

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

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

IDAPA 50.01.01 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket
No. 50-0101-1900).

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 07/22/2019. 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 08/19/2019.

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

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: July 2, 2019

SUBJECT: Commission of Pardons and Parole

IDAPA 50.01.01 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket No. 50-0101-1900)

The Commission of Pardons and Parole has submitted temporary and proposed rules that reauthorize and re-publish the following previously approved chapter under IDAPA 50:

50.01.01, Rules of the Commission of Pardons and Parole

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. **However, changes from the previously approved rules are noted as follows:**

The Commission is allowing portions of Sections 010, 101, 102, 107, 150 and 250 to expire in order to remove outdated definitions and duplicative language already in statute.

This rule change appears to be within the Commission's statutory authority to promulgate rules provided in Section 20-223, Idaho Code.

No other substantive changes from the existing rules have been noted.

cc: Commission of Pardons and Parole
Ashley Dowell

*** 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

DOCKET NO. 50-0101-1900

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 20-223, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 50 rules of the Commission of Pardons and Parole.

IDAPA 50

- IDAPA 50.01.01, *Rules of the Commission of Pardons and Parole* – All rules *except portions of Sections 010, 101, 102, 107, 150, and 250.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

The Commission will be removing outdated definitions and duplicative statutory language from Sections 18-310 Imprisonment-Effect on Civil Rights, 20-101A Commission of pardons and parole-Duties and powers, 20-223 Pardons and rules governing -Restrictions-Psychiatric or psychological examination and 20-240 Respites, reprieves, commutations and pardons-Treason or Impeachment.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Mary Schoeler, Paralegal, 208-334-2520.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Ashley Dowell, Executive Director
Commission of Pardons and Parole
3056 Elder Street
P.O. Box 83720
Boise, Idaho 83709
Phone: (208) 334-2520
Fax: (208) 334-3501

**IDAPA 50
TITLE 01
CHAPTER 01**

IDAPA 50 – COMMISSION OF PARDONS AND PAROLE

50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 20-223(a), Idaho Code, which provides that the Commission has the power to establish rules, policies, or procedures in compliance with Title 67, Chapter 52, Idaho Code. (4-11-15)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 50.01.01, “Rules of the Commission of Pardons and Parole.” (5-3-03)

02. Scope. The rules govern parole, pardons, firearm rights restoration, and commutations for the state of Idaho; and other matters within the authority of the Commission. (3-21-18)

002. WRITTEN INTERPRETATION.

There are no written interpretation of these rules. (3-23-98)

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. (5-3-03)

004. INCORPORATION BY REFERENCE.

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

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

The Commission of Pardons and Parole is located at 3056 Elder St, Boise, Idaho 83705. Business hours are typically 8 a.m. to 5 p.m. Monday through Friday, excluding holidays. Mail regarding the Commission rules should be directed to P.O. Box 83720, Statehouse Mail, Boise, Idaho 83720-1807. Website www.pardons.idaho.gov. (5-3-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records subject to the disclosure provisions of Title 74, Chapter 1, Idaho Code. (3-21-18)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Absconder. An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. (3-21-18)

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

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

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

- 05. Commissioner.** A member of the Commission who is appointed by the Governor to carry out decision-making functions regarding parole, parole revocations, pardons, commutations, remission of fines, and firearm rights restoration. (3-21-18)
- 06. Commutation.** Clemency powers granted to the Commission, or the Governor, or both, which allow for a sentence to be modified. (4-11-15)
- 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. DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)
- 15. 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)
- 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. 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. 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. 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)

25. **Member or Members.** A member of the Commission, Commissioner, or Commissioners. (3-21-18)
26. **NCIC.** National Crime Information Center. (3-23-98)
29. **Non-Technical Violation.** Violation of parole by absconding or a new felony or misdemeanor conviction. (3-8-16)
30. **Offender.** A person under the legal care, custody, supervision, or authority of the board of correction, including a person within or without Idaho pursuant to agreement with another state or contractor. (3-21-18)
31. **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)
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 the applicant to be released from the consequences of conviction of a crime and restores the applicant's civil rights. (3-21-18)
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 Revocation Hearing.** A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. (3-21-18)
38. **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)
39. **Parolee.** Offender being supervised on parole. (4-11-15)
40. **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)
41. **Reprieve.** Temporary suspension of the execution of sentence; delay a punishment. (3-23-98)
42. **Risk Assessment.** Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)
43. **Self-Initiated Parole Reconsideration (SIPR).** A process in which an offender may request

reconsideration of the last hearing decision of the Commission. (3-21-18)

44. Session. See “Hearing Session.” (4-11-15)

45. Special Meeting. A hearing called by the Commission or the Executive Director outside of the regularly scheduled hearing session. The Commission will consider whether to reinstate, modify, or revoke parole when the parole violation decision is not unanimous between the two (2) Commissioners. (3-21-18)

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

47. 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)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

The rules contained herein govern practice and procedure of the Idaho Commission of Pardons and Parole, hereafter referred to as the commission. The commission reserves the right to deviate from established rules whenever special circumstances warrant, and to act, at its discretion, in circumstances not specifically outlined but within confines established by the constitution and Idaho Code. (4-11-15)

101. HEARINGS.

01. Conduct of Hearings. All hearings of the Commission will be conducted in accordance with the open meeting law as provided in Chapter 2, Title 74, Idaho Code, and as modified by Section 20-213A, Idaho Code. The Commission will conduct each hearing assigned and scheduled before them. Each Commissioner will have an opportunity to ask questions or provide comments, or both. The Executive Director or Commission staff may provide information during the hearing or ask questions. (4-11-15)

02. Deliberations. Receipt and exchange of information or opinion relating to a decision concerning the granting, revoking, reinstating, or denial of parole, or related decisions, to include commutations, pardons, and restoration of firearm rights. Deliberations will be made in executive session. Votes of individual members will not be made public. A written record of the vote by each Commission member will be kept confidential and privileged from disclosure and, provided, for all lawful purposes as outlined by Section 20-213A, Idaho Code. (6-30-19)T

102. HEARING SESSIONS.

The executive director or designee will schedule hearing sessions according to the number of hearings required for the specific month. (6-30-19)T

103. BUSINESS MEETINGS.

The commission schedules a business meeting at least quarterly or at the call of the executive director and notice of such meetings must comply with the open meeting law requirements. Such meeting may be cancelled at the vote of a majority of the commission or by the executive director if the scheduled business cannot be conducted. (4-11-15)

104. RECORD OF HEARINGS AND BUSINESS MEETINGS.

01. Minutes of Hearings and Case Reviews. (3-21-18)

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

b. Audio recordings of open hearings may be made and will be maintained by Commission office in digital format. The recordings will be subject to disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. Executive sessions will not be recorded. (3-21-18)

02. Minutes of Business Meetings. Summary minutes of business meetings are reviewed by Commissioners who are present at the next business meeting. The summary minutes as approved by the Commissioners will be signed by the Executive Director or designee. Summary minutes of business meetings are maintained in the Commission office and published on the Commission’s website when the summary minutes are approved. (3-21-18)

03. Official Record of Parole Hearing or Case Review. The official record of a parole hearing or case review will be the summary minutes, once signed, of that hearing or review. The official record will be maintained in the Commission office and subject to public disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-21-18)

105. PREVIOUS DECISIONS.

The commission reserves the right to review or reconsider any previous decision for any reason and to take whatever action is agreed upon. The executive director may bring forward any case determined to need review before the next hearing session. Information may be sent by electronic mail if considered an emergency. (4-11-15)

106. INDIVIDUAL POLLING OF THE COMMISSION.

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)

107. APA APPLICABILITY.

The commission has the authority to establish rules under Chapter 52, Title 67, Idaho Code (Administrative Procedures Act). No other provision or requirement of the Administrative Procedures Act applies to the commission. (3-23-98)

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

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

02. 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(2), Idaho Code, and other applicable provisions of Idaho law. (4-11-15)

109. -- 149. (RESERVED)

150. COMMISSION AND STAFF.

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

a. The Commission is composed of seven (7) members appointed by the governor for three (3) year terms. Vacancies for unexpired terms will be for the remainder of the term and appointees may be reappointed. (3-21-18)

i. No more than four (4) members will be from one (1) political party. (3-21-18)

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 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)

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

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

151. -- 199. (RESERVED)

200. HEARING PROCESS.

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

a. A schedule of Commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. The hearing schedule will be available five (5) business days prior to a hearing session. The hearing schedule may be revised due to offender movement between institutions or other circumstances and may not be published earlier. A person may obtain the offender's hearing date by contacting the Commission office or on the commission website at www.pardons.idaho.gov. (6-30-19)T

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. (3-21-18)

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

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

03. Interview Method. For parole hearings, commutation hearings, pardon hearings, remission of fines hearings, and restoration of firearm rights hearings, an interview may be conducted face-to-face, by telephone, or by other electronic means. The interview may be conducted by a hearing officer or other designee of the Executive Director. If an interview is not required, the offender may simply appear before the Commission for a hearing. (3-21-18)

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

b. The Commission will determine if it will conduct another hearing or make a decision based upon the report. (3-21-18)

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

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

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

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

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

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

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

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

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

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

f. Restoration of Firearm Rights. The offender is encouraged to be present at the hearing. The Commission may make such appearance mandatory or may make a final decision based upon the information that is available. (3-21-18)

06. Witnesses and Documents. The Commission allows for the participation of attorneys, families of the offender, parolee, victims, and others who have a direct relationship to the specific hearing or offender/parolee. (3-21-18)

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

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

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

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

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

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

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

08. Decisions. (3-23-98)

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

i. Two (2) members of the Commission may meet to make decisions on the disposition of parole violations. Such decisions must be unanimous. In the event they are not unanimous, then the parole violation disposition decision will be made by a majority of the full Commission at the next quarterly meeting or a special meeting, pursuant to Section 20-210, Idaho Code. (3-21-18)

ii. Three (3) members of the Commission may meet to make decisions to grant or deny parole. Such decisions must be unanimous. In the event they are not unanimous, then the decision to grant or deny parole will be made by a majority of the full Commission at the next quarterly meeting, pursuant to Section 20-210, Idaho Code. (3-21-18)

b. Decisions will be given orally following the hearing and deliberation of a case by the Commission. The decision may be sent to the offender in writing with specific information/conditions. (3-21-18)

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 without a Commission hearing, the decision will be published within a reasonable time on the Commission website. (3-21-18)

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

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

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

b. All persons attending a hearing or hearing session, must abide by security policies of the department of correction, the facility where the hearing is being held, and pertinent statutes. The number of witnesses allowed in the hearing room will follow the security policies of the institution; and all persons may be screened through metal detectors or similar technology and will be subject to search. (3-21-18)

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

d. The media is invited to attend any open hearing of the Commission. (3-21-18)

i. Interviews with offenders or witnesses will not be allowed during the hearing process and neither the Commission nor its staff will be responsible for arranging such interviews. (3-21-18)

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)

201. -- 249. (RESERVED)

250. PAROLE.

01. Parole Consideration. The Commission will use clear, evidence-based parole guidelines in making parole decisions, while still maintaining discretion in individual cases. (3-21-18)

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, which are embedded in clear parole guidelines. These guidelines will include the use of a validated risk and needs assessment. The Commission still retains the discretion to grant or deny parole in individual cases based on countervailing, discrete, individual case factors. Factors to be considered include, but are not limited to: (3-21-18)

i. Seriousness of and aggravating factors involved in the crime. (3-21-18)

ii. Mitigating factors involved in the crime or related to the offender's circumstances. (3-21-18)

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

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

v. Institutional history to include conformance to established rules, involvement in programs, jobs, and custody level at time of the hearing, and overall behavior. (3-21-18)

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

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

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

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

x. Compliance with any order of restitution entered pursuant to Section 19-5304, Idaho Code. (3-21-18)

02. Primary Review. For all offenders eligible for parole, a review for the purpose of setting the initial parole hearing will be conducted. (3-21-18)

a. The Executive Director or a designee will conduct the primary review following receipt of the sentence calculation from the Department of Correction's central records unit. The month and year of the initial parole hearing will be established based upon the sentence calculation. The Commission is responsible for conducting the primary review to set the initial hearing once an official sentence calculation document has been received from the Department of Correction (3-21-18)

i. In cases where an offender is serving both a court-ordered retained jurisdiction period and a current sentence of imprisonment, the primary review will not be conducted on the imprisonment case until the court-retained jurisdiction case has been concluded. (3-21-18)

ii. In cases where the offender has a death sentence, or a life without parole sentence, a primary review will not be conducted. (3-21-18)

iii. In cases with specified fixed terms, the initial hearing will be scheduled approximately six (6) months prior to the offender's parole eligibility date based on the sentence calculation. An initial hearing will not be scheduled until all fixed terms (consecutive and concurrent) the offender is currently serving are within six (6) months of completion. (3-21-18)

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

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

vi. Initial parole hearings will be scheduled based on the sentence calculation prepared by Idaho Department of Correction. (3-21-18)

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

a. The parolee is required to enter into and comply with an agreement of supervision with the Idaho Department 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. (3-21-18)

b. The 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. (3-21-18)

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

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

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

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

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

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

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

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

ii. Not engage in conduct that is, or is intended to be, harmful to himself or others. (3-21-18)

iii. Not purchase, own, sell, or have in the parolee's control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. (4-11-15)

iv. Not have in the parolee's control any dangerous weapons used, or intended to be used, for other than normal purposes, such as knives for household use. (3-21-18)

- g.** The parolee will: (4-11-15)
- i. Abstain from use of alcoholic beverages. (3-8-16)
 - ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (3-23-98)
 - iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, narcotics, or other substances, which may be at the parolee’s expense. (4-11-15)
 - iv. Participate in treatment programs as specified by the Commission or ordered by the parole officer. (3-23-98)
- h.** A parolee will submit to a search of person or property, or both, to include residence and vehicle, at any time and place by the supervisory authority or the Commission, and the parolee waives the constitutional right to be free from such searches. (3-21-18)
- 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; or (3-21-18)
 - iii. Leave the assigned district. (3-23-98)
- j.** The parolee will be available for supervision and will not actively avoid supervision. (3-21-18)
- 04. Special Conditions of Parole.** (3-23-98)
- a.** In addition to general conditions of parole, the Commission may add special conditions appropriate to the individual case. (3-23-98)
- b.** The Commission delegates the authority to the Executive Director to add additional special conditions, before an offender has been released to parole or while on parole, after the offender has signed a statement acknowledging the special conditions. The Commission will establish the special conditions of parole using the offender’s most current risk and needs assessment to guide the imposition of necessary conditions. (3-8-16)
- 05. Medical Parole.** The Commission may parole an offender for medical reasons pursuant to Section 20-223(8), Idaho Code. (3-21-18)
- 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, which will require specific medical information in reference to the offender’s condition, as well as a treatment or care plan if released, and any other information deemed necessary. (3-21-18)
- 06. 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, parole officer designee, or parole officer supervisor can petition the Commission to consider an early discharge upon reaching the timelines established in Subsection 250.07.b.i. (3-21-18)

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

c. If a decision has been made by the Commission to grant an early discharge, and adverse information is received that was not previously available, the document will not be signed and the discharge will not be effective. The Executive Director may issue a Commission warrant based upon the new information and the discharge grant will automatically be voided without further action by the Commission. Such adverse information will be submitted to the Commission at the next available hearing session for reconsideration. If the Executive Director does not issue a warrant, the information will be referred to the Commission for reconsideration. (4-11-15)

d. If the parolee is permanently incapacitated or terminally ill, the Commission may consider and grant an early discharge after one (1) year for any crime. (3-21-18)

07. Detainers. (3-23-98)

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

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

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

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

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

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

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

08. Special Progress Reports. A special progress report may be submitted by the supervising

authority to request modification of a special condition of parole or advise the Commission of problems that have developed. (3-21-18)

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

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

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

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

ii. Failure to successfully complete parole may be grounds for forfeiture of the bond. (4-11-15)

iii. Upon successful completion of parole, the amount of the bond may be returned to payee less an amount for administrative costs as determined by the Commission rule. (4-11-15)

iv. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. (4-11-15)

251. -- 299. (RESERVED)

300. VICTIMS.

01. Process for Victims. The Commission has established a process for victims of criminal offenses for which an offender is currently incarcerated and is not serving a retained jurisdiction. Victims of non-adjudicated cases may be given courtesy notification. This includes victims who may not be in the instant offense and those removed from the instant offense as a result of the plea bargain process. The victims may be located in the hearing officer report or from another victim coordinator or the prosecutor. The Victim Coordinator will verify the victims with the prosecutor when not included with the instant offense. (3-21-18)

a. The Commission will establish a record for victims of offenders who may be considered for parole, early discharge, commutation, restoration of firearm rights, or pardon. To establish a victim record, the Commission must receive official written notice from the clerk of the sentencing court or the county prosecutor's office. If the Commission has not received official notice of the victim, the Commission or staff may be advised of the victim's identity directly by the victim, victim's family or other individual. Commission staff will verify the name or names of the victim(s) with the county prosecutor and a record will be established. (3-21-18)

b. The Commission will advise the victims of their constitutional and statutory rights to be notified of Parole Commission proceedings. The Commission will use all tools at its disposal and will exercise all due diligence to notify victims of their rights if this official notice has not been received. (3-21-18)

c. Hearing schedules and Commission decision will be made available on the Commission website. (3-21-18)

d. Hearing notifications can be discontinued at the victims' request. (3-21-18)

e. Victims will be notified when an offender has been released to parole or has absconded from supervision. (3-21-18)

02. Confidentiality of Victim's Address and Written Testimony. The victim's record maintained by

the Commission will include contact information and written testimony or information, which will be maintained in a confidential manner. The Commission may only release the victim's contact information to the Department of Correction. (3-21-18)

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 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 testify before the Commission during a hearing session, but at a time separate from the actual hearing with the offender. Testimony that is not on the record in a hearing is not subject to disclosure. (3-21-18)

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

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

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

301. -- 349. (RESERVED)

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. A parole plan approved by Department of Correction probation and parole staff should provide a positive re-entry into the community for the offender. (3-21-18)

a. The proposed parole plan should be available at the parole hearing interview and parole consideration hearing and should include a stable residence, employment or maintenance and care plan, as well as treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. This plan will be formulated using the validated risk and needs assessment prepared by the Department of Correction. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. (3-21-18)

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

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

02. 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. Should the offender have disciplinary problems following the parole hearing, or the Commission receives information that was not available at the time of the hearing, the Commission may reconsider the decision, and the tentative parole date may be voided or changed. (3-21-18)

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

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

351. -- 399. (RESERVED)

400. PAROLE REVOCATION PROCESS.

01. Initiated. The parole revocation process is initiated by a written or verbal report describing the conditions of parole that are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender, with the exception of an absentia revocation hearing as explained in Subsection 400.07.g. (4-11-15)

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

a. A supervising authority may issue an investigative warrant referred to as an agent's warrant. The agent's warrant authorizes local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the Commission, pursuant to Section 20-227, Idaho Code. (3-21-18)

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 or other law enforcement database and will designate from which states the Commission will extradite the offender once arrested. At any time the Executive Director or designee may change the area of extradition. (3-21-18)

ii. If an offender is being held in custody on new charges in a state outside of Idaho, the warrant may be placed as a detainer only, and written notice of this action will be submitted to the holding facility. If the detainer is officially served on the offender without notice of this action to the Commission, the Commission will not be held responsible for the time limits prescribed by law for service of the factual allegations of the violation of the conditions of parole. (3-21-18)

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

c. Parolees who have allegedly absconded from supervision are considered to be a Fugitive from Justice, starting from the day a Fugitive Warrant is issued by the Commission and ending upon the day of arrest on that warrant. Per Idaho Code Section 20-228, upon issuance of a Fugitive Warrant, parole is suspended. The time that a parolee is considered to be a Fugitive from Justice will not be counted towards the time on parole or as part of the sentence. (3-21-18)

03. Notice of Hearing Rights. Every parolee arrested on a Commission warrant for alleged violation(s) of parole is entitled to a fair and impartial hearing of the factual allegations of violation of the conditions of parole. (3-21-18)

a. The parolee shall be provided written, pertinent due process including notice of the date, time and location of any and all hearings involved in the revocation process. (3-21-18)

b. The parolee shall have the right to appear at a hearing and personally address the allegations of violation of the conditions of parole at said hearing. (3-21-18)

c. The parolee may confront and cross-examine adverse witnesses who have given information on which the charges have been based. (3-21-18)

04. Alternative Options for Parole Violations and Absconding. The Commission will consider alternative options on a case by case basis. (3-21-18)

a. When the member or members or hearing officer, having heard the matter conclude that the allegations of violation of the conditions of parole are not sufficient cause for the revocation of parole, the parolee will be reinstated on parole on the same or modified conditions of parole. (3-21-18)

b. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and are not sufficient cause for the revocation of parole, then the alleged parole violator may be considered for alternative options to revocation. (3-21-18)

i. Any decision made by the Commission may be reconsidered at any time. The Commission or Executive Director may bring forward any case determined to need reconsideration before the next hearing session as described in Section 105. (3-21-18)

ii. The Commission may review the parole violator's status while serving alternative options. In the case of non-compliance with the alternative options, the Commission may review the parole violator's status which may result in additional alternative options or revocation. (3-21-18)

c. When the member or members or hearing officer, having heard the matter conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then a dispositional hearing shall be convened during the regular session of the Commission for consideration of revocation of parole. (3-21-18)

05. Witnesses. The accusing parole officer or alleged parole violator may present witnesses in support of the claimed allegations of parole violation or in defense of the charges. (3-21-18)

a. The Commission has no subpoena power to compel any witness to attend a hearing. The alleged parole violator may make a timely written request to the Commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. (4-11-15)

b. If it is determined by the hearing officer or the Executive Director that the identification of an informant or the personal appearance of a witness would subject such person to potential risk or harm, confrontation or cross-examination will not be allowed, and the record will reflect such determination. (3-21-18)

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. (3-21-18)

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the Commission office of any hearings and if requested in writing, the Commission office will provide the attorney with copies of reports or documents that are subject to disclosure according to the public records act. (3-21-18)

c. Commission Provided Attorney. Prior to a hearing, the alleged parole violator may request legal representation be provided by the Commission. The Executive Director or designee will determine if the facts presented by the alleged parole violation or the circumstances of the alleged parole violator demonstrate that alleged parole violator has presented a colorable claim that the alleged violation(s) did not occur or that the alleged parole violator does not understand the proceedings or is otherwise incapable of representing himself. (6-30-19)T

i. If a hearing officer, after meeting with the alleged parole violator, believes that the individual is not able to fully understand the hearing proceedings or is otherwise incapable of representing himself, the hearing officer shall notify the Executive Director. Upon receipt of such notification, the Executive Director or the Commission will make an attorney available to assist the alleged parole violator at the Commission's expense if the facts presented demonstrate that the alleged parole violator meets the criteria for Commission-provided attorney. In reaching this decision, the Executive Director or Commission shall: (3-21-18)

(1) Review the case file and documents regarding the alleged parole violator's personal history, including his physical and mental health status. (3-21-18)

(2) Consider the alleged parole violator's ability and capacity to understand the proceedings. (3-21-18)

(3) Order a current or competency assessment if such would be helpful in making a decision regarding the request for counsel. (3-21-18)

ii. Specific time limits provided for in these rules may be waived at the discretion of the Executive Director when an attorney is requested or provided, or both, at Commission expense. (3-21-18)

07. Violations and Revocation Hearings. The alleged parole violator will be notified of any and all hearing dates and locations reasonably in advance of the hearing. The hearing officer or Executive Director will determine the location of all hearings. (3-21-18)

a. The alleged parole violator may request a continuance of, or waive any hearing, subject to the final determination of the hearing officer, Executive Director, or the Commission. (3-21-18)

b. The type of violations raised in the allegations will determine the type of hearings available to the alleged parole violator. (3-21-18)

i. Non-technical violations. If the alleged parole violator is charged or convicted of a new felony, the subject is not entitled to a preliminary or on-site hearing, but is entitled to a hearing to determine guilt or innocence of the alleged parole violation within a reasonable time following service of a copy of the factual basis of the allegations. (3-21-18)

ii. Technical violations. If the alleged parole violator is charged with a technical violation of the conditions of parole, the alleged parole violator is entitled to a preliminary hearing by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a Commission hearing officer to determine guilt or innocence within thirty (30) days from the date the accused was served with the notice of violation allegations. (3-21-18)

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

d. On-Site Violation Hearing. A technical parole violator is entitled to an on-site fact-finding hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The Executive Director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the Executive Director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than Idaho. (3-21-18)

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

decision is rendered, such decision will issue within twenty (20) days of the violation hearing. (3-21-18)

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

i The revocation hearing will include personal attendance of the alleged parole violator. (3-21-18)

ii. The Commission has full discretion to reinstate the offender to parole, impose alternative options to revocation, including sanctions, or revoke parole. Unless the offender has waived his right to be present and the Commission accepts such waiver as set forth in Subsection 400.07.g. of these rules, the alleged parole violator will appear before the Commission at the revocation hearing. The Commission will consider all options available, and will state its reasoning if parole is revoked. (3-21-18)

g. Absentia Hearing. The Commission can hold a revocation hearing without the alleged parole violator's appearance if the alleged parole violator has signed the proper document waiving the right to appear before the Commission, and the Commission accepts such a waiver. The Commission will determine if parole will be considered once the revocation decision has been made. (3-21-18)

i. If new criminal charges result in a new commitment and incarceration, the alleged parole violator can admit guilt and waive an appearance at a violation or revocation hearing. (3-21-18)

ii. If the alleged parole violator has absconded supervision, and is re-incarcerated in another state without a new conviction, the alleged parole violator can admit guilt and waive an appearance at a violation or revocation hearing. (3-21-18)

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

a. 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)

b. 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. Competency to Assist in Defense. (3-21-18)

a. Specific time limits pertinent to the case may be stayed. (3-21-18)

b. A competency evaluation may be requested by the Commission and mental health treatment may be deemed appropriate. (3-21-18)

c. 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 Commission will decide if the parolee will be released to continue parole or be considered for alternative options to revocation. (3-21-18)

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

c. After a violation hearing, the hearing officer will prepare a report of findings summarizing the

violation hearing, to include testimony, and will make specific findings for each allegation. (4-11-15)

i. If the hearing officer makes a finding of guilt, the hearing officer may recommend to the Executive Director or the Commission immediate reinstatement or reinstatement upon successful completion of an alternative option to revocation without further proceedings. (3-21-18)

ii. Two (2) members of the Commission may meet to make decisions on the disposition of parole violations. Such decisions must be unanimous, and in the event they are not unanimous, then the parole violation disposition decision will be made by a majority of the full Commission at the next quarterly meeting or a special meeting pursuant to Section 20-210, Idaho Code. (3-21-18)

iii. The alleged parole violator is entitled to receive a copy of all reports of findings of hearings. (3-21-18)

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

a. Any time the offender is incarcerated on an agent's warrant and a Commission warrant will be credited toward the sentence, including discretionary jail time. (3-21-18)

b. 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)

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

401. -- 449. (RESERVED)

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

Commutation is a process whereby clemency may be considered and granted to modify a sentence imposed by the sentencing jurisdiction. (3-21-18)

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

a. The only acceptable form is the one provided by the Commission, and it must be signed by the petitioner and the case manager. (3-21-18)

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

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

ii. Reduce the maximum length of sentence. (3-23-98)

iii. Reduce the minimum fixed term of a sentence. (3-30-01)

iv. Change a fixed sentence to indeterminate. (3-23-98)

v. Change a sentence in any other manner not described. (3-23-98)

d. The Commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (3-23-98)

e. Petitions may be considered at any time by the Commission, but are usually scheduled for consideration in the quarterly sessions in January, April, July, and October. (3-21-18)

f. Petitions must be received no later than the first day of the month prior to the next designated quarterly hearing session for which the offender is applying. (3-21-18)

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

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

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

j. The petition is limited to no more than six (6) pages; the petition will not be considered if the document exceeds this number. (3-21-18)

k. A parole violator is not eligible to file a petition until the violation has been adjudicated. (3-21-18)

02. Commutation Hearing. The scheduling of a hearing is at the complete discretion of the Commission; if a commutation hearing is scheduled, the Commission will determine the date of the hearing. (3-21-18)

a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. (3-23-98)

c. All rules of procedure governing hearings will apply to a commutation hearing. (3-23-98)

d. The decision and supporting documents regarding a commutation will be filed with the Secretary of State. (3-21-18)

i. The fact and number of dissenting votes of the Commission will be a matter of public record. The dissenting votes of any Commissioner voting shall be separately reduced to writing with the reason for said dissent and signed by the dissenting Commissioner. The written dissent shall be submitted to the Office of the Secretary of State. Disclosure of the dissenting vote(s) and reason(s) shall be maintained and disclosed in accordance with the Idaho Public Records Act, Section 74-101, Idaho Code, et seq. (3-21-18)

ii. All written material considered in the decision process of a commutation will be a matter of public record with the exception of the pre-sentence investigation report, victim information, mental health records, criminal history information, medical records, or other documents determined by the Executive Director or Commissioners or designee as confidential, will be submitted to the Office of the Secretary of State and will be a matter of public record. (3-21-18)

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

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

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

04. Authority to Grant. The Commission has full and final authority to grant commutations except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a

minor child, and manufacture or delivery of a controlled substance pursuant to Section 20-240, Idaho Code. (3-21-18)

a. In the cases of offenses listed in this section, the Commission's decision on the commutation application shall only constitute a recommendation to the Governor. (3-21-18)

b. Following the hearing, the Commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-21-18)

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

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

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

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

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

i. The petition must contain the signature of the petitioner, unless the petitioner is unable to sign the petition. In such a case, the Executive Director will determine if it is the desire of the person to submit a petition. (3-21-18)

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

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

451. -- 499. (RESERVED)

500. SELF-INITIATED PAROLE RECONSIDERATION.
An offender may appeal the last hearing decision of the Commission. (3-21-18)

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

a. The only acceptable form is the one provided by the Commission, and it must be signed by the petitioner and case manager. (3-21-18)

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. (3-23-98)

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

e. Following the initial submission, the Commission may consider but one (1) application from any one (1) person in any twelve-month (12) period. (4-11-15)

i. A petition may be submitted six (6) months after a qualified hearing. A qualified hearing includes: (4-11-15)

- (a) Regular parole hearings; (4-11-15)
- (b) Parole revocation hearings; (4-11-15)
- (c) Hearing officer reviews; and (4-11-15)
- (d) SIPR hearings. (4-11-15)
- ii. A petition may be submitted once every twelve (12) months if a hearing is not granted. (4-11-15)
- f. Petitions may be considered at any time by the Commission. (3-30-01)
- g. Petitions must be received no later than the first day of the month prior to the next month's hearing session. (3-8-16)
- h. Review or deliberation on the petition by the Commission will be conducted in executive session. (3-23-98)
- i. Any petition may be continued for additional information or for further consideration. (3-23-98)
- j. The petitioner will be sent written notice of the decision. (3-23-98)
- k. The petition is limited to 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)
 - a. If a hearing is scheduled, the Commission will determine the date of the hearing. (3-8-16)
 - b. If a hearing is scheduled, the previous decision of the Commission is considered null and void. (3-8-16)
- 03. Amended Decision.** The Commission may elect to amend any decision without conducting another hearing. (3-23-98)

501. -- 549. (RESERVED)

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

A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. A pardon does not expunge or remove the crime from the applicant's criminal history. (3-21-18)

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 discharge from supervision or incarceration. (3-21-18)

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted for consideration no sooner than five (5) years after discharge from supervision or incarceration. (3-21-18)

c. A pardon application will not be considered while an offender is incarcerated. (3-21-18)

d. The Commission will determine whether a hearing will be granted and the applicant will be advised notified of the decision in writing. (3-21-18)

02. Application. A pardon application can be obtained from the Commission office or on the

- Commission website. (4-11-15)
- a. The application must be completed and returned to the Commission office. (3-23-98)
 - i. The completed application must include the reasons why the pardon is requested. (3-23-98)
 - ii. The applicant may attach letters of recommendation or other documents to support the request. (3-23-98)
 - iii. The applicant must include copies of all court judgments and conviction documents, as well as police reports for each crime for which a pardon is requested. (3-21-18)
 - iv. A pardon may be requested only once during a twelve-month (12) period unless otherwise stated by the Commission. (4-11-15)
 - v. An application may not be considered if there is significant law enforcement contact since sentence or discharge. (3-21-18)
- b.** Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report will contain the following: (3-21-18)
- i. A records check will be conducted to include any law enforcement contact since the release from supervision or incarceration. (3-21-18)
 - ii. The applicant’s employment history since discharge from supervision or incarceration. (3-21-18)
 - iii. The applicant’s willingness to fulfill the obligations of a law abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. (3-21-18)
 - iv. The applicant’s employment and education status, including any professional or vocational achievements, training, and any additional information as deemed necessary or appropriate. (3-21-18)
 - v. Confirmation that all restitution and fines as ordered by the sentencing court are paid. (3-21-18)
 - vi. An interview with the applicant may be conducted and a summary of the interview provided. Said interview may be conducted in person or by electronic means. (3-21-18)
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. If a pardon hearing is scheduled, the Commission will determine the date of the hearing. (4-11-15)
- a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)
 - b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)
 - c. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. (3-23-98)
 - i. The applicant’s appearance at the hearing is not mandatory but is encouraged. If appearance is not possible or the applicant decides not to attend the hearing, the applicant must notify the Commission in writing. (3-21-18)
 - ii. Upon request, the Commission may continue the hearing to a later date in order for the applicant to attend; such continuance will not require additional publication of the hearing. (3-21-18)

- 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.** The fact and number of dissenting votes of the Commissioners voting will be a matter of public record. The dissenting votes of any Commissioner voting shall be separately reduced to writing with the reason for said dissent and signed by the dissenting Commissioner. The written record of the vote by each voting Commission dissent shall be submitted to the Office of the Secretary of State. Disclosure of the dissenting vote(s) and reason(s) shall be maintained and disclosed in accordance with the Idaho Public Records Act, Section 74-101, Idaho Code, et seq. (3-21-18)
- ii.** All written material considered in the decision process, with the exception of the pre-sentence investigation report, victim information, mental health records, criminal history information, and medical records, or other documents determined by the Executive Director or Commissioners or designee as confidential, will be submitted to the office of the Secretary of State and will be a matter of public record. (3-21-18)
- 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)

04. Authority to Grant. The Commission has full and final authority to grant pardons, except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances pursuant to Section 20-240, Idaho Code. (3-21-18)

- a.** In the cases listed in this section, the Commission’s decision to grant a pardon shall only constitute a recommendation to the governor. (3-21-18)
- 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 applicant’s criminal history. (3-21-18)

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

01. General. An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(3), Idaho Code. This is not a pardon for the conviction of a crime, nor is the applicant’s criminal record expunged. (3-21-18)

02. Application. An application may not be made until five (5) years after the date of final discharge from supervision or incarceration. (3-21-18)

- a.** An application may be obtained from the Commission office or on the Commission website. (4-11-15)
- b.** The application must be the original and returned to the Commission office. (4-11-15)
- i.** The application must request the restoration of the right to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. (4-11-15)
- ii.** The application must be in writing and legible. (4-11-15)
- iii.** All court convictions, judgment orders, including any dismissal documents, as well as police

- reports related to said convictions must accompany the application. (3-21-18)
- 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)
 - vii. The Commission will determine whether a hearing will be granted and the applicant will be advised of the decision. (3-21-18)
 - viii. An incarcerated offender is not eligible to apply for the restoration of gun rights until completion of sentence or supervision after five (5) years have elapsed. (3-21-18)
- c.** Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report shall include, but shall not be limited to, the following: (3-21-18)
- i. A records check will be conducted to include any law enforcement contact since release from supervision or incarceration. (3-21-18)
 - ii. The applicant's employment history since discharge from supervision or incarceration. (3-21-18)
 - iii. The applicant's willingness to fulfill the obligations of a law abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. (3-21-18)
 - iv. The applicant's employment and education status, including any professional or vocational achievements, training and any additional information as deemed necessary or appropriate. (3-21-18)
 - v. Confirmation that all restitution and fines as ordered by the sentencing court have been paid. (3-21-18)
 - vi. An interview with the applicant may be conducted and a summary of the interview provided. The interview may be conducted in person or by electronic means. (3-21-18)
- 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 hearing may be continued for additional information. (3-21-18)
 - 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. (3-21-18)
 - i. The applicant's appearance at the hearing is not mandatory but is encouraged. If the applicant decides not to attend the hearing, the applicant must notify the Commission in writing. (3-21-18)
 - d.** The decision and supporting documents regarding the decision to grant or deny an application to restore firearms rights will be filed with the Secretary of State. (3-21-18)
 - i. The fact and number of dissenting votes of the Commissioners voting will be a matter of public record. The dissenting votes of any Commissioner voting shall be separately reduced to writing with the reason for said dissent and signed by the dissenting Commissioner. The written record of the vote by each voting Commission dissent shall be submitted to the office of the Secretary of State. Disclosure of the dissenting vote(s) and reason(s) shall be maintained and disclosed in accordance with the Idaho Public Records Act, Idaho Code Section 74-101 et

seq. (3-21-18)

ii. All written material considered in the decision process, with the exception of the pre-sentence investigation report, victim information, mental health records, criminal history information, medical records, or other documents determined by the Executive Director or Commissioners or designee as confidential, will be submitted to the Office of the Secretary of State and will be a matter of public. (3-21-18)

e. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-21-18)

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)

552. -- 599. (RESERVED)

600. REMISSION OF FINE OR PENALTY PURSUANT TO SECTION 20-210A, IDAHO CODE.

01. Request. An application for remission of fine or penalty must be made to the Commission. (3-23-98)

a. The application must be in writing. (3-23-98)

b. The application must outline the reasons action is requested to remit such fine or penalty. (3-23-98)

c. The applicant must submit a certified copy of the judgment or order assessing said fine or penalty from the jurisdiction that assessed such penalty. (3-21-18)

02. Review. The Commission will review the request to remit a fine or penalty. (3-23-98)

a. The Commission will usually review such application on a month designated as a quarterly session, but may make such review during any session. The review will be conducted by the full Commission. (4-11-15)

b. The Commission will conduct such review in executive session. (3-23-98)

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

d. The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. (3-21-18)

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

a. If a hearing is scheduled, the Commission will determine the date of the hearing. (3-23-98)

b. If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

c. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

d. All rules of procedure governing hearings will apply to such scheduled hearing. (3-23-98)

e. The decision and supporting documents regarding the remission will be filed with the clerk of the court where said fine or penalty or forfeiture was assessed. (3-21-18)

i. The fact and number of dissenting votes of the Commission will be a matter of public record. The written record of the vote by each voting Commission member shall be kept confidential and privileged from disclosure, provided the record shall be made available, upon request, to the Governor or chairman of the Senate Judiciary and Rules Committee and the chairman of the House of Representatives Judiciary, Rules and Administration Committee, pursuant to Section 20-213A(2), Idaho Code. (3-21-18)

ii. All written material considered in the decision process, with the exception of the pre-sentence investigation report, victim information, mental health records, criminal history information, medical records or other documents determined by the Executive Director or Commissioners or designee as confidential, will be submitted to the Office of the Secretary of State and will be a matter of public record. (3-21-18)

f. Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. (3-23-98)

i. The applicant's appearance at the hearing is not mandatory; however, appearance may be required and the applicant will be notified. (3-23-98)

ii. The Commission may continue the hearing to a later date for any reason and such continuance will not require notice to be published again. (3-23-98)

04. Satisfaction of Judgment. If the Commission determines that such fine or penalty is to be remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. (3-23-98)

601. -- 799. (RESERVED)

800. FOREIGN NATIONAL TREATY TRANSFER PURSUANT TO SECTION 20-104, IDAHO CODE. Under Section 20-104, Idaho Code, an offender may be transferred, upon request, to his country of citizenship if a treaty exists between his country and the United States. The Commission's decision is only a recommendation to the Governor as the Governor will have final approval of the transfer. (3-8-16)

01. Request for Transfer. An offender may request a transfer to his country of citizenship. The Commission will receive the application and relevant documents from the Department of Correction. The Commission may request additional information from the applicant, the victim, the Department, or any other source the Commission deems appropriate. (3-21-18)

a. The offender must be a citizen of the country to which he is requesting a transfer. (3-21-18)

b. The United States and the foreign country must be parties to a treaty that provides for the transfer or exchange of convicted offenders. (3-21-18)

c. The offender must not be serving a life sentence. (3-21-18)

d. The offender cannot be less than two (2) years from his parole eligibility date. (3-21-18)

e. The offender must meet the Department of Justice's guidelines for international transfer applications as follows: (3-21-18)

i. The offender must not have a death sentence. (3-21-18)

ii. The offender must be serving determinate sentence. (3-21-18)

iii. The offender must not be serving a sentence for an immigration offense. (3-21-18)

02. Schedule for Review of Application. The Commission will schedule the application for review during a scheduled hearing session at a time and place of its choosing. (3-21-18)

a. The Commission has complete discretion and authority to make a recommendation to the Governor. (3-8-16)

b. The offender is not entitled to be personally present, to have counsel, to present witnesses or evidence, to have any particular evidence considered or to designate the location or time. (3-21-18)

03. Issuance of Written Recommendation. Following the Commission's consideration, a non-binding written recommendation will be issued to the Governor for his consideration. A copy of the recommendation will be sent to the Department's central records. (3-21-18)

a. The offender is not entitled to appeal the Commission's recommendation or the Governor's decision. (3-21-18)

b. The offender may reapply two (2) years from the date of denial by either the Governor or the Commission. (3-8-16)

04. Approval of Transfer Request. If the Governor approves the transfer request, and the receiving country accepts the offender for transfer, the request packet is sent to the Department of Justice for consideration and approval. Once the Department of Justice approves the transfer, the offender is under the jurisdiction of the Department of Justice. (3-21-18)

801. -- 999. (RESERVED)