PDC

staff regarding information collected during reviews, compliance issues or concerns discussed by the PDC, or other relevant items related to county provision of indigent defense services. All reports created by PDC staff and submitted as the result of a review *of the county or a defending attorney providing services within that county*, shall also be issued to an authorized official of the county that is the subject of the report. ()

06. PDC Reporting to Indigent Defense Providers and Defending Attorneys. The PDC will provide ongoing feedback to indigent defense providers and defending attorneys individually or through communication via the public defense roster. Such feedback could include, but is not limited to, information collected during reviews, compliance issues or concerns discussed by the PDC, or other relevant items related to the provision of indigent defense services. All reports created by PDC staff and submitted as the result of a review shall also be issued to the subject(s) of the report. ()

07. Indigent Defense Providers and Defending Attorneys Reporting to PDC Staff. On an ongoing basis, indigent defense providers and defending attorneys shall report to PDC staff any compliance issues that relate to Indigent Defense Standards. PDC staff shall review such reports and may forward such reports to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. Additionally, indigent defense providers and defending attorneys shall follow requirements of Section 025: Corrective Action *Plans* and Compliance Verification. ()

08. Counties Reporting to PDC Staff. On an ongoing basis, counties shall report to PDC staff any compliance issues or observed deficiencies that relate to indigent defense standards. PDC staff shall review such reports and may forward such reports to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. Additionally, counties shall follow requirements of Section 025: Corrective Action *Plans* and Compliance Verification. ()

09. Other Stakeholders Reporting to PDC Staff. The PDC and PDC staff will seek and accept reports of compliance issues from stakeholders, though the PDC has no authority to mandate such reporting. Stakeholders may report whether or not a county, indigent defense provider or defending attorney are in compliance with Indigent Defense Standards. PDC staff shall review such reports and may pass such reports on to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. ()

024. PROCEDURES FOR OVERSIGHT PROGRAM.

The procedure outlined below applies to all oversight activities performed by PDC staff. On-site review will generally be structured as follows: ()

01. Time and Place. PDC staff will work with stakeholders to identify a convenient period of time for on-site oversight activities. ()

02. Notification. PDC staff will notify the subject of a review at least thirty (30) days before the review is to take place. ()

03. Extension. PDC staff may grant an extension for the conduct of a review, provided the PDC is notified by the party being reviewed within fifteen (15) days of the original notification date of the compliance review. ()

04. Items Subject to Review. PDC staff will request and review the most recent Compliance Proposals, Indigent Defense Grant applications, indigent defense contracts, indigent defense budgets, annual reports, and other items relevant to the provision of indigent defense and compliance with indigent defense standards. ()

05. Items Subject to Observation. PDC staff will conduct field observation of courtroom activities and facilities available to and used by indigent defense providers, defending attorneys, and their staff in the course of the representation of indigent defendants. In this section, “staff” refers to non-attorneys employed or contracted by an indigent defense provider or defending attorney as such employment or contract relates to the provision of indigent defense services. ()

06. Persons Subject to Interview. PDC staff will interview county officials, indigent defense providers, defending attorneys and other stakeholders who are involved in the administration of Indigent Defense

Services or could be in positions to observe compliance with Indigent Defense Standards. ()

07. Timing of Report. PDC staff will issue a report within thirty (30) days of completion of oversight review or by April 15 of each year if an annual review. ()

025. CORRECTIVE ACTION *PLANS* AND COMPLIANCE VERIFICATION.

Corrective Action Plans and Compliance Verification forms are to address how Indigent Defense Standards are to be met and how any deficiencies will be cured. ()

01. Corrective Action Plans. Upon report of *compliance issue* by PDC staff or PDC *finding* of non-compliance, a county or defending attorney shall describe a proposed corrective action to be taken. The plan shall be submitted to the PDC electronically using a reporting system specified by the executive director, as approved by the PDC. ()

a. County Response. Within sixty (60) days of the date of a report issued by PDC staff *in which the county is the subject*, the county shall respond in writing to each finding of non-compliance or finding of compliance with recommendation. The county shall describe a corrective action to be taken by the county. The county may request from the PDC an extension of up to sixty (60) days in which to describe a corrective action and submit it to the PDC. ()

b. Indigent Defense Provider and Defending Attorney Response. Within sixty (60) days of the date of a report issued by a PDC Staff *in which an attorney is* the subject, *the* indigent defense provider or defending attorney shall respond in writing to each finding of non-compliance or finding of compliance with recommendation. The attorney shall describe a corrective action to be taken. The attorney may request from the PDC an extension of up to sixty (60) days in which to describe a corrective action and submit it to the PDC. ()

c. Follow-up Reviews. PDC staff shall conduct follow-up reviews of counties, indigent defense providers and defending attorneys when a report included findings of non-compliance. The follow-up review shall occur within a reasonable time, but not more than sixty (60) days following receipt of a response to the report. Such reviews shall occur monthly until complete implementation of the corrective action has occurred. PDC staff shall provide monthly updates to the PDC regarding the subject of the report. Monthly updates by PDC staff to the PDC must include all issues that have not yet been corrected. ()

d. Annual Follow-up Review. If implementation of a Corrective Action Plan will take longer than three hundred sixty-five (365) days, PDC staff shall provide a formal yearly report regarding the status of the corrective actions to the PDC and the subject of the report. Within thirty (30) days of the date of the annual follow-up review, the subject of the report shall respond in writing to each continued finding of non-compliance and describe the proposed corrective action to be taken. ()

02. Compliance Verification. If in any given fiscal year, a county does not apply for an Indigent Defense Grant, the county shall submit a compliance verification form. See IDAPA 61.01.04 for further guidance. ()

026. ENFORCEMENT.

Pursuant to Section 19-862A(1), Idaho Code, all counties, indigent defense providers and defending attorneys shall cooperate and participate with the PDC in the review of their indigent defense services. ()

01. Failure to Submit to a Review. If a county, indigent defense provider or defending attorney fails to cooperate with a review by PDC staff, the following actions will be taken: ()

a. Review by the PDC executive director as described in Subsection 023.03.a. and Section 024 of this chapter. ()

b. Continued failure to submit to a review will result in a certified letter designating a deficiency and the PDC may take action under Section 19-862A, Idaho Code, as allowed by law. ()

02. Failure to Respond to Report. If a county, indigent defense provider, or defending attorney fails

to respond to a report within the required time, *the PDC will be notified. If the PDC finds no just cause for the failure to respond to the report*, a certified letter will be sent to the subject of the report *indicating the subject has failed to comply*. The PDC may *then* take action *pursuant to* Section 19-862A(11), Idaho Code. ()

03. County Non-compliance. If a county fails to take steps to correct a *finding* of *non-compliance*, the PDC may act pursuant to Section 19-862A(11), Idaho Code. ()

04. Defending Attorney Non-compliance. If a defending attorney fails to take steps to correct a Finding of Non-compliance, the following actions will be taken: ()

a. The county or counties for which the defending attorney provides indigent defense services will be notified via certified letter as to the non-compliance. ()

b. The defending attorney will be removed from the *Public Defense Roster*. The defending attorney may re-apply for inclusion on the public defense roster after the *finding* of *non-compliance* is corrected. The defending attorney may still provide indigent defense services during this time. ()

c. If the defending attorney continues to be deemed non-compliant after a period of six (6) months, the defending attorney will be prohibited from accepting any additional indigent defense cases in any county in which said attorney has been deemed non-compliant. Such prohibition shall remain in place until the PDC makes a finding that the defending attorney is compliant. ()

05. Designation of a Deficiency. The designation of a deficiency is a formal *finding* made by the PDC *that* a county or defending attorney *has failed to comply with Indigent Defense Standards within the timeline as required by Section 19-862A(9), Idaho Code*. The PDC will maintain a list of designated deficiencies that will be made available upon request. When a deficiency exists for a period of more than six (6) months or persists through the IDG application process without a compliance proposal that sufficiently addresses such deficiency, *the PDC will assess whether the party responsible has* willfully and materially failed to comply. *Upon such a finding*, the PDC will take action *pursuant to* Section 19-862A(11), Idaho Code, *which may include the withholding of Indigent Defense Grant funds or the PDC takeover of an indigent defense delivery system*. ()

06. Material Non-compliance. *Established standards are deemed crucial to the constitutional representation of indigent defendants and the effective provision of indigent defense services. A violation of an established standard is material non-compliance.* ()

07. Willful Non-compliance. *The violation of an established standard that is done voluntarily with either an intentional disregard of, or indifference to, the requirements of these rules will be deemed willful non-compliance.* ()

08. Final Determination of Non-compliance. The PDC is ultimately responsible for the determination that a county or defending attorney has willfully and materially failed to comply with Indigent Defense Standards. Pursuant to Section 19-862A(11), Idaho Code, the PDC may upon review of PDC staff reports, stakeholder reports, Indigent Defense Grant applications, Compliance Verification reports, information received relevant to the provision of indigent defense services, or observation by PDC staff or the PDC, deem a county or defending attorney has willfully and materially failed to comply. Upon such determination, the PDC will take action *pursuant to* Section 19-862A, Idaho Code, as allowed by law. ()

027 – 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. 61-0107-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective May 1, 2018, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 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).

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 amendment to this rule will create standards for defending attorneys who represent indigent defendants in capital cases and standards related to investigation and the use of experts. Standards related to capital counsel will be derived from Idaho’s Principles of an Indigent Defense Delivery System (IPIDDS) principle number 5, Idaho Code 19-850(1)(a)(vii)(5), and take into account ABA’s Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, revised edition, February 2003. Defending attorneys will be required to conform to such performance standards if handling capital cases. Standards related to investigation and the use of experts are supported by IPIDDS as a whole, Idaho Code 19-850(1)(a). All defending attorneys will be required to conform to investigation standards.

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 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 554-558](#).

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 at (208) 332-1735.

DATED this 24th day of November, 2017.

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

THE FOLLOWING NOTICE 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).

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

PUBLIC HEARINGS	
Wednesday, October 11, 2017 4:00 p.m. (MDT) The Grove Hotel The Riverfork Room, 3rd Floor 245 South Capitol Blvd. Boise, ID 83702	Thursday, October 12, 2017 6:00 p.m. (MDT) Canyon County Administration Building 1st Floor Public Meeting Room 111 N. 11th Avenue Caldwell, ID 83605
Tuesday, October 17, 2017 6:00 p.m. (MDT) Residence Inn 635 West Broadway Idaho Falls, ID 83402	Tuesday, October 17, 2017 6:00 p.m. (PDT) Red Lion Hotel Lewiston Port 1 Room 621 21st Street Lewiston, ID 83501
Wednesday, October 18, 2017 6:00 p.m. (MDT) Holiday Inn Express & Suites Scout Mountain Room 200 Via Venitio Pocatello, ID 83201	Wednesday, October 18, 2017 6:00 p.m. (PDT) Best Western Plus Idaho Room 506 W. Appelway Coeur d'Alene, ID 83814
Thursday, October 19, 2017 - 6:00 p.m. (MDT) Hilton Garden Inn I.B. Perrine Room 1741 Harrison Street North Twin Falls, ID 83301	

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 amendment to this rule will create standards for defending attorneys who represent indigent defendants in capital cases and standards related to investigation and the use of experts. Standards related to capital counsel will be derived from Idaho's Principles of an Indigent Defense Delivery System (IPIDDS) principle number 5, Idaho Code 19-850(1)(a)(vii)(5), and take into account ABA's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, revised edition, February 2003. Defending attorneys will be required to conform to such performance standards if handling capital cases. Standards related to investigation and the use of experts are supported by IPIDDS as a whole, Idaho Code 19-850(1)(a). All defending attorneys will be required to conform to investigation standards.

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 as a result of this rulemaking: N/A

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 April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, page 53](#).

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 (incorporated into Chapter 61.01.08, a rule in negotiation scheduled for publication on September 6, 2017) 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 3, 2017. Written comments will also be accepted during the scheduled public hearings.

DATED this 1st day of September, 2017.

LSO Rules Analysis Memo

Italicized red text that is *double underscored* is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0107-1701

004. INCORPORATION BY REFERENCE.

~~The following documents are incorporated by reference into these rules:~~ *IDAPA 61.01.08, "Rules Governing the*

Administration of Idaho's Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter.
(5-1-17)()

~~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/wp-content/uploads/sites/11/2017/01/Idahos-Principles-of-PD-System.pdf>.~~
(5-1-17)

~~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/wp-content/uploads/sites/11/2017/01/Standards-for-Defending-Attorneys-FINAL.pdf>.~~
(5-1-17)

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 operation. 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>.
(5-1-17)()

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-1-17)

007 -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems – Rule Definitions” for definitions of the terms and abbreviations used in this Rule.
()

~~01. Case. (5-1-17)~~

~~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. (5-1-17)~~

~~b. A felony case is counted as follows: (5-1-17)~~

~~i. A case filed as a felony is counted as one (1) felony, whether it is dismissed, remanded, pled, or tried to completion. (5-1-17)~~

~~ii. A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. (5-1-17)~~

~~iii. A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. (5-1-17)~~

~~e. 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. (5-1-17)~~

~~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. (5-1-17)~~

~~02. Caseload. The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. (5-1-17)~~

~~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.~~
(5-1-17)

~~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.~~
(5-1-17)

~~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.~~
(5-1-17)

~~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 (1) (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.~~
(5-1-17)

~~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.~~
(5-1-17)

011. ABBREVIATIONS:

~~01. **PDC.** The State Public Defense Commission.~~
(5-1-17)

~~02. **IPIDDS.** Idaho's Principles of an Indigent Defense Delivery System.~~
(5-1-17)

012. – 019. (RESERVED)

020. PUBLIC DEFENSE ROSTERS.

01. Public Defense 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 indigent defense providers, defending attorneys and non-attorney staff under their regular employ or supervision who are compliant with current Indigent Defense Standards.
(5-1-17)()

a. Maintenance of Public Defense Roster. The public defense 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 November of each year or whenever there is a change requiring an update.
(5-1-17)()

b. Public Defense Roster Contents. The public defense roster will include the name of each compliant defending attorney or non-attorney staff, their Idaho State Bar Number, and professional contact information, including email address, physical address, and telephone number. The roster will also indicate the county or counties within which the defending attorney provides indigent defense services.
(5-1-17)()

c. Secondary Roster. The PDC will create and maintain a secondary roster of all non-compliant indigent defense providers and defending attorneys who continue to provide indigent defense services. The contents of the secondary roster will be the same as the Public Defense Roster but will include information as to how the attorney is not meeting established standards and the date on which the attorney was removed from the Public Defense Roster for such non-compliance.
()

d. Former Defending Attorneys Roster. The PDC will create and maintain a roster of all attorneys who have provided indigent defense services for a county, but are no longer providing those services. The FDA Roster will include the same contents as the Public Defense Roster but will include the information regarding when they stopped providing indigent defense services and the reason why.
()

ee. Availability of Public Defense Roster. The rosters will be made are available from the PDC office upon request.
(5-1-17)()

02. **Application for Public Defense 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, or who has become compliant after a period of non-compliance with Indigent Defense Standards, may apply to the PDC for inclusion on the Public Defense Roster. The application is available on the PDC website: <https://pdc.idaho.gov/forms>. (5-1-17)()

~~03~~a. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. (5-1-17)

03. **Membership Benefits.** Membership on the public defense roster ensures access to PDC trainings and scholarships as outlined in IDAPA 61.01.01. ()

04. **Capital Counsel Roster Membership.** The PDC will create and maintain a roster of all qualified capital defending attorneys. Inclusion on the capital counsel roster requires compliance with Standards for Defending Attorneys and current Indigent Defense Standards. ()

a. **Maintenance of Capital Counsel Roster.** The capital counsel roster will be updated in November of each year, but may be updated more frequently in order to accurately reflect changes made throughout the year. ()

b. **Capital Counsel Roster Contents.** The capital counsel roster will include the name of each qualified capital counsel who meets the Standards for Defending Attorneys: Capital Counsel Qualifications and Roster, their Idaho State Bar number and professional contact information including email address, physical address, and telephone number. ()

05. **Application for Capital Counsel Roster Inclusion.** Any defending attorney who represents indigent defendants at public expense in defense of a capital crime shall apply for inclusion on the capital counsel roster. The application is available on the PDC website: <https://pdc.idaho.gov/forms>. ()

a. **Approval.** The PDC must approve inclusion on the capital counsel roster. ()

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

61.01.08 – RULES GOVERNING THE ADMINISTRATION OF IDAHO'S INDIGENT DEFENSE DELIVERY SYSTEMS – RULE DEFINITIONS

DOCKET NO. 61-0108-1701 (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 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective May 1, 2018, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 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 Sections 19-850(1) and 19-862A, Idaho Code.

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

This rule chapter will serve as a single location to incorporate documents and define terms used in all rules promulgated by the PDC. Documents and terms defined will be used in rules and standards that help improve the provision of indigent defense services in Idaho.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the November 1, 2017 Idaho Administrative Bulletin, [Vol. 17-11, pages 156-161](#).

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 at (208) 332-1735.

DATED this 27th day of November, 2017.

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

THE FOLLOWING NOTICE 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. This rulemaking action is authorized pursuant to Sections 19-850(1) and 19-862A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 15, 2017.

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

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

This rule chapter will serve as a single location to incorporate documents and define terms used in all rules promulgated by the PDC. Documents and terms defined will be used in rules and standards that help improve the provision of indigent defense services in Idaho.

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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the Sept. 6, 2017 Idaho Administrative Bulletin, [Vol. 17-9, page 333](#).

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 at (208) 332-1735.

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 22, 2017.

DATED this 6th day of October, 2017.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis](#)

Italicized red text indicates amendments in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0108-1701

IDAPA 61
TITLE 01
CHAPTER 08

**61.01.07 – RULES GOVERNING THE ADMINISTRATION OF IDAHO'S
INDIGENT DEFENSE DELIVERY SYSTEMS – RULE DEFINITIONS**

000. LEGAL AUTHORITY.

Sections 19-849 through 19-866, Idaho Code, give the State Public Defense Commission (PDC) authority to adopt rules and standards to improve the delivery of trial-level indigent defense services in Idaho. The PDC is authorized under Sections 19-850(1)(a) and 19-862A, Idaho Code, to supervise and administer the indigent defense delivery system. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” ()

02. Scope. These rules contain the definitions used throughout the Indigent Defense Delivery System chapters of rules adopted by the PDC. Those chapters include: ()

a. IDAPA 61.01.01, “Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds”; ()

b. IDAPA 61.01.04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants”; ()

c. IDAPA 61.01.06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards”; ()

d. IDAPA 61.01.07, “Rules Governing the Standards for Defending Attorneys that Utilize Idaho’s Principles of an Indigent Defense Delivery System.” ()

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 promulgate rules 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,” revised as of January 25, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/wp-content/uploads/sites/11/2017/01/Idahos-Principles-of-PD-System.pdf>. ()

02. Standards for Defending Attorneys. “Standards for Defending Attorneys, edition 2017,” revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. ()

03. Application for Capital Defense Roster. “Application for Capital Defense Roster, edition 2017,” revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. ()

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.

For the purposes of the Indigent Defense Delivery System chapters of rules, the following definitions apply: ()

01. Annual Report. A report submitted to the appropriate Board of County Commissioners, Administrative District Judge and the PDC by a defending attorney pursuant to Section 19-864, Idaho Code, on an annual reporting form created by the PDC. The annual reporting form is available on the PDC website: <https://pdc.idaho.gov/forms/>. ()

02. Applicant – Indigent Defense Grant. A County that identifies a need for an Indigent Defense Grant by submission of a compliance proposal, and applies for a grant through the PDC. ()

03. Approval – IDG Application. An IDG application shall be approved if the applicant meets the requirements for eligibility. An approval does not guarantee the amount or disbursement of an IDG award. The PDC retains the ability to determine the amount of an IDG award based upon the components listed in IDAPA 61.01.04. Disbursement of funds is subject to availability as appropriated by the State Legislature each year. ()

04. Capital Counsel Roster. A roster of defending attorneys who may be appointed to represent an indigent defendant in a case in which the death penalty may be imposed. Defending attorneys not on this roster may not represent indigent defendants in such cases. ()

05. 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 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 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 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. ()

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

07. Compliance Checklist. A document provided by the PDC each grant cycle to assist an Applicant determine eligibility for an IDG. The checklist will be updated each year and is required as a part of an IDG application. ()

08. Compliance Period. The compliance period runs from May 1 through March 31. Indigent defense standards that are in place by May 1 of a given year must be complied with by March 31 of the following year. ()

09. Compliance Proposal. A plan that specifically addresses how indigent defense standards shall be met and how any deficiencies previously identified by the PDC will be cured in the upcoming county fiscal year. The plan shall include a cost analysis that specifically identifies the amount of funding in excess of the applicable local share necessary to allow the county to successfully execute the compliance proposal. If the county can execute its plan without exhausting the entirety of the grant for which it may be eligible, the plan may include a request for funding for other improvements to its delivery of indigent defense services, pursuant to Section 19-862A(2), Idaho Code. ()

10. Compliance Verification. A form that must be completed and submitted to the PDC by a county that chooses not to file an Indigent Defense Grant Application. This verification requires the county to describe how IDG funds have been used in the prior year (if applicable) and an explanation as to how the county will fund their indigent defense delivery system in compliance with established standards. ()

11. Corrective Action Plan. A plan developed by a county or defending attorney with the assistance of PDC staff that addresses any *reported violation of established standards* and how those *violations* will be corrected. ()

12. 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. ()

13. Deficiency. *The violation of an established standard for which the timeline for compliance has passed pursuant to Section 19-862A(9), Idaho Code.* ()

14. Eligible Applicant – Indigent Defense Grant. To be considered for an award of an IDG, an applicant must meet the requirements of IDAPA 61.01.04, Section 024, “Award Eligibility Requirements.” ()

15. Established Standards. *Rules promulgated by the PDC* pursuant to Section 19-850(1)(a), Idaho Code. ()

16. Finding of Compliance with Recommendation. A finding of compliance with recommendation refers to a condition whereby a county or defending attorney may be in compliance with Indigent Defense Standards; however, the provision of indigent defense services could be improved to ensure constitutionally-sound representation or achieve compliance with indigent defense standards yet to be promulgated. This finding is not a PDC determination of deficiency or non-compliance. *The PDC does not have the authority to enforce compliance*

with a recommendation. ()

17. Finding of Non-Compliance. A finding of non-compliance refers to an instance where a county or defending attorney is not in compliance with applicable Indigent Defense Standards and may be related to a deficiency in the provision of indigent defense services. This finding is not necessarily a PDC determination of a deficiency and still requires a finding of material and willful non-compliance before the take-over provisions of Section 19-862A, Idaho Code, are invoked. ()

18. 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. ()

19. Formal Status Meeting. A meeting between PDC staff and a county or defending attorney conducted in accordance with IDAPA 61.01.06, section 023.02. ()

20. Indigent Defense Budget. The funds appropriated each fiscal year by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code, that includes the expenses of investigation, other preparation and trial, but does not include amounts received from the Capital Crimes Defense Fund or the Public Defense Commission. The appropriated funds shall not be less than a county's local share for that fiscal year. ()

21. Indigent Defense Contract. A written contract between the board of county commissioners and a defending attorney or existing office of public defender that provides representation of indigent persons and other individuals who are entitled to be represented by an attorney at county expense. Such contracts *shall* not include a pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney. ()

22. Indigent Defense Delivery System. The system created by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code. The system includes the county, indigent defense provider, defending attorneys, and any other county staff necessary for the administration of indigent defense services. ()

23. Indigent Defense Expenditures. Any monies expended for indigent defense services within a county that do not include amounts received from the public defense commission or amounts expended for capital cases by those counties participating in the capital crimes defense program in excess of premiums and deductibles required by guidelines approved by the Idaho capital crimes defense fund board of directors. ()

24. Indigent Defense Grant. Pursuant to Section 19-862A, Idaho Code, any sum of money awarded by the PDC to a county to support compliance with Indigent Defense Standards or for other improvements to its delivery of indigent defense services if compliance can be achieved with county monies. ()

25. Indigent Defense Grant Application. An application created by the PDC each year requesting information related to the provision of indigent defense services in an Applicant's county. This application will be updated each year and be provided by February 28, initiating the grant cycle. Counties are required to use this application when requesting an IDG award. ()

26. 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 19-862A(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. ()

27. Indigent Defense Services. County services provided to indigent persons and other individuals who are entitled to be represented by an attorney at public expense pursuant to Section 19-859, Idaho Code. ()

28. Indigent Defense Stakeholders ("Stakeholders"). A person, agency, entity or other organization with an interest or concern in the delivery of indigent defense in Idaho. ()

29. Indigent Defense Standard. Defined in Section 19-851, Idaho Code, as any rule promulgated by

the commission pursuant to Section 19-850(1)(a), Idaho Code. ()

30. Joint Incentive Indigent Defense Grant. Pursuant to Section 19-862A, Idaho Code, a sum of money awarded by the PDC to counties who join together to establish and maintain a joint office of public defender pursuant to Section 19-859(2), Idaho Code. ()

31. Local Share. Defined in Section 19-851, Idaho Code, as the benchmark figure calculated by the commission to determine the minimum amount of funding that shall be maintained by a county and to determine the award amount of state indigent defense grants for which a county may be eligible pursuant to Section 19-862A, Idaho Code. For any given county fiscal year, a county's local share shall be the median of the annual amount in county funds expended by that county for indigent defense during each of the first three (3) of the preceding five (5) county fiscal years, as certified by the county clerk. ()

32. Oversight Review. An annual or periodic review of a county or defending attorney, completed by PDC staff, that considers whether indigent defense standards are being met and if deficiencies are being identified and cured in a timely fashion. ()

33. Public Defense Roster. A roster of *complaint* defending attorneys who may be appointed to represent indigent defendants or other persons entitled to be represented by an attorney at public expense. *The roster may also include non-attorney staff under the regular employ or supervision of a defending attorney.* ()

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

35. Staff. Any individual employed by the PDC. ()

36. Submission Date. The date upon which one mails or digitally submits a document, form or application to the PDC. ()

37. Training Program. Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of persons servicing indigent clients as designated by law, statute, court rule, or appointment. ()

38. 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. These funds are dedicated to provide training and education for persons servicing indigent clients as designated by law, statute, court rule, or appointment. ()

39. Vertical Representation. *Continuous representation by the same attorney from assignment through completion of the case. Assignment shall occur immediately following an initial appearance to ensure that the constitutionally required level of advocacy necessary to mount a meaningful defense commences as soon as possible.* ()

40. Workload. The term workload recognizes that a caseload generally consists of a mix of case types that each require differing amounts of time and resources. ()

011. ABBREVIATIONS.

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

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

03. IPIDDS. Idaho's Principles of an Indigent Defense Delivery System. ()

04. IDG. Indigent Defense Grant. ()

012. – 999. (RESERVED)