

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 150

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1  
2 RELATING TO THE IDAHO COMMISSION OF PARDONS AND PAROLE; AMENDING SECTION  
3 20-201, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE FOR THE IDAHO  
4 COMMISSION OF PARDONS AND PAROLE; AMENDING TITLE 20, IDAHO CODE, BY  
5 THE ADDITION OF A NEW CHAPTER 10, TITLE 20, IDAHO CODE, TO ESTABLISH  
6 THE IDAHO COMMISSION OF PARDONS AND PAROLE AND TO DEFINE TERMS; AMEND-  
7 ING SECTION 20-210, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE  
8 PROVISIONS REGARDING THE APPOINTMENT, QUALIFICATIONS, TERMS, COMPEN-  
9 SATION, AND MEETINGS OF THE COMMISSION, TO PROVIDE FOR THE EXECUTIVE  
10 DIRECTOR AND STAFF, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
11 20-213A, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE TERMINOLOGY,  
12 TO PROVIDE A CORRECT CODE REFERENCE, TO PROVIDE A CERTAIN REQUIREMENT  
13 FOR OPEN MEETINGS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
14 20-210A, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE PRO-  
15 VISIONS REGARDING THE DUTIES AND POWERS OF THE COMMISSION; AMENDING  
16 SECTION 20-223, IDAHO CODE, TO REVISE A PROVISION REGARDING LEGISLATIVE  
17 INTENT, TO PROVIDE THAT THE DEPARTMENT OF CORRECTION AND BOARD SHALL  
18 ASSIST THE COMMISSION, TO REMOVE PROVISIONS REGARDING PSYCHIATRIC OR  
19 PSYCHOLOGICAL EXAMINATIONS, AND TO REVISE PROVISIONS REGARDING REPORT-  
20 ING; AMENDING CHAPTER 10, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW  
21 SECTION 20-1005, IDAHO CODE, TO PROVIDE FOR RULES GOVERNING PAROLE,  
22 LEGISLATIVE INTENT, CERTAIN RESTRICTIONS, AND CERTAIN REQUIRED EXAMI-  
23 NATIONS AND REPORTING; AMENDING CHAPTER 10, TITLE 20, IDAHO CODE, BY THE  
24 ADDITION OF A NEW SECTION 20-1006, IDAHO CODE, TO PROVIDE FOR MEDICAL  
25 PAROLE AND CERTAIN REQUIRED REPORTING; AMENDING SECTION 20-228, IDAHO  
26 CODE, TO REDESIGNATE THE SECTION, TO REVISE TERMINOLOGY, TO PROVIDE A  
27 CORRECT CODE REFERENCE, AND TO MAKE A TECHNICAL CORRECTION; AMENDING  
28 SECTION 20-229, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE TER-  
29 MINOLOGY, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 20-229A,  
30 IDAHO CODE, TO REDESIGNATE THE SECTION, TO CLARIFY PROVISIONS REGARDING  
31 SERVICE TO AN ALLEGED VIOLATOR AND A WAIVER, TO REVISE TERMINOLOGY, AND  
32 TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 20-229B, IDAHO  
33 CODE, TO REDESIGNATE THE SECTION, TO CLARIFY PROVISIONS REGARDING  
34 COMMISSION RULINGS, TO REVISE TERMINOLOGY, TO PROVIDE A CORRECT CODE  
35 REFERENCE, AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 20-231,  
36 IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 20-233, IDAHO  
37 CODE, TO REDESIGNATE THE SECTION, TO REVISE TERMINOLOGY, AND TO MAKE  
38 A TECHNICAL CORRECTION; AMENDING SECTION 20-234, IDAHO CODE, TO RE-  
39 DESIGNATE THE SECTION, TO REVISE TERMINOLOGY, AND TO MAKE TECHNICAL  
40 CORRECTIONS; AMENDING SECTION 20-104, IDAHO CODE, TO REDESIGNATE THE  
41 SECTION AND TO REVISE TERMINOLOGY; AMENDING SECTION 20-240, IDAHO CODE,  
42 TO REDESIGNATE THE SECTION; AMENDING SECTION 20-240A, IDAHO CODE, TO  
43 REDESIGNATE THE SECTION; AMENDING SECTION 20-213, IDAHO CODE, TO REDES-  
44 IGNATE THE SECTION AND TO REVISE PROVISIONS REGARDING PUBLICATIONS AND  
45 A LIMITATION ON APPLICATIONS; AMENDING SECTION 20-240B, IDAHO CODE, TO

1 REDESIGNATE THE SECTION AND TO CLARIFY A PROVISION REGARDING NOTICE OF  
 2 GRANTED PARDON; AMENDING SECTION 19-2513, IDAHO CODE, TO PROVIDE COR-  
 3 RECT CODE REFERENCES; AMENDING SECTION 19-2515, IDAHO CODE, TO PROVIDE  
 4 A CORRECT CODE REFERENCE; AMENDING SECTION 19-2715, IDAHO CODE, TO PRO-  
 5 VIDE A CORRECT CODE REFERENCE; AMENDING SECTION 19-4213, IDAHO CODE,  
 6 TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION;  
 7 AMENDING SECTION 20-209G, IDAHO CODE, TO PROVIDE A CORRECT CODE REFER-  
 8 ENCE; AND AMENDING SECTION 74-105, IDAHO CODE, TO REVISE TERMINOLOGY  
 9 AND TO PROVIDE CORRECT CODE REFERENCES.

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 20-201, Idaho Code, be, and the same is hereby  
 12 amended to read as follows:

13 20-201. DEPARTMENT OF CORRECTION CREATED. There is hereby created the  
 14 department of correction, which shall consist of the state board of correc-  
 15 tion and the Idaho commission of pardons and parole. The department of cor-  
 16 rection shall, for the purposes of section 20, article IV, of the constitu-  
 17 tion of the state of Idaho, be an executive department of state government.  
 18 The Idaho commission of pardons and parole will operate and function as out-  
 19 lined in chapter 10, title 20, Idaho Code, and as otherwise provided by law.

20 SECTION 2. That Title 20, Idaho Code, be, and the same is hereby amended  
 21 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
 22 ter 10, Title 20, Idaho Code, and to read as follows:

23 CHAPTER 10  
 24 IDAHO COMMISSION OF PARDONS AND PAROLE

25 20-1001. DEFINITIONS. As used in this chapter, unless the context  
 26 clearly indicates or requires otherwise, the following terms shall be de-  
 27 fined as follows:

- 28 (1) "Board" means the state board of correction.  
 29 (2) "Commission" means the Idaho commission of pardons and parole.  
 30 (3) "Executive director" means the executive director of the commis-  
 31 sion.

32 SECTION 3. That Section 20-210, Idaho Code, be, and the same is hereby  
 33 amended to read as follows:

34 20-2101002. COMMISSION OF PARDONS AND PAROLE CREATED -- APPOINTMENT  
 35 -- QUALIFICATIONS -- TERMS -- SALARY MEETINGS -- COMPENSATION -- EXECUTIVE  
 36 DIRECTOR AND STAFF. (1) The governor shall appoint a state commission of  
 37 pardons and parole, each member of which shall be subject to the advice and  
 38 consent of the senate, in this chapter referred to as the commission, which  
 39 shall succeed to and have all rights, powers and authority of said board of  
 40 pardons as are granted and provided by the provisions of the constitution of  
 41 the state of Idaho.

1       (2) The commission shall be composed of seven (7) members. The members  
2 shall serve at the pleasure of the governor and not more than four (4) members  
3 shall be from any one (1) political party.

4       ~~(3) The members of the commission shall be appointed for the purposes of~~  
5 ~~organization as follows: Members on the commission on the effective date of~~  
6 ~~this act, shall serve out the remainder of their terms; thereafter, as mem-~~  
7 ~~bers' terms expire, the governor shall reappoint them or appoint new members~~  
8 ~~to serve terms of~~ Terms on the commission shall be for three (3) years; and  
9 vacancies in the commission for unexpired terms shall be by appointment by  
10 the governor for the remainder of the term and all appointees may be reap-  
11 pointed.

12       (4) The commission and the board may meet as necessary to exchange such  
13 information to enable each to effectively carry out their respective duties.

14       (5) The commission shall meet at such times and places as determined to  
15 be necessary and convenient, or at the call of the executive director, and in  
16 any event no less than quarterly.

17       (6) Two (2) ~~members of the commission~~ commissioners may meet to make  
18 decisions on the disposition of parole violations. Such decisions must be  
19 unanimous, and in the event they are not unanimous, then the parole violation  
20 disposition decision will be made by a majority of the full commission either  
21 at the next quarterly meeting or special meeting.

22       (7) Three (3) ~~members of the commission~~ commissioners may meet to make  
23 decisions to grant or deny parole. Such decisions must be unanimous, and in  
24 the event they are not unanimous, then the decision to grant or deny parole  
25 will be made by a majority of the full commission at the next quarterly meet-  
26 ing.

27       (8) ~~The members~~ Commissioners shall be compensated as provided by sec-  
28 tion 59-509(i), Idaho Code, when attending quarterly meetings conducted at  
29 a date and time separate from a hearing session or other meetings approved  
30 by the executive director. ~~The members~~ Commissioners shall receive compen-  
31 sation of three hundred dollars (\$300) per ~~member~~ commissioner per day when  
32 conducting parole, commutation, pardon, revocation or other hearings, and  
33 shall be reimbursed for actual and necessary expenses subject to the limita-  
34 tions provided in section 67-2008, Idaho Code.

35       (9) ~~The governor will liberally allow the reasonable payment for ser-~~  
36 ~~vices of such technical and professional advice and consultation as the~~  
37 ~~commission may require.~~ The governor shall appoint the executive director  
38 for the commission. The executive director shall be the full-time employee  
39 who shall report to, serve at the pleasure of, and be compensated as de-  
40 termined by the governor. The executive director shall be the official  
41 representative for the commission, shall be responsible for the managing  
42 and administration of daily commission business and shall schedule hearing  
43 sessions at times convenient to the ~~members of the commission~~ commissioners.  
44 For each scheduled session, the executive director shall designate one (1)  
45 of the ~~members of the commission~~ commissioners as the presiding officer for  
46 conducting the hearings. The executive director may hire such staff and  
47 employees as are approved by the governor. The executive director shall also  
48 have such other duties and responsibilities as the governor shall assign.

49       SECTION 4. That Section 20-213A, Idaho Code, be, and the same is hereby  
50 amended to read as follows:

1           20-213A1003. COMPLIANCE WITH OPEN MEETINGS LAW -- EXECUTIVE SESSIONS  
2 AUTHORIZED -- REPORT REQUIRED. (1) All meetings and hearings of the commis-  
3 sion of pardons and parole shall be held in accordance with the open meetings  
4 law as provided in chapter 2, title 74, Idaho Code, except:

5           (a) An initial review of an application for a request for parole, par-  
6 don, commutation or firearm restoration may be held in executive ses-  
7 sion. The executive session shall be limited to a decision as to whether  
8 a hearing should be granted;

9           (b) When a hearing is granted, it will be conducted in open session.  
10 Pursuant to section 74-206, Idaho Code, deliberations and voting con-  
11 cerning the granting, revoking, reinstating or refusing of paroles; the  
12 granting or denying of pardons or commutations; or the granting or deny-  
13 ing of firearm restorations shall be made in executive session;

14           (c) Votes of individual members in arriving at the parole, pardon,  
15 firearm restoration or commutation decisions shall not be made public,  
16 provided that the commission shall maintain a record of the votes of the  
17 individual members as required in subsection (23) of this section; and

18           (ed) Meetings of less than a majority of the commission to make deci-  
19 sions concerning the grant or denial of parole or the disposition of pa-  
20 role violations as provided in section 20-2101002, Idaho Code.

21           (2) In order to satisfy the requirements of section 74-203(5), Idaho  
22 Code, when the commission meets using telecommunications devices, the exec-  
23 utive director may designate an employee of the commission to be present at  
24 the physical location of the meeting.

25           (3) A written record of the vote to grant or deny parole, pardon,  
26 firearm restoration or commutation by each commission member in each case  
27 reviewed by that member shall be made by the commission. The record pro-  
28 duced by the commission pursuant to this section shall be kept confidential  
29 and privileged from disclosure, provided the record shall be made avail-  
30 able, upon request, to the governor or the governor's representative, the  
31 chairman and most senior minority member of the senate judiciary and rules  
32 committee, and the chairman and most senior minority member of the house of  
33 representatives judiciary, rules and administration committee, for all law-  
34 ful purposes. All committee members and representatives of the governor's  
35 office shall keep such record confidential. Distribution of the report by  
36 a commissioner or an employee of the executive director to any person not  
37 specifically listed in this section shall be a misdemeanor.

38           (34) Nothing contained in this section shall prevent any person from  
39 obtaining the results of any parole, pardon, firearm restoration or commu-  
40 tation action by the commission without reference to the manner in which any  
41 member voted, and the commission shall make such information public informa-  
42 tion.

43           (45) Nothing contained herein in this section shall prevent the execu-  
44 tive director ~~for the commission~~ or designated staff of the executive direc-  
45 tor from attending any meeting, including an executive session of the com-  
46 mission of pardons and parole.

47           (56) Nothing contained herein in this section shall prevent the gover-  
48 nor, the governor's representative, the chairman and most senior minority  
49 member of the senate judiciary and rules committee, and the chairman and most  
50 senior minority member of the house of representatives judiciary, rules and

1 administration committee from attending any meeting, including an executive  
2 session of the commission ~~of pardons and parole.~~

3 SECTION 5. That Section 20-210A, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5 ~~20-210A1004. COMMISSION OF PARDONS AND PAROLE --~~ DUTIES AND POWERS OF  
6 THE COMMISSION. The commission ~~of pardons and parole~~ shall:

7 (1) Have the powers relating to commutation, pardon and remission of  
8 fines and forfeitures as set forth in section 7, article IV, of the Idaho con-  
9 stitution;

10 (2) Subject to and consistent with the provisions of this chapter and  
11 section 19-2513, Idaho Code, decide whether any prisoner who is eligible for  
12 parole may be released on parole;

13 (3) Subject to and consistent with the provisions of ~~this chapter~~  
14 section 7, article IV, of the constitution of the state of Idaho; chapter 2,  
15 title 20, Idaho Code; and section 19-2513, Idaho Code~~;~~; and in compliance  
16 with chapter 52, title 67, Idaho Code, promulgate rules to establish the  
17 procedures to carry out the provisions of this chapter, including procedures  
18 under which any eligible prisoner may be released on parole;

19 (4) Specify in writing the conditions of parole for every prisoner re-  
20 leased on parole and provide every prisoner released on parole with a copy of  
21 the conditions of parole;

22 (5) Subject to and consistent with the provisions of this chapter, is-  
23 sue orders of final discharge from parole for eligible parolees; and

24 (6) Carry out all other duties and powers relating to the commission as  
25 set forth in Idaho Code.

26 SECTION 6. That Section 20-223, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 ~~20-223. PAROLE AND RULES GOVERNING -- RESTRICTIONS~~ LEGISLATIVE INTENT  
29 ~~-- PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION~~ REQUIRED REPORT. (1) It is the  
30 intent of the legislature to focus prison space on those who commit the most  
31 serious offenses or who have the highest likelihood of offending in the fu-  
32 ture, ~~and the commission, consistent with the provisions of this subsection,~~  
33 ~~shall promulgate rules that establish clear guidelines and procedures that~~  
34 ~~retain the commission's discretion in individual cases.~~

35 (2) Subject to section 19-2513, Idaho Code, ~~the commission shall have~~  
36 ~~the power to establish rules in compliance with chapter 52, title 67, Idaho~~  
37 ~~Code, under which any prisoner, excepting any under sentence of death, may be~~  
38 ~~allowed to go upon parole but to remain while on parole in the legal custody~~  
39 ~~and under the control of the board and subject to be taken back into confine-~~  
40 ~~ment at the direction of the commission.~~ The department of correction and  
41 board shall assist the commission where required by law and, consistent with  
42 subsection (1) of this section, in carrying out the provisions of chapter 10,  
43 title 20, Idaho Code.

44 ~~(3) Any prisoner who is granted parole under the interstate compact may~~  
45 ~~be required to post a bond prior to release or prior to such acceptance under~~  
46 ~~the interstate compact; such bond may be posted by the prisoner, the pris-~~  
47 ~~oner's family, or other interested party. Failure to successfully complete~~

1 parole may be grounds for forfeiture of the bond. Upon successful completion  
2 of parole, the amount of the bond may be returned, less an amount for admin-  
3 istrative costs as determined by commission rule, in compliance with chap-  
4 ter 52, title 67, Idaho Code. A request must be made for return of the bond  
5 within one (1) year of discharge of the offense for which the particular of-  
6 fender was serving parole. Funds collected through the bonding process will  
7 be placed in a separate commission receipts fund which is hereby created in  
8 the state treasury and utilized for the extradition of parole violators.

9 (4) No person serving a sentence for rape, incest, committing a lewd  
10 act upon a child, crime against nature, or with an intent or an assault with  
11 intent to commit any such crimes, or whose history and conduct indicate to  
12 the commission that he is a sexually dangerous person, shall be released on  
13 parole except upon the examination and evaluation of one (1) or more psy-  
14 chiatrists or psychologists or mental health professionals designated for  
15 this purpose by the department of correction to be selected by the commission  
16 and such evaluation shall be duly considered by the commission in making its  
17 parole determination. The commission may, in its discretion, likewise re-  
18 quire a similar examination and evaluation for persons serving sentences for  
19 crimes other than those above enumerated. No person making such evaluation  
20 shall be held financially responsible to any person for denial of parole by  
21 the commission or for the results of the future acts of such person if he be  
22 granted parole.

23 (5) Before considering the parole of any prisoner, the commission shall  
24 ensure that a risk assessment has been conducted pursuant to section 20-224,  
25 Idaho Code, and shall afford the prisoner the opportunity to be interviewed  
26 by the commission, a commissioner or other designated commission staff. A  
27 designated report and risk assessment, prepared by commission staff or a  
28 designated department of correction employee, that is specifically to be  
29 used by the commission in making a parole determination shall be exempt from  
30 public disclosure; such reports contain information from the presentence  
31 investigation report, medical or psychological information, the results  
32 of a risk assessment, victim information, designated confidential witness  
33 information and criminal history information. A parole shall be ordered  
34 when, in the discretion of the commission, it is in the best interests of  
35 society, and the commission believes the prisoner is able and willing to  
36 fulfill the obligations of a law-abiding citizen. Such determination shall  
37 not be a reward of clemency and it shall not be considered to be a reduction  
38 of sentence or a pardon. The commission may also by its rules fix the times  
39 and conditions under which any application denied may be reconsidered. No  
40 action may be maintained against the commission and/or any of its members in  
41 any court in connection with any decision taken by the commission to parole  
42 a prisoner and neither the commission nor its members shall be liable in any  
43 way for its action with respect thereto.

44 (6) In making any parole or commutation decision with respect to a pris-  
45 oner, the commission shall consider the current risk assessment, criminal  
46 history, program participation, compliance and completion, institutional  
47 misconduct and other individual characteristics related to the likelihood  
48 of offending in the future, as well as the compliance of the prisoner with  
49 any order of restitution which may have been entered according to section

1 ~~19-5304, Idaho Code. The commission may make compliance with such an order~~  
2 ~~of restitution a condition of parole.~~

3 ~~(7) Except as provided in subsection (2) of this section, no provision~~  
4 ~~of chapter 52, title 67, Idaho Code, shall apply to the commission.~~

5 ~~(8) Subject to the limitations of this subsection and notwithstanding~~  
6 ~~any fixed term of confinement or minimum period of confinement as provided~~  
7 ~~in section 19-2513, Idaho Code, the commission may parole an inmate for med-~~  
8 ~~ical reasons. A prisoner may be considered for medical parole only when the~~  
9 ~~prisoner is permanently incapacitated or terminally ill and when the commis-~~  
10 ~~sion reasonably believes the prisoner no longer poses a threat to the safety~~  
11 ~~of society. For the purposes of this section, "permanently incapacitated"~~  
12 ~~shall mean a person who, by reason of an existing physical condition that~~  
13 ~~is not terminal, is permanently and irreversibly physically incapacitated.~~  
14 ~~For the purposes of this section "terminally ill" shall mean a person who has~~  
15 ~~an incurable condition caused by illness or disease and who is irreversibly~~  
16 ~~terminally ill.~~

17 ~~(9) The commission shall prepare and send to the house of represen-~~  
18 ~~tatives and senate judiciary committees annually a report containing the~~  
19 ~~names, medical condition and current status of all persons granted parole~~  
20 ~~pursuant to subsection (8) of this section.~~

21 ~~(103) The department of correction shall promulgate rules in consul-~~  
22 ~~tation with the commission to prepare prisoners for parole. The department~~  
23 ~~of correction shall create sufficient programming opportunities, such that~~  
24 ~~lack of access to programming is not the primary cause in delaying parole el-~~  
25 ~~igibility. The department shall promulgate rules to include case plan de-~~  
26 ~~velopment upon entry into prison and a current risk assessment before all pa-~~  
27 ~~role hearings.~~

28 ~~(114) By February 1, 2015, and by February 1 of each year thereafter,~~  
29 ~~the department of correction and the commission shall submit a report to the~~  
30 ~~legislature and governor, the senate judiciary and rules committee, and the~~  
31 ~~house of representatives judiciary, rules, and administration committee~~  
32 ~~that describes the most common reasons for delay or denial of release, in-~~  
33 ~~cluding statistical data supporting the conclusions of the report.~~

34 SECTION 7. That Chapter 10, Title 20, Idaho Code, be, and the same is  
35 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
36 ignated as Section 20-1005, Idaho Code, and to read as follows:

37 20-1005. RULES GOVERNING PAROLE -- LEGISLATIVE INTENT -- RESTRIC-  
38 TIONS -- REQUIRED PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION -- REQUIRED  
39 REPORT. (1) It is the intent of the legislature to focus prison space on those  
40 who commit the most serious offenses or who have the highest likelihood of  
41 offending in the future, and the commission, consistent with the provisions  
42 of this subsection, shall promulgate rules that establish clear guidelines  
43 and procedures that retain the commission's discretion in individual cases.

44 (2) Subject to the provisions of section 20-1004, Idaho Code, the com-  
45 mission shall have the power to establish rules under which any prisoner, ex-  
46 cepting any under sentence of death, may be allowed to go upon parole but to  
47 remain while on parole in the legal custody and under the control of the board  
48 and subject to be taken back into confinement at the direction of the commis-  
49 sion.

1 (3) Any prisoner who is granted parole under the interstate compact may  
2 be required to post a bond prior to release or prior to such acceptance under  
3 the interstate compact; such bond may be posted by the prisoner, the pris-  
4 oner's family, or other interested party. Failure to successfully complete  
5 parole may be grounds for forfeiture of the bond. Upon successful completion  
6 of parole, the amount of the bond may be returned, less an amount for admin-  
7 istrative costs as determined by commission rule, in compliance with chap-  
8 ter 52, title 67, Idaho Code. A request shall be made for return of the bond  
9 within one (1) year of discharge of the offense for which the particular of-  
10 fender was serving parole. Funds collected through the bonding process will  
11 be placed in a separate commission receipts fund that is hereby created in  
12 the state treasury and utilized for the extradition of parole violators.

13 (4) No person serving a sentence for rape, incest, committing a lewd act  
14 upon a child, crime against nature, or with an intent or an assault with in-  
15 tent to commit any such crimes, or whose history and conduct indicate to the  
16 commission that the person is a sexually dangerous person, shall be released  
17 on parole except upon the examination and evaluation of one (1) or more psy-  
18 chiatrists or psychologists or mental health professionals designated for  
19 this purpose by the department to be selected by the commission, and such  
20 evaluation shall be duly considered by the commission in making its parole  
21 determination. The commission may, in its discretion, likewise require a  
22 similar examination and evaluation for persons serving sentences for crimes  
23 other than those described in this subsection. No person making such eval-  
24 uation shall be held financially responsible to any person for denial of pa-  
25 role by the commission or for the results of the future acts of such person if  
26 granted parole.

27 (5) Before considering the parole of any prisoner, the commission shall  
28 ensure that a risk assessment has been conducted pursuant to section 20-224,  
29 Idaho Code, and shall afford the prisoner the opportunity to be interviewed  
30 by the commission, a commissioner, or other commission staff designated by  
31 the executive director. A designated report and risk assessment, prepared  
32 by commission staff or a designated department of correction employee, that  
33 is specifically to be used by the commission in making a parole determination  
34 shall be exempt from public disclosure; such reports contain information  
35 from the presentence investigation report, medical or psychological infor-  
36 mation, the results of a risk assessment, victim information, designated  
37 confidential witness information, and criminal history information. A pa-  
38 role shall be ordered when, in the discretion of the commission, it is in the  
39 best interests of society and the commission believes the prisoner is able  
40 and willing to fulfill the obligations of a law-abiding citizen. Such deter-  
41 mination shall not be a reward of clemency, and it shall not be considered to  
42 be a reduction of sentence or a pardon. The commission may also by its rules  
43 fix the times and conditions under which any application denied may be re-  
44 considered. No action may be maintained against the commission or any of its  
45 members in any court in connection with any decision taken by the commission  
46 to parole a prisoner, and neither the commission nor its members shall be  
47 liable in any way for its action with respect thereto.

48 (6) In making any parole or commutation decision with respect to a pris-  
49 oner, the commission shall consider the current risk assessment, criminal  
50 history, program participation, compliance and completion, institutional



1 misconduct, and other individual characteristics related to the likelihood  
2 of offending in the future, as well as the compliance of the prisoner with  
3 any order of restitution that may have been entered according to section  
4 19-5304, Idaho Code. The commission may make compliance with such an order  
5 of restitution a condition of parole.

6 (7) Except as provided in section 20-1004(3), Idaho Code, no provision  
7 of chapter 52, title 67, Idaho Code, shall apply to the commission.

8 (8) By February 1 of each year, the department and the commission shall  
9 submit a report to the governor, the senate judiciary and rules committee,  
10 and the house of representatives judiciary, rules, and administration com-  
11 mittee that describes the most common reasons for delay or denial of release,  
12 including statistical data supporting the conclusions of the report.

13 SECTION 8. That Chapter 10, Title 20, Idaho Code, be, and the same is  
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
15 ignated as Section 20-1006, Idaho Code, and to read as follows:

16 20-1006. MEDICAL PAROLE -- REQUIRED REPORT. (1) Subject to the limita-  
17 tions of this section and section 20-1005, Idaho Code, and notwithstanding  
18 any fixed term of confinement or minimum period of confinement as provided  
19 in section 19-2513, Idaho Code, the commission may parole an inmate for med-  
20 ical reasons. A prisoner may be considered for medical parole only when the  
21 prisoner is permanently incapacitated or terminally ill and when the commis-  
22 sion reasonably believes the prisoner no longer poses a threat to the safety  
23 of society.

24 (2) The commission shall annually prepare and send to the governor, the  
25 senate judiciary and rules committee, and the house of representatives judi-  
26 ciary, rules, and administration committee a report containing the name and  
27 current legal status of all persons granted parole pursuant to this section.

28 (3) As used in this section:

29 (a) "Permanently incapacitated" means a person who, by reason of an ex-  
30 isting physical condition that is not terminal, is permanently and ir-  
31 reversibly physically incapacitated; and

32 (b) "Terminally ill" means person who has an incurable condition caused  
33 by illness or disease and who is irreversibly, terminally ill.

34 SECTION 9. That Section 20-228, Idaho Code, be, and the same is hereby  
35 amended to read as follows:

36 ~~20-228~~1007. CONDITIONS OF PAROLE TO BE SPECIFIED IN WRITING -- WARRANT  
37 FOR ARREST OF SUSPECTED VIOLATORS -- EFFECT OF SUSPENSION AND ARREST. The  
38 commission ~~for pardons and parole~~, in releasing a person on parole, shall  
39 specify in writing the conditions of parole, and a copy of such conditions  
40 shall be given to the person paroled. The commission shall include in the  
41 conditions of parole a requirement that the defendant enter into and comply  
42 with an agreement of supervision with the board of correction. The agreement  
43 of supervision shall include provisions setting forth the potential sanc-  
44 tions for a violation of the conditions imposed and potential rewards for  
45 compliance with the conditions imposed, as such sanctions and rewards are  
46 set forth in rules of the board. Whenever the commission finds that a parolee  
47 may have violated the conditions of parole, the written order of the commis-

1 sion, signed by a member or members of the commission or the executive direc-  
 2 tor, shall be sufficient warrant for any law enforcement officer to take into  
 3 custody such person, and it is hereby made the duty of all sheriffs, police,  
 4 constables, parole and probation officers, prison officials and other peace  
 5 officers, to execute such order. Such warrant shall serve to suspend the  
 6 person's parole until a determination on the merits of the allegations of the  
 7 violation has been made pursuant to a revocation hearing. From and after the  
 8 issuance of the warrant and suspension of the parole of any convicted person  
 9 and until arrest, the parolee shall be considered a fugitive from justice.  
 10 Such person so recommitted, except as provided in section 20-229B1010, Idaho  
 11 Code, must serve out the sentence, and the time during which such prisoner  
 12 was out on parole shall not be deemed a part thereof, unless the commission,  
 13 in its discretion, shall determine otherwise, but nothing herein contained  
 14 shall prevent the commission from again paroling such prisoners at its dis-  
 15 cretion.

16 SECTION 10. That Section 20-229, Idaho Code, be, and the same is hereby  
 17 amended to read as follows:

18 20-2291008. PAROLE REVOCATION HEARING. (1) Whenever a paroled pris-  
 19 oner is accused of a violation of parole, other than by absconding supervi-  
 20 sion or the commission of, and conviction for, a felony or misdemeanor of-  
 21 fense under the laws of this state, or any other state, or any federal laws,  
 22 the parolee shall be entitled to a fair and impartial hearing of such charges  
 23 within thirty (30) days from the date the accused is served with the charges  
 24 of the violation of conditions of parole subsequent to arrest and detention.  
 25 The hearing shall be held before one (1) or more members of the commission  
 26 ~~for pardons and parole,~~ or before an impartial hearings officer selected by  
 27 the executive director. Such hearing shall be held at a place or places,  
 28 within this state, reasonably near the site of the alleged violation or vi-  
 29 olations of parole. If the parolee has been supervised outside of the state  
 30 of Idaho and such violations occurred outside of Idaho, the executive direc-  
 31 tor or hearing officer shall determine the location of the hearing.

32 (2) Whenever a paroled prisoner is accused of a violation of parole by  
 33 absconding supervision or the commission of, and conviction for, a felony  
 34 or misdemeanor offense under the laws of this state, or any other state, or  
 35 any federal laws, the parolee shall be entitled to a fair and impartial hear-  
 36 ing within a reasonable time from the date the accused is served with such  
 37 charges. The location of such hearing shall be determined by the executive  
 38 director or hearing officer.

39 SECTION 11. That Section 20-229A, Idaho Code, be, and the same is hereby  
 40 amended to read as follows:

41 20-229A1009. NOTICE -- AND SERVICE TO AN ALLEGED PAROLE VIOLATOR --  
 42 WAIVER OF HEARING. (1) Within fifteen (15) calendar days following arrest  
 43 and detention on a warrant issued by the ~~Idaho~~ commission ~~for pardons and pa-~~  
 44 ~~role,~~ the alleged parole violator shall be personally served with a copy of  
 45 the factual allegations of the violation of the conditions of parole by a  
 46 state probation and parole officer, a law enforcement official or other as  
 47 designated by the executive director. When accused of a violation of his pa-

1 role, other than by absconding supervision or the commission of and conviction  
 2 for a felony or misdemeanor, the alleged parole violator shall be advised  
 3 of the right to an on-site parole revocation hearing and of procedural  
 4 rights and privileges as provided by this act. The alleged parole violator,  
 5 after service of the allegation of violations of the conditions of parole and  
 6 the notification of rights, may waive the on-site parole revocation hearing  
 7 as provided by section 20-229A1008, Idaho Code. If the alleged parole violator  
 8 waives the right to an on-site hearing, the commission, executive director  
 9 or hearing officer shall designate the facility where the hearing will be  
 10 conducted.

11 (2) Whenever a paroled prisoner is accused of a violation of his parole  
 12 by absconding supervision or the commission of and conviction for a felony or  
 13 misdemeanor under the laws of this state, or any other state, or any federal  
 14 laws, and following arrest and detention on a warrant issued by the ~~Idaho~~  
 15 ~~commission for pardons and parole~~, the alleged parole violator shall be personally  
 16 served with a copy of the factual allegations of the violation of the  
 17 conditions of parole within a reasonable time. The alleged parole violator  
 18 shall be advised of the right to a hearing and all other rights and privileges  
 19 as provided by this act. The executive director or hearing officer shall  
 20 designate the facility where the hearing will be conducted. A fair and impartial  
 21 hearing of the charges will be conducted within a reasonable time.

22 (3) The alleged parole violator may waive the right to any hearing, and  
 23 at that time may admit one (1) or more of the alleged violations of the conditions  
 24 of parole. If the waiver is accepted by the commission or hearing officer:  
 25 (i) the parolee may be reinstated under the same or modified conditions,  
 26 or (ii) the parolee shall be subject to an expedited determination by the  
 27 commission consistent with the provisions of section 20-229B1010, Idaho  
 28 Code, without a hearing. If all waivers made by the parolee are rejected by  
 29 the commission or designated hearing officer, a parole revocation hearing  
 30 shall be held either on-site or at a penitentiary facility.

31 SECTION 12. That Section 20-229B, Idaho Code, be, and the same is hereby  
 32 amended to read as follows:

33 20-229B1010. COMMISSION RULINGS AT A PAROLE REVOCATION HEARING. (1)  
 34 After a factual parole revocation hearing has been concluded, the ~~member or~~  
 35 ~~members of the commission for pardons and parole~~ commissioner or commissioners  
 36 or the designated hearing officer, having heard the matter, shall render  
 37 a decision within twenty (20) days. If the alleged parole violator waives  
 38 the parole hearing pursuant to the provisions of section 20-229A1009(3),  
 39 Idaho Code, then a decision shall be entered upon acceptance of the waiver.

40 (2) If the ~~member or members~~ commissioner or commissioners or hearing  
 41 officer, having heard the matter, should conclude that the allegations of  
 42 violation of the conditions of parole have not been proven by a preponderance  
 43 of the evidence, or those ~~which~~ that have been proven by a preponderance of  
 44 the evidence are not sufficient cause for the revocation of parole, then the  
 45 parolee shall be reinstated on parole on the same or modified conditions of  
 46 parole.

47 (3) If the ~~member or members~~ commissioner or commissioners or hearing  
 48 officer, having heard the matter, should conclude that the allegations of  
 49 violation of the conditions of parole have been proven by a preponderance of

1 the evidence and constitute sufficient cause for the revocation of parole,  
2 then a dispositional hearing shall be convened during a regular session of  
3 the commission to impose any sanctions up to and including executing an or-  
4 der of parole revocation and determine the period of time the parole violator  
5 shall be returned to state custody.

6 SECTION 13. That Section 20-231, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 ~~20-231~~1011. IMMUNITY FROM PAROLE OR RELEASE OF A PRISONER. Neither a  
9 public entity nor a public employee or servant shall be financially respon-  
10 sible or liable for any injury resulting from determining whether to parole  
11 or release a prisoner or from determining the terms or conditions of his pa-  
12 role or release or from determining whether to revoke his parole or release.

13 SECTION 14. That Section 20-233, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 ~~20-233~~1012. FINAL DISCHARGE OF PAROLEE -- MINIMUM TERM. (1) When any  
16 paroled prisoner has performed the obligations of his parole for such time  
17 as shall satisfy the commission that his final release is not incompatible  
18 with his welfare and that of society, the commission may make the final order  
19 of discharge and issue to the paroled prisoner a certificate of discharge;  
20 but no such order of discharge shall be made in any case within a period of  
21 less than one (1) year after the date of release on parole, except that when  
22 the period of the maximum sentence provided by law shall expire at an earlier  
23 date, then a final order of discharge must be made and a certificate of dis-  
24 charge issued to the paroled prisoner not later than the date of expiration  
25 of said maximum sentence.

26 (2) The board ~~of correction~~ may submit a request to the commission  
27 for an order of final discharge from the remaining period of parole for  
28 any parolee under the board's supervision at any time during the period of  
29 parole. A request for final discharge shall be supported by a statement at-  
30 tested to under oath or signed under penalty of perjury pursuant to section  
31 9-1406, Idaho Code, setting forth the facts upon which the request is based.  
32 The commission shall notify the victim of a request for final discharge from  
33 parole. Any response to a request for final discharge shall be filed within  
34 thirty (30) days of the date of submittal of the request. The commission may,  
35 without a hearing, rule upon a request for final discharge based on a review  
36 of the case, the request, the statement and any responses to the request,  
37 or may schedule a hearing on the request. The commission shall rule on the  
38 request for final discharge within ninety (90) days of the date of submittal  
39 of the request.

40 SECTION 15. That Section 20-234, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42 ~~20-234~~1013. PAROLE INFORMATION TO BE TRANSMITTED TO THE SHERIFF AND  
43 COUNTY PROSECUTOR. Whenever any person committed to the custody of the ~~state~~  
44 board ~~of correction~~ shall have been granted a parole by the commission, it  
45 shall be the duty of the commission to transmit to the sheriff and the prose-

1 cutting attorney of the county within which said prisoner shall be paroled, a  
2 copy of the parole agreement, and information as to the place of residence of  
3 said prisoner within said county, and the sheriff shall notify local law en-  
4 forcement and other pertinent agencies.

5 SECTION 16. That Section 20-104, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 ~~20-104~~1014. TRANSFER OF CONVICTED FOREIGN CITIZENS OR NATIONALS UNDER  
8 TREATY. If a treaty in effect between the United States and a foreign coun-  
9 try provides for the transfer or exchange of convicted offenders to the coun-  
10 try of which they are citizens or nationals, the governor may, on behalf of  
11 the state and subject to the terms of the treaty, authorize the commission  
12 ~~of pardons and parole~~ to consent to the transfer or exchange of offenders and  
13 take any other action necessary to initiate the participation of this state  
14 in the treaty.

15 SECTION 17. That Section 20-240, Idaho Code, be, and the same is hereby  
16 amended to read as follows:

17 ~~20-240~~1015. RESPITES AND REPRIEVES. (1) The governor shall have power  
18 to grant respites or reprieves in all cases of convictions for offenses  
19 against the state, except treason or imprisonment on impeachment, but such  
20 respites or reprieves shall not extend beyond the next session of the commis-  
21 sion; and such commission shall at such session continue or determine such  
22 respite or reprieve, or may commute or pardon the offense as herein provided.

23 (2) In cases of conviction of treason, the governor shall have the power  
24 to suspend the execution of the sentence until the case shall be reported to  
25 the legislature at its next regular session, when the legislature shall ei-  
26 ther pardon or commute the sentence, direct its execution or grant a further  
27 reprieve.

28 SECTION 18. That Section 20-240A, Idaho Code, be, and the same is hereby  
29 amended to read as follows:

30 ~~20-240A~~1016. COMMUTATIONS AND PARDONS. (1) The commission shall have  
31 full and final authority to grant commutations and pardons after conviction  
32 and judgment in all cases of offenses against the state except treason or im-  
33 peachment and as otherwise provided in this section.

34 (2) With respect to commutations and pardons for offenses, or conspir-  
35 acies to commit any offense, for which the maximum punishment allowed by law  
36 at the time of sentencing is death or life imprisonment, the commission's  
37 determination shall only constitute a recommendation subject to approval  
38 or disapproval by the governor. No commutation or pardon for such offenses  
39 shall be effective until presented to and approved by the governor. Any com-  
40 mutation or pardon recommendation not so approved within thirty (30) days of  
41 the commission's recommendation shall be deemed denied.

42 (3) Notwithstanding subsection (2) of this section, the commission  
43 shall have full and final authority to grant pardons and commutations for:

1 (a) Any offense in violation of chapter 27, title 37, Idaho Code, for  
2 which the maximum punishment allowed by law at the time of sentencing is  
3 life imprisonment; and

4 (b) Any offense for which the maximum punishment allowed by law at the  
5 time of sentencing is enhanced by chapter 25, title 19, Idaho Code, to  
6 life imprisonment.

7 (4) The commission shall conduct commutation and pardon proceedings  
8 pursuant to rules and regulations adopted in accordance with law and may  
9 attach such conditions as it deems appropriate in granting pardons or commu-  
10 tations.

11 SECTION 19. That Section 20-213, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 ~~20-2131017. MEETINGS AS STATE COMMISSION OF PARDONS AND PAROLES -- NO-~~  
14 ~~TICE, PUBLICATION, CONTENTS REQUIRED PUBLICATIONS AND LIMITATION ON APPLI-~~  
15 ~~CATIONS FOR COMMUTATIONS AND PARDONS. (1) The commission shall meet at such~~  
16 ~~times and places as it may prescribe, but not less than quarterly. If When~~  
17 ~~applications for pardon or commutation are scheduled to be considered at~~  
18 ~~such a meeting of the commission, notice the executive director shall cause~~  
19 ~~to be published in some newspaper of general circulation at Boise, Idaho, at~~  
20 ~~least once a week for four (4) consecutive weeks, all notice required by the~~  
21 ~~constitution of the state of Idaho immediately prior thereto to the hear-~~  
22 ~~ing. Such notices shall list the names of all persons making application for~~  
23 ~~pardon or commutation, and a copy of such notice shall immediately, upon the~~  
24 ~~first publication thereof, be mailed provided to each prosecuting attorney~~  
25 ~~of any county from which any such person was committed to the penitentiary,~~  
26 ~~and provided further that custody of the board.~~

27 (2) ~~T~~he commission may in its discretion consider but one (1) appli-  
28 cation for pardon or commutation from any one (1) person in any twelve (12)  
29 month period.

30 SECTION 20. That Section 20-240B, Idaho Code, be, and the same is hereby  
31 amended to read as follows:

32 ~~20-240B1018. NOTICE OF GRANTED PARDON, COMMUTATION, OR REMISSION OF~~  
33 ~~FINES AND FORFEITURES. When, by action of the commission or the governor,~~  
34 ~~a pardon, commutation, or remission of fines and forfeitures is granted as~~  
35 ~~provided by law, the executive director shall:~~

36 (1) Retain an original pardon, commutation, or remission of fines and  
37 forfeitures document at the commission;

38 (2) File a copy of the original pardon, commutation, or remission of  
39 fines and forfeitures document in the office of the secretary of state;

40 (3) Provide an original pardon, commutation, or remission of fines and  
41 forfeitures document to the individual petitioner;

42 (4) File notice with the state courts, in a manner approved by the  
43 supreme court, that a pardon, commutation, or remission of fines and forfei-  
44 tures has been granted in the case; and

45 (5) Provide such additional notice that a pardon, commutation, or re-  
46 mission of fines and forfeitures has been granted as the commission may adopt  
47 by rule.

1 SECTION 21. That Section 19-2513, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 19-2513. UNIFIED SENTENCE. (1) Whenever any person is convicted of  
4 having committed a felony, the court shall, unless it shall commute the  
5 sentence, suspend or withhold judgment and sentence or grant probation, as  
6 provided in chapter 26, title 19, Idaho Code, or unless it shall impose the  
7 death sentence as provided by law, sentence such offender to the custody of  
8 the state board of correction. The court shall specify a minimum period of  
9 confinement and may specify a subsequent indeterminate period of custody.  
10 The court shall set forth in its judgment and sentence the minimum period of  
11 confinement and the subsequent indeterminate period, if any, provided, that  
12 the aggregate sentence shall not exceed the maximum provided by law. During  
13 a minimum term of confinement, the offender shall not be eligible for pa-  
14 role or discharge or credit or reduction of sentence for good conduct except  
15 for meritorious service except as provided in section 20-223(8)1006, Idaho  
16 Code. The offender may be considered for parole or discharge at any time  
17 during the indeterminate period of the sentence and as provided in section  
18 20-223(8)1006, Idaho Code.

19 (2) If the offense carries a mandatory minimum penalty as provided by  
20 statute, the court shall specify a minimum period of confinement consistent  
21 with such statute. If the offense is subject to an enhanced penalty as pro-  
22 vided by statute, or if consecutive sentences are imposed for multiple of-  
23 fenses, the court shall, if required by statute, direct that the enhance-  
24 ment or each consecutive sentence contain a minimum period of confinement;  
25 in such event, all minimum terms of confinement shall be served before any  
26 indeterminate periods commence to run.

27 (3) Enactment of this amended section shall not affect the prosecution,  
28 adjudication or punishment of any felony committed before the effective date  
29 of enactment.

30 SECTION 22. That Section 19-2515, Idaho Code, be, and the same is hereby  
31 amended to read as follows:

32 19-2515. SENTENCE IN CAPITAL CASES -- SPECIAL SENTENCING PROCEEDING  
33 -- STATUTORY AGGRAVATING CIRCUMSTANCES -- SPECIAL VERDICT OR WRITTEN FIND-  
34 INGS. (1) Except as provided in section 19-2515A, Idaho Code, a person con-  
35 victed of murder in the first degree shall be liable for the imposition of  
36 the penalty of death if such person killed, intended a killing, or acted with  
37 reckless indifference to human life, irrespective of whether such person di-  
38 rectly committed the acts that caused death.

39 (2) Where a person is sentenced to serve a term in the penitentiary,  
40 after conviction of a crime which falls within the provisions of section  
41 20-2231005, Idaho Code, except in cases where the court retains juris-  
42 diction, the comments and arguments of the counsel for the state and the  
43 defendant relative to the sentencing and the comments of the judge relative  
44 to the sentencing shall be recorded. If the comments are recorded electroni-  
45 cally, they need not be transcribed. Otherwise, they shall be transcribed by  
46 the court reporter.

47 (3) Where a person is convicted of an offense which may be punishable by  
48 death, a sentence of death shall not be imposed unless:

1 (a) A notice of intent to seek the death penalty was filed and served as  
2 provided in section 18-4004A, Idaho Code; and

3 (b) The jury, or the court if a jury is waived, finds beyond a reason-  
4 able doubt at least one (1) statutory aggravating circumstance. Where  
5 a statutory aggravating circumstance is found, the defendant shall be  
6 sentenced to death unless mitigating circumstances which may be pre-  
7 sented are found to be sufficiently compelling that the death penalty  
8 would be unjust. The jury shall not direct imposition of a sentence of  
9 death unless it unanimously finds at least one (1) statutory aggravat-  
10 ing circumstance and unanimously determines that the penalty of death  
11 should be imposed.

12 (4) Notwithstanding any court rule to the contrary, when a defendant is  
13 adjudicated guilty of murder in the first degree, whether by acceptance of a  
14 plea of guilty, by verdict of a jury, or by decision of the trial court sit-  
15 ting without a jury, no presentence investigation shall be conducted; pro-  
16 vided however, that if a special sentencing proceeding is not held or if a  
17 special sentencing proceeding is held but no statutory aggravating circum-  
18 stance has been proven beyond a reasonable doubt, the court may order that a  
19 presentence investigation be conducted.

20 (5) (a) If a person is adjudicated guilty of murder in the first de-  
21 gree, whether by acceptance of a plea of guilty, by verdict of a jury,  
22 or by decision of the trial court sitting without a jury, and a notice  
23 of intent to seek the death penalty was filed and served as provided in  
24 section 18-4004A, Idaho Code, a special sentencing proceeding shall be  
25 held promptly for the purpose of hearing all relevant evidence and argu-  
26 ments of counsel in aggravation and mitigation of the offense. Informa-  
27 tion concerning the victim and the impact that the death of the victim  
28 has had on the victim's family is relevant and admissible. Such informa-  
29 tion shall be designed to demonstrate the victim's uniqueness as an  
30 individual human being and the resultant loss to the community by the  
31 victim's death. Characterizations and opinions about the crime, the  
32 defendant and the appropriate sentence shall not be permitted as part of  
33 any victim impact information. The special sentencing proceeding shall  
34 be conducted before a jury unless a jury is waived by the defendant with  
35 the consent of the prosecuting attorney.

36 (b) If the defendant's guilt was determined by a jury verdict, the same  
37 jury shall hear the special sentencing proceeding; provided however,  
38 that if it is impracticable to reconvene the same jury to hear the spe-  
39 cial sentencing proceeding due to an insufficient number of jurors, the  
40 trial court may dismiss that jury and convene a new jury of twelve (12)  
41 persons, plus alternate jurors as the trial court deems necessary pur-  
42 suant to section 19-1904, Idaho Code.

43 (c) If the defendant's guilt was determined by a plea of guilty or by a  
44 decision of the trial court sitting without a jury, or if a retrial of  
45 the special sentencing proceeding is necessary for any reason includ-  
46 ing, but not limited to, a mistrial in a previous special sentencing  
47 proceeding or as a consequence of a remand from an appellate court, the  
48 trial court shall impanel a jury of twelve (12) persons, plus alternate  
49 jurors as the trial court deems necessary pursuant to section 19-1904,  
50 Idaho Code, unless such jury is waived.



1 (d) If a special sentencing proceeding is conducted before a newly im-  
2 paneled jury pursuant to the provisions of subsection (5) (b) or (5) (c)  
3 of this section, the state and the defense may present evidence to in-  
4 form the jury of the nature and circumstances of the murder for which the  
5 defendant was convicted. The newly impaneled jury shall be instructed  
6 that the defendant has previously been found guilty of first-degree  
7 murder and that the jury's purpose is limited to making findings rele-  
8 vant for sentencing.

9 (6) At the special sentencing proceeding, the state and the defendant  
10 shall be entitled to present all relevant evidence in aggravation and miti-  
11 gation. Disclosure of evidence to be relied on in the sentencing proceeding  
12 shall be made in accordance with Idaho criminal rule 16. Evidence admitted  
13 at trial shall be considered and need not be repeated at the sentencing hear-  
14 ing.

15 (7) The jury shall be informed as follows:

16 (a) If the jury finds that a statutory aggravating circumstance exists  
17 and no mitigating circumstances exist which would make the imposition  
18 of the death penalty unjust, the defendant will be sentenced to death by  
19 the court.

20 (b) If the jury finds the existence of a statutory aggravating circum-  
21 stance but finds that the existence of mitigating circumstances makes  
22 the imposition of the death penalty unjust or the jury cannot unani-  
23 mously agree on whether the existence of mitigating circumstances makes  
24 the imposition of the death penalty unjust, the defendant will be sen-  
25 tenced to a term of life imprisonment without the possibility of parole;  
26 and

27 (c) If the jury does not find the existence of a statutory aggravating  
28 circumstance or if the jury cannot unanimously agree on the existence of  
29 a statutory aggravating circumstance, the defendant will be sentenced  
30 by the court to a term of life imprisonment with a fixed term of not less  
31 than ten (10) years.

32 (8) Upon the conclusion of the evidence and arguments in mitigation and  
33 aggravation:

34 (a) With regard to each statutory aggravating circumstance alleged by  
35 the state, the jury shall return a special verdict stating:

36 (i) Whether the statutory aggravating circumstance has been  
37 proven beyond a reasonable doubt; and

38 (ii) If the statutory aggravating circumstance has been proven  
39 beyond a reasonable doubt, whether all mitigating circumstances,  
40 when weighed against the aggravating circumstance, are suffi-  
41 ciently compelling that the death penalty would be unjust.

42 (b) If a jury has been waived, the court shall:

43 (i) Make written findings setting forth any statutory aggravat-  
44 ing circumstance found beyond a reasonable doubt;

45 (ii) Set forth in writing any mitigating circumstances consid-  
46 ered; and

47 (iii) Upon weighing all mitigating circumstances against each  
48 statutory aggravating circumstance separately, determine whether  
49 mitigating circumstances are found to be sufficiently compelling

1           that the death penalty would be unjust and detail in writing its  
2           reasons for so finding.

3           (9) The following are statutory aggravating circumstances, at least  
4 one (1) of which must be found to exist beyond a reasonable doubt before a  
5 sentence of death can be imposed:

6           (a) The defendant was previously convicted of another murder.

7           (b) At the time the murder was committed the defendant also committed  
8 another murder.

9           (c) The defendant knowingly created a great risk of death to many per-  
10 sons.

11           (d) The murder was committed for remuneration or the promise of remu-  
12 neration or the defendant employed another to commit the murder for re-  
13 muneration or the promise of remuneration.

14           (e) The murder was especially heinous, atrocious or cruel, manifesting  
15 exceptional depravity.

16           (f) By the murder, or circumstances surrounding its commission, the de-  
17 fendant exhibited utter disregard for human life.

18           (g) The murder was committed in the perpetration of, or attempt to per-  
19 petrate, arson, rape, robbery, burglary, kidnapping or mayhem and the  
20 defendant killed, intended a killing, or acted with reckless indiffer-  
21 ence to human life.

22           (h) The murder was committed in the perpetration of, or attempt to per-  
23 petrate, an infamous crime against nature, lewd and lascivious conduct  
24 with a minor, sexual abuse of a child under sixteen (16) years of age,  
25 ritualized abuse of a child, sexual exploitation of a child, sexual bat-  
26 tery of a minor child sixteen (16) or seventeen (17) years of age, or  
27 forcible sexual penetration by use of a foreign object, and the defen-  
28 dant killed, intended a killing, or acted with reckless indifference to  
29 human life.

30           (i) The defendant, by his conduct, whether such conduct was before,  
31 during or after the commission of the murder at hand, has exhibited a  
32 propensity to commit murder which will probably constitute a continuing  
33 threat to society.

34           (j) The murder was committed against a former or present peace officer,  
35 executive officer, officer of the court, judicial officer or prosecut-  
36 ing attorney because of the exercise of official duty or because of the  
37 victim's former or present official status.

38           (k) The murder was committed against a witness or potential witness in a  
39 criminal or civil legal proceeding because of such proceeding.

40           SECTION 23. That Section 19-2715, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42           19-2715. MINISTERIAL ACTIONS RELATING TO STAYS OF EXECUTION, RESET-  
43 TING EXECUTION DATES, AND ORDER FOR EXECUTION OF JUDGMENT OF DEATH. (1) Here-  
44 after, no further stays of execution shall be granted to persons sentenced  
45 to death except that a stay of execution shall be granted during an appeal  
46 taken pursuant to section 19-2719, Idaho Code, during the automatic review  
47 of judgments imposing the punishment of death provided by section 19-2827,  
48 Idaho Code, by order of a federal court or as part of a commutation proceeding  
49 pursuant to section 20-~~240~~1015, Idaho Code.

1 (2) Upon remittitur or mandate after a sentence of death has been af-  
2 firmed, the state shall apply for a warrant from the district court in which  
3 the conviction was had, authorizing execution of the judgment of death. Upon  
4 such application, the district court shall set a new execution date not more  
5 than thirty (30) days thereafter.

6 (3) If a stay of execution is granted pursuant to subsection (1) of this  
7 section and as a result, no execution takes place on the date set by the dis-  
8 trict court, upon termination of the stay, the state shall apply for another  
9 warrant and upon such application, the district court shall set a new execu-  
10 tion date not more than thirty (30) days thereafter.

11 (4) If for any reason, other than those set forth in subsection (1) of  
12 this section, a judgment of death has not been executed, and it remains in  
13 force, the state shall apply for another warrant. Upon such application,  
14 the district court may inquire into the facts, and if no legal reason exists  
15 against the execution of the judgment, must make an order that the warden ex-  
16 ecute the judgment at a special specified time. The warden must execute the  
17 judgment accordingly.

18 (5) Action of the district court under this section is ministerial  
19 only. No hearing shall be required for setting a new execution date and the  
20 court shall inquire only into the fact of an existing death sentence and the  
21 absence of a valid stay of execution.

22 (6) For purposes of this section, the phrase "stay of execution" shall  
23 refer to a temporary postponement of an execution as a result of a court or-  
24 der or an order of the governor postponing the execution while a petition for  
25 commutation is pending.

26 SECTION 24. That Section 19-4213, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 19-4213. RELIEF AVAILABLE FOR CONSTITUTIONAL VIOLATIONS DURING THE  
29 COURSE OF REVOCATION OF PAROLE. (1) If a court finds that an in-state  
30 prisoner's constitutional rights have been violated during the course of  
31 revocation of his parole, the court may, upon specific findings of fact and  
32 conclusions of law, enter an order directing that the parole revocation  
33 proceedings be reconvened. The order shall identify the constitutional vio-  
34 lation which occurred and direct that the violation be cured.

35 (2) The Idaho commission ~~for~~ of pardons and parole has the exclusive  
36 authority to order release of an in-state prisoner on parole pursuant to  
37 ~~sections 20-210 and 20-223~~ chapter 10, title 20, Idaho Code.

38 SECTION 25. That Section 20-209G, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40 20-209G. AUTHORITY TO INVESTIGATE AND ISSUE SUBPOENAS. (1) For pur-  
41 poses of this section, the following definitions shall apply:

42 (a) "Correctional facility" means any prison, correctional facility  
43 or mental health facility operated by the department of correction and  
44 any public or private correctional facility in which department of cor-  
45 rection prisoners are housed pursuant to contract, including a county  
46 jail;

1 (b) "Department of correction prisoner" means any person housed in a  
2 correctional facility who has been committed to the custody of or who is  
3 under the supervision of the department of correction by way of a judg-  
4 ment of conviction or court order, including the following:

5 (i) Prisoners committed to the department to serve criminal sen-  
6 tences;

7 (ii) Persons committed in relation to their fitness to proceed at  
8 trial pursuant to section 18-212, Idaho Code;

9 (iii) Prisoners over whom a court has retained jurisdiction pur-  
10 suant to section 19-2601 4., Idaho Code;

11 (iv) Prisoners serving discretionary jail time as probationers or  
12 parolees;

13 (v) Parolees arrested pursuant to sections 20-227 and 20-  
14 ~~228~~1007, Idaho Code, and are awaiting a determination regarding  
15 violation or revocation of their parole;

16 (vi) Civil commitments pursuant to section 66-329, Idaho Code;  
17 and

18 (vii) Persons committed to the Idaho security medical program pur-  
19 suant to section 66-1301, Idaho Code.

20 (c) "Documents" means any writings, charts, records, recordings, elec-  
21 tronic records or data, photographs, tangible things, drawings or dia-  
22 grams of any sort whatsoever.

23 (2) In furtherance of the duties set forth in this chapter and depart-  
24 ment of correction rules, the director of correction shall have the author-  
25 ity to:

26 (a) Investigate crimes, criminal enterprises or conspiracies, viola-  
27 tions of state law or administrative regulations, disturbances, riots  
28 and the introduction of contraband into a correctional facility, where  
29 such activities involve department of correction prisoners;

30 (b) Investigate waste, mismanagement of state resources and violations  
31 of laws, regulations, policies, directives or procedures by employees  
32 of the department of correction; and

33 (c) Issue subpoenas for the production of documents which may be rele-  
34 vant to such investigations.

35 (3) If a custodian of documents refuses to produce any document re-  
36 quired by a subpoena issued pursuant to subsection (2) of this section, the  
37 director of correction may petition the district court in the county in which  
38 the custodian resides or does business, setting forth by way of sworn affi-  
39 davit the reasons supporting issuance of the subpoena and why the documents  
40 sought are necessary for the investigation, that due notice has been given  
41 of the time and place of production of said documents, that the custodian has  
42 been properly summoned and that the custodian has failed and refused to pro-  
43 duce documents required by the subpoena and may request an order compelling  
44 the custodian to produce the documents.

45 (4) Upon the filing of such petition and affidavit, the court shall en-  
46 ter an order directing the custodian of documents to appear before the court  
47 at a time fixed by the court, but not more than ten (10) court days from the  
48 date of the order, and to show cause why the custodian has not produced the  
49 documents and why he should not be required to produce the documents. The  
50 court shall serve a copy of the order upon the custodian. If it appears to the

1 court that the petition is adequately supported by affidavit, the subpoena  
2 was regularly issued by the director of correction and regularly served upon  
3 the custodian, and that there is not good cause for the custodian's failure  
4 to produce the documents, the court shall order the custodian to produce the  
5 required documents at a time and place fixed by the court. If the custodian  
6 fails to obey the court's order, he shall be dealt with for contempt of court.

7 (5) When documents are sought from a custodian who is not a resident of  
8 this state or who has his principal place of business in another state, the  
9 director of correction is authorized to obtain subpoenas issued by the clerk  
10 of the district court of Ada county. The clerk of the district court shall  
11 open a court file, provide a case number and issue the subpoena under the seal  
12 of the court. The subpoena shall specify those documents required to be pro-  
13 duced.

14 (6) The department of correction shall cooperate with local law en-  
15 forcement and other local, state or federal law enforcement agencies during  
16 the conduct of any investigation arising out of the powers and duties set  
17 forth in this section.

18 SECTION 26. That Section 74-105, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 74-105. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS,  
21 INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS,  
22 WORKER'S COMPENSATION. The following records are exempt from disclosure:

23 (1) Investigatory records of a law enforcement agency, as defined in  
24 section 74-101(7), Idaho Code, under the conditions set forth in section  
25 74-124, Idaho Code.

26 (2) Juvenile records of a person maintained pursuant to chapter 5,  
27 title 20, Idaho Code, except that facts contained in such records shall be  
28 furnished upon request in a manner determined by the court to persons and  
29 governmental and private agencies and institutions conducting pertinent  
30 research studies or having a legitimate interest in the protection, welfare  
31 and treatment of the juvenile who is thirteen (13) years of age or younger.  
32 If the juvenile is petitioned or charged with an offense which would be a  
33 criminal offense if committed by an adult, the name, offense of which the  
34 juvenile was petitioned or charged and disposition of the court shall be sub-  
35 ject to disclosure as provided in section 20-525, Idaho Code. Additionally,  
36 facts contained in any records of a juvenile maintained under chapter 5,  
37 title 20, Idaho Code, shall be furnished upon request to any school district  
38 where the juvenile is enrolled or is seeking enrollment.

39 (3) Records of the custody review board of the Idaho department of ju-  
40 venile corrections, including records containing the names, addresses and  
41 written statements of victims and family members of juveniles, shall be ex-  
42 empt from public disclosure pursuant to section 20-533A, Idaho Code.

43 (4) (a) The following records of the department of correction:

44 (i) Records of which the public interest in confidentiality, pub-  
45 lic safety, security and habilitation clearly outweighs the pub-  
46 lic interest in disclosure as identified pursuant to the authority  
47 of the ~~Idaho~~ Idaho state board of correction under section 20-212, Idaho  
48 Code;

1 (ii) Records that contain any identifying information, or any in-  
2 formation that would lead to the identification of any victims or  
3 witnesses;

4 (iii) Records that reflect future transportation or movement of a  
5 prisoner;

6 (iv) Records gathered during the course of the presentence inves-  
7 tigation;

8 (v) Records of a prisoner, as defined in section 74-101(10),  
9 Idaho Code, or probationer shall not be disclosed to any other  
10 prisoner or probationer.

11 (b) Records, other than public expenditure records, related to pro-  
12 posed or existing critical infrastructure held by or in the custody  
13 of any public agency only when the disclosure of such information is  
14 reasonably likely to jeopardize the safety of persons, property or the  
15 public safety. Such records may include emergency evacuation, escape  
16 or other emergency response plans, vulnerability assessments, oper-  
17 ation and security manuals, plans, blueprints or security codes. For  
18 purposes of this paragraph, "system" includes electrical, computer  
19 and telecommunication systems, electric power (including production,  
20 generating, transportation, transmission and distribution), heating,  
21 ventilation, and air conditioning. For purposes of this subsection,  
22 "critical infrastructure" means any system or asset, whether physical  
23 or virtual, so vital to the state of Idaho, including its political sub-  
24 divisions, that the incapacity or destruction of such system or asset  
25 would have a debilitating impact on state or national economic secu-  
26 rity, state or national public health or safety or any combination of  
27 those matters.

28 (c) Records of the Idaho commission of pardons and parole shall be  
29 exempt from public disclosure pursuant to section 20-213A1003, Idaho  
30 Code, and section 20-2231005, Idaho Code. Records exempt from dis-  
31 closure shall also include those containing the names, addresses and  
32 written statements of victims.

33 (5) Voting records of the sexual offender management board. The writ-  
34 ten record of the vote to classify an offender as a violent sexual predator by  
35 each board member in each case reviewed by that board member shall be exempt  
36 from disclosure to the public and shall be made available upon request only  
37 to the governor, the chairman of the senate judiciary and rules committee,  
38 and the chairman of the house of representatives judiciary, rules and admin-  
39 istration committee, for all lawful purposes.

40 (6) Records of the sheriff or Idaho state police received or maintained  
41 pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating  
42 to an applicant or licensee except that any law enforcement officer and law  
43 enforcement agency, whether inside or outside the state of Idaho, may access  
44 information maintained in the license record system as set forth in section  
45 18-3302K(16), Idaho Code.

46 (7) Records of investigations prepared by the department of health and  
47 welfare pursuant to its statutory responsibilities dealing with the protec-  
48 tion of children, the rehabilitation of youth, adoptions and the commitment  
49 of mentally ill persons. For reasons of health and safety, best interests of  
50 the child or public interest, the department of health and welfare may pro-

1 vide for the disclosure of records of investigations associated with actions  
2 pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by  
3 the department of health and welfare pursuant to its statutory responsibili-  
4 ties dealing with the protection of children except any such records regard-  
5 ing adoptions shall remain exempt from disclosure.

6 (8) Records including, but not limited to, investigative reports,  
7 resulting from investigations conducted into complaints of discrimination  
8 made to the Idaho human rights commission unless the public interest in  
9 allowing inspection and copying of such records outweighs the legitimate  
10 public or private interest in maintaining confidentiality of such records.  
11 A person may inspect and copy documents from an investigative file to which  
12 he or she is a named party if such documents are not otherwise prohibited from  
13 disclosure by federal law or regulation or state law. The confidentiality of  
14 this subsection will no longer apply to any record used in any judicial pro-  
15 ceeding brought by a named party to the complaint or investigation, or by the  
16 Idaho human rights commission, relating to the complaint of discrimination.

17 (9) Records containing information obtained by the manager of the Idaho  
18 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on  
19 behalf of employers or employees contained in underwriting and claims for  
20 benefits files.

21 (10) The worker's compensation records of the Idaho industrial commis-  
22 sion provided that the industrial commission shall make such records avail-  
23 able:

24 (a) To the parties in any worker's compensation claim and to the indus-  
25 trial special indemnity fund of the state of Idaho; or

26 (b) To employers and prospective employers subject to the provisions of  
27 the Americans with disabilities act, 42 U.S.C. 12112, or other statu-  
28 tory limitations, who certify that the information is being requested  
29 with respect to a worker to whom the employer has extended an offer of  
30 employment and will be used in accordance with the provisions of the  
31 Americans with disabilities act, 42 U.S.C. 12112, or other statutory  
32 limitations; or

33 (c) To employers and prospective employers not subject to the provi-  
34 sions of the Americans with disabilities act, 42 U.S.C. 12112, or other  
35 statutory limitations, provided the employer presents a written autho-  
36 rization from the person to whom the records pertain; or

37 (d) To others who demonstrate that the public interest in allowing in-  
38 spection and copying of such records outweighs the public or private in-  
39 terest in maintaining the confidentiality of such records, as deter-  
40 mined by a civil court of competent jurisdiction; or

41 (e) Although a claimant's records maintained by the industrial commis-  
42 sion, including medical and rehabilitation records, are otherwise ex-  
43 empt from public disclosure, the quoting or discussing of medical or re-  
44 habilitation records contained in the industrial commission's records  
45 during a hearing for compensation or in a written decision issued by the  
46 industrial commission shall be permitted; provided further, the true  
47 identification of the parties shall not be exempt from public disclo-  
48 sure in any written decision issued and released to the public by the in-  
49 dustrial commission.

1 (11) Records of investigations compiled by the commission on aging in-  
2 volving vulnerable adults, as defined in section 18-1505, Idaho Code, al-  
3 leged to be abused, neglected or exploited.

4 (12) Criminal history records and fingerprints, as defined in section  
5 67-3001, Idaho Code, and compiled by the Idaho state police. Such records  
6 shall be released only in accordance with chapter 30, title 67, Idaho Code.

7 (13) Records furnished or obtained pursuant to section 41-1019, Idaho  
8 Code, regarding termination of an appointment, employment, contract or  
9 other insurance business relationship between an insurer and a producer.

10 (14) Records of a prisoner or former prisoner in the custody of any state  
11 or local correctional facility, when the request is made by another prisoner  
12 in the custody of any state or local correctional facility.

13 (15) Except as provided in section 72-1007, Idaho Code, records of the  
14 Idaho industrial commission relating to compensation for crime victims un-  
15 der chapter 10, title 72, Idaho Code.

16 (16) Records or information identifying a complainant maintained by the  
17 department of health and welfare pursuant to section 39-3556, Idaho Code,  
18 relating to certified family homes, unless the complainant consents in writ-  
19 ing to the disclosure or the disclosure of the complainant's identity is re-  
20 quired in any administrative or judicial proceeding.

21 (17) Records of any certification or notification required by federal  
22 law to be made in connection with the acquisition or transfer of a firearm,  
23 including a firearm as defined in 26 U.S.C. 5845(a).

24 (18) The following records of the state public defense commission:

25 (a) Records containing information protected or exempted from disclo-  
26 sure under the rules adopted by the Idaho supreme court, attorney work  
27 product, attorney-client privileged communication, records containing  
28 confidential information from an individual about his criminal case or  
29 performance of his attorney, or confidential information about an in-  
30 quiry into an attorney's fitness to represent indigent defendants.

31 (b) Records related to the administration of the extraordinary litiga-  
32 tion fund by the state public defense commission, pursuant to section  
33 19-850(2)(e), Idaho Code, to the extent that such records contain in-  
34 formation protected or exempted from disclosure under rules adopted  
35 by the Idaho supreme court, attorney work product or attorney-client  
36 privileged communication. This exemption does not include the amount  
37 awarded based upon an application for extraordinary litigation funds.

38 (19) Records and information received by the office of the state con-  
39 troller from any local government, state agency and department, or volunteer  
40 nongovernmental entity for purposes of entry into the criminal justice  
41 integrated data system pursuant to section 19-4803, Idaho Code, and all  
42 records created by persons authorized to research and analyze information  
43 entered into the criminal justice integrated data system, regardless of  
44 whether such records were previously exempted from disclosure or redacted  
45 pursuant to state or federal law or court order. This exemption does not  
46 apply to projects, reports, and data analyses approved for release by the  
47 data oversight council and issued by persons authorized to conduct research  
48 and analysis as set forth in chapter 48, title 19, Idaho Code. Records and  
49 information relating to the management of the criminal justice integrated



1 data system shall not be exempt from disclosure except as otherwise provided  
2 in law.