

MINUTES

SENATE JUDICIARY & RULES AND HOUSE JUDICIARY, RULES & ADMINISTRATION SUBCOMMITTEES FOR REVIEW OF ADMINISTRATIVE RULES

**November 14, 2011
Capitol Building, West Wing Room 54**

Those in attendance included subcommittee members Senator Denton Darrington, Representative Richard Wills, Senator Les Bock, Representatives Lynn Luker and Grant Burgoyne and participating telephonically was Senator Steve Vick. Others in attendance included William Flink, POST Administrator; Chief David Moore, Vice chair, POST Council; Colonel Jerry Russell, Idaho State Police (ISP); Sheriff Gary Rainey, POST Council; Paul Panther, POST Council Attorney General; Dennis Stevenson, Administrative Rules Coordinator, Department of Administration; Ken Harward, Association of Idaho Cities; Gary White; and Brooke Murdoch and Charmi Arregui, Legislative Services Office (LSO).

The meeting was called to order at 1:30 p.m. pursuant to Section 67-454, Idaho Code, chaired by Senator Darrington, for the purpose of determining whether an objection would be made to one or more of the following rules of the Idaho State Police:

- IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council - RULES MEETING CALLED - 11/14/11 1:30 - 3:30, Capitol Bldg - West Wing Room 54 - Docket No. 11-1101-1102
- IDAPA 11.11.06 - Rules of the Idaho Peace Officer Standards & Training Council for Misdemeanor Probation Officers - RULES MEETING CALLED - 11/14/11 1:30 - 3:30, Capitol Bldg - West Wing Room 54 - Docket No. 11-1106-1101

A verbal roll call was taken. Brooke Murdoch, LSO Principal Legislative Research Analyst, informed the subcommittee that the meeting was called pursuant to and consistent with Section 67-454, Idaho Code, by two subcommittee members. Ms. Murdoch explained that the purpose of the meeting was to decide whether to object to one or both of the rules at issue. An objection to a rule is advisory only; it is not a rejection of the rule. In order to adopt a motion to object to a rule, a majority of the members of the subcommittee of each house voting separately is required. Ms. Murdoch advised that a motion should state plainly the reasons for the objection, which will be memorialized in a report to be transmitted to ISP and to the members of the germane standing committees.

Senator Bock asked for clarification regarding the consequences of the following: (1) a vote passes to object to the rule(s); and (2) there are sufficient votes to approve the rule(s). Ms. Murdoch clarified that the members are not tasked with approving or disapproving the rule(s) during this meeting; rather, the members would be deciding whether or not to object to the rule(s). An objection is advisory in nature only, it is not a rejection of the rule. A report of the subcommittee's findings, whether it adopts a motion to object or not, will be transmitted to the members of the germane standing committees, as well as to ISP. ISP may go forward with the rules as written, may revise the rules or may decide to hold the rules. The germane standing committee members may be advised by the findings of the subcommittee in its consideration of the rules

during the regular legislative session. Chairman Darrington reiterated that any action taken would only be for information purposes for ISP and as advice for the full committees when they meet for rules review during the first weeks of session.

Chairman Darrington asked that a representative from ISP explain the two rules at issue. Mr. William Flink, POST Administrator, read aloud Docket No. 11-1101-1102.

Senator Bock sought clarification regarding the underlying reason for the changes included in Docket No. 11-1101-1102. Mr. Flink responded that a committee was established in February, 2009, for the purpose of examining decertification provisions and proceedings and devising methods to make those proceedings more expeditious. Mr. Flink explained that there have been decertification cases that have taken months, and even years, to conclude. Some issues have involved serious crimes, such as homicide against a family member and severe sexual assault. An officer remains in possession of certification during the criminal proceedings and during the time it takes for ISP to conclude the administrative process. Provisions added to the rule for the use of Garrity v. New Jersey warnings allow officers to respond to questioning without the risk that their statements will be used against them in criminal proceedings. Mr. Flink stated that in his experience, the use of Garrity warnings tends to expedite the investigation process.

Chief David Moore, Vice-chair of POST Council, stated that he is a member of the hearing board that includes one chief, one sheriff and one representative from the Office of the Attorney General. He explained that the decertification process can be long and drawn-out and some cases have taken as long as two to three years. There have been instances in which officers were able to find employment with other agencies because their certification was still intact during the lengthy decertification process. The hearing board went to the full POST Council and a subcommittee was appointed to rework the rule in order to speed up the proceedings, while ensuring due process remains intact.

Representative Luker asked if ISP was currently using the Administrative Procedure Act (APA) for the hearing process. Mr. Flink responded in the affirmative. Representative Luker then asked whether, within that framework, there is no way to deal with officers who present an imminent danger. Mr. Flink responded that he was not aware of any other way to deal with such officers. Representative Luker expressed interest in the number of backlogged decertification hearings. Mr. Flink stated that ISP deals with roughly 36-50 cases annually. He further stated that ISP has tried Garrity warnings during investigations and has also utilized stipulations whereby officers sign over their certifications to try to expedite the process. Approximately 15-20 possible decertification cases are dealt with at every Council meeting and of those, at least 12-15 result in stipulations. Representative Luker stated that the 36-50 figure is concerning. Mr. Flink agreed and responded that ISP needs to do everything possible to make education a priority. Representative Luker then asked about the Garrity warnings and how certain ISP is that this will not become an issue in a criminal proceeding. Mr. Flink responded that it is unlawful to use that type of evidence in a criminal proceeding. He further noted that cases have been overturned because information wrongfully got into the criminal case and that any prosecutor who is knowledgeable of the law knows that if a person's testimony has been coerced, it cannot be used in a court of law for criminal purposes.

Representative Luker directed Mr. Flink's attention to a list of eight questions and concerns contained in a handout entitled "Rep. Luker Questions and Concerns." This handout is available online at <http://legislature.idaho.gov/sessioninfo/2011/interim/adminrules/1111011102.pdf> and in the Legislative Services Office. First, Representative Luker asked why decertification is the only option, particularly with regard to offenses listed under Section 091.04 of the rule, which are more

subjective codes of conduct. Representative Luker inquired as to whether other options, such as temporary suspension or limited assignments, are available for noncriminal violations. Mr. Flink responded that the POST Council is compiling other options, some of which have been submitted for further consideration. Currently, decertification is the only remedy for serious ISP misconduct while other less serious issues have not resulted in decertification. The hearing board is very methodical and weighs all considerations and interests in arriving at a decision. Chief Moore added that there have been times when the members on the board would have liked to have options other than decertification. He noted that out of 100 cases, there are usually five that would qualify for remedial training. ISP is in the process of drafting language that would provide additional options similar to those suggested by Representative Luker.

Representative Luker then addressed the ten-year reapplication provision in Section 091.03.e. of the rule, which applies to all violations. Representative Luker stated that ten years seems too generous for felony violations, but perhaps too harsh for some Section 091.04, noncriminal violations. Representative Luker explained that he was approached by a retired police officer who expressed concern about the possibility of a felon being reinstated after ten years. Representative Luker stated that it should be made clear in the rule that the possibility of recertification does not apply to felony convictions. Chairman Darrington clarified that the ten-year application process for recertification is not a mandatory certification; rather, it is simply the ability to apply for recertification after ten years, which may or may not be granted. Mr. Flink confirmed this statement to be correct.

Next, Representative Luker commented that in Section 091.04 and 04.a., the use of the term "may" and the inclusion of criminal conduct "whether charged or not" injects subjectivity into decertification proceedings, requiring more vigilant concern over due process rights of the officer accused. He noted that in civil law, if there is imminent threat of harm, a temporary restraining order or preliminary injunction is issued until further proceedings take place in front of a judge so as to ensure due process. Mr. Flink replied that this process is allowed under other state schemes, including Utah. The ability to decertify on an emergency basis has merit in extraordinary cases. Representative Luker stated that he understood the need in certain circumstances, but the rule provides a very quick review for an order that is final. He suggested a mechanism for provisional decertification that would be later confirmed by a full hearing. Mr. Flink responded that he could not disagree; however, other states have this process in place. If an immediate action is taken on a serious issue that affects the safety and welfare of others, this rule meets the needs in an emergency situation and, constitutionally, the officers would have an opportunity to respond to the known charges against them.

Sheriff Rainey added that the inefficient decision process was a frustration to the POST Council and to agency heads alike. It is arguable as to what that best process is, but Sheriff Rainey and others thought that the proposed rule reflects the most appropriate process. He gave an example of a case in which an officer had his three-year certification lapse during his decertification process. By the time this officer's case came before the POST Council for decertification proceedings, they could not decertify him because he was not technically certified any longer. The officer could have been certified again.

Representative Luker turned to Section 092.03.b.i., noting that the rule requires the notice of an order to inform the officer of his right to respond to the order, but does not specify a deadline for such response. Representative Luker noted that typically such response times are set in rule. Mr. Flink did not know the reason why the rule does not include a response deadline, but stated that the purpose of the summary decertification process is to account for situations involving immediate danger. Representative Luker said that this particular rule does not pertain to the initial

decertification order, but to the ability to respond later in an administrative appeal after the order was issued. He further clarified that the response time should be set in rule, not in the order. Mr. Flink responded that he does not know why a specific time period was not set in rule, but he stated it was something that could be considered.

Representative Luker next asked the purpose for 092.03.e., stating that everything upon which a decertification is based should be in the agency record, particularly when it is the POST Division Administrator who is both the investigator and the judge. Mr. Flink stated that when dealing with summary judgment, all of the facts in the case may not yet be available, but enough facts were available to support an immediate decertification. Sheriff Rainey added that the employing agency, not POST, may have a portion of the record that is necessary for POST to gather other facts to include in the consideration. Representative Luker stated that this process produces confusion as to what the decision is actually being based upon since reference is made to something outside that record. Sheriff Rainey replied that there are cases where agencies do not collect or release much information to POST because they are personnel records. Therefore, POST must rely upon its own investigation and collection of facts to determine a course of action. The proposed rule allows POST to supplement the information provided by an agency by conducting its own investigation.

Representative Luker, referring to Section 092.04, asked why, in non-summary decertifications, the investigator is also the judge. He noted that a certification of any other license is a property right. Revocation of that right should be attended with adequate due process, particularly in cases that do not involve convictions but come under the broader and more subjective criteria of Section 091.04, which "may" be invoked "whether or not charged." Representative Luker opined that the better approach would be to have the POST Council be the decertifying agency or have a standing board comprised of officers and citizens and then have the administrator present evidence to the board or Council, with an appeal to the district court. This would shorten the process by one or two steps while providing greater due process than having the administrator act as investigator, prosecutor and judge.

Mr. Flink responded that this was an administrative process, much like an employment process in which the chief administrator of the agency initiates the investigation through internal affairs and decides whether the officer is hired or fired. The officer is given an opportunity to respond to allegations, a decision is made and there is an opportunity for appeal. Hearings are slow because of the current process. The proposed rule ensures due process while providing a legal means to speed up the hearing process by minimizing the number of hearings required of the Council. Chief Moore added that the proposed rule was generated by the chiefs and sheriffs throughout the state of Idaho who want a quicker process for decertification investigations and decisions. He noted that the final decision does not come from Mr. Flink; rather, it goes through the POST Council. Representative Luker responded that with regard to non-summary and non-emergency decertifications, essentially a property right is involved, much like his law license and therefore full protection is necessary.

Representative Luker then referred to Section 091.04.g. and i., involving officer misconduct such as "excessive use of force" and "discredit or disrepute" and questioned whether these terms are defined. He noted that such terms are a matter of perception and subjective when balanced against issues of self-defense and free speech, respectively. Such issues are of even greater concern when one person acts as the investigator, the prosecutor and the judge. In non-emergency situations, there is a slower process for good reason; to ensure that the rights of everyone are protected.

Representative Burgoyne expressed concern that the officers involved be treated fairly, concern with the criminal justice system and concern about the administrative process. He stated

that he has experience with administrative law and, in his experience, the Supreme Court of the United States and the Supreme Courts around the country in various states have laid down bare constitutional minimums, which he does not think are always sufficient. He questioned the failure of the proposed rule to specifically and explicitly provide that the summary decertification is subject to appeal and what the appeal process looks like. He stated that this is a constitutional issue and the failure to explicitly provide in the rule that there is a right of appeal and what that looks like makes the summary adjudication, in all likelihood, unconstitutional; a defect that needs to be fixed. He noted that he does not question that the rule meets constitutional minimums, but questions whether the minimums are good enough. Representative Burgoyne illustrated situations where law enforcement officers have been required to investigate a person who holds public office or the rich and powerful in this state. A way to retaliate or to throw an investigation off track is to get that investigating officer decertified, which could be a signal to the community. He opined that we do not want to have rules in place that make that kind of behavior possible.

Representative Burgoyne noted that, under the proposed rule, law enforcement officers do not have access to the record before a hearing. He questioned how an officer could possibly respond to a charge if that officer is not familiar with the record. A description of evidence is not useful or helpful. He stated that the process may meet minimums but is not, as a practical matter, adequate. He further noted that the rule requires the officer to cite factual and legal errors and that effectively means the officer must understand the record. However, if the officer does not have the record, it proves very difficult, especially if the officer is not represented by an attorney. Representative Burgoyne stated that the proposed process is convoluted, lengthy and potentially expensive, noting that a response goes to the Administrator, then to a hearing, then to POST (three times) to get through the process. Also concerning is the requirement that the process take place in Ada County; it is unclear whether it can take place elsewhere in the state. The accused officer should have the right and ability to go through all of the procedures in a home county because it is costly for an officer, and possibly witnesses, to travel to Ada County.

Representative Burgoyne also expressed concern about the procedures. He noted that in the proposed rule, the APA does not apply and stated that as a hearing officer in a non-APA setting, he understands firsthand that it is necessary to be very clear as to what the procedures are and what the standard of review is. He further noted that the rule does not provide a clear sense of the membership make up of the board. Representative Burgoyne also indicated that he does not think it good practice for agencies to repeatedly use the same hearing officers, which results in situations where agencies get the decisions they want. He stated that he would prefer a board that includes retired or non-active law enforcement members who are not subject to conflicts that naturally arise when people in the law enforcement community are judging each other. Finally, Representative Burgoyne stated that the proposed rule should be examined in recognition of the fact that the employing agency has the right to remove an officer from duty and, within a brief period of time, dismiss the officer from employment. He noted that the issue then becomes whether such officer can be rehabilitated and go to work elsewhere, which he opined to be a tougher decision and one worthy of more review and protection than this rule provides.

Mr. Flink responded that the hearing board is defined in rule. He stated that he also has experience as a hearing officer and understands how an implication could be made that a hearing officer might be giving the agency a decision for a reason. Finally, he agreed that the standard of review should be detailed in the rule.

Next, Mr. Gary White testified. Mr. White introduced himself as a prior employee of POST from 1988 to 2000. He stated that law enforcement officers are in business for one function - the protection of the citizenry. Mr. White further stated that he understood why POST was breaking up

the code of ethics, but it should not be the POST Council code of ethics; rather, it should be the law enforcement code of ethics. He explained that the law enforcement code of ethics is a professional code that does not belong solely to the state of Idaho, but to all fifty states and all police officers who take the oath within the fifty states. This is a promise made by all officers to the citizens. He stated that officers who violate the trust of the public and the trust of law enforcement should not have an opportunity to return to the profession after ten years of decertification. He opined that there is not a perfect process or system, but when an officer is investigated and decertified for bad behavior, then that officer should not be allowed to reapply for certification in ten years. Chairman Darrington asked if Mr. White was testifying against or for the rule. Mr. White responded that the purpose of his testimony was to convey his opinion that an officer who has been decertified should never be able to be recertified.

Senator Bock asked Mr. Dennis Stevenson, Administrative Rules Coordinator, to explain the deadline for revising the proposed rule. Mr. Stevenson responded that the rule was published in the October bulletin and that it is now before the agency for consideration for adoption as a pending rule. Mr. Stevenson stated that November 25, 2011, is the deadline for submitting any changes to the rule, which would be published in the January bulletin for consideration by the 2012 Legislature.

Chairman Darrington requested the will of the subcommittee. Representative Luker stated that for the reasons discussed, he has concerns about the way the rule is written. He then made a motion to object to Docket No. 11-1101-1102 as written. The motion was seconded by Representative Burgoyne.

Senator Bock stated that he was torn, recognizing that time is of the essence because of the November 25, 2011, deadline. He noted that the subcommittee cannot require that POST make changes to the rule. Senator Bock further stated that he was not in a position to specify how he would vote on the rule during session, but he indicated he wanted to see changes made to the rule. He stated that he does not know how best to communicate the need for changes other than to vote in favor of the motion.

Representative Wills commented that he applauded the work of his esteemed colleagues for taking up the banner to ensure that rights of police officers and the public are protected. Having spent four decades in the law enforcement arena, he understands the position of all parties involved. The POST Council was established to set rules and regulations that would establish and complement the professional conduct of police officers. He stated that he understands that the standards of the POST Council are quite high and that all police officers who go through POST are made aware of the high standards. Representative Wills then made a substitute motion to accept the rules as written. Ms. Murdoch clarified that the subcommittee was not tasked with approving the rules; rather, it may object to the rules as written or do nothing. Representative Wills amended his substitute motion, moving to do nothing on Docket No. 11-1101-1102. The amended substitute motion died for lack of a second.

A roll call vote was taken on the original motion made by Representative Luker. The motion to object prevailed in the Senate subcommittee with Chairman Darrington voting "no" and Senators Bock and Vick voting "yes." The motion to object prevailed in the House subcommittee with Co-chairman Representative Wills voting "no" and Representatives Luker and Burgoyne voting "yes." The motion to object to Docket No. 11-1101-1102 therefore prevailed.

Chairman Darrington then turned to Docket No. 11-1106-1101 for consideration. Mr. Flink explained that this rule dealt with proposed amendments to the misdemeanor probation rules passed

during the 2011 legislative session. In Section 010.02 of the rule the new language allows for any public or private agency administered by or contracted with the county to be considered a probation department. Mr. Flink explained that presently, POST Council does not train any contracted misdemeanor probation agencies because there is no explicit language allowing them to do so. This provision of the rule was added to explicitly permit POST Council to train contracted misdemeanor probation officers.

Representative Luker stated that discussion on this rule is more for informational purposes. He noted that there is some concern about whether contracting this service out is in the public interest, as opposed to having public entities be responsible within constitutional parameters. Representative Luker asked Mr. Flink how many private agencies are doing this work, the status of any related lawsuits and Mr. Flink's perception as to whether this is good policy. Mr. Flink responded that currently there are five counties that use contracted misdemeanor probation officers and that these officers must become certified by January 1, 2014. He noted that the POST Council realizes that there is a constitutional question raised regarding misdemeanor probation officers, as well as difficulties in Ada County regarding contracting misdemeanor probation officers. His impression was that the POST Council would have no objection to withdrawing this particular provision for one more year, if necessary. Chief Moore added that the language in the rule was changed because of legislative action.

Chairman Darrington explained that a subcommittee of the Criminal Justice Commission has an agreed upon solution, but that solution is not yet available for the public.

Representative Luker asked for clarification with regard to the status of the rule. Mr. Flink responded that misdemeanor probation officers do not have to be trained and certified until January 1, 2014. He further stated that if the subcommittee had advice about this rule, such advice would be useful to the POST Council. Sheriff Rainey, speaking as a POST Council member, stated that he raised an issue as to whether the state of Idaho via POST should be involved in the relationship between counties and the provider of probation services. Sheriff Rainey, then speaking as an Ada County Sheriff, stated that there has been an increase in the number of complaints to Ada County and a lawsuit has been filed. Ada County notified the current contractor that the contract will end at the calendar term of October, 2012; then reverting to a county service. He noted that many in Ada County government have stated that they do not believe that probation should be a contracted service.

Representative Luker asked Sheriff Rainey whether it is his perception that, given the current law allowing private contractors, it is the responsibility of POST to oversee certification of those probation officers as opposed to any other means. Sheriff Rainey responded that in 2014, it will be a responsibility of POST to oversee the training and certification of probation officers regardless of whether they are private or public. Representative Luker asked if there was any certification requirement now and whether there is an immediate need for this rule given the 2014 deadline. Sheriff Rainey responded that there is currently no certification process or training standard and in Ada County, if things proceed as planned, there would not be a need. However, he could not speak for the other four counties that have contracts for such service.

Representative Luker commented that given the current state of flux and potential legislation, it is not necessary to take any action on this rule. He thought it best to defer any action on Docket No. 11-1106-1101 until it is considered during the legislative session.

There being no further comment or motions, the meeting adjourned at 3:45 p.m.

REP. LUKER QUESTIONS AND CONCERNS
IDAPA 11-1101-1102 – POST DECERTIFICATION
November 14, 2011

1. .091.03(b) -- Why is decertification the only option, particularly with regard to offenses under 091.04 related to more subjective code of conduct ? Are other options such as temporary suspension, limited assignments available for non-criminal violations?
2. .091.03(e) -- Why is a 10 year reapplication limit applicable to all violations. Ten years seems too generous for felonies, but perhaps too harsh for some 091.04 non-criminal violations.
3. 091.04 and .04(a) -- use of the verb "may" and inclusion of criminal conduct "whether or not charged" injects more subjectivity into decertification proceedings which requires more vigilant concern over due process rights of the officer accused.
4. .092.03 -- Summary Decertification. It is understandable that in cases of immediate danger a quick action is in order, however, because the Administrator is the investigative authority, and also the decision maker, this rule appears to lack full due process. There is no appeal. An appropriate remedy would seem to be allowance of a temporary suspension such as a TRO or preliminary injunction remedy available in the courts, and then followed with an appeal process, or permanent decertification if the appeal is not filed or otherwise waived.
5. 092.03(b)(l) -- Why is the response time not set in the rule as opposed to allowing a variable time depending upon what is put in the order?
6. 092.03(e) -- What is the purpose for this rule? It seems that everything upon which the decertification is based should be in the agency record, particularly when it is the Administrator who is the investigator and judge.
7. 092.04 -- In non-summary decertifications, why is the investigator also the judge? A certification as any other license is a property right. Revocation of that right should be attended with adequate due process, particularly in cases which do not involve convictions, but come under the broader and more subjective criteria of 091.04 which "may" be invoked "whether or not charged." I have concerns about having the investigator also being the judge and jury in this situation. It seems that the better approach would be to have the Council either be the decertifying agency, or have a standing board made up of officers and citizens, and have then have the administrator present the evidence to the board or council, with an appeal to the district court. This would shorten the process for everyone by one or two steps, and provide greater due process than having the administrator be investigator, prosecutor and judge.
8. 091.04 (g) and (j) -- how and "excessive use of force" and "discredit or disrepute" defined? These are areas that can be subjective when balanced against issues of self-defense and free-speech respectively. Such issues are of even greater concern when one person is the investigator, prosecutor and judge.



Legislative Services Office

Idaho State Legislature

Jeff Youtz
Director

Serving Idaho's Citizen Legislature

December 06, 2011

Senator Brent Hill
President Pro Tem of the Senate
W331
Statehouse Mail

Representative Lawrence Denney
Speaker of the House of Representatives
E303
Statehouse Mail

Re: Report of the Senate Judiciary & Rules and House Judiciary, Rules & Administration

Dear Pro Tem Hill and Speaker Denney:

The Senate Judiciary & Rules and House Judiciary, Rules & Administration Germane Joint Subcommittee met on November 14, 2011 pursuant to section 67-454, Idaho Code, to review the proposed rule of the Idaho State Police contained in Docket No. 11-1101-1102, Rules of the Idaho Peace Officer Standards and Training Council.

Section 67-454, Idaho Code, provides that "[u]pon a finding of the same objection by a majority of the members of the subcommittee of each house voting separately, an objection to a rule shall be transmitted to the agency with a concise statement of the reasons for the objection. A report of the joint subcommittee on each rule transmitted to it, including a finding that there is no objection to the rule or that an objection has been filed, shall be filed with the agency, transmitted to the membership of the germane standing committee, and submitted to the next regular session of the legislature."

Senators Bock and Vick, along with Representatives Luker and Burgoyne voted to object to the proposed rule. Senator Darrington and Representative Wills voted against the objection. The reasons for the objection were:

1. Alternative remedial options for noncriminal violations should be permitted when appropriate; however, the proposed rule provides only for decertification for every type of violation;
2. Allowing decertified officers to reapply for certification after ten years is too generous for felony violations and too harsh for less egregious, noncriminal violations; and
3. The due process procedures for summary and non-summary decertification are convoluted and inadequate.

Sincerely yours,

Brooke Murdoch
Principal Legislative Research Analyst

SBM/

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

cc: William L. Flink, POST Division Administrator, Idaho State Police
Office of Administrative Rules

October 19, 2011

MEETING NOTICE AND AGENDA

SENATE JUDICIARY & RULES AND HOUSE JUDICIARY, RULES & ADMINISTRATION SUBCOMMITTEES FOR REVIEW OF ADMINISTRATIVE RULES

The Senate Judiciary & Rules and House Judiciary, Rules & Administration Subcommittees For the Review of Administrative Rules will hold a meeting on:

DATE: November 14, 2011

TIME: 1:30 - 3:30

PLACE: Capitol Bldg, Boise, ID - West Wing Room 54

Members will be meeting to review and discuss the following proposed rules of the Idaho State Police pursuant to Section 67-454, Idaho Code, for the purpose of

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council - RULES MEETING CALLED - 11/14/11 1:30 - 3:30, Capitol Bldg - West Wing Room 54 - Docket No. 11-1101-1102

If you have any questions, please call Brooke Murdoch at the Legislative Services Office at (208) 334-4859.

Members of the Subcommittees:

Senator Denton Darrington, Co-chairman

Senator Steve Vick

Senator Les Bock

Representative Richard Wills, Co-chairman

Representative Lynn Luker

Representative Grant Burgoyne

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

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

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council (Docket
No. 11-1101-1101);

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council (Docket
No. 11-1101-1102);

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council (Docket
No. 11-1101-1103);

IDAPA 11.11.02 - Rules of the Idaho Peace Officer Standards & Training Council for Juvenile
Detention Officers (Docket No. 11-1102-1101);

IDAPA 11.11.06 - Rules of the Idaho Peace Officer Standards & Training Council for
Misdemeanor Probation Officers (Docket No. 11-1106-1101).

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 10/28/2011. 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 11/28/2011.

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 11, 2011

SUBJECT: Idaho State Police - Idaho POST Council

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council (Docket No. 11-1101-1101)

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council (Docket No. 11-1101-1102)

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards & Training Council (Docket No. 11-1101-1103)

IDAPA 11.11.02 - Rules of the Idaho Peace Officer Standards & Training Council for Juvenile Detention Officers (Docket No. 11-1102-1101)

IDAPA 11.11.06 - Rules of the Idaho Peace Officer Standards & Training Council for Misdemeanor Probation Officers (Docket No. 11-1106-1101)

(1) The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No. 11-1101-1101). The proposed rule defines the terms "direction" and "supervision," permits the POST Basic Misdemeanor Probation Academy to operate as a closed campus depending upon resources, removes language that requires trainees to make up missed course content, awards partial credit toward law enforcement experience and training to applicants who have served as full-time military law enforcement officers, removes language that requires communications specialists to meet the minimum standards for age and traffic record, removes references to the Advanced Dispatch Academies, removes reference to certain canine handler training requirements and revises the list of explosive substances used for detection canine team certification.

Negotiated rulemaking was not conducted because representatives of the affected parties were involved in drafting and approving the proposed rule.

The proposed rule is within the authority granted to the Idaho POST Council in Section 19-5107, Idaho Code.

(2) The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No. 11-1101-1102). The proposed rule requires the POST Division Administrator to report decertification proceedings on a regular basis, provides code of conduct requirements, identifies conduct that may constitute cause for decertification, requires an officer charged with a

felony or misdemeanor to notify his agency head of such charge within five business days, requires the agency head of an officer so charged to notify the POST Division Administrator within fourteen days of learning of the charge, clarifies that decertified officers are ineligible for POST certification for a period of ten years, requires an agency head intending to hire a previously decertified officer to request a waiver from the POST Council and establishes due process procedures applicable to all decertification proceedings.

We note that Section 091.03.b on page 242 of the proposed rule provides that the "Council may decertify any officer who...willfully or otherwise falsifies or omits material information to obtain any certified status." Section 19-5109(3)(b), Idaho Code, provides the same language in granting the Council the discretion to decertify officers, except that the term "material" is not included in the statute.

We further note in regards to the due process procedures on pages 244-246 of the proposed rule, pursuant to Section 19-5109(3), Idaho Code, any decertification proceedings taken by the Council are required to be conducted in accordance with Title 67, Chapter 52, Idaho Code.

Negotiated rulemaking was not conducted because representatives of the affected parties were involved in drafting and approving the proposed rule.

Aside from the above comments, the proposed rule appears to be within the authority granted to the Idaho POST Council in Section 19-5107, Idaho Code.

(3) The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No. 11-1101-1103). Language in the existing rule permits the POST Council to determine whether applicants who have been previously convicted of a felony may be certifiable in the state of Idaho when the crime for which the applicant was convicted has been statutorily reduced to a misdemeanor or decriminalized. The Idaho State Police states that this existing rule exceeds statutory authority and is therefore removing this language.

Negotiated rulemaking was not conducted because representatives of the affected parties were involved in drafting and approving the proposed rule.

The proposed rule appears to be within the authority granted to the Idaho POST Council in Section 19-5107, Idaho Code.

(4) The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.11.02 - Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers. The proposed rule revises the minimum standards for employment as a POST-certified juvenile detention officer and clarifies that POST-certified detention officers who undertake juvenile detention responsibilities without a change in employer are not required to meet additional hearing and vision standards in order to qualify for juvenile detention certification.

We note that the revisions made to Section 030.02.c on page 255 of the proposed rule appear to be moot as the existing provisions in that section were either met, or not, by September 30, 2004.

Negotiated rulemaking was not conducted because representatives of the affected parties were involved in drafting and approving the proposed rule.

The proposed rule is within the authority granted to the Idaho POST Council in Section 19-5107, Idaho Code.

(5) The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.11.06 - Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers. The Idaho State Police states that there are five counties that contract for misdemeanor probation officer services. The proposed rule allows the POST Council to certify misdemeanor probation officers employed by a private contractor.

Negotiated rulemaking was not conducted because representatives of the affected parties were involved in drafting and approving the proposed rule.

The proposed rule appears to be within the authority granted to the Idaho POST Council in Section 19-5107, Idaho Code.

cc: Idaho State Police

William L. Flink, POST Division Administrator

Trish Christy

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1101

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 19-5107, 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 October 19, 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:

Defines the terms "direction" and "supervision" as it relates to reserve officers; establishes that the Basic Misdemeanor Probation Academy may operate as a closed campus if POST has dorm space available; clarifies that a student must attend all basic academy classes to successfully complete the course; establishes criteria for obtaining credit toward higher certifications for officers who formerly served as military law enforcement officers; removes the requirement that communications specialists meet the minimum employment standards for age and traffic record; removes references to the Advanced Dispatch Academy which is no longer offered; removes confusing language in reference to canine team training and certification requirements; and updates the list of explosive substances used for detection canine team certification.

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 representatives of the affected parties were involved in the drafting and approval of the rule.

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 Trish Christy at (208) 884-7253.

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 October 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

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

010. DEFINITIONS.

- 01. Act.** Title 19, Chapter 51, of the Idaho Code. (4-5-00)
- 02. Adult Probation and Parole Officer.** Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (3-30-07)
- 03. Agency.** A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 04. Agency Head.** A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 05. Applicant.** Any person applying to participate in a POST training program or applying for POST certification. (4-2-08)
- 06. Basic Adult Probation and Parole Academy.** A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. (4-2-08)
- 07. Basic Correction Academy.** A basic course of instruction for Correction Officers as recognized by POST Council. (4-2-08)
- 08. Basic Detention Academy.** A basic course of instruction for Detention Officers as recognized by POST Council. (4-2-08)
- 09. Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. (4-2-08)
- 10. Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (4-2-08)
- 11. Basic Patrol Academy.** A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)
- 12. College Credit.** A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other equivalent accrediting agency. (7-1-93)
- 13. Correction Officer.** Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. (3-30-07)
- 14. Correction Standards and Training Council.** An advisory group to the POST Council that is

comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. (4-2-08)

15. Council. The Idaho Peace Officer Standards and Training Council. (4-2-08)

16. County Detention Officer. An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)

17. Crime of Deceit. Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (4-2-08)

18. Direction. Direction, at its broadest term, allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. This does not allow a Level II reserve officer to operate alone in his official capacity. He shall be under direct observation and control of the agency's full-time peace officer. ()

189. Field Training. Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)

1920. Full Time. Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days. (4-2-08)

201. High School. A school accredited as a high school by the Department of Education of the state in

which the high school is located, or a school accredited as a high school by the recognized regional accreditation body, or a school accredited as a high school by the State University of the state in which the school is located. (7-1-93)

242. In-Service Training. Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned. (7-1-93)

223. Juvenile Detention Center. A juvenile detention facility that is part of or administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders. (4-2-08)

234. Juvenile Detention Officer. Any employee of a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center. (4-2-08)

245. Juvenile Probation Officer. Any employee of a juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders. (4-2-08)

256. Juvenile Training Council. An advisory group to the POST Council that is composed of the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Detention and Juvenile Probation Academies. (4-2-08)

267. Law Enforcement Profession. As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center; an employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (4-2-08)

278. Manual. This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (4-5-00)

289. Part Time. Employment of less than one hundred sixty (160) hours per month for ninety (90) consecutive calendar days. (4-2-08)

2930. Part-Time Juvenile Detention Officer. Any employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-2-08)

301. Peace Officer. Any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho. (4-5-00)

342. POST. The Idaho Peace Officer Standards and Training Program. (7-1-93)

323. **POST Basic Training Academy.** The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile Probation Academy, or the Basic Patrol Academy. (4-2-08)

334. **Prosecutor.** A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)

345. **Qualified Instructor.** Any person certified by the Idaho POST Council as being competent to teach in a Council-approved school. (4-2-08)

356. **Reserve Peace Officer.** An individual assigned by an agency to perform the duties of a peace officer on a part-time basis. All reserve officers shall be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (4-2-08)

367. **School.** Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)

378. **School Director or Coordinator.** An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)

389. **Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

40. **Supervision.** Supervision allows the employing agency to utilize a Level I reserve officer to work by himself without the immediate presence or direction of a full-time peace officer, but acting under the overall on-duty supervision of an on-duty, full-time peace officer. This may allow a Level I reserve officer to work alone in his jurisdiction, without immediate oversight of an agency full-time peace officer, as long as there were another full-time peace officer of the agency working at the same time to provide supervision of the Level I reserve officer's activities. ()

3941. **Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

402. **Trainee.** An officer participating in any POST approved training program. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

071. BASIC TRAINING ACADEMY.

Every peace and detention officer shall begin the respective POST Basic Training Academy within six (6) months from the date of their appointment as a full-time officer. Every peace, detention, juvenile detention, and juvenile probation officer shall successfully complete the respective POST Basic Training Academy, including the field training portion, within twelve (12) months from the date of their appointment as a full-time officer. This time period includes probationary time. (4-7-11)

01. Closed Campus. The POST Basic Patrol, Juvenile Detention, and Juvenile Probation Training Academies shall operate as a closed campus Monday through Thursday. The POST Division Administrator may consider an exemption to this requirement in the case of a documented personal hardship for the applicant where no other reasonable alternative exists and provided the applicant's agency head files a written request for review with the POST Division Administrator. A trainee granted a hardship exemption shall be required to attend all mandatory classes, and shall not be late to any class. Unauthorized lateness to or absence from any class shall be grounds for revocation of the hardship exemption by the POST Division Administrator. The POST Council may consider an exemption to this requirement on a case-by-case basis for a scheduled POST Basic Patrol, Juvenile Detention, or Juvenile Probation Training Academy. (4-7-11)

~~02. **POST Basic Misdemeanor Probation Academy.** The POST Basic Misdemeanor Probation Academy may operate as a closed campus depending upon the availability of POST resources. ()~~

~~023. **Open Campus.** All other POST Basic Training Academies shall operate as an open campus. (4-2-08)~~

~~034. **Attendance.** Attendance shall be required of each trainee at all classes in the Basic Training Academy. *A trainee who is absent for more than one (1) day of the academy session shall make up such course content.* (4-7-11)()~~

~~045. **Completion.** A trainee shall successfully complete the Basic Training Academy within six (6) months of the date they enroll in such course. In a case of delay of more than six (6) months, the entire course shall be repeated. (4-7-11)~~

~~056. **Field Training.** The field training portion shall be completed to be eligible for certification. (4-7-11)~~

(BREAK IN CONTINUITY OF SECTIONS)

095. LAW ENFORCEMENT EXPERIENCE.

~~01. **Law Enforcement Experience.** Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 064, ~~will~~ shall be subject to the determination of the Council. (4-2-08)()~~

~~02. **Military Law Enforcement Service and Education.** An applicant who has served in the military as a full-time military law enforcement officer may be awarded partial credit toward law enforcement experience and training. ()~~

~~a. **The applicant shall have served in the military as a full-time military law enforcement officer for the period of time he is requesting credit for. Regular guard duty does not qualify.** ()~~

~~b. **Education shall be military law enforcement schools successfully completed. All certificates, course outlines, diplomas, DD-214's, and certificates of completion showing length of school shall accompany an appropriate application form designated by the Council.** ()~~

~~c. **Credit shall be awarded as follows:** ()~~

~~i. **One (1) year of accepted military law enforcement service shall equal three (3) months of law enforcement experience.** ()~~

~~ii. **Eight (8) hours of accepted military law enforcement training shall equal four (4) hours of law enforcement training.** ()~~

~~d. **No applicant shall be awarded more than two (2) years of law enforcement experience or more than one thousand (1,000) hours of law enforcement training.** ()~~

(BREAK IN CONTINUITY OF SECTIONS)

174. LAW ENFORCEMENT EXPERIENCE.

01. Law Enforcement Experience. Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 064, ~~will~~ shall be subject to the determination of the Council. (4-2-08)()

02. Military Law Enforcement Service and Education. An applicant who has served in the military as a full-time military law enforcement officer may be awarded partial credit toward law enforcement experience and training. ()

a. The applicant shall have served in the military as a full-time military law enforcement officer for the period of time he is requesting credit for. Regular guard duty does not qualify. ()

b. Education shall be military law enforcement schools successfully completed. All certificates, course outlines, diplomas, DD-214's, and certificates of completion showing length of school shall accompany an appropriate application form designated by the Council. ()

c. Credit shall be awarded as follows: ()

i. One (1) year of accepted military law enforcement service shall equal three (3) months of law enforcement experience. ()

ii. Eight (8) hours of accepted military law enforcement training shall equal four (4) hours of law enforcement training. ()

d. No applicant shall be awarded more than two (2) years of law enforcement experience or more than one thousand (1,000) hours of law enforcement training. ()

(BREAK IN CONTINUITY OF SECTIONS)

197. GENERAL PROVISIONS.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. Communications Specialist Certification is not statutorily mandated, but is voluntary. (4-2-03)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the communications specialist is appointed as an Idaho communications specialist by a duly constituted Idaho law enforcement agency and has not been decertified. (3-29-10)

03. Eligibility. To be eligible for the award of a Level I, Level II, Level III, or Advanced certificate, each applicant shall be a full-time communications specialist appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

04. Applications. All applications for award of the Level I, Level II, Level III, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

05. Submission. The Application for Certification form shall be submitted by the applicant to his

agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

06. Training. Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. (4-2-03)

07. Minimum Standards. Each applicant shall meet the minimum standards for employment as provided in Sections 050 ~~through, 051, 052, 054, 055, 056, and~~ 058. (~~4-2-08~~)()

198. COMMUNICATIONS SPECIALIST EXPERIENCE.

Communications specialist experience, as used herein, means actual time served as a full-time communications specialist with a duly constituted law enforcement agency. The acceptability of time served as a communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 ~~through, 051, 052, 054, 055, 056, and~~ 058, shall be subject to the determination of the Council. (~~4-2-08~~)()

(BREAK IN CONTINUITY OF SECTIONS)

202. ADVANCED CERTIFICATE.

01. Requirements. The Advanced Certificate is for individuals who have consciously decided to focus career efforts on public safety communications. A candidate for the Advanced Certificate ~~must shall:~~ (~~4-11-06~~)()

- a. Possess the Level III Communications Specialist Certificate. (4-2-03)
- b. Have satisfactorily completed five hundred (500) hours of POST-certified communications-related training. (4-2-03)
- c. Have satisfactorily completed ~~both~~ the POST Basic ~~and Advanced~~ Dispatch Academies. (~~4-2-03~~)()
- d. Have a minimum of ten (10) years of communications specialist experience. (4-2-03)

02. Exception. An applicant who has a minimum of twenty (20) years of communications specialist experience but has not satisfactorily completed the POST Basic ~~and Advanced~~ Dispatch Academies ~~will shall~~ be eligible for the Advanced Certificate without attending the academies provided he meets all other requirements as set forth in Section 202 of these rules and can pass the final examination for ~~each the~~ academy with a minimum score of seventy-five percent (75%). The applicant ~~will shall~~ be allowed two (2) attempts to pass ~~each the~~ examination. The attempts ~~must shall~~ be no less than thirty (30) days apart and no more than six (6) months apart. If an applicant fails both attempts or fails to retake the examination within six (6) months, he ~~must shall~~ successfully complete the POST Basic ~~and Advanced~~ Dispatch Academies to be eligible for the Advanced Certificate. (~~4-11-06~~)()

203. -- 209. (RESERVED)

210. CANINE EVALUATOR CERTIFICATION.

01. Purpose. Canine Evaluator Certificates are established for the purpose of recognizing competence as an evaluator of police canine teams. (4-11-06)

02. Certification. The Council ~~will shall~~ certify applicants who meet the requirements set forth in this section and are deemed qualified by their training and experience to evaluate police canine teams. Certificates ~~will shall~~ be issued in the areas of Patrol, ~~Tracking, Evidence Search, Controlled Substance Detection, and Explosive Substance~~ Detection. The applicant ~~must shall~~ show training and experience in each area he is requesting certification in. Certificates ~~will shall~~ be issued to the agency head for award to the applicant. (~~4-11-06~~)()

03. Revocation. Canine Evaluator certification may be revoked by the Council whenever a canine evaluator is deemed to be unqualified to continue evaluating police canine teams. Review of canine evaluator certification may be initiated upon the request of an agency head or other reliable source. Such review may also be initiated by the Council in the absence of external requests or complaints. (4-11-06)

04. Eligibility. To be eligible for the award of a Canine Evaluator Certificate, each applicant ~~must shall~~ meet the following POST requirements: ~~(4-11-06)~~()

a. Be a POST-certified or federally commissioned peace, detention, correction, or adult probation and parole officer who is actively involved in a law enforcement canine program; (4-11-06)

b. Have three (3) years of canine handler experience; (4-11-06)

c. Have three hundred ninety (390) hours of POST-certified or federally-approved canine-related training; (4-11-06)

d. Successfully complete the Idaho POST-certified Canine Evaluators course; (4-11-06)

e. Evaluate seven (7) dogs while under supervision of a current Idaho POST-certified canine evaluator; and (4-11-06)

f. Submit an Idaho POST Canine Evaluator Application Packet to POST Council, which ~~must shall~~ include: ~~(4-11-06)~~()

i. Transcripts, certificates, diplomas, or other documents that substantiate the applicant's education and training in the canine field; and (4-11-06)

ii. A letter of recommendation from an administrator within the applicant's employing agency. (5-8-09)

05. Retaining Certification. To retain certification, a certified canine evaluator ~~must shall~~ evaluate a minimum of four (4) dogs every two (2) years. Any canine evaluator not satisfying this requirement ~~must shall~~ complete all requirements as set forth in Section 210 of these rules to be recertified. ~~(5-8-09)~~()

(BREAK IN CONTINUITY OF SECTIONS)

213. GENERAL PROVISIONS.

01. Mandatory Certification. A canine team shall be Idaho-POST certified in order to perform their duties. (4-7-11)

02. Eligibility. The canine handler shall be an Idaho POST-certified peace, detention, correction, adult probation and parole, juvenile detention, juvenile probation, or adult misdemeanor probation officer employed by a law enforcement agency which is a part of or administered by the state or any political subdivision thereof, or an Idaho POST-certified direct care staff member of the Idaho Department of Juvenile Corrections to be eligible for certification under these rules. Contract employees shall not be eligible for canine team certification. (4-7-11)

03. Notification of Canine Being Put Into Service. Prior to a canine being put into service, the law enforcement agency head shall submit written notification to the Council of such pending action unless the canine team is POST-certified in another state or approved by the federal government, in which case notification shall be submitted within fifteen (15) days of the canine being put into service in Idaho. (4-7-11)

04. Training. (4-11-06)

a. A patrol canine handler shall have completed two hundred forty (240) hours of POST-approved canine handler training. The training shall include, but not be limited to: (4-7-11)

- i. Suspect search; (4-11-06)
- ii. Apprehension; (4-11-06)
- iii. Handler protection; (4-11-06)
- iv. Obedience; and (4-11-06)
- v. Agility. (4-11-06)

b. A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler shall have completed one hundred sixty (160) hours of POST-approved canine handler training. The training shall include, but not be limited to: (4-7-11)

- i. Obedience; and (4-11-06)
- ii. Odor recognition specific to the area the canine team is seeking certification in. (4-11-06)

~~**e.** A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler cross-trained as a patrol canine handler shall have completed two hundred forty (240) hours of POST-approved canine handler training. (4-7-11)~~

05. Evaluation. In evaluating the proficiency of the canine teams, the evaluators shall use the standards approved by the POST Council for that particular skill category. Performance shall be rated on a pass/fail basis. The evaluator shall have the discretion to discontinue the testing if excessive time has been spent without results. The evaluator shall not be the owner or handler of the canine being evaluated, and shall not have a proprietary interest in the training of the canine team being evaluated. A POST Training Specialist shall be notified of all canine certification testing. (4-7-11)

06. Failed Evaluation. If a canine team fails any portion of an evaluation, the entire evaluation is considered to be failed, and all skills shall be repeated and successfully demonstrated during retesting. The canine team shall wait at least twenty-four (24) hours before retesting, and they shall be retested by the same evaluator that evaluated the failed test or his designee. (4-7-11)

07. Areas of Certification. The Council shall certify a canine team which successfully demonstrates the handler's ability to control the canine, under the scrutiny of a canine evaluator, in addition to proficiency in one (1) or more of the following areas: (4-7-11)

- a.** Patrol; (3-30-01)
- b.** Tracking; (3-30-01)
- c.** Evidence search; (3-30-01)
- d.** Controlled substance detection; or (3-30-01)
- e.** Explosive substance detection. (3-30-01)

08. Expiration of Certification. Each certification issued pursuant to these rules shall remain valid for fifteen (15) months. A canine team shall be evaluated prior to their certification expiration date to maintain their certification. A canine team certification shall lapse if the handler and canine cease to perform canine team functions together. (4-7-11)

09. Appeal. Any handler who believes there have been improper procedures applied in implementing the standards may file an appeal with the Idaho Peace Officer Standards and Training ~~Academy~~ in writing. This appeal shall be filed within thirty (30) days of the testing date. ~~(4-7-11)~~()

(BREAK IN CONTINUITY OF SECTIONS)

241. EXPLOSIVE SUBSTANCES.

Explosive substances ~~will~~ shall consist of twelve (12) areas. An explosive detection dog ~~must~~ shall locate one (1) find of each of the following: (4-11-06)

- 01. C-4 Explosive.** (4-11-06)
- 02. Pyrodex.** (4-11-06)
- 03. Ammonium Nitrate.** (4-11-06)
- 04. Detonating Cord.** (4-11-06)
- 05. Time Fuse.** (4-11-06)
- 06. Nitro Methane.** (4-11-06)
- 07. TNT.** (4-11-06)
- 08. ~~Nitro Glycerin Dynamite~~ PETN.** ~~(4-11-06)~~()
- 09. ~~Non Nitro Glycerin~~ Dynamite.** ~~(4-11-06)~~()
- 10. Sodium Chlorate.** (4-11-06)
- 11. Potassium Chlorate.** (4-11-06)
- 12. Gun Powder.** (4-11-06)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1102

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 19-5107, 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 October 19, 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:

Requires the POST Division Administrator to report decertification proceedings to the POST Council on a regular basis; identifies the conduct that may constitute cause for decertification; requires an officer charged with a felony or misdemeanor to notify his agency head within five business days; requires an agency head to notify POST within fourteen days of learning of the charge; allows an agency head intending to hire a decertified officer to petition the Council, ten years after the date the officer was decertified, for reconsideration for law enforcement officer employment; and establishes the due process procedures.

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 representatives of the affected parties were involved in the drafting and approval of the rule.

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 Trish Christy at (208) 884-7253.

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 October 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1102

031. DIVISION ADMINISTRATOR.

There shall be established in the Idaho State Police a nonclassified position of Division Administrator of the Idaho Peace Officer Standards and Training Council. (4-7-11)

01. Selection of Division Administrator. (4-7-11)

a. The Chairman of the POST Council shall recommend one Chief or Sheriff who is a member of the POST Council to serve on the examining board set up by the Idaho Division of Human Resources. (4-2-08)

b. The Division Administrator shall be selected by the director of the Idaho State Police subject to approval of the POST Council from the approved register established by the Idaho Division of Human Resources after competitive testing. (4-7-11)

02. Under POST Council's Direction. The Division Administrator shall be employed by the Idaho State Police to serve under the direction of the POST Council in carrying out the duties and responsibilities of the Council. (4-7-11)

03. Decertification Investigations. The POST Division Administrator shall report to the Council on a regular basis regarding all decertification proceedings. ()

034. Supervision Over Employees. The Division Administrator shall have supervision over the employees and other persons necessary in carrying out the functions of POST. (4-7-11)

045. Administration. For administrative purposes, the Division Administrator and his staff shall be governed by the Policies and Rules of the state of Idaho and the Idaho State Police, concerning but not limited to fiscal, purchasing, and personnel matters. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

063. CODE OF CONDUCT/CODE OF ETHICS.

Each applicant shall attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct POST Council's Code of Ethics as found in Subsection 091.04 and the Law Enforcement Code of Ethics that he has read and understands the conduct that may constitute cause for decertification as found in Subsections 091.03 and 091.054. Each applicant shall additionally attest that he understands and will abide by the following Law Enforcement Code of Conduct: (4-2-08)()

01. Fundamental Duty. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice. ()

02. Personal and Official Life. I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret, unless revelation is necessary in the performance of my duty. ()

03. Appropriately Enforce the Law. I will never act officiously or permit personal feelings,

prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and the relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. ()

04. Public Trust. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. ()

05. Professional Performance. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement. ()

(BREAK IN CONTINUITY OF SECTIONS)

091. INTRODUCTION.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. (3-20-97)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the officer has not been decertified and is appointed as an Idaho peace, county detention, juvenile detention, juvenile probation, correction, adult probation and parole, or misdemeanor probation officer, or an Idaho Department of Juvenile Corrections Direct Care Staff member. (3-29-10)

03. Decertification -- Mandatory, Discretionary, Reporting, Eligibility. (3-30-07)()

a. The Council shall decertify any officer who is convicted, as defined in *Idaho Code* Section 19-5109, *Idaho Code*, of any felony or offense which would be a felony if committed in this state. ()

b. The Council may decertify any officer who is convicted, as defined in Section 19-5109, Idaho Code, of any misdemeanor; willfully or otherwise falsifies or omits any material information to obtain any certified status; or ~~violates any of the standards of conduct as established by the council's code of conduct or code of ethics, as adopted and amended by the council. Any officer charged with a felony, a non-traffic misdemeanor, or a misdemeanor that would be a felony if committed in this state, must notify the POST Division Administrator within fourteen (14) business days. Failure to notify constitutes a violation of the Law Enforcement Code of Ethics and the Law Enforcement Code of Conduct for any of the causes set forth in Subsection 091.04.~~ (3-29-10)()

c. Any officer charged with a felony or misdemeanor shall notify his agency head within five (5) business days. ()

d. The agency head of an officer charged with a felony or misdemeanor shall notify the POST Division Administrator within fourteen (14) days of learning of the charge. ()

be. Any officer decertified by the Council ~~is shall~~ not ~~be~~ eligible for POST certification of any kind ~~in the future~~ for ten (10) years following the date of decertification. An agency head intending to hire an officer who has been decertified shall request a waiver from the POST Council. No decertified officer shall exercise any law enforcement authority until recertified by the POST Council. Any officer who is the subject of a POST decertification investigation ~~is shall~~ not ~~be~~ eligible for POST certification of any kind while under investigation. (3-29-10)()

04. Law Enforcement POST Council's Code of Conduct Ethics, Additional Cause for Decertification. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and

~~property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality, and justice. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. In furtherance of these duties, I hereby adopt and accept~~ The Council may also decertify any officer who engages in any of the following ~~code of~~ conduct which shall be considered a violation of the Council's code of ethics: (7-1-99)()

a. ~~I shall conduct myself at all times in a manner that does not damage or have the likely result of damaging or bringing the public image, integrity, or reputation of my department or myself into discredit or disrepute~~ Engage in criminal conduct whether charged or not. (7-1-99)()

b. ~~I shall not possess or consume~~ Consumption of alcoholic beverages on duty ~~or while in uniform on duty or off duty~~, except as ~~expressly required~~ necessary for the lawful performance of ~~my~~ duties. ~~Nor shall I unlawfully possess, sell, consume, use or assist in the use of any illegal or unauthorized drugs or medications on duty or off duty.~~ (7-1-99)()

c. ~~I shall not engage in any~~ Illegal or unlawful harassment or intimidation of another, ~~nor shall I permit personal prejudices, political beliefs, animosities, or friendships to influence my decisions.~~ (7-1-99)()

d. ~~I shall not lie, give misleading information,~~ Lying or falsifying official written or verbal communications ~~in official reports or in my actions with another person or organization when it is reasonable to expect that such information may be relied upon because of my position or affiliation with my department.~~ (3-30-07)()

e. ~~I shall willfully observe and obey the lawful verbal and written rules, duties, policies, procedures, and practices of my department. I shall also subordinate my personal preferences and work priorities to the lawful verbal and written rules, duties, policies, procedures and practices of my department, as well as to the lawful orders and directives of supervisors and superior command personnel of my department. I shall willfully perform all lawful duties and tasks assigned by supervisory and/or superior ranked personnel. Direct, tacit, or constructive refusal to do so is insubordination~~ Engaging in inappropriate sexual conduct while on duty. (7-1-99)()

f. ~~I shall obey the constitutional, criminal and civil laws of the city, county, state, and federal government. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers~~ Engaging in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication. (7-1-99)()

g. Unlawful or excessive use of force. ()

h. Acts of corruption or bribery. ()

i. Engaging in conduct, other than protected speech, that damages, discredits, or brings into disrepute the integrity of the officer, his agency, or the law enforcement profession. ()

j. Unauthorized use or unlawful conversion of the property, equipment, or funds of his agency. ()

k. Intentional and unauthorized disclosure of confidential information or information that may compromise an official investigation. ()

l. Failure to report being charged with a felony or misdemeanor within five (5) business days. ()

m. Refusal to respond or failure to respond truthfully to questions asked in relation to an investigation. ()

~~05- Law Enforcement Code of Ethics.~~ (3-30-07)

a. ~~As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives~~

~~and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.~~
(3-30-07)

~~**b.** I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.~~
(3-30-07)

~~**c.** I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.~~
(3-30-07)

~~**d.** I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.~~
(3-30-07)

~~**e.** I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.~~
(3-30-07)

Codified Sections 092 through 098 have been moved and renumbered to proposed Sections 096 through 102, respectively.

092. DUE PROCESS PROCEDURES.

01. Overview. The POST Division Administrator shall oversee and conduct investigations into all trustworthy allegations or information received pertaining to officer conduct that could be a cause for decertification as set forth in these rules. Based upon the results of the investigation in each case, the Division Administrator shall make a determination whether decertification proceedings shall be commenced. The due process procedures set forth in these rules shall apply to all decertification proceedings once they are commenced. ()

02. Investigations. ()

a. The officer may be interviewed during the investigation. The officer shall receive an administrative warning requiring the officer to respond to questions, to answer such questions truthfully, and to acknowledge his understanding that no statements provided shall be used against him in criminal proceedings, as based on *Garrity v. New Jersey* 385 U.S. 493 (1967). ()

b. Refusal to respond or failure to respond truthfully to questions asked in relation to an investigation under this section may be cause for decertification. ()

03. Due Process Procedures - Summary Decertification. If the POST Division Administrator determines that the allegations of conduct by the officer constitute cause for decertification and create a situation involving an immediate danger to the public health, safety, or welfare, he shall issue an order of decertification, including a brief, reasoned statement to justify both that the immediate danger exists and the decision to summarily decertify. ()

a. The order shall include findings of fact and conclusions of law and shall be effective when issued. ()

- b.** The officer and his agency head shall be provided written notice of the order. ()
- i.** The notice of the order shall advise the officer of his right to respond to the order and present the POST Division Administrator, in writing or in person, with any reasons why the action should not have been taken. The order shall specify a deadline for such response. ()
- ii.** The notice shall inform the officer of his right to be represented by a person of the officer's own choosing during the opportunity to respond. ()
- iii.** The deadline for the opportunity to respond shall not occur sooner than fourteen (14) days after the notice is given. ()
- c.** The decision of the POST Division Administrator shall become final if the officer fails to respond within the time allowed or if a response has been waived in writing by the officer, whichever occurs first. ()
- d.** If the officer responds, the POST Division Administrator shall review and consider such response and shall, within fourteen (14) days of receiving the response, make a decision and give notice of the decision to the officer. ()
- e.** The agency record need not constitute the exclusive basis for agency action in a summary proceeding or for judicial review thereof. ()
- 04. Due Process Procedures - Non-Summary Decertification.** If the POST Division Administrator determines that the allegations of conduct by the officer do not create a situation involving an immediate danger to the public health, safety, or welfare, the officer shall be provided notice and an opportunity to respond before a decision is made to decertify. ()
- a.** The POST Division Administrator shall provide the officer with a notice of the intent to decertify, which shall state the basis or reason for the contemplated decertification and an explanation of the evidence supporting the intended action. ()
- b.** The officer shall be given the opportunity to respond to the notice and present the POST Division Administrator, in writing or in person, any reasons why the intended action should not be taken. The notice shall inform the officer of his right to be represented by a person of the officer's own choosing during the opportunity to respond. The deadline for the opportunity to respond shall not occur sooner than fourteen (14) days after the notice is given. After the officer has responded, or after the period to respond has expired or has been waived in writing by the officer, whichever occurs first, the POST Division Administrator shall, within twenty-eight (28) days, make a decision on the decertification of the officer and give notice of the decision and the reasons therefore to the officer. ()
- 05. Final Decision.** The decision or action of the POST Division Administrator shall be final and conclusive unless the officer files with the POST Council a request for a hearing on the decision within fourteen (14) days after the date of the POST Division Administrator's decision. The request for hearing shall specifically cite the alleged errors of fact or law made by the POST Division Administrator. ()
- 06. Due Process Procedure - Hearing.** Upon receipt of a request for hearing, the POST Council shall assign the matter to a hearing board or officer for hearing. If after the hearing the hearing board or officer determines that proper cause for decertification did not in fact exist under Subsection 091.03 or 091.04 of these rules, or that proper procedures were not followed in reaching the decision, the hearing board or officer shall order the reinstatement of the officer's certification, or may remand the case to the POST Division Administrator for further proceedings. ()
- a.** Process and procedure for the hearing before the hearing board or officer shall be as summary and simple as reasonably may be. ()
- i.** The hearing board or officer appointed by the POST Council shall have the power to subpoena witnesses, administer oaths, and examine such of the records of the parties as relate to the questions in dispute.

- ()
- ii. The officer shall have the right to be represented at the hearing by a person of the officer's own choosing. ()
- iii. Prior to submitting testimonial evidence, the officer shall receive an administrative warning requiring the officer to respond to questions, to answer such questions or provide testimony truthfully, and to acknowledge his understanding that no statements provided shall be used against him in criminal proceedings, as based on *Garrity v. New Jersey* 385 U.S. 493 (1967). ()
- iv. A verbatim record of the proceedings at hearing before the hearing board or officer shall be recorded at the POST Council's expense. The verbatim record shall be the official record of the proceedings. ()
- v. Any party to the action may, at its expense, request that a transcript of the proceedings be prepared or that additional recordings be made of the proceedings. Such a request shall be approved if the making of the additional recording does not cause distraction or disruption of the hearing. ()
- vi. The hearing board or officer to whom the matter has been assigned shall make such inquiry and investigations as shall be deemed necessary. ()
- vii. The hearings shall be held at the principle office of the Idaho Division of the Peace Officer Standards and Training in Ada County or in such place as the hearing board or officer may designate. ()
- viii. The district court, in and for the county of Ada, shall have the power to enforce by proper proceedings the attendance and testimony of witnesses and production and examination of books, papers, and records. ()
- b. The decision of the hearing board or officer, consisting of such findings of fact, conclusions of law, and orders as are necessary, together with the record of the proceedings, shall be filed with the POST Council. A copy of the hearing board or officer's decision shall be immediately sent to the parties by United States mail. The decision of the hearing board or officer shall be final and conclusive between the parties, unless a petition for review by the full POST Council is filed with the Council within twenty-eight (28) days. The petition for review shall specifically cite the alleged errors of fact or law made by the hearing board or officer. Where the decision and order of the hearing board or officer directed the reinstatement of the officer's certification, the certification shall be reinstated by the POST Division Administrator upon the expiration of the time for filing a petition for review. ()

07. Due Process Procedure - Review by POST Council. If a petition for review is filed, the POST Council shall review the record of the proceedings before the hearing board or officer, briefs submitted in accordance with any briefing schedule it orders, and any transcripts submitted of the hearing. The Council may grant the parties the opportunity to present oral argument, but need not do so. The officer may be represented by a person of the officer's own choosing during the review process. The Council may affirm, reverse, or modify the decision of the hearing board or officer, or may remand the matter. A decision of the POST Council shall be final and conclusive between the parties. The POST Council's decision may be appealed to district court by filing a notice of appeal within twenty-eight (28) days of the filing of the decision. ()

08. Notice. All notices to be given under Section 092 of these rules shall be made either by personal service, facsimile or by U.S. mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party's last known address, as shown in the records and files of the POST Council. An affidavit of personal service shall be filed by the person making the same. ()

093. -- 095. (RESERVED)

0926. LAPSE OF PEACE OFFICER CERTIFICATION.

The certification of any peace officer ~~will~~ shall be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified peace officer who remains in an administrative, jail, communications, or civil division duty assignment with a police or law enforcement agency

that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision ~~will~~ **shall** retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein shall be tolled during any time period that a peace officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(3-29-10)~~()

01. Three to Five Years. A peace officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to reactivate certification ~~must~~ **shall** meet the following POST requirements: ~~(3-29-10)~~()

- a. Submit a POST Certification Patrol Challenge Packet; (4-2-03)
- b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- d. Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097101~~.02.b.; ~~(4-2-03)~~()
 - ii. The POST Firearms Qualification Course; (4-2-03)
 - iii. The POST Physical ~~Fitness~~ **Readiness** Test ~~Battery~~; and ~~(4-2-03)~~()
- e. Satisfy the probationary period requirement of Section 064. (4-2-08)

02. Over Five Years. A peace officer who has been out of full-time law enforcement status for over five (5) years ~~must~~ **shall** attend the POST Basic Patrol Academy to reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence ~~must~~ **shall** be submitted with a POST Certification Patrol Challenge Packet. Upon receiving a waiver, the officer ~~must~~ **shall** meet the following POST requirements: ~~(3-29-10)~~()

- a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- c. Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)
- d. Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097101~~.02.b.; ~~(4-2-03)~~()
 - ii. The POST Firearms Qualification Course; (4-2-03)
 - iii. The POST Physical ~~Fitness~~ **Readiness** Test ~~Battery~~; and ~~(4-2-03)~~()
- e. Satisfy the probationary period requirement of Section 064. (4-2-08)

03. Over Eight Years. A peace officer who has been out of full-time law enforcement status for over eight (8) years ~~must~~ **shall** attend the POST Basic Patrol Academy to be recertified. No waiver of this requirement ~~will~~ **shall** be granted by the Council. (4-6-05)()

04. Exception. The provisions of Subsections 0926.01 through 0926.03 ~~will~~ **shall** not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. (4-6-05)()

0937. PEACE OFFICER CERTIFICATION.

Any peace officer as defined in Section 19-5101(d), Idaho Code, except any elected official, any deputy sheriff serving civil process, the director of the Idaho State Police, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, shall be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in Subsection 030.11. (4-2-08)

0948. GENERAL PROVISIONS.

01. Purpose. Basic, Part-Time Basic, Intermediate, and Advanced Certificates are established for the purpose of fostering professionalism, education, and experience necessary to perform adequately the duties of law enforcement. (4-2-03)

02. Eligibility. To be eligible for the award of a Basic, Intermediate, or Advanced Certificate, each applicant shall be a professional member of the POST Council staff, or a full-time peace officer appointed by a duly constituted Idaho law enforcement agency. To be eligible for the award of a part-time Basic certificate each applicant shall be a professional member of the POST Council staff, or a part-time peace officer appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

03. Applications. All applications for award of the Basic, Part-Time Basic, Intermediate, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

04. Submission. The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

05. Minimum Standards. Each applicant shall meet the minimum standards for employment and basic training as provided in Sections 050 through 064 and 070 through 076. (4-2-08)

06. Other. The director of the Idaho State Police or any elected official, although specifically excluded by law from meeting the requirements set by the Council, may be certified if they so desire, provided they meet the minimum requirements for certification as prescribed in these rules. (4-2-08)

0959. LAW ENFORCEMENT EXPERIENCE.

Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 064, ~~will~~ **shall** be subject to the determination of the Council. (4-2-08)()

096100. COLLEGE CREDITS.

01. College Hour. One (1) college or university semester hour or unit shall equal one (1) college credit. (7-1-93)

02. College Quarter Hour. One (1) college or university quarter hour or unit shall equal two-thirds (2/3) of one (1) college credit. (7-1-93)

03. Conversion to POST Training Hours. College credits may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. (4-2-03)

04. Credits for POST-Approved Training. When college credit is awarded or purchased for POST-approved training, it may be counted for either POST training hours or college credit, whichever is to the advantage of the applicant. (4-2-08)

05. Documentation. Proof of college education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of an official transcript. (4-7-11)

~~097~~101. THE BASIC AND PART-TIME BASIC CERTIFICATE.

In addition to the requirements set forth in Section ~~094~~8 of these rules, the requirements in Section ~~097~~101 are necessary for award of the basic certificate and the part-time basic certificate. (~~4-2-03~~)()

01. Probation. The applicant shall have satisfactorily completed at least a six (6) month probationary period, which may include basic patrol academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time shall be continuous with the agency the officer is appointed to when applying for certification. The probationary period shall not extend over one (1) year for certification purposes. (4-2-03)

02. Basic Training. The applicant shall have satisfactorily completed: (4-2-03)

a. The POST Basic Patrol Academy as required by the Council in Section 071; or (4-2-03)

b. Be a graduate of a college law enforcement ~~vo-tech~~ program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Patrol Academy, and shall have passed the POST patrol certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he shall successfully complete the POST Basic Patrol Academy to be certified. (~~4-2-03~~)()

03. Field Training. The applicant shall have satisfactorily completed forty (40) hours of POST-approved field training. (4-2-03)

04. ~~Vo-Tech~~ College Law Enforcement Program Graduates. Graduates from Idaho POST-certified college law enforcement ~~vo-tech~~ programs shall also comply with the requirements of Subsection 073.02. (~~4-2-03~~)()

05. Patrol and Detention ~~Vo-Tech~~ College Law Enforcement Program or POST Academy Graduates. An applicant who is appointed to a peace officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified college law enforcement ~~vo-tech~~ program or the Idaho POST Academy, shall be eligible for peace officer certification in Idaho without attending the POST Basic Patrol Academy, provided the officer: (~~4-7-11~~)()

a. Was appointed to a county detention officer position in Idaho within three (3) years from graduating from the ~~vo-tech~~ college law enforcement program or POST Academy; (~~4-7-11~~)()

b. Possesses detention officer certification from Idaho; (4-2-08)

c. Submits a POST Certification Patrol Challenge Packet; (4-2-08)

d. Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-08)

e. Passes the following tests administered by a POST Training Specialist: (4-2-08)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097~~101.02.b.; (4-2-08)

- ii. The POST Firearms Qualification Course; (4-2-08)
- iii. The POST Physical *Fitness Readiness* Test ~~Battery~~; and ~~(4-2-08)~~()
- f. Satisfies the probationary period requirement of Section 064. (4-2-08)

~~008~~**102. CHALLENGING THE BASIC PATROL ACADEMY.**

Any peace officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a peace officer or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years may be eligible for certification in the state of Idaho without attending the Basic Patrol Academy, provided the officer: (3-29-10)

01. Submission of Challenge Packet. Submits a POST Certification Patrol Challenge Packet to POST Council, which ~~must~~ **shall** include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; ~~(4-6-05)~~()

02. Discloses Decertification Information. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

03. Law Course Attendance. Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-03)

04. Passes Required Tests. Passes the following tests administered by a POST Training Specialist: (4-2-03)

a. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~007~~**101**.02.b.; ~~(4-2-03)~~()

b. The POST Firearms Qualification Course; and (4-2-03)

c. The POST Physical *Fitness Readiness* Test ~~Battery~~. ~~(4-2-03)~~()

05. Completes Probationary Period. Completes his probationary period as required by Subsection ~~007~~**101**.01. ~~(4-2-03)~~()

~~009~~**103. -- 105. (RESERVED)**

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1103

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 19-5107, 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 October 19, 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:

The existing rule in reference to felony conviction allows the POST Council to grant a waiver if the crime has, by statute, been reduced to a misdemeanor or decriminalized. This exceeds statutory authority.

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 representatives of the affected parties were involved in the drafting and approval of the rule.

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 Trish Christy at (208) 884-7253.

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 October 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1103

055. CRIMINAL RECORD.

01. Fingerprints. The applicant shall be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results shall be retained by the POST Council. (4-2-03)

02. Conviction. The term “conviction” shall include: (4-2-03)

a. Any conviction in a federal, tribal, state, county, or municipal court; (3-15-02)

b. A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant’s appearance in court as final disposition; (3-15-02)

c. The payment of a fine; (3-15-02)

d. A plea of guilty, nolo contendere; or (3-15-02)

e. A finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed or reduced, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (3-15-02)()

03. Misdemeanor Conviction. A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-2-03)

a. An applicant shall be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant’s agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator shall have the discretion to refer the application to the POST Council. In all other cases, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. (4-2-03)()

b. An applicant shall be rejected who has been convicted of a DUI during the two (2) years immediately preceding application. No waivers shall be granted by the POST Council for DUI convictions within the last two (2) years. If the conviction occurred more than two (2) years prior to application, the applicant may be accepted upon approval of the POST Division Administrator provided the applicant’s agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. (3-15-02)

c. An applicant with any other misdemeanor conviction may be accepted upon approval of the POST Division Administrator provided the conviction occurred more than two (2) years prior to application and the applicant’s agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. If the conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. (4-2-03)()

04. Felony Conviction. An applicant shall be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction shall continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or

procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers shall be granted by the POST Council, ~~except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho.~~ (4-2-03)()

IDAPA 11 - IDAHO STATE POLICE

11.11.02 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE DETENTION OFFICERS

DOCKET NO. 11-1102-1101

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 19-5107, 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 October 19, 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:

Allows a POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities to qualify for Juvenile Detention certification without having to meet the minimum hearing and vision standards again.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges imposed through this rulemaking.

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 representatives of the affected parties were involved in the drafting and approval of the rule.

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:

No documents have been incorporated by reference into this rule through this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

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 October 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1102-1101

030. JUVENILE DETENTION OFFICER CERTIFICATION.

01. Decertification. The council may decertify any juvenile detention officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (3-30-01)

02. Certification. The following dates govern voluntary and mandatory certification. (3-30-01)

a. From October 1, 2000 through September 30, 2002, any county Juvenile Detention Officer may receive voluntary certification from POST upon successful completion of the requirements outlined in Sections 031 or 032. (3-30-01)

b. If employed after October 1, 2002, any juvenile detention officer shall be certified by obtaining mandatory certification from the Peace Officer Standards and Training Council within one (1) year of the date the officer was first employed as a juvenile detention officer. (3-30-01)

c. Juvenile detention officers employed prior to October 1, 2002, shall comply with the training and certification provisions of Section 030 by September 30, 2004, however, the requirement for successful completion of the POST Basic Juvenile Detention Academy ~~will shall~~ be waived if the officer scores a minimum of seventy-five percent (75%) on a challenge examination administered by POST and any other requirements for certification. The officer ~~will shall~~ be allowed two (2) attempts to pass the examination. The attempts ~~must shall~~ be no less than thirty (30) days apart and no more than six (6) months apart. If the officer fails both attempts or fails to retake the examination within six (6) months, the officer ~~must shall~~ successfully complete the POST Basic Juvenile Detention Academy to be certified. (~~3-30-01~~)()

03. Applications. All applications for award of the Juvenile Detention Officer Certificate shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. (3-30-01)

04. Submission. The Application for Certification form ~~must shall~~ be submitted by the officer/applicant to the applicant's department head, who shall forward the application to the Council. Certificates ~~will shall~~ be issued to the department head for award to the applicant. (~~3-30-01~~)()

05. Minimum Standards. ()

a. Each applicant ~~must shall~~ meet the minimum standards for employment and training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of ~~height, weight,~~ fitness, and physical disability which ~~will shall~~ be left to the discretion of the employing agency. (~~3-30-01~~)()

b. A POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities, shall not be required to meet the hearing and vision standards again in order to qualify for juvenile detention certification. ()

IDAPA 11 - IDAHO STATE POLICE

11.11.06 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR MISDEMEANOR PROBATION OFFICERS

DOCKET NO. 11-1106-1101

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 19-5107, 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 October 19, 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:

There are five counties that contract for misdemeanor probation officer services. This rule change allows POST to certify Misdemeanor Probation Officers employed by a private contractor.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

No fees or charges are imposed through this rulemaking.

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 representatives of the affected parties were involved in the drafting and approval of the rule.

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:

No documents have been incorporated by reference into this rule through this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

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 October 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1106-1101

010. DEFINITIONS.

01. Basic Misdemeanor Probation Academy. A basic course of instruction for Misdemeanor Probation Officers as recognized by POST Council. (4-7-11)

02. Misdemeanor Probation Department. Any public or private agency administered by or contracted with the county, made up of one (1) or more staff to provide misdemeanor probation services to a county at the expense and concurrence of the county commissioners. Services may include intake, diversion, supervision, restitution, and community service work. (~~4-7-11~~)()

03. Misdemeanor Probation Officer. Any employee of a misdemeanor probation department who is responsible for preparing reports to the court, making recommendations regarding conditions of probation, and the supervision of misdemeanor offenders' compliance with court orders. (4-7-11)

04. Misdemeanor Probation Training Council. An advisory group to the POST Council that is comprised of a Magistrate, two (2) county commissioners, three (3) misdemeanor probation department administrators, a representative of the Idaho Association of Counties, a representative of the Idaho Department of Correction, and a representative of the Administrative Office of the Courts. The purpose of the Misdemeanor Probation Training Council is to advise POST Council in the planning, development, and operation of the Basic Misdemeanor Probation Academy. (4-7-11)

05. Part-Time Misdemeanor Probation Officer. Any employee of a misdemeanor probation department who is responsible for preparing reports to the court, making recommendations regarding conditions of probation, or the supervision of misdemeanor offenders' compliance with court orders, and is employed less than full time or does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-7-11)