

Dear Senators DARRINGTON, Vick, Bock, and  
Representatives WILLS, Luker, Burgoyne:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Board of Correction:  
IDAPA 06.01.01 - Rules of the Board of Correction (Docket No. 06-0101-1101).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10/13/2011. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/10/2011.

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 334-4845, or send a written request to the address or FAX number indicated on the memorandum enclosed.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

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

**FROM:** Principal Legislative Research Analyst - Brooke Murdoch

**DATE:** September 23, 2011

**SUBJECT:** Board of Correction

IDAPA 06.01.01 - Rules of the Board of Correction (Docket No. 06-0101-1101)

The Board of Correction submits its Notice of Proclamation of Rulemaking at IDAPA 06.01.01 - Rules of the Board of Correction. The Board states that the rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures and directives. The rule changes include the following:

- (1) The addition of a non-disclosure provision whereby the IDOC will not disclose certain information relating to an execution;
- (2) An increase to the number of persons allowed in the execution unit at any time and a clarification that the configuration of the execution unit and the occupants of each room will be in accordance with IDOC standard operating procedure; and
- (3) Revisions to provisions relating to the Community Work Center Advisory Boards, including such Boards' responsibilities, establishment, member selection and meetings.

The Board is exempt from negotiated rulemaking procedures pursuant to Section 20-212, Idaho Code. In addition, the Board states that there is no fiscal impact on general funds as a result of this rulemaking.

We note one potential issue with Section 135.06 of the rule (pages 94-95), which provides that the IDOC "will not disclose (under any circumstance) the identity of staff, contractors, consultants, or volunteers serving on escort or injection teams, nor will the Department disclose any other information wherein the disclosure of such information could jeopardize the Department's ability to carry out an execution." Title 9, Chapter 3, Idaho Code, grants every person a right to examine and copy any public record of this state unless the record is statutorily exempt from disclosure. Section 9-340B(4)(a)(i), Idaho Code, provides an exemption for certain records of the IDOC using a balancing test whereby "the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction...." It is unclear whether the non-disclosure provisions in Section 135.06 of the Board's rule fall within the scope of this exemption because the Board has not identified information suggesting that the "public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure" as required by statute.

Aside from the foregoing comment, the rule appears to be within the authority granted to the Board of Correction in Section 20-212, Idaho Code.

cc: Board of Correction  
Lorenzo Washington

# IDAPA 06 - BOARD OF CORRECTION

## 06.01.01 - RULES OF THE BOARD OF CORRECTION

DOCKET NO. 06-0101-1101

### NOTICE OF PROCLAMATION OF RULEMAKING

**EFFECTIVE DATE:** The final effective date of this rule is November 4, 2011.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated rulemaking procedures. Section 20-212, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of Chapter 52, Title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute. In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 20-212(1), Idaho Code, public hearing(s) concerning this rulemaking will not be scheduled.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. Board of Correction rule changes are summarized by sections as follows:

005. Office-Office Hours-Mailing Address and Street Address - To re-add missing information to subsection 06.

135. Executions - To add a subsection that serves notice that the Department will not disclose the names of injection team members, escorts, or any information that could jeopardize the Department's ability to carry out an execution. To clarify execution unit configuration and occupants. To allow one additional member of the offender's family and one additional member of the victim's family to witness the execution if they so choose to do so.

143. Advisory Boards - This new section was previously section 706. Renumbering is required to better align with Idaho Department of Correction (IDOC) policy numbering. The section is also being revised to reflect current IDOC standard operating procedure.

706. Community Work Center Advisory Board - This section requires renumbering to section 143 and a change in section title as indicated above.

**FEE SUMMARY:** There is no increase in fees imposed with this rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on general funds for this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lorenzo Washington, Policy Coordinator, at (208) 658-2133.

DATED this 31st day of August, 2011.

Lorenzo Washington, Policy Coordinator  
Idaho Department of Correction  
1299 N Orchard St Suite 110

Boise, ID 83706  
Ph: (208)658-2133  
Fax: (208)327-7404

**THE FOLLOWING IS THE PROCLAIMED TEXT FOR DOCKET NO. 06-0101-1101**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

**01. Street Address.** The Board of Corrections' administrative office and the Idaho Department of Correction are located at 1299 N. Orchard St., Suite 110, Boise, Idaho 83706-2266. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. (10-5-07)

**02. Mailing Address (Board of Correction).** Mail regarding the Board of Corrections' rules shall be directed to the Board of Correction, attn: management assistant, office of the director, 1299 N. Orchard St., Suite 110, Boise, Idaho 83706-2266. (10-5-07)

**03. Mailing Address (Dept. of Correction).** Mail regarding the Idaho Department of Correction shall be sent to 1299 N. Orchard St., Suite 110, Boise, Idaho 83706-2266. (10-5-07)

**04. Telephone Number.** The telephone number of both the Board and Department is (208) 658-2000. (10-5-07)

**05. Facsimile Number.** Faxes shall be sent directly to the person, division, bureau, or unit as requested. If the fax number is not provided by the person, division, bureau, or unit, contact the Department's main reception at (208) 658-2000 to obtain the fax number. (10-5-07)

**06. Internet Website.** The Department's Internet website can be found at <http://www.idoc.idaho.gov/>.  
(10-5-07)(11-4-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**135. EXECUTIONS.**

**01. Personnel Assigned to Execution.** Idaho Maximum Security Institution personnel will carry out the execution warrant. The facility head of the Idaho Maximum Security Institution shall be the official executioner. (11-5-99)

**02. Method of Execution.** Execution of the sentence of death shall be by lethal injection. If the director determines that a competent lethal injection team cannot be assembled, execution shall take place by firing squad. (11-5-99)

**03. Media Coordination.** Department personnel will coordinate media activity and provide logistics and communications support. A media center shall be established. The pre-execution briefing will be delivered in the media center. Media witnesses will be chosen pursuant to Department procedure. The selection of media witnesses will occur in the media center. The post-execution briefing will occur in the media center. (11-5-99)

**04. Public Information Officer to Handle Media Requests.** The director will designate a public information officer to deal with execution-related media requests and releases of information. (11-5-99)

**05. Parking and Demonstration Areas Provided.** Areas for public and media parking will be provided and maintained in a secure manner. Areas for public gathering and demonstration of support or opposition to the death penalty will be provided and maintained in a secure manner. (11-5-99)

**06. Non-disclosure.** The Department will not disclose (under any circumstance) the identity of staff, contractors, consultants, or volunteers serving on escort or injection teams, nor will the Department disclose any other information wherein the disclosure of such information could jeopardize the Department's ability to carry out

an execution. (11-4-11)

**067.** ~~Individuals Present at~~ **Persons Allowed in the Execution Unit.** A total of ~~twenty-one~~ **thirty** ~~(2130) occupants~~ **persons, inclusive of the condemned offender,** is the limit **allowed** in the execution **facility unit** at ~~one (1)~~ **any** time. The configuration of the execution unit and the occupants of each room will be in accordance with Department standard operating procedure. Persons allowed in the execution ~~viewing area~~ **unit** are:

~~(10-31-08)~~(11-4-11)

- a. Idaho Department of Correction (IDOC) and or contract, consultant, or volunteer ~~S~~staff: ~~(10-31-08)~~(11-4-11)
  - i. The injection team as identified by the facility head (or designee) of the Idaho Maximum Security Institution (IMSI); ~~(10-31-08)~~(11-4-11)
  - ii. The director (or designee); ~~(10-31-08)~~(11-4-11)
  - iii. A representative from the Idaho Board of Correction; (10-31-08)
  - iv. The chief of the Operations Division ~~of Prisons~~ (or designee); and ~~(10-31-08)~~(11-4-11)
  - v. IMSI facility head (or designee); and ~~(10-31-08)~~(11-4-11)
  - vi. Six (6) escort staff; (11-4-11)
- b. Witnesses: (10-31-08)
  - i. The coroner; (11-5-99)
  - ii. The sheriff from the county of conviction; (11-5-99)
  - iii. The prosecuting attorney from the county of conviction; (11-5-99)
  - iv. A spiritual advisor of the inmate's choosing; (11-5-99)
  - v. The sentencing judge; (11-5-99)
  - vi. A representative from the Governor's office; (11-5-99)
  - vii. The Attorney General or his representative; (11-5-99)
  - viii. A Two (2) members of the victim's family; ~~(10-31-08)~~(11-4-11)
  - ix. A Two (2) friends or members of the offender's family; and ~~(10-31-08)~~(11-4-11)
  - x. A maximum of four (4) news media pursuant to Subsection 135.03. (10-31-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

137. -- ~~144~~2. (RESERVED)

**Section 706 is being moved and renumbered to Section 143.**

~~706~~**143. COMMUNITY WORK CENTER ADVISORY BOARDS.**

**01. Advisory Board Members' Responsibility.** Advisory board members shall be responsible for

advising Department community work centers on the philosophies and wishes of the community so that those philosophies and wishes may be considered for incorporation into the community work center's established processes. (11-4-11)

**012.** **Advisory Boards Established.** ~~The~~ Each Department community work center shall establish an community work center advisory board in ~~each~~ the community ~~of the state~~ where ~~a~~ the community work center is located. The advisory board shall consist of not less than four (4) ~~and~~ not more than seven (7) members. (11-5-99)(11-4-11)

**023.** **Advisory Board Member Selection.** ~~Initial selection of advisory board members should be from prominent civic and community leaders. Subsequent selection of advisory board members should be by recruitment by existing advisory board members from among members of the community.~~ The Department shall identify the needs of the community work center and the offender population, and take into consideration the type of community representatives and partners best suited to meet those needs. The Department shall make the final selection of advisory board members to serve on the advisory board. Advisory board members should represent segments of the community that are important to the successful operation of the community work center such as the following representatives and partners: (11-5-99)(11-4-11)

- a.** Law enforcement; (11-4-11)
- b.** Businesses; (11-4-11)
- c.** Faith-based communities; and (11-4-11)
- d.** Employment. (11-4-11)

**034.** **Duties of the Advisory Board Meetings.** ~~The advisory board shall meet from time to time as they may determine. The advisory board shall provide advisory input into the establishment of guidelines and procedures for the operation of the community work center.~~ Advisory board meeting dates and times shall be set by the Department and the existing advisory board. The Department shall not be bound to follow any advisory board recommendations but shall be free to decide which philosophies and community wishes recommended by the advisory board best suits the needs of the community work center and the offender population. (11-5-99)(11-4-11)

**144.** **(RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

~~702. -- 705.~~ **(RESERVED)**

**Section 706 is being moved and renumbered to Section 143.**

~~707. — 999.~~ **(RESERVED)**