

Dear Senators LODGE, Nonini, Burgoyne, and
Representatives WILLS, Dayley, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Juvenile Corrections:

IDAPA 05.01.03 - Rules of the Custody Review Board - Proposed Rule (Docket No. 05-0103-1601).

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 10/06/2016. 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 11/04/2016.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
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 - Ryan Bush
DATE: September 19, 2016
SUBJECT: Department of Juvenile Corrections

IDAPA 05.01.03 - Rules of the Custody Review Board - Proposed Rule (Docket No. 05-0103-1601)

The Department of Juvenile Corrections submits notice of proposed rulemaking at 05.01.03 - Rules of the Custody Review Board - Proposed Rule. The Department states that the rule changes are to update code references and to clarify and refine the existing rule. Specifically, this rulemaking revises the definition of "Incident Report" to remove examples of incidents, provides that testimony before the Review Board is confidential, clarifies how a juvenile who is nineteen year of age can have his case eligible for referral to the Review Board and clarifies how a victim may testify outside of the juvenile's presence.

The Department states that negotiated rulemaking was not conducted because the changes are minor and will only increase clarity. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the Department in Section 20-520(1)(r), Idaho Code.

cc: Department of Juvenile Corrections
Sharon Harrigfeld

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.03 - RULES OF THE CUSTODY REVIEW BOARD

DOCKET NO. 05-0103-1601

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 20-520(1)(r), 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 September 21, 2016.

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 minor changes made to this rule are in an effort to update code numbers and to clarify and refine the existing rules.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Custody Review Board is already familiar with the changes being made, which are minor and will only increase clarity.

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 Marc Crecelius, (208) 334-5100 x. 422.

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 September 28, 2016.

DATED this 4th Day of August, 2016.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83720-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0103-1601
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

01. **Section 20-520(1)(r), Idaho Code.** Pursuant to Section 20-520(1)(r), Idaho Code, the Idaho Department of Juvenile Corrections shall adopt rules implementing the Custody Review Board and operations and procedures of such board. (3-5-08)

02. **Section 20-532, Idaho Code.** Pursuant to Section 20-532, Idaho Code, a juvenile offender committed to a secure facility shall remain until the offender reaches nineteen (19) years of age, is retained for extended custody pursuant to Section 20-520(1)(r), Idaho Code, or is released or discharged. (3-5-08)

03. **Section 20-504(1+2), Idaho Code.** Pursuant to Section 20-504(1+2), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Title 67, Chapter 52, Idaho Code, as are deemed necessary or appropriate for the function of the department and the implementation and administration of the Juvenile Corrections Act. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **Board.** The Custody Review Board of the Idaho Department of Juvenile Corrections. (5-3-03)

02. **Case Management Team.** A team consisting of juvenile services coordinator (JSC), case manager, and juvenile probation officer (JPO) who provide input in setting and following through with treatment goals. (5-3-03)

03. **Case Manager.** Department staff assigned to directly manage a juvenile's case, such as a group leader at a state institution; or, if a juvenile is placed at a contract program, the contract provider's employee assigned to directly manage a juvenile's case. (5-3-03)

04. **Classification.** A process for determining the needs and requirements of juveniles for whom commitment has been ordered, and for assigning them to housing units or programs according to their needs and existing resources. (5-3-03)

05. **Commit.** Commit means to transfer legal custody. (5-3-03)

06. **Court.** Means any Idaho district court or magistrate's division thereof. (5-3-03)

07. **Director.** The director of the Idaho Department of Juvenile Corrections. (5-3-03)

08. **Department.** The Idaho Department of Juvenile Corrections. (5-3-03)

09. **Extended Time in Custody.** Any period of time a juvenile remains in custody after age nineteen (19) and not to exceed age twenty-one (21). (5-3-03)

10. **Incident Report.** A written document reporting an unusual occurrence or special event ~~such as the discovery of contraband, use of physical force, use of chemical agents, discharge of firearms,~~ and action taken ~~including notation of strip and cavity searches.~~ (5-3-03)()

11. Juvenile. A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (5-3-03)

12. Juvenile Records. Information concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, personal property receipts, visitors' lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. (5-3-03)

13. Juvenile Services Coordinator (JSC). An employee of the department who is assigned to a particular juvenile as the case worker, licensed in social work. (3-5-08)

14. Legal Guardian. A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner, or operator of a detention center, observation and assessment center, secure facility, residential facility, or other facility having temporary or long-term physical custody of the juvenile offender. (5-3-03)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

01. Hearings. All matters and testimony concerning juveniles, before the Custody Review Board, are confidential and shall be conducted in accordance with Section 67-2341(1), (4), and (5), Idaho Code; Title 974, Chapters 1 and 2, Idaho Code; and Title 20, Chapter 5, Idaho Code, regarding juvenile records and proceedings. (~~5-3-03~~)()

02. Written Record. A written record of the vote by the Custody Review Board shall be kept confidential and privileged from disclosure, to the extent allowed by law, and provided that the record, or portions thereof, shall be made available upon request, for all lawful purposes or as required by the Idaho Public Records Act, Title 974, Chapter 1, Idaho Code. (~~5-3-03~~)()

03. Confidentiality. Distribution of the record by the Custody Review Board or an employee of the Idaho Department of Juvenile Corrections to any person not specifically allowed by law to receive or read it may result in disciplinary action. (5-3-03)

04. Records of Hearings and Meetings. Summary minutes of individual hearings and case reviews will be approved and signed by the board members and maintained in the department office. (5-3-03)

101. POWERS AND DUTIES.

01. Review. The Custody Review Board is empowered by Sections 20-520(1)(r) and 20-532, Idaho Code, to review the cases of juveniles in the custody of the department whose cases have been referred to the board according to Section 201 of these rules. (3-5-08)

02. Board Determinations. After conducting its review, the Custody Review Board shall advise the department's director whether it has determined that the juvenile before it needs an extended time in custody to address accountability, community protection, and competency. (3-5-08)

03. ~~Indeterminate Sentence Remains~~ Placement. The Custody Review Board cannot direct the placement or treatment of a juvenile in the department's custody, ~~and any determination by the board that extended time in custody is needed by a juvenile shall not create a determinate sentence of any kind.~~ (~~3-5-08~~)()

04. Release Date for Juveniles. If a juvenile has appeared before the Custody Review Board and the board has concluded that he not be retained in custody, the director shall set a release date for the juvenile, as follows: (4-6-05)

a. If a juvenile appears before the board prior to his nineteenth birthday, but before a reasonable and

appropriate release plan has been finalized, the department may retain the juvenile long enough to finalize those plans, but not to exceed forty-five (45) days after the juvenile's nineteenth birthday. (4-6-05)

b. In all other cases, the department may retain the juvenile long enough to finalize a reasonable and appropriate release plan, but not to exceed forty-five (45) days after the director's signed order has been transmitted or delivered to the facility/JSC or any other department appointee. (3-5-08)

(BREAK IN CONTINUITY OF SECTIONS)

201. REFERRAL OF CASES TO THE BOARD.

The Custody Review Board shall review cases referred to it and will advise the director whether it has determined that extended time in custody is necessary for a juvenile to address competency, accountability and community protection. (3-5-08)

01. Cases Eligible for Referral. A juvenile's case is eligible for referral to the board in either of the following circumstances: (4-6-05)

a. If the juvenile is no more than six (6) months from his nineteenth birthday and one (1) or more members of the juvenile's case management team believes that the juvenile needs extended time in custody beyond that juvenile's nineteenth birthday; or (4-6-05)

b. If the juvenile, at the time of commitment to the Department, is past age nineteen (19), ~~has already been retained in the department's custody based on an earlier determination of the Custody Review Board, and one (1) or more members of a juvenile's case management team, the Custody Review Board, or the director of the department believes that an additional case review is in the best interest of the juvenile or others affected or will reach age nineteen (19) prior to the next scheduled meeting of the Custody Review Board.~~ (3-5-08)()

02. Juvenile Has Not Appeared Before the Custody Review Board. Any juvenile who has not appeared before the Custody Review Board in person or by video conference prior to the date of his nineteenth birthday, excepting those juveniles described in Paragraph 201.01.b. above, shall be released from custody on that date or as soon thereafter as a reasonable release plan can be determined and finalized. The final release date shall not exceed forty-five (45) days after the juvenile's nineteenth birthday. (4-6-05)()

03. Hearing Schedules. Once a case is referred, the board shall set a date for the review hearing. ~~Unless the board decides otherwise, no case will be heard more often than every six (6) months.~~ (5-3-03)()

04. Written Submissions. All written documents and letters to be considered at a particular hearing must be submitted fourteen (14) calendar days in advance of the scheduled hearing in order to ensure that they will be considered. Other documents may be allowed after this deadline by unanimous consent of the board members present. Documents may include: (5-3-03)

- a.** Progress reports to the courts pursuant to Sections 20-532 and 20-540, Idaho Code; (5-3-03)
- b.** Report on original offenses leading to commitment plus order for commitment and orders of judgment; (5-3-03)
- c.** Written recommendations from each member of the treatment team; (5-3-03)
- d.** Polygraph results and written conclusions and recommendations from the professionals administering these tests; (5-3-03)
- e.** Psychosocial or psychosexual evaluations; (5-3-03)
- f.** Victim's written statement; (5-3-03)

- g.** Juvenile's written statement; (5-3-03)
- h.** Initial classification; (5-3-03)
- i.** Custody level assessment at case review; and (5-3-03)
- j.** Any other pertinent information. (5-3-03)

202. PERSONS TO ATTEND OR COMMENT.

01. Juvenile. The juvenile who is the subject of a custody review proceeding is required to appear either in person or by videoconference. (5-3-03)

02. Witnesses. The Custody Review Board allows for the participation of victims, attorneys, members of the case management team, and approved family members or others who have a direct relationship to the specific hearing or subject of the hearing. (5-3-03)

03. Participation. Persons who want to participate in hearings shall notify the Custody Review Board staff fourteen (14) calendar days in advance of the scheduled hearing. Children, including victims, under the age of fourteen (14), may not be allowed to attend the hearings without prior approval of the director or board. Parents or guardians of child victims in a case may appear and comment. (5-3-03)

04. Time Limited. ~~At its discretion, the board's presiding officer~~ may limit the time allotted to each participant during the proceeding. ()

05. Exclusion. ~~in~~ ~~At its discretion, and, the board~~ may exclude witnesses or participants for inappropriate or disruptive behavior, or other good cause. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

400. VICTIMS.

It is the policy of the Idaho Department of Juvenile Corrections and the Custody Review Board to respect the rights of victims of crime in Idaho, pursuant to the Idaho Constitution and statute. When a juvenile's case has been referred for review, the department shall be responsible for providing the board with a list of crime victims who were officially identified by the adjudicating court or prosecuting attorney. (5-3-03)

01. Notice to Victims. The board will notify identified victims of a juvenile's crime that a custody review hearing has been scheduled. These victims will also be notified of their right to submit written statements or information and their right to provide testimony. After the review proceeding, victims shall be notified of the board's determination regarding the custody of the juvenile. (5-3-03)

a. Notices of rights, hearings, the board's final determinations, and any anticipated release documents will be sent to the victim of record at the last known address. It is the responsibility of the victim to provide any change of address. (3-5-08)

b. Victims may request that they not be notified or contacted. (5-3-03)

02. Victim Testimony. A victim may attend any and all custody review hearings pertinent to their case and to provide testimony. The victim may be allowed to testify before the board members during a hearing session ~~but at a time separate from the actual hearing with~~ outside the juvenile's presence. ~~All testimony of a victim shall remain confidential.~~ (5-3-03)()