

Dear Senators LODGE, Nonini, Burgoyne, and
Representatives WILLS, DAYLEY, 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.
50-0101-1501).

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 10/28/2015. 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 11/25/2015.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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 Research Analyst - Ryan Bush

DATE: October 8, 2015

SUBJECT: Commission of Pardons and Parole

IDAPA 50.01.01 - Rules of the Commission of Pardons and Parole - Proposed Rule (Docket No. 50-0101-1501)

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 Commission states that this rule change makes updates to include changes passed by the Legislature in 2015 and to mirror parole guidelines of the Justice Reinvestment Initiative. Specifically, this rulemaking accomplishes the following:

- (1) Removes infractions from the definitions of "non technical violation" and "technical violation";
- (2) Provides violation hearing officers with the authority to impose sanctions;
- (3) Implements firearms restoration conditions and guidelines;
- (4) Adds provisions for confidential evaluations of substance abuse;
- (5) Clarifies the Executive Director's authority to recall a decision;
- (6) Provides additional explanation of conditions of a parole contract including sanctions and rewards and that the conditions be in writing and signed by the parolee;
- (7) Clarifies what constitutes excessive alcohol use;
- (8) Authorizes violation hearing officers to implement 90 and 180 day sanctions without appearing before the Commission;
- (9) Removes reference to institutional parole;
- (10) Removes reference to staff progress reports; and
- (11) Provides guidelines for a prisoner transfer to his country of citizenship under the Foreign National Treaty.

The Commission states that negotiated rulemaking was not conducted because the update reflects current operating processes and legislation passed in the 2015 session. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the Commission in Section 20-210A, Idaho Code.

cc: Commission of Pardons and Parole
Olivia Craven

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE
50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE
DOCKET NO. 50-0101-1501
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 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 October 21, 2015.

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 update and revise the rules to include changes passed through the legislative session for 2015; to implement violation hearing officers' authority to impose sanctions; mirror statutory language from JRI and correct minor clerical errors. To allow the implementation of firearm restoration guidelines, implement the firearm application to include conditions to be met; to make additions to confidential evaluations of substance abuse; additional explanation of executive director's authority to recall a decision; additional explanation of conditions of parole contract; remove ambiguous terms such as "excessive" in excessive alcohol use; removal of instructional parole due to no benefit of parolee; to include the authority of Violation Hearing Officers to implement 90/180 day sanctions without appearing before the commission; to clarify public records requests regarding hearing officer reports and interviews as confidential; and further clarify and mirror statutory language in rules; to include guidelines for Foreign National Treaty transfer; to remove institutional parole.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because The Commission of Pardons and Parole is updating its administrative rules to reflect current operating processes and legislation passed in the 2015 session. The commission will be correcting minor clerical errors and mirroring statutory language found when implementing the Justice Reinvestment Initiative and further clarifying the Justice Reinvestment Initiative parole guidelines to be placed into current practice. The Commission anticipates prosecuting attorneys, law enforcement agencies, the judiciary, and the Idaho Department of Corrections will support the proposed rules. It is unlikely that defense attorneys, offenders and their families will support the rule changes, as they will be perceived as disadvantageous to these groups' interest. Consequently, negotiated rulemaking is not a viable option and will unnecessarily expend commission resources.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Schoeler, Paralegal (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, 2015.

DATED this 2nd Day of September, 2015.

Sandy Jones, Executive Director
Idaho Commission of Pardons and Parole
3506 Elder St.
Boise, Idaho 83705
(208) 332-2520

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 50-0101-1501
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

- 01. Abscond.** 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. Commutation.** Clemency powers granted to the commission, or the governor, or both, which allow for a sentence to be modified. (4-11-15)
- 06. Concurrent Sentence.** Sentence served at the same time as another. (3-23-98)
- 07. Conditions of Parole.** Conditions under which an offender is released to parole supervision. (4-11-15)
- 08. Confidential.** Privileged from disclosure. (3-23-98)
- 09. Consecutive Sentence.** Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)
- 10. Decision.** A determination arrived at after consideration, a conclusion. (3-23-98)
- 11. 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)
- 12. Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (4-11-15)
- 13. DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)
- 14. 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)

15. **Escape.** Flight from confinement. (3-23-98)
16. **Evidence Based Program.** A treatment program evaluated using an experimental methodological design, with outcomes reviewed by a variety of scientific professionals, and deemed effective in the delivery method and the desired participant population outcomes. (4-11-15)
17. **Executive Session.** Any meeting or part of a meeting of the commission which is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. (4-11-15)
18. **Fixed Term.** Portion of sentence during which the convicted person is not eligible for parole. (3-23-98)
19. **Full Term Release Date.** The date an offender completes the term of sentence without good time credits. (4-11-15)
20. **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)
21. **Hearing.** The opportunity to be interviewed by the commission, a commissioner, or other designated commission staff. (4-11-15)
22. **Hearing Officer.** An impartial person employed by the commission and selected by the executive director to conduct an interview and take testimony from an offender regarding offender's history, criminal record, social history, present condition of offender, and offense. (4-11-15)
23. **Hearing Session.** A series of hearings conducted by the commission. (3-23-98)
24. **Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (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)
26. **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)
27. **NCIC.** National Crime Information Center. (3-23-98)
28. **Non Restricted Sentence.** Sentence not restricted by statute. (3-23-98)
29. **Non Technical Violation.** Violation of parole by absconding or a new felony or violent misdemeanor ~~or infraction~~. (4-11-15) ()
30. **Offender.** A person under the legal care, custody, supervision, or authority of the board or correction, including a person within or without Idaho pursuant to agreement with another state or contractor. (4-11-15)
31. **On-Site Parole Violation Hearing.** Parole violation hearing to determine guilt or innocence which must be held reasonably near the site of the alleged violation(s). (4-11-15)
32. **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)

33. **Pardon.** Clemency powers granted to the commission or the governor that allows release from consequences of conviction of a crime and restores a persons' civil rights. (4-11-15)
34. **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)
35. **Parole Eligibility Date.** The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. (4-11-15)
36. **Parole Hearing Interview.** An interview conducted by a hearing officer for the purpose of gathering information and testimony from the offender regarding the offender's history, criminal record, social history, present condition, instant offense, and other factors, when the offender is scheduled for a forthcoming parole consideration hearing. (4-11-15)
37. **Parole Violation Hearing.** A fact-finding hearing conducted by a hearing officer to determine a subject's guilt or innocence of alleged violations of parole. The hearings are conducted for both technical and non-technical violations, and may be held on-site, or at a location as determined by the executive director or the hearing officer. (4-11-15)
38. **Parolee.** Offender being supervised on parole. (4-11-15)
39. **Permanently Incapacitated.** As defined in Section 20-223, Idaho Code, permanently incapacitated means a person who, by reason of an existing physical condition which is not terminal, is permanently and irreversibly physically incapacitated. (4-11-15)
40. **Rescission.** Cancellation of a previous decision. (4-11-15)
41. **Reprieve.** Temporary suspension of the execution of sentence; delay a punishment. (3-23-98)
42. **Restricted Sentence.** Sentence restricted by Idaho Statutes, by carrying a mandatory minimum to be served prior to parole eligibility. (4-11-15)
43. **Return of Service.** The document that establishes what legal documents were served on whom, by whom, and when. (4-11-15)
44. **Revocation/Violation File.** File containing the documents pertinent to a particular violation/revocation proceeding. (4-11-15)
45. **Risk Assessment.** Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)
46. **Session.** See "Hearing Session." (4-11-15)
47. **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)
48. **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)
49. **Technical Violation.** Violation of parole by not conforming to conditions of parole, but not to include absconding or a new criminal conviction ~~or infraction.~~ (4-11-15)()

50. 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)

51. 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." (4-11-15)()

52. 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)

102. HEARING SESSIONS.

01. Number of Hearings Scheduled. The executive director or designee will schedule hearing sessions according to the number of hearings scheduled required for the specific month. (4-11-15)()

02. Designation of Presiding Officer. The executive director may designate one (1) of the members of the commission as the presiding officer to conduct individual hearings or a hearing session, or a business meeting. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

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

01. Commutation, Pardon, Restoration of Firearms, and Remission. The commission succeeds to and has all rights, powers and authority of the Board of Pardons as granted and provided by the provision of the constitution of the state of Idaho, in reference to commutation, pardon, restoration of firearms, and remission of fines. (4-11-15)()

02. Restoration of Firearms. The commission is granted the authority by Section 18-310, Idaho Code, to restore the civil right to ship, transport, possess, or receive a firearm. ()

023. 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)

034. 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)

(BREAK IN CONTINUITY OF SECTIONS)

150. COMMISSION AND STAFF.

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

a. The commission is composed of five (5) members appointed by the governor for three (3) year terms; vacancies for unexpired terms will be for the remainder of the term and appointees may be reappointed.

- (4-11-15)
- i. No more than three (3) 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 firearms and remissions of fines. (~~3-23-98~~)()
 - ii. The executive director shall assume all authority and duties as may be delegated by the commission and the governor. (3-30-01)
 - b.** The commission, the executive director, and all staff will maintain professional integrity in all matters of commission business. (3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

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.** 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)
- a.** 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 hearing, commutation hearings, ~~and~~ pardon hearings, remission of fines hearing, and restoration of firearms hearing, 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. (~~4-11-15~~)()
- i. 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.

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

ii. The commission will determine if they will conduct another hearing or make a decision based upon the report. (3-30-01)

04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), Substance Abuse Evaluation, or Other. ~~(4-11-15)~~()

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, ~~or~~ SORA, substance abuse evaluations, and mental health reports will be maintained in a confidential manner. ~~(4-11-15)~~()

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

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 ~~of the hearing~~ is encouraged to be present at the hearing; the commission may make such appearance mandatory or may make a final decision based upon the information which is available. ~~(4-11-15)~~()

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. 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. ()

06. Witnesses and Documents. The commission allows for the offender/parolee participation of attorneys, families of the subject, victims, and others who have a direct relationship to the specific hearing or offender/parolee of the hearing. (4-11-15)

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. ()

08. Decisions. (3-23-98)

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

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. 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)

de. 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. (3-23-98)()

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

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

b. All persons attending a hearing or hearing session, must abide by security policies of the department of correction, the facility where the hearing is being held, and pertinent statutes; number of witnesses allowed in the hearing room will be in line with life and safety codes; and all persons may be screened through metal detectors or similar technology and will be subject to search. (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 hearing or session of the commission. (3-23-98)

i. Interviews with offenders or witnesses will not be allowed during the hearing process and the

commission and staff will not be responsible for arranging any 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. The commission will use clear, evidence-based parole guidelines in making parole determinations, while still maintaining discretion of 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 are embedded in the clear parole guidelines; these guidelines will include the use of a validated risk and needs assessment. The commission still retains the discretion to deny parole of individual cases based on countervailing, discrete, individual case factors. Factors considered include, but are not limited to: (4-11-15)

i. Seriousness and aggravation and/or mitigation involved in the crime. (3-23-98)

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

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

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

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

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

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

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

02. Primary Review. For offenders eligible for parole ~~4a~~ review for the purpose of setting the initial parole hearing will be conducted on all offenders, ~~except those serving a court retained jurisdiction and those offenders sentenced to death.~~ ~~†~~The commission is not responsible for the setting of a hearing until an official sentence calculation document has been received. (4-11-15)()

a. The executive director or a designee will conduct the review following receipt of the sentence calculation from the department of correction, records office. The month and year of the initial parole hearing will be established based upon the sentence calculation. (4-11-15)

i. In cases of offender serving a court-retained jurisdiction, the primary review will not be scheduled on that conviction until the court-retained jurisdiction has been adjudicated. ()

ii. In cases where the offender has a death sentence a primary hearing will not be scheduled. ()

iii. In cases of specified minimum terms, the initial hearing will be set approximately six (6) months prior to the offender's parole eligibility date based on the sentence calculation. (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)

vii. 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 six (6) months from the month the commission was notified of the commitment. (4-11-15)

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)

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: (4-11-15)()

a. The parolee is required to enter into and comply with an agreement of supervision with the board of correction. 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. (4-11-15)()

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

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. Conduct himself or herself in a manner that is not, nor 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)
 - iv. 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)
 - v. Not have any dangerous weapons used or intended to be used for other than normal purposes, such as knives for household use. (3-23-98)
 - g.** The parolee will: (4-11-15)
 - i. Abstain from ~~excessive~~ use of alcoholic beverages. (~~3-23-98~~)()
 - ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (3-23-98)
 - iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, 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 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 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 (3-23-98)
 - iii. Leave the assigned district. (3-23-98)
 - j.** The parolee will make himself available for supervision and will not actively avoid supervision. (3-23-98)
- 04. Special Conditions of Parole.** (3-23-98)
- a.** In addition to general 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, ~~once~~ **after** the offender has signed a statement ~~agreeing to~~ **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. (~~4-11-15~~)()

~~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)

06.5. Medical Parole. The commission may parole an offender for medical reasons during the determinate portion of a sentence. (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 will require specific medical information in reference to the condition, 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. (4-11-15)

~~07.6.~~ ***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 can petition the commission to consider an early discharge upon reaching the timelines established in Subsection 250.09.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 incapacitated, the commission may consider or grant, or both, an early discharge after one (1) year for any crime. (4-11-15)

087. Detainers. (3-23-98)

a. The commission may grant a parole to any county, state, or federal detainer which 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)

098. 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 of problems that have developed. (4-11-15)

109. 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. Program Process for Victims. The commission has established a program process for victims of criminal offenses for which an offender is currently incarcerated and is not serving a court-ordered jurisdiction. Victims of non-adjudicated cases may be given courtesy treatment. This includes victims who may not be in the instant offense and those removed from the instant offense as a result of the plea bargain process. The victims may be located in the hearing officer report or from another victim coordinator or the prosecutor. The Victim Witness Coordinator will verify the victims with the prosecutor when not included with the instant offense. (4-11-15)()

a. The commission will establish a record for victims of offenders who may be considered for parole, early discharge, or commutation, ~~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. (4-11-15)()

b. The commission will notify legal victims of offenders of the instant offense of their right to be notified of parole, early discharge, and commutation hearings and the decision of these hearings; their right to submit written statements or information; and, their right to provide testimony. (4-11-15)

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

d. A victim may request not be notified or contacted. (4-11-15)

e. Victims will receive notices of releases to parole and offenders who have absconded, but the commission is not responsible to advise of any other releases such as 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. (4-11-15)

02. Confidentiality of Victim's Address and Written Testimony. The victim's record maintained by the commission to include the address and written testimony or information will be maintained in a confidential manner and is not subject to disclosure to anyone for any reason. The commission may release to the Idaho Department of Corrections the victim's address only. (3-23-98)()

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

a. The victim is invited to attend any and all hearings, except executive sessions, pertinent to the case and to provide testimony. (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. (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. ~~The parole plan needs to provide a positive re-entry of the offender into the community~~ **An IDOC approved parole plan should provide a positive re-entry into the community for the offender.** (4-11-15)()

~~a. The case manager will discuss the parole plan with the offender.~~ (4-11-15)

ba. The proposed parole plan ~~must~~ **should** be available at the parole hearing interview and parole consideration hearing and ~~must~~ **should** include a stable residence, employment, or a maintenance and care plan, and treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. This plan will be formulated using the validated risk and needs assessment that is used by the department of correction. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. (4-11-15)()

eb. 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)

~~d. In cases where the commission does not approve the proposed parole plan and a tentative parole date is granted, the executive director can approve or deny a subsequent plan.~~ (3-30-01)

ec. 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 250.12. (4-11-15)

03. Tentative Parole Dates. All parole release dates granted by the commission are tentative. (3-23-98)

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

b. If 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. (4-11-15)

04. Contract. Prior to any release to parole, the offender must sign a contract with the commission and must ~~agree to~~ **acknowledge** all general and special conditions of parole. (4-11-15)()

~~**05. Reporting and Release Instructions.**~~ (3-23-98)

a. The parolee will be ~~given~~ **issued** reporting instructions that will include the address and the telephone number of the supervising office. (4-11-15)()

~~b. It is the responsibility of the parolee to arrange for transportation upon release and the parolee must go directly to the destination approved by the commission or executive director. The parolee must request permission to deviate from direct travel to the approved location, and such request must be in writing to the commission office at least two (2) weeks in advance of the established release date.~~ (4-11-15)

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 which are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

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

a. A supervising agency 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. (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 data base and will designate which states the commission will extradite the offender from once arrested. At any time the executive director or designee may change the area of extradition. (4-11-15)

ii. If an offender is being held in custody on new charges **in a state other than 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. (4-11-15)()

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)

03. Due Process. 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. (4-11-15)

04. Intermediate Sanctions on Technical Violations and Absconding Supervision. If the violation does not result from a conviction of a new felony or violent misdemeanor, then the parolee will be afforded the

opportunity to serve an intermediate sanction rather than proceeding through the formal parole violation process. (4-11-15)

a. The commission or hearing officer will cause the parolee to be confined for a period of up to ninety (90) days effective immediately ~~upon entering the decision on the initial violation.~~ upon either: (4-11-15)()

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 ()

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. ()

b. For a second parole violation, 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 entering the decision.~~ upon either: (4-11-15)()

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 ()

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. ()

c. For a third or subsequent parole violation, a dispositional hearing will be convened during a regular session of the commission to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (4-11-15)

d. If the member or members or hearing officer, having heard the matter, should conclude that the allegations of violation of parole by absconding supervision have been proven by a preponderance of the evidence, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision. (4-11-15)()

e. For a second or subsequent parole violation by absconding supervision, a dispositional hearing during a regular session of the commission will be convened to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (4-11-15)

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. (4-11-15)()

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 then be moved to non-technical status and will proceed through the formal violation process.~~ (4-11-15)()

h. The commission or hearing officer will ~~establish criteria~~ use the intermediate sanctions pursuant to Section 20-229B, Idaho Code, to determine ~~the necessary~~ length of confinement ~~up to the allowed periods of time.~~ The criteria may include the parolee's supervision history, stability in the community, severity and type of violation(s), risk and needs assessment score, and the violations report by the parole officer. (4-11-15)

i. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of evidence, or those that have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee will be reinstated on parole on the same or modified conditions of parole. ~~The commission will consider alternatives to revocation for offenders whose violations do not require reincarceration.~~ (4-11-15)()

05. **Witnesses.** The alleged parole violator or the accusing parole officer may present witnesses in support of the claims of the allegations or in defense of the charges. (3-23-98)

a. The commission has no subpoena power to compel any witness to attend a hearing. 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 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 **any and all copies of** reports **and or** documents; ~~in addition, the subject's attorney may also obtain copies by making a request to the commission office~~ **that are public records according to the public records act.** (4-11-15)()

07. Hearings. The alleged parole violator will be advised of any and all hearing dates and locations within a reasonable time frame. The hearing officer or executive director will determine the location of all hearings. (4-11-15)

a. The subject may request continuance or waiver of any hearing which is subject to the final determination of the hearing officer, executive director, or the commission. (3-23-98)

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

i. Non-technical Violations. If the alleged parole violator is charged with a conviction for a violent misdemeanor, or new felony criminal conviction, or is charged with absconding from supervision, the subject is not entitled to a preliminary or on-site hearing, but is entitled to a hearing to determine guilt or innocence within a reasonable time following service of the charges. (4-11-15)

ii. Technical Violations. If the alleged parole violator is charged with a violation of the conditions of parole other than a violent misdemeanor, or new felony criminal conviction, or absconding from supervision, the subject is entitled to a preliminary hearing conducted by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a hearing officer. The hearing is to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. (4-11-15)

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 Hearing. A technical parole violator is entitled to an on-site 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 and may dismiss some or all allegations. If a hearing officer is unavailable, the executive director will appoint someone to conduct the hearing. The offender is entitled to a verbal or written decision within twenty (20) days of the violation hearing. (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 commission has full discretion in granting reinstatement on parole or revocation of 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 [400.06.h.i](#); [400.07.g.i](#), and [400.06.h.ii](#); [400.07.g.ii](#).) The Commission will consider whether the parole will be reinstated or revoked and will state the reasoning if parole is revoked. (4-11-15)()

g. Absentia Hearing. The commission can revoke parole without the subject's appearance if the subject has signed the proper commission form waiving the right to appear before the commission. The commission will determine if parole will be considered once the revocation decision has been made. (3-23-98)

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

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

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)

b. The commission, through the executive director shall designate the county, state, or other facility where the alleged parole violator shall be held. The commission's order shall be sufficient authority by law to direct any county sheriff or the board of correction to hold an alleged parole violator in custody until such time as the commission directs his removal or transfer. (3-23-98)

c. The alleged parole violator can request a continuance of any hearing. 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. (3-23-98)

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

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

c. A psychological evaluation may be requested by the commission and mental health treatment may be deemed appropriate. (4-11-15)

d. A status update of the case will be made at regular intervals, and the executive director will determine how the case will proceed. (3-23-98)

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. (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. The hearing officer may make a finding of guilt but may recommend to the executive director that the offender be reinstated on parole without further proceedings. (3-23-98)

ii. The offender 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 and/or commission warrant may be forfeited, in whole or in part, and may not be deemed a part of the sentence for which the offender was committed. (4-11-15)

a. The time the offender is incarcerated on an agent's warrant and a commission warrant will be credited toward the sentence. (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)

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

d. The offender must provide the hearing officer or the executive director with dates of incarceration and the location of the incarceration. (3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

500. SELF-INITIATED PROGRESS REPORT.

An offender may appeal the last parole 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. (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 completed correctly per instructions on the form or it may be returned. (3-23-98)

c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (3-23-98)

d. A petition may be filed by any offender who is currently incarcerated. (4-11-15)

- e. Following the initial submission, the commission may consider but one (1) application from any one (1) person in any twelve (12) month 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 hearing session. (4-11-15)
- h. Review or deliberation on the petition by the commission will be conducted in executive session. (3-23-98)
- i. Any petition may be continued for additional information or for further consideration. (3-23-98)
- j. The petitioner will be sent written notice of the decision. (3-23-98)
- k. The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (3-23-98)
- l. The petition must be readable or it may be returned. (5-3-03)
- 02. Hearing.** The scheduling of a hearing is at the complete discretion of the commission. (3-23-98)
- a. If a *special* hearing is scheduled, the commission will determine the date of the hearing. ~~(3-23-98)~~()
- b. If a *special* hearing is scheduled, the previous decision of the commission ~~may be~~ **is** considered null and void. ~~(3-23-98)~~()
- 03. Amended Decision.** The commission may elect to amend any decision without conducting another hearing. (3-23-98)
- 501. -- 549. (RESERVED)**
- 550. PARDON.**
A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. (3-23-98)
- 01. General.** An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. (3-23-98)
- a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than three (3) years after completion of the sentence. (3-23-98)
- b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted

five (5) years after completion of the sentence. (3-23-98)

02. Application. A pardon application can be obtained from the commission office or on the commission website. (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 judgment and conviction documents for each crime 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)

b. Following 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 the following: ~~(3-23-98)~~()

i. A criminal record check of the applicant. (3-23-98)

ii. The applicant's employment history since completion of sentence. (3-23-98)

iii. The applicant's status as a good citizen. (3-23-98)

iv. An interview with the applicant should be conducted and a summary of the interview provided. (3-23-98)

v. Evidence of all restitution and fines as ordered by the sentencing court are paid. ()

vi. Any additional information as deemed necessary or appropriate. (3-23-98)

c. If the applicant is residing in a jurisdiction which refuses to conduct an investigation of the case, the applicant may be required to come to Idaho for an interview with a parole officer or hearing officer, or the interview may be conducted by electronic means. A normal investigation will then be completed. (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)

c. Any application may be continued for further consideration or additional information. (3-23-98)

04. Hearing. The scheduling of a hearing is at the complete discretion of the commission. 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. (3-23-98)

ii. The commission may continue the hearing to a later date in order for the applicant to make a personal appearance and such continuance will not require additional publication of the hearing. (3-23-98)

d. All rules of procedure governing hearings will apply at a pardon hearing. (3-23-98)

e. The decision and supporting documents regarding the decision to grant or deny a pardon will be filed with the secretary of state. (3-23-98)

i. Dissenting votes of the commissioners voting are submitted to the office of the secretary of state and become a matter of public record. (3-23-98)

ii. All written material considered in the decision process, with the exception of the presentence investigation report, ~~and~~ victim information, mental health records, criminal history information, and medical records, will be submitted to the office of the secretary of state and will be a matter of public record. ~~(3-23-98)~~ ()

f. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-23-98)

05. Authority to Grant. The commission has full and final authority to grant pardons, except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances. (3-23-98)

a. In the cases listed in this section, the commission's decision to grant a pardon shall constitute a recommendation only to the governor. (3-23-98)

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

c. No pardon for the offenses listed in this section will be effective until presented to and approved by the governor, and any pardon recommendations not so approved within thirty (30) days of the pardon hearing shall be deemed denied. (3-23-98)

d. The granting of a pardon does not expunge the crime from the Idaho criminal history. ()

551. RESTORATION OF FIREARMS RIGHTS UNDER SECTION 18-310, IDAHO CODE.

01. General. An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(3), Idaho Code. This is not a pardon for the conviction of a crime, nor is the Idaho criminal record expunged. ~~(4-11-15)~~ ()

02. Application. An application may not be made until five (5) years after the date of final discharge. (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 conviction and dismissal documents 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)

c. Following 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. The report shall include, but shall not be limited to, the following: ()

- i.** A criminal record check of the applicant. ()
- ii.** The applicant's employment history since completion of sentence. ()
- iii.** The applicant's status as a good citizen. ()
- iv.** An interview with the applicant should be conducted and a summary of the interview provided. ()
- v.** Evidence of all restitution and fines ordered by the sentencing court have been paid. ()

03. 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 may be continued for additional information. (4-11-15)

04. Authority to Grant. The commission has the full and final authority and discretion to grant restoration of civil rights to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. (4-11-15)

05. Exceptions. See the exceptions listed in Section 18-310, Idaho Code. (4-11-15)

a. Persons convicted of the felonies enumerated in Sections 18-310(2)(s) and (t), Idaho Code, for any degree of murder or voluntary manslaughter, shall not be restored the right to ship, transport, possess, or receive a firearm regardless of the date of their conviction if the conviction was the result of an offense committed by the use of a firearm. (4-11-15)

b. The commission shall not restore the right to ship, transport, possess, or receive a firearm to any person convicted of murder in the first degree (Section 18-4003, Idaho Code), murder in the second degree (Section 18-4003, Idaho Code), or any felony enumerated in Sections 18-310(2)(a) through (jj), Idaho Code, upon which the sentence was enhanced for the use of a firearm during the commission of said felony. (4-11-15)

552. STAFF PROGRESS REPORT.

A staff member making a request for parole must initiate the process by submitting an application. (4-11-15)

01- Acceptable Form. *The only acceptable form is the one provided by the commission, and it must be signed by the offender and staff member. (4-11-15)*

- a.** *The petition must be the original petition. (4-11-15)*

- ~~b. The petition must be completed correctly per instructions on the form or it may be returned. (4-11-15)~~
- ~~c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (4-11-15)~~
- ~~d. The application must include progress reports, C notes, and other documents to support the request. (4-11-15)~~
- ~~02. **Time of Consideration.** Petitions may be considered at any time by the commission. (4-11-15)~~
- ~~a. Petitions must be received no later than the first day of the month. (4-11-15)~~
- ~~b. Review or deliberation on the petition by the commission will be conducted in executive session. (4-11-15)~~
- ~~c. The staff member and offender will be sent written notice of the decision. (4-11-15)~~
- ~~d. The petition is limited to no more than four (4) pages. The petition may be returned before submission to the commission if the document exceeds this number. (4-11-15)~~
- ~~e. The petition must be legible or it may be returned. (4-11-15)~~
- ~~03. **Case Manager Guidelines.** (4-11-15)~~
- ~~a. The staff member will identify an offender using the following criteria: (4-11-15)~~
- ~~i. The offender must not have any assaults on staff members in the last twenty-four (24) months. (4-11-15)~~
- ~~ii. The offender must not have been charged with any new crimes during his current incarceration. (4-11-15)~~
- ~~iii. The offender must have been medication compliant for the last six (6) months. (4-11-15)~~
- ~~iv. The offender must not have introduced any contraband in the last eighteen (18) months. (4-11-15)~~
- ~~v. The offender must have a written verified parole plan. (4-11-15)~~
- ~~b. Timeline for consideration of petition for parole. The following timeline is for determining the eligibility of the offender: (4-11-15)~~
- ~~i. The staff member identifies the offender twenty-four (24) to thirty-one (31) months prior to his full term release date. (4-11-15)~~
- ~~ii. The parole hearing officer is notified of the offender to be interviewed when offender is twenty (20) months from full term date. (4-11-15)~~
- ~~iii. When the offender has eighteen (18) months remaining on his sentence, the offender will be interviewed by a parole hearing officer. (4-11-15)~~
- ~~iv. The offender will be scheduled for a hearing before the commission when there are fifteen (15) months until his full term release date. (4-11-15)~~
- ~~v. The commission will grant a release date twelve (12) months prior to offender's full term date. (4-11-15)~~

- ~~04. **Exceptions to the Staff Progress Report.** An offender will not be seen by the commission if the offender has the following on his record: (4-11-15)~~
- ~~a. Class A DOR in the last six (6) months; (4-11-15)~~
 - ~~b. Sexual DORs in the last six (6) months including physical touching; (4-11-15)~~
 - ~~c. Is in segregation status; (4-11-15)~~
 - ~~d. Offender has refused to participate in the hearing/interview process; (4-11-15)~~
 - ~~e. Offender has refused programming and has a tentative parole date; (4-11-15)~~
 - ~~f. The offender has a parole eligibility date; (4-11-15)~~
 - ~~g. The offender is a parole violator; or (4-11-15)~~
 - ~~h. The offender has a violent crime, including injury to a person, has a sexual crime involving statutory rape or a property offense that was pled down, but which had a violent component. (4-11-15)~~
- ~~05. **Hearing.** The scheduling of a hearing is at the complete discretion of the commission. If a special hearing is scheduled, the commission will determine the date of the hearing. (4-11-15)~~
- ~~06. **Amended Decision.** The commission may elect to amend any decision without conducting another hearing. (4-11-15)~~
- 553~~2~~. -- 599. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

800. FOREIGN NATIONAL TREATY.

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. ()

- 01. Request for Transfer.** An offender may request a transfer to his country of citizenship. ()
- 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. ()
 - b.** Upon gathering the documentation, central records will forward the application and packet to the commission. ()
 - i.** The commission will set the matter for consideration at a time and place of its choosing. ()
 - (1)** The commission has complete discretion and authority to make a recommendation to the Governor. ()
 - (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)** The offender is not entitled to be present, to have counsel, to present witnesses or evidence, to have any particular evidence considered or to designate the location or time. ()

ii. Following the commission's consideration, a non-binding recommendation will be issued to the Governor. A copy of the recommendation will be sent to the Department's central records. ()

(1) The offender is not entitled to appeal the commission's recommendation. ()

(2) The offender may reapply two (2) years from the date of denial by either the Governor or the commission. ()

iii. If the Governor approves the transfer and the receiving state accepts the offender for transfer, the packet is sent to the Department of Justice. ()

02. Eligibility Requirements for Transfer. ()

a. The offender must be a citizen of the country to which he is requesting a transfer. ()

b. The offender must not have a life sentence. ()

c. The offender cannot be less than two (2) years from his parole eligibility date. ()