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**IDAPA 05
TITLE 01
CHAPTER 03**

05.01.03 - RULES OF THE CUSTODY REVIEW BOARD

000. LEGAL AUTHORITY.

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

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

03. Section 20-504(11), Idaho Code. Pursuant to Section 20-504(11), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Title 67, Chapter 52, Idaho Code, as are deemed necessary or appropriate for the function of the department and the implementation and administration of the Juvenile Corrections Act. (5-3-03)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.01.03, "Rules of the Custody Review Board." (5-3-03)

02. Scope. These rules are established to ensure that the juvenile corrections system in Idaho and the Custody Review Board will be consistently based on the following principles: accountability, community protection, and competency development. (5-3-03)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements, including board bylaws, which pertain to the interpretation of these rules. Such documents will be available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285, P.O. Box 83720, Boise, Idaho 83720-0285. (5-3-03)

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the determination of the Custody Review Board. (3-5-08)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. (5-3-03)

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections rules should be directed to 400 N. 10th St., 2nd Floor, P.O. Box 83720, Boise, Idaho 83720-0285. The telephone of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 800 377-1363 or 711. The facsimile number of the office is (208) 334-5120. (5-3-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the Custody Review Board are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (5-3-03)

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Custody Review Board of the Idaho Department of Juvenile Corrections. (5-3-03)

02. Case Management Team. A team consisting of juvenile services coordinator (JSC), case manager, and juvenile probation officer (JPO) who provide input in setting and following through with treatment goals. (5-3-03)

03. Case Manager. Department staff assigned to directly manage a juvenile's case, such as a group leader at a state institution; or, if a juvenile is placed at a contract program, the contract provider's employee assigned to directly manage a juvenile's case. (5-3-03)

04. Classification. A process for determining the needs and requirements of juveniles for whom commitment has been ordered, and for assigning them to housing units or programs according to their needs and existing resources. (5-3-03)

05. Commit. Commit means to transfer legal custody. (5-3-03)

06. Court. Means any Idaho district court or magistrate's division thereof. (5-3-03)

07. Director. The director of the Idaho Department of Juvenile Corrections. (5-3-03)

08. Department. The Idaho Department of Juvenile Corrections. (5-3-03)

09. Extended Time in Custody. Any period of time a juvenile remains in custody after age nineteen (19) and not to exceed age twenty-one (21). (5-3-03)

10. Incident Report. A written document reporting an unusual occurrence or special event such as the discovery of contraband, use of physical force, use of chemical agents, discharge of firearms, and action taken including notation of strip and cavity searches. (5-3-03)

11. Juvenile. A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (5-3-03)

12. Juvenile Records. Information concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, personal property receipts, visitors' lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. (5-3-03)

13. Juvenile Services Coordinator (JSC). An employee of the department who is assigned to a particular juvenile as the case worker, licensed in social work. (3-5-08)

14. Legal Guardian. A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner, or operator of a detention center, observation and assessment center, secure facility, residential facility, or other facility having temporary or long-term physical custody of the juvenile offender. (5-3-03)

011. -- 099. (RESERVED).

100. GENERAL PROVISIONS.

01. Hearings. All matters concerning juveniles, before the Custody Review Board, are confidential and shall be conducted in accordance with Section 67-2341(1), (4), and (5), Idaho Code; Title 9, Chapter 3, Idaho Code; and Title 20, Chapter 5, Idaho Code, regarding juvenile records and proceedings. (5-3-03)

02. Written Record. A written record of the vote by the Custody Review Board shall be kept confidential and privileged from disclosure, to the extent allowed by law, and provided that the record, or portions thereof, shall be made available upon request, for all lawful purposes or as required by the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (5-3-03)

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

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

101. POWERS AND DUTIES.

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

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

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

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

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

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

102. STRUCTURE AND COMPOSITION OF THE CUSTODY REVIEW BOARD.

01. Board Members. (5-3-03)

a. The board is composed of four (4) members, each of whom shall be appointed by the director of the department. (5-3-03)

b. The director shall select appointees who represent a variety of juvenile justice experiences and victim perspectives, or who are otherwise qualified. (5-3-03)

02. Terms of Appointment. (5-3-03)

a. The first term of appointment shall be staggered as follows: (5-3-03)

i. An appointee shall serve for a term of one (1) year; (5-3-03)

ii. An appointee shall serve for a term of two (2) years; (5-3-03)

iii. An appointee shall serve for a term of three (3) years; and (5-3-03)

iv. An appointee shall serve for a term of four (4) years. (5-3-03)

b. The terms of these initial board members shall be identified in each appointment. (5-3-03)

c. The director shall fill each succeeding vacancy for terms of four (4) years. Vacancies in the board for unexpired terms shall be by appointment by the director for the remainder of the term. All appointees may be reappointed. (5-3-03)

03. Compensation of Board Members. Members shall be compensated as provided by Section 59-509(b), Idaho Code. They shall serve without honorarium or compensation but shall be reimbursed for actual and necessary expenses, subject to the limits provided in Section 67-2008, Idaho Code. (5-3-03)

04. Removal from Board. The director may remove any member from the board for neglect of duty required by law, for incompetence, for breaches of confidence or for unprofessional or dishonorable conduct. (5-3-03)

103. -- 199. (RESERVED).

200. REVIEW PROCESS.

A juvenile in the custody of the Idaho Department of Juvenile Corrections does not have the legal right or ability to request or demand a case review by the board. A review by the board does not create a liberty interest for the juvenile, and cannot be appealed. All cases come before the Custody Review Board through the referral system in Section 201 of these rules (5-3-03)

201. REFERRAL OF CASES TO THE BOARD.

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

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

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

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

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

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

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

a. Progress reports to the courts pursuant to Sections 20-532 and 20-540, Idaho Code; (5-3-03)

b. Report on original offenses leading to commitment plus order for commitment and orders of judgment; (5-3-03)

- c. Written recommendations from each member of the treatment team; (5-3-03)
- d. Polygraph results and written conclusions and recommendations from the professionals administering these tests; (5-3-03)
- e. Psychosocial or psychosexual evaluations; (5-3-03)
- f. Victim's written statement; (5-3-03)
- g. Juvenile's written statement; (5-3-03)
- h. Initial classification; (5-3-03)
- i. Custody level assessment at case review; and (5-3-03)
- j. Any other pertinent information. (5-3-03)

202. PERSONS TO ATTEND OR COMMENT.

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

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

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

04. Time Limited. The board's presiding officer may limit the time allotted to each participant during the proceeding, in its discretion; and may exclude witnesses or participants for inappropriate or disruptive behavior. (5-3-03)

203. CONFLICT OF INTEREST.

A member of the board who has personal knowledge of a case, shall notify all other board members of this fact prior to the meeting where that case is to be considered. The remaining members of the Custody Review Board will determine whether or not that member should be disqualified from participating in the review of that case and determination. (5-3-03)

204. -- 299. (RESERVED).

300. BOARD DETERMINATIONS.

All determinations by the Custody Review Board regarding a juvenile shall be prepared in writing and given to the director of the Idaho Department of Juvenile Corrections. (3-5-08)

01. Confidentiality. All determinations, including any written documents from any source regarding the juvenile's case, will be held by the Idaho Department of Juvenile Corrections in the juvenile's case management file. (3-5-08)

02. Board's Determination to the Director. The board's written determination concerning a juvenile's release or the juvenile's need to have extended time in custody shall be given to the director no later than thirty (30) calendar days after the date the board receives the last documents or interviews the last witness pertaining to the case. (3-5-08)

03. Reconsideration. The board may reconsider its determination in any case only if the vote based on

the reconsideration is made before the written determination is given to the director of the Idaho Department of Juvenile Corrections. Only the members who heard the case may discuss or vote on any reconsideration of the determination. (3-5-08)

a. Any member of the board who was present for and heard the juvenile's case may call for a vote to reconsider the board's determination by making a request through the board chair. (3-5-08)

b. Any reconsideration may occur by teleconference, in person, by videoconference, or any combination thereof. (3-5-08)

c. The chair will call for a motion to reconsider, and a vote. (3-5-08)

d. The determination will then be given to the director in the same manner as is specified in Subsection 300.02, of these rules. (3-5-08)

04. Indeterminate Sentence Remains. If the board determines that a juvenile needs to stay for an extended time in custody of the department, that determination does not create a determinate sentence of any kind, and the director shall still have the authority to release the juvenile at any later time deemed appropriate. (3-5-08)

05. 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 with records of the Idaho Department of Juvenile Corrections. (5-3-03)

06. Evaluation of Juvenile Cases. Juvenile cases are evaluated on the individual merits of each case. The board's evaluation of a case and a juvenile's need for extended time in custody shall not be based upon any predetermined hearing standard, criteria, or precedent. Factors that may be taken into account by the board include, but are not limited to: (5-3-03)

a. Seriousness of the crime; (5-3-03)

b. Prior criminal history of the juvenile, as well as prior commitments to the department; (5-3-03)

c. Progress or completion of program, treatment plan, accountability; (5-3-03)

d. Institutional history to include conformance to established rules, involvement in programs and overall behavior; (5-3-03)

e. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen; and (5-3-03)

f. Information or reports regarding physical, psychological, or other conditions. (5-3-03)

301. -- 399. (RESERVED).

400. VICTIMS.

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

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

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

change of address. (3-5-08)

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

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

401. -- 999. (RESERVED).

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