



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators DARRINGTON, Vick, Bock and,  
Representatives WILLS, Luker, Burgoyne

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

**DATE:** January 18, 2012

**SUBJECT:** Notice of Emergency Proclamation of Rulemaking

IDAPA 06.01.01 - Rules of the Board of Correction - Emergency Proclamation of Rulemaking - Docket  
No. 06-0101-1201

We are forwarding this Notice of Emergency Proclamation of Rulemaking to you for your information only. No analysis was done by LSO. This is posted on our web site. Please call with any questions - 334-4845. Thank you.

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

# IDAPA 06 - BOARD OF CORRECTION

## 06.01.01 - RULES OF THE BOARD OF CORRECTION

DOCKET NO. 06-0101-1201

### NOTICE OF EMERGENCY PROCLAMATION OF RULEMAKING

**EFFECTIVE DATE:** This emergency rule becomes effective on January 10, 2012.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated emergency rulemaking procedures. Section 20-212, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute. Under normal circumstances, in accordance with Section 20-212(1) of the Idaho Code, this rule would become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin. However, in accordance with Section 20-212 (1) of the Idaho Code, the Idaho Board of Correction has determined that due to upcoming executions it is necessary that this rule become immediately effective to prevent the public's health, safety, and welfare from being jeopardized.

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

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

This emergency rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. This emergency rulemaking is further necessary to confer a benefit upon the families of victims and other official witnesses who otherwise would be unable to witness an execution. Board of Correction rule changes are summarized by section(s) as follows:

Section 135 - Executions – This section is being revised to make it consistent with IDOC standard operating procedure 135.02.01.001, *Execution Procedures*. This section is also being revised to give the director of the IDOC flexibility in determining the number of persons allowed in the execution unit. There may be times when a condemned offender received the death penalty for crimes committed in multiple jurisdictions or multiple cases, and therefore adjustments may need to be made to accommodate, for example, persons who were victim to the crime the offender was condemned for. Taking into consideration that there may be multiple victims or official witnesses in multiple jurisdictions, not allowing all appropriate witnesses into the execution unit may jeopardize the public's welfare by preventing victims or official witnesses from participating in an integral part of the criminal justice process.

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

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

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

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

DATED this 10th day of January, 2012.

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

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

NOW, THEREFORE, I, C.L. "Butch" Otter, Governor of the State of Idaho, by the authority vested in me under Section 20-212(1) of the Idaho Code, I do hereby approve this request for emergency rulemaking.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 11th day of January in the year of our Lord two thousand and twelve and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.

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C.L. "BUTCH" OTTER  
GOVERNOR

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BRENT REINKE  
DIRECTOR, IDAHO DEPARTMENT OF CORRECTION

**THE FOLLOWING IS THE TEXT OF DOCKET NUMBER 06-0101-1201**

**135. EXECUTIONS.**

**01. Personnel Assigned to Execution.** Idaho Maximum Security Institution (IMSI) personnel and the Department's administrative team will carry out the execution warrant. The IMSI facility head of the Idaho Maximum Security Institution (or designee) shall be the official executioner. ~~(11-5-99)(1-11-12)~~

**02. Method of Execution.** Execution of the sentence of death shall be by lethal injection. ~~If the director determines that a competent lethal injection team cannot be assembled, execution shall take place by firing squad.~~ ~~(11-5-99)(1-11-12)~~

**03. News Media Coordination.** Department personnel will coordinate news media activity and provide logistics and communications support. A news media center shall be established. The pre-execution briefing will be delivered in the news media center. ~~Media witnesses will be chosen pursuant to Department procedure. The selection of media witnesses will occur in the media center.~~ The post-execution briefing will occur in the news media center. News media witnesses will be chosen pursuant to Department procedure. ~~(11-5-99)(1-11-12)~~

**04. Public Information Officer to Handle News Media Requests.** The director (or designee) will designate a public information officer to deal with execution-related news media requests and releases of information. ~~(11-5-99)(1-11-12)~~

**05. Parking and Demonstration Areas Provided.** Areas for public and news media parking will be provided and maintained in a secure manner. Areas for public gathering and demonstration of support or opposition to the death penalty will be provided and maintained in a secure manner. ~~(11-5-99)(1-11-12)~~

**06. Non-Disclosure.** The Department will not disclose (under any circumstance) the identity of the on-site physician; or staff, contractors, consultants, or volunteers serving on escort or injection medical teams; nor will the Department disclose any other information wherein the disclosure of such information could jeopardize the Department's ability to carry out an execution. ~~(11-4-11)(1-11-12)~~

**07. Persons Allowed in the Execution Unit.** ~~A total of thirty (30) persons, inclusive of the condemned offender, is the limit allowed in the execution unit at any time.~~ The director (or designee) shall have the discretion to determine the number of persons allowed in the execution unit at any time. In exercising this discretion, the director (or designee) shall consider the safe, secure, and orderly operation of the Idaho Maximum Security Institution (IMSI); the interests of the victim's family; and whether multiple death warrants are being executed concurrently. The configuration of the execution unit and the occupants of each room will be in accordance with Department standard operating procedure. ~~Persons allowed in the execution unit are:~~ ~~(11-4-11)(1-11-12)~~

**a.** ~~Idaho Department of Correction (IDOC) and or contract, consultant, or volunteer staff~~ In most instances, the following persons should be allowed in the execution unit: ~~(11-4-11)(1-11-12)~~

**i.** The ~~injection~~ administrative team ~~as identified by the facility head (or designee) of the Idaho Maximum Security Institution (IMSI);~~ ~~(11-4-11)(1-11-12)~~

~~ii.~~ Six (6) The escort staff team; ~~(11-4-11)(1-11-12)~~

iii. The medical team as identified by the Department's administrative team; (1-11-12)

iv. The on-site physician; (1-11-12)

~~iv.~~ The director (or designee); (11-4-11)

~~iii.~~vi. ~~An representative from the~~ Idaho Board of Correction representative; ~~(10-31-08)(1-11-12)~~

~~iv.~~vii. The chief of the Operations Division (or designee); (11-4-11)

~~viii.~~ The IMSI facility head (or designee); and ~~(11-4-11)(1-11-12)~~

~~ix.~~ The following Witnesses: ~~(10-31-08)(1-11-12)~~

~~i.~~(1) The Ada County coroner (or deputy coroner); ~~(11-5-99)(1-11-12)~~

~~ii.~~(2) The sheriff from the county of conviction; (11-5-99)

~~iii.~~(3) The prosecuting attorney from the county of conviction; (11-5-99)

~~iv.~~(4) A spiritual advisor of the ~~inmate's~~ offender's choosing; ~~(11-5-99)(1-11-12)~~

~~v.~~(5) The sentencing judge; (11-5-99)

~~vi.~~(6) ~~A representative from the~~ Idaho ~~G~~overnor's office (or his representative); ~~(11-5-99)(1-11-12)~~

~~vii.~~(7) The Idaho ~~A~~ttorney ~~G~~eneral (or his representative); ~~(11-5-99)(1-11-12)~~

~~viii.~~(8) Two (2) members of the victim's family; (11-4-11)

~~ix.~~(9) Two (2) friends (approved visitors) or members of the offender's family; ~~and~~ ~~(11-4-11)(1-11-12)~~

(10) The offender's attorney of record; and (1-11-12)

~~x.~~(11) ~~A maximum of~~ Four (4) members of the news media pursuant to Subsection 135.03 of these rules. ~~(10-31-08)(1-11-12)~~

**b.** In the event that any of the persons (to include their designee or representative) identified in Subsection 135.07.a. of these rules do not wish to attend the execution, the director (or designee) may approve another individual to attend in that person's place. (1-11-12)