

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Idaho State Police:

IDAPA 11.10.03 - Rules Governing The Sex Offender Registry (Docket No. 11-1003-1101).

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 11/14/2011. 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 12/13/2011.

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:** October 25, 2011

**SUBJECT:** Idaho State Police

IDAPA 11.10.03 - Rules Governing The Sex Offender Registry (Docket No. 11-1003-1101)

The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.10.03 - Rules Governing the Sex Offender Registry. The Idaho State Police states that the proposed rule is prompted by Senate Bill No. 1154 passed by the 2011 Legislature. Senate Bill No. 1154 made substantial revisions to the Sexual Offender Registration Notification and Community Right-to-Know Act. The proposed rule includes the following changes:

- (1) Specifies that any decision rendered by the Central Registry is a final order for purposes of appeal;
- (2) Permits the director of the ISP to delegate his authority to issue final orders relating to registration requirements for those convicted of substantially equivalent crimes to those listed in Section 18-8304(1)(a), Idaho Code, to the Bureau of Criminal Identification;
- (3) Defines the phrase "substantially equivalent or similar";
- (4) Revises the Idaho Sex Offender Registry Form and provides for an Idaho Sex Offender Registry Homeless - Location Verification Form;
- (5) Specifies that offenders are required to register at the sheriff's office in the county in which their primary address is located (consistent with Sections 18-8306 and 18-8307, Idaho Code, as amended);
- (6) Revises provisions relating to photographs, fingerprints and palmprints;
- (7) Removes language relating to a change of address or status notification (new Section 18-8309, Idaho Code, specifies the duty to update registration information);
- (8) Specifies that lists of all registered sexual offenders are available on the sex offender registry website;
- (9) Revises provisions relating to the expungement of Central Registry information (consistent with Section 18-8305, Idaho Code);
- (10) Removes language relating to corrections of the Central Registry information;

(11) Specifies that the Bureau of Criminal Identification shall be the entity that determines whether a person's out-of-state conviction is substantially equivalent or similar to an Idaho sex related offense for the purpose of requiring registration in Idaho; and

(12) Removes language relating to the release of information to the public (Section 18-8323, Idaho Code, as amended, specifies information accessible to the public).

We note that language in the Definition Section 010, page 21, provides that the terms in the rule will have the same meaning as terms defined in Section 67-3001, Idaho Code, "except as otherwise specifically provided." The proposed language presents an implication that if the ISP creates a definition in rule that contradicts a statutory definition, then the rule controls. However, rules are required to be consistent with the governing statute. We recommend the ISP remove the language at issue.

We further note that in Section 012.08 on page 24, the rule refers to substantially equivalent or similar crimes in "another state" and "out-of-state." Sections 18-8303(1) and (11) and 18-8304(1)(b) and (c), Idaho Code, refer to substantially equivalent or similar crimes in "another jurisdiction." "Jurisdiction," being a broader term than "state," includes not only other states, but also foreign convictions and convictions in military courts. We recommend the ISP revise the language in the proposed rule to be consistent with the language in the governing statute.

The Idaho State Police states that negotiated rulemaking was not conducted because the changes were made in response to changes made in the governing law.

Aside from the above notations, the proposed rule is within the authority granted to the Idaho State Police in Section 18-8304(5), Idaho Code.

cc: Idaho State Police  
Colonel G. Jerry Russell  
Dawn Peck

## IDAPA 11-IDAHO STATE POLICE

### 11.10.03 - RULES GOVERNING THE SEX OFFENDER REGISTRY

#### DOCKET NO. 11-1003-1101

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 18-8304(5), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 16, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

In the 2011 session, the legislature made some substantive changes to Title 18, Chapter 83, Idaho Code, Sexual Offender Registration Notification and Community Right-To-Know Act. The changes made under Senate Bill 1154 necessitate changes in IDAPA 11.10.03.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were made in response to law changes that were already in place.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dawn Peck, Idaho State Police Bureau of Criminal Identification Manager, 208-884-7136.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 23, 2011.

DATED this 20th day of September, 2011.

Col. G. Jerry Russell, Director  
Idaho State Police  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone: 208-884-7003  
Fax: 208-884-7090

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1003-1101

**000. LEGAL AUTHORITY.**

The Idaho State Police has authority to make rules to implement the sex offender central registry pursuant to Title 18, Chapter 83, Idaho Code, Sections 18-8301 through 18-832631. (3-18-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-18-99)

**01. Exception.** Any decision rendered by the central registry will be considered a final order for the purposes of appeal and will be governed by Title 67, Chapter 52, Idaho Code, Section 67-5270 et seq. ( )

**02. Delegation of Authority.** The director of Idaho State Police hereby delegates his authority to the Bureau of Criminal Identification, Idaho State Police the ability to issue final orders on his behalf in instances where the bureau determines an offender's registration requirement based upon a conviction of a substantially similar or substantially equivalent crime. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

Except as otherwise specifically provided, the terms defined in Section 67-3001, Idaho Code, will have the same meaning in these rules. In addition, the following terms shall have the meanings set forth below: ( )

**01. Bureau.** "Bureau" means the Bureau of Criminal Identification, Idaho State Police. (3-18-99)

**02. Central Registry.** "Central Registry" means the state-level records system containing information, photographs and fingerprints relating to persons required to register as a sex offender under Title 18, Chapters 83 and 84, Idaho Code. (3-18-99)

**03. Department.** "Department" means the Idaho State Police. (3-18-99)

**04. Director.** "Director" means the director of the Idaho State Police. (3-18-99)

**05. Substantially Equivalent or Similar.** "Substantially Equivalent or Similar" means any sex offense related crime, regardless of whether a felony or misdemeanor, that consists of similar elements defined in Title 18 of the Idaho Criminal Code. It does not mean exactly the same, nor exactly identical to. ( )

**056. Working Days.** "Working Days" means each day except Saturday, Sunday, or a legal state holiday. (3-18-99)

*[Codified Section 011 has been moved and renumbered to proposed Section 012]*

**011. ABBREVIATIONS.**

There are no abbreviations associated with this chapter of rules. ( )

**012. SEX OFFENDER CENTRAL REGISTRY -- ADMINISTRATION.**

**01. Central Registry Established.** Pursuant to Title 18, Chapter 83, Idaho Code, the department

establishes a sex offender central registry in the bureau of criminal identification. The bureau is responsible for administration of the central registry pursuant to the requirements set forth in Title 18, Chapters 83 and 84, Idaho Code and these rules. (3-18-99)

**02. Forms.** The following forms and procedures ~~are prescribed for~~ will be used to providing notice to and collecting information from persons required to register as a sex offender pursuant to Title 18, Chapters 83 and 84, Idaho Code. (4-11-06)( )

**a.** "Idaho Sex Offender Registry Notification and Registration Form." This ~~two~~ three (23) page form notifies an offender of ~~the duty to~~ register requirements and collects from an offender information required for ~~first-time registration in a county, annual re-registration in a county,~~ or any change of address or status, ~~within the county of residence as required by statute. This form is also used for change of name. The court, correctional agency, or the sheriff shall forward the original copy, along with the offender's photograph and fingerprints, when taken at the sheriff's department, to the bureau within three (3) working days of completing the form.~~ (4-11-06)( )

**b.** "Idaho Sex Offender Registry Homeless - Location Verification Form." This one (1) page form is used during weekly reporting to collect from an offender the information required when the offender does not provide a physical address at the time of registration. ( )

**03. Information Required at Initial Registration.** ~~In addition to the information required by Section 18-8307(8), Idaho Code, the "Idaho Sex Offender Registry Notification and Registration Form" shall collect the following information:~~ Registration Location. An offender who is required to register either as an adult under Title 18, Chapter 83, Idaho Code, or as a juvenile under Title 18, Chapter 84, Idaho Code, must notify and register at the sheriff's office in the county where the offender's primary address is located. (4-11-06)( )

**a.** ~~Whether the offender is registering as an adult under Title 18, Chapter 83, Idaho Code, or as a juvenile under Title 18, Chapter 84, Idaho Code;~~ (3-18-99)

**b.** ~~Physical description of the offender, including gender, race, height, weight, eye color, hair color, and scars, marks, and tattoos;~~ (3-18-99)

**c.** ~~Offender's occupation and name and place of employment;~~ (3-18-99)

**d.** ~~The name and location of a school, college, or university that the offender attends; and~~ (3-18-99)

**e.** ~~Name of the offender's probation/parole officer.~~ (3-18-99)

**04. Photographs and Fingerprints.** Whenever the Idaho Sex Offender Registry ~~Notification and Registration Form is used to register an offender who moves into a county or within a county, to re-register an offender annually, or register an offender who resides out of state but is employed in the state or enrolled in an institution of higher learning as defined in Section 18-8304(1)(d), it is~~ will be submitted to the central registry with the offender's photograph, ~~and~~ fingerprints, and palmprints. (4-11-06)( )

**a.** An offender's photograph ~~shall~~ will be in color. The sheriff ~~shall~~ will forward ~~one (1) a copy of the~~ photograph ~~of the offender with each registration with tagging information so it may easily be located by registry staff in the department of transportation photo database.~~ Photographs submitted to the central registry ~~shall~~ will be a copy of the new photographs taken at the time of each registration. From collected registration fees, the sheriff ~~shall~~ will pay to the state the cost of photography materials lawfully required by a state agency or department. (4-11-06)( )

**b.** The sheriff ~~shall~~ will also submit the required fingerprints on the federal bureau of investigation form FD-249. For each registrant, the sheriff ~~shall~~ will forward one (1) FBI fingerprint cards with each registration Form. (4-11-06)( )

**c.** The sheriff will also submit the required palmprints on the federal bureau of investigation form. For each registrant, the sheriff will forward one (1) set of FBI palmprint cards with each registration form, unless a set was previously submitted. ( )

~~05. Change of Address or Status Notification. (5-3-03)~~

~~a. When an offender changes address or actual residence within a county, the offender will complete within five (5) days after the change Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. (4-11-06)~~

~~b. When an offender moves to another county to establish permanent or temporary domicile, the offender must register as a new resident with the sheriff having jurisdiction within ten (10) days of moving to the other county. (5-3-03)~~

~~c. When an offender moves to another state, the offender shall notify the central registry by certified mail within five (5) days after moving to the other state. (5-3-03)~~

~~d. When an offender enrolls as a student at or becomes an employee of a school, college, or university in the state, the offender, whether such enrollment or employment is part-time or full-time and is for more than fourteen (14) days or an aggregate period exceeding thirty (30) days per year, will complete within five (5) days of the commencement of employment or enrollment the Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. (4-11-06)~~

~~e. When an offender, who is a student at or an employee of a school, college, or university, changes status as a student or employee, the offender will complete within five (5) days of the change of status the Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. (4-11-06)~~

~~f. When a nonresident offender is required to register pursuant to Section 18-8304(1)(d), Idaho Code, the offender must register, within ten (10) days of the commencement of employment or enrollment, with the sheriff having jurisdiction. When the status of such employment or enrollment changes, the offender will complete within five (5) days after the change the Idaho Sex Offender Registry Notification and Registration Form to provide required notification. (4-11-06)~~

**065. Notification to Local Law Enforcement.** ~~The bureau will provide to a local law enforcement agency on its request a list of registered sex offenders residing in its jurisdiction. Lists of all offenders registered within a county are available on the sex offender registry web site located at [http://isp.idaho.gov/sor\\_id/](http://isp.idaho.gov/sor_id/). The bureau will notify the local the appropriate county law enforcement agency with jurisdiction any time the bureau becomes aware of a change of status or change of residence of a registered sex offender; and of a registered offender's intent to reside in the an agency's jurisdiction. Whenever practical, the bureau will provide notification using the Idaho law enforcement telecommunication system (ILETS). (3-18-99)(\_\_\_\_)~~

**076. Notification to Other States Jurisdictions.** Within one (1) working day of receiving notification that a registered sex offender is moving to another state jurisdiction, the bureau will notify the receiving state's designated sex offender registration agency of the move by mail or electronic means. (3-18-99)(\_\_\_\_)

**087. Expungement of Central Registry Information. (3-18-99)**

a. Upon receipt of a certified copy of a death certificate recording the death of a person registered with the central registry, the bureau will expunge all records concerning the person from the central registry. (3-18-99)

b. Upon receipt of a duly attested copy of a pardon issued by the governor of a the state as to a where the conviction was entered and then reported to the central registry, the bureau will expunge all records concerning the conviction from the central registry. If the pardoned person has no other conviction requiring registration, the bureau will expunge all references concerning the person from the central registry. (3-18-99)(\_\_\_\_)

c. Upon receipt of a duly attested document from a court clerk that a conviction previously reported to the central registry has been reversed or dismissed by the court of conviction, except where such a dismissal is on a withheld judgment, the bureau will expunge all records concerning the conviction from the central registry; if provided that the person has no other conviction requiring registration, the bureau will expunge all references

~~concerning the person from the central registry. An offender registered for a withheld judgment is required to obtain relief from registration under provisions of Section 18-8310, Idaho Code. (5-3-03)( )~~

~~i. Expungement of a record will not occur in cases where a court has ordered a dismissal for a withheld judgment. ( )~~

~~d. Upon receipt of a duly attested document from a court clerk that a registered sex offender has been released by the court from registration requirements pursuant to Section 18-8310, Idaho Code Pursuant to Section 18-8310(5), Idaho Code, if a person is exempted from the registration requirement by court order, the bureau will expunge all records and references concerning the offender from the central registry. (3-18-99)( )~~

~~**09. Correction of Central Registry Information.** (3-18-99)~~

~~a. A person registered pursuant to Title 18, Chapters 83 or 84, Idaho Code, may submit a written request to the bureau to correct or modify information regarding that person in the central registry for the purpose of making the information accurate and complete. The bureau will respond to the request in writing within thirty (30) days after receipt of the request. When a request is denied, in whole or part, the bureau will explain the reasons for the decision. (3-18-99)~~

~~b. A person whose request, under Subsection 011.09.a. of this Section, is denied, in whole or part, may appeal to the director for review of the decision within thirty (30) days after the mailing of the bureau's written response. The appeal must be in writing and must set out the reasons for the appeal. The decision of the director will be in writing and made within forty five (45) calendar days after the department's receipt of the appeal. (3-18-99)~~

~~**08. Determination of Substantially Equivalent or Similar Crime.** ( )~~

~~a. A person convicted of a sex offense in another state and who moves to Idaho may be required to register as a sex offender in Idaho pursuant to Title 18, Chapters 83 or 84, Idaho Code. ( )~~

~~b. The bureau shall determine if a person's out-of-state conviction is substantially equivalent or similar to an Idaho sex related offense, as defined by Idaho's Criminal Code, for the purposes of requiring a person to register in Idaho. ( )~~

~~c. The bureau's decision is an agency action as defined by Chapter 52, Title 67, Idaho Code. ( )~~

~~i. Judicial review of the bureau's decision shall be made in accordance with Chapter 52, Title 67, Idaho Code. ( )~~

~~**012. RELEASE OF INFORMATION TO THE PUBLIC.**~~

~~**01. Methods of Access.** (4-11-06)~~

~~a. Any person may inquire on a named person or obtain a list of sex offenders by geographic area by submitting a completed Request for Information Form SOR-4 to the bureau or local sheriff. The bureau or sheriff may only provide public access to central registry information by means of a completed Form SOR-4, which must include the requester's full name, address, and either driver's license number or social security number. The bureau or sheriff shall respond to a completed Form SOR-4 within ten (10) working days of receipt. A sheriff may refer a person to the bureau for public access to the central registry. (4-11-06)~~

~~b. Any person can access registration information via an authorized web site. (4-11-06)~~

~~**02. Geographic Lists.** Any person using a Form SOR-4 may request a list of offenders by county or zip code or any person may obtain a list of offenders by county or zip code from the bureau web site. (4-11-06)~~

~~**03. Information Released.** Only central registry information authorized for release pursuant to Section 18-8323(2), Idaho Code, may be provided by the bureau or sheriff in response to a completed Form SOR-4 or as a response to a query of the web site. A conviction of incest (Section 18-6602, Idaho Code, or equivalent offense) shall~~



~~be reported as sexual abuse of a child under sixteen (16) years of age (Section 18-1506, Idaho Code). (4-11-06)~~

~~**04. Fee for Accessing Information.** The bureau shall collect a fee of five dollars (\$5) for each inquiry on a named person or for each request for a list of sex offenders by geographic area. Schools, state agencies, and nonprofit organizations working with youth, women, or other vulnerable populations are exempt from payment of the fee. The bureau may request information additional to that required by the Form SOR-4 to determine eligibility status for nonfee access to central registry information. A registered offender may request a copy of the offender's own central registry information without payment of a fee. Any person can access registration information without charge on the bureau's web site. (4-11-06)~~

~~**05. Photographs.** Any person may request the photograph of a registered sex offender by submitting to the bureau a completed Request for Registry Photograph Form SOR-5. The bureau may only provide public access to central registry photographs by means of a completed Form SOR-5, which must include the requester's full name, address, and either driver's license number or social security number. Any person can access registration photos via the bureau's or an authorized web site. (4-11-06)~~

~~**06. Fee for Photographs.** The bureau shall collect a fee of five dollars (\$5) for each photograph provided in response to a completed Form SOR-5. Any person can access registration photos without charge on the bureau's web site. (4-11-06)~~

~~**07. Retention of Request Forms.** The bureau and all sheriffs shall retain in their files the original copies of forms SOR-4 and SOR-5 for a period of two (2) years from the date of submission. These forms are available for inspection only by law enforcement and criminal justice agencies. (3-18-99)~~