

Dear Senators LAKEY, Lee, Burgoyne, and  
Representatives CHANEY, Monks, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Commission of Pardons and Parole:

IDAPA 50.01.01 - Rules of the Commission of Pardons and Parole - Proposed Rule (Docket No.  
50-0101-2001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 11/09/2020. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/07/2020.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

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

**FROM:** Principal Legislative Drafting Attorney - Ryan Bush

**DATE:** October 21, 2020

**SUBJECT:** Commission of Pardons and Parole

IDAPA 50.01.01 - Rules of the Commission of Pardons and Parole - Proposed Rule (Docket No. 50-0101-2001)

#### Summary and Stated Reasons for the Rule

The Commission of Pardons and Parole submits notice of proposed rulemaking at IDAPA 50.01.01 - Rules of the Commission of Pardons and Parole. The proposed rule removes an obsolete definition and provisions regarding individual polling of commissioners and staff professionalism. In addition, this rule provides that service of process for commissioners and staff shall be made deputy attorneys general.

#### Negotiated Rulemaking / Fiscal Impact

The Commission did not conduct negotiated rulemaking, and there is no fiscal impact associated with this rulemaking.

#### Statutory Authority

The proposed rule appears to be within the statutory authority granted to the Commission in Section 20-223, Idaho Code.

cc: Commission of Pardons and Parole  
Mary Schoeler

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

**IDAPA 50 – COMMISSION OF PARDONS AND PAROLE**  
**50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE**  
**DOCKET NO. 50-0101-2001**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-223, 20-210A(3); 20-223(1)-(5); 20-224(2); 20-240A(4); and 20-240B(5), 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 21, 2020.

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:

**150.03 Service of Process on Commissioners or Commission Staff**

All service of summons, complaints, subpoenas and other legal process for any cause of action arising from or related to the actions, duties or employment of the Commission or any employee of the Commission, shall be made upon the deputy attorneys general assigned to the Commission in the manner and form required by state and federal rules of procedure.

**500.01.d Self-Initiated Parole Reconsideration.**

Removal of the text in Subsection 500.01(d) “unless otherwise stated by the Commission. The Commission will not consider SIPR petitions for offenders with a scheduled hearing in the next three (3) years,” a requirement added at sine die that have proven to be overly burdensome.

Additional stricken text is shown as follows, as this rule had a corresponding temporary rule that took effect ([Vol. 20-3, March 4, 2020, pages 13 through 17](#)) prior to this chapter becoming final before the 2020 regular legislature.

As offsets to the added language, the Commission is removing the definition of Reprieve as the language is outdated; removing Section 106, “Individual Polling of Commissioners,” as this is potentially contrary to the open meeting requirements; and removing Subsection 150.02(b), regarding staff professionalism.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is for the privacy and protection of Commissioners and Commission staff from receiving service of process at their residential homes.

**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 at (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 October 28, 2020.

Dated this 1st day of October, 2020.

Ashley Dowell, Executive Director  
Phone: (208) 334-2520  
Fax: (208) 334-3501

Commission of Pardons and Parole  
3056 Elder Street  
Boise, ID 83705

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.  
The temporary effective date of those changes were January 13, 2020.

The original text of the temporary rule was published in the Idaho Administrative Bulletin,  
[Volume 20-3, March 4, 2020, pages 13 through 17.](#)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 50-0101-2001**  
**(Only Those Sections With Amendments Are Shown.)**

**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. (3-21-18)

**02. Case Manager.** For purposes of reference, the case manager is an Idaho Department of Correction employee who is involved with assisting offenders regarding their problems, needs, and adjustments. Such case manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician. (3-20-20)

**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. (3-21-18)

**06. Commutation.** Clemency powers granted to the Commission, or the Governor, or both, which allow for a sentence to be modified, including a final discharge from the remaining period of parole. (3-20-20)

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

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

**09. Confidential.** Privileged from disclosure. (3-23-98)

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

**11. Decision.** A determination arrived at after consideration, a conclusion. (3-23-98)

**12. 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)

**13. Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (4-11-15)

14. **Dispositional Hearing.** A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. (3-20-20)
15. **DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)
16. **Escape.** Flight from confinement. (3-23-98)
17. **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)
18. **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)
19. **Full Term Release Date.** The date an offender completes the term of sentence. (3-20-20)
20. **Hearing.** The opportunity to be interviewed by the Commission, a Commissioner, or other designated Commission staff. (4-11-15)
21. **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)
22. **Hearing Session.** A series of hearings conducted by the Commission. (3-23-98)
23. **Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (4-11-15)
24. **Member or Members.** A member of the Commission, Commissioner, or Commissioners. (3-21-18)
25. **NCIC.** National Crime Information Center. (3-23-98)
26. **Non-Technical Violation.** Violation of parole by absconding or the commission of, and conviction for, a felony or misdemeanor offense. (3-20-20)
27. **Offender.** A person under the legal care, custody, supervision, or authority of the board of correction, including a person within or outside Idaho pursuant to agreement with another state or contractor. (3-20-20)
28. **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). (3-21-18)
29. **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)
30. **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 the applicant's civil rights. (3-21-18)
31. **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)
32. **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)

**33. 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)

**34. Parole Violation Hearing.** A fact-finding hearing conducted by a hearing officer to determine a 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. (3-21-18)

**35. Parolee.** Offender being supervised on parole. (4-11-15)

**36. 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. (3-21-18)

**37. ~~Reprivee. Temporary suspension of the execution of sentence; delay a punishment.~~** ~~(3-23-98)~~

**38. Risk Assessment.** Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)

**39. Self-Initiated Parole Reconsideration (SIPR).** A process in which an offender may request reconsideration of the last decision of the Commission. (3-20-20)

**40.39 Session.** See "Hearing Session." (4-11-15)

**41.40. Supervising Authority.** The agency responsible for community supervision of parolees which is Idaho Department of Correction. (3-21-18)

**42.41. 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**106. ~~INDIVIDUAL POLLING OF THE COMMISSION. (RESERVED)~~**  
~~The executive director may conduct an individual poll of the commission to obtain a majority vote regarding a case or business matter in which a decision must be made prior to the next session or meeting.~~ (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. COMMISSION AND STAFF.**

**01. Commission Members.** The Commission is composed of seven (7) members. (3-20-20)

**02. Commission Staff.** 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, firearms rights restoration, and remissions of fines. (3-21-18)

**a.** The Executive Director assumes 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)*~~

**03. Service of Process on Commissioners or Commission Staff.** All service of summons, complaints, subpoenas and other legal process for any cause of action arising from or related to the actions, duties or employment of the Commission or any employee of the Commission, shall be made upon the deputy attorneys general assigned to the Commission in the manner and form required by state and federal rules of procedure. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. SELF-INITIATED PAROLE RECONSIDERATION.**

**01. Petition.** An incarcerated offender making a request for reconsideration of parole denial must initiate the process by submitting an application. (3-20-20)

**a.** The only acceptable form is the one provided by the Commission, and it must be signed by the offender and case manager. (3-20-20)

**b.** The petition must be typed and completed correctly, per the instructions on the form, or it will not be considered. (3-21-18)

**c.** The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. The offender must have had no disciplinary issues in the year prior to submitted the petition. (3-20-20)

**d.** The Commission will consider one (1) application from the offender who was denied parole one (1) year after the denial of parole. After the initial SIPR is heard, the Commission will consider applications once per year from the date of the initial SIPR denial ~~unless otherwise stated by the Commission. The Commission will not consider SIPR petition for offenders with a scheduled hearing in the next three (3) years.~~ (3-20-20)( )

**e.** Petitions must be received no later than the first day of the month prior to the next month's hearing session. (3-8-16)

**f.** Review or deliberation on the petition by the Commission will be conducted in executive session. (3-23-98)

**g.** Any petition may be continued for additional information or for further consideration. (3-23-98)

**h.** The petitioner will be sent written notice of the decision. (3-23-98)

**i.** The petition is limited to four (4) pages; the petition will not be considered if the petition exceeds this number. (3-21-18)

**02. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. (3-23-98)