



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Senators LAKEY, Lee, Burgoyne and,
Representatives DAYLEY, Chaney, Gannon

FROM: Ryan Bush - Principal Legislative Drafting Attorney

DATE: March 06, 2019

SUBJECT: Temporary Rule

IDAPA 11.10.02 - Rules Governing State Criminal History Records and Crime Information - Adoption of Temporary Rule - Docket No. 11-1002-1901

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Ryan Bush at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

**IDAPA 11 – IDAHO STATE POLICE
BUREAU OF CRIMINAL IDENTIFICATION**

11.10.02 – RULES GOVERNING STATE CRIMINAL HISTORY RECORDS AND CRIME INFORMATION

DOCKET NO. 11-1002-1901

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is February 5, 2019.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 67-3001, 67-3003, 67-3007, and 67-3010, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This rule is necessary to conform to an amendment to Section 7-3003(10), Idaho Code, passed in the 2018 legislative session. This law allows dismissals to be eligible for expungement from a person's criminal history record.

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

This rule is necessary to conform to an amendment to Section 67-3003(10), Idaho Code, during the 2018 legislative session.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There is no fee associated with this rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Leila McNeill, (208) 884-7136 or leila.mcneill@isp.idaho.gov.

Dated this 5th day of February, 2019.

Colonel Kedrick R. Wills
Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7003
Fax: (208) 884-7290

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 11-1002-1901
(Only Those Sections With Amendments Are Shown.)**

This rule has been adopted as a temporary rule and is effective February 5, 2019.

010. DEFINITIONS.

Except as otherwise specifically provided, the terms defined in Section 67-3001, Idaho Code, shall have the same meaning in these rules. Any other terms defined in Section 67-3001 shall be given their ordinary and commonly understood meaning. (3-20-14)

- 01. Acquittal.** The legal certification by a jury or judge that a person is not guilty of the crime charged. (3-20-14)
- 02. Criminal Summons.** Shall include any summons, information or indictment issued in a criminal proceeding or action. (3-20-14)
- 03. Dismissal.** Termination of a criminal action without further hearing, ~~especially before the~~ or trial of the issues involved in the interest of justice. ~~(3-20-14)~~ (2-5-19)T
- 04. Expunge.** To erase or destroy, to declare null and void outside the record, so that it is noted in the original record as expunged, and redacted from all future copies. (3-20-14)
- 05. Serious Misdemeanor.** A crime, that if convicted, could be punishable by imprisonment in a county jail. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

021. EXPUNGEMENT PROCEDURE.

The procedure for any criminal history record expungement shall be as follows: (3-20-14)

- 01. Application.** A person seeking to expunge their criminal history record must submit the proper application to the Bureau of Criminal Identification as provided by the Bureau. (3-20-14)
- 02. Required Information Included.** The applicant must also include a copy of one of the following to the Bureau of Criminal Identification: (3-20-14)
 - a.** Criminal citation; or (3-20-14)
 - b.** Criminal Summons, Complaint, and Affidavit of Service by the county sheriff's office; or (3-20-14)
 - c.** Indictment; or (3-20-14)
 - d.** Information. (3-20-14)
- 03. Certified Copy of Order of Acquittal or Order of Dismissal.** ~~(3-20-14)~~ (2-5-19)T
 - a.** The applicant must also include a certified copy of the court's order of acquittal finding the applicant was not guilty of the crime charged: ~~;~~ or ~~(3-20-14)~~ (2-5-19)T
 - b.** A certified copy of the dismissal order, showing that all charges related to that arrest were dismissed. (2-5-19)T
- 04. Return of Incomplete Application.** The Bureau of Criminal Identification shall return an application to the applicant, if the application is incomplete or if the required documents are not provided. (3-20-14)