

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Sexual Offender Management Board:

IDAPA 57.01.01 - Rules of the Sexual Offender Management Board - (Fee Rule) Proposed Rule
(Docket No. 57-0101-1601).

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 10/25/2016. 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 11/23/2016.

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: October 5, 2016

SUBJECT: Sexual Offender Management Board

IDAPA 57.01.01 - Rules of the Sexual Offender Management Board - (Fee Rule) Proposed Rule (Docket No. 57-0101-1601)

The Sexual Offender Management Board submits notice of a proposed fee rule at IDAPA 57.01.01 - Rules of the Sexual Offender Management Board. The proposed rule change includes the following: replaces the single level of certification for post-conviction sex offender polygraph examiners with senior and associate level certifications; revises the continuing education requirements for polygraph examiners; revises certification requirements for psychosexual evaluators and treatment providers; revises the requirements for a conditional waiver for certification for evaluators, providers and examiners; and revises the standards of professional conduct to include community safety and ethical treatment of clients. The Board also updates several incorporations by reference regarding standards, guidelines and practices related to sexual offender management.

The fees being proposed by the Board include seventy-five dollars (\$75) for initial senior/approved or associate/supervised level post-conviction sexual offender polygraphy examiner certification applications and fifty dollars (\$50) for biennial certification renewal applications for both certification levels. The Board has submitted an economic impact statement along with the proposed fee rule.

The Board states that negotiated rulemaking was conducted and that notice was published in the August edition of the Idaho Administrative Bulletin, Vol. 16-8, page 129. There is no fiscal impact associated with this rulemaking.

The proposed fee rule appears to be within the statutory authority granted to the Board in Section 18-8314, Idaho Code.

cc: Sexual Offender Management Board
Aileen Lucas

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD

57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD

DOCKET NO. 57-0101-1601 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 18-8314, 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, 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:

Incorporates by reference amendments to previously adopted SOMB's Standards and Guidelines for Adult Sexual Offender Management Practices, and the Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders to provide the following: an extension on the timeframe for psychosexual evaluator and sex offender treatment provider certification applicants to meet the clinical experience requirements; clarification of specialized training requirements for dual population certification applicants; modification of supervision requirements for provisional-level psychosexual evaluators and sex offender treatment providers to accommodate a less restrictive level of supervision; elimination of a now-unnecessary criteria exception provision for psychosexual evaluators; clarification of conditional waiver provisions for psychosexual evaluator and sex offender treatment provider applicants; creation of conditional waiver provisions for post-conviction sexual offender polygraph examiner applicants with inclusion of an extension provision for "good cause"; reduction of quality assurance monitoring measures for psychosexual evaluators and treatment providers to a level that is supported by the SOMB's available resources; replacement of the single level of certification for post-conviction sex offender polygraph examiners with senior and associate-level certifications to accommodate examiners who are new to the field; placement of those who are currently certified as post-conviction sex offender polygraph examiners in the senior level of certification if qualifications are met; the continuing education requirements for post-conviction sex offender polygraph examiners will be brought into line with the requirements established by the American Polygraph Association; modification of the formal education provision for post-conviction sex offender polygraph examiners; and make technical corrections. Technical corrections will also be made to associated forms.

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

Section 18-8314, Idaho Code, provides authority for the agency to collect fees for provider certification processing. With this rulemaking, the current single level of post-conviction sexual offender polygraph examiner certification will be replaced by two (2) certification levels.

The existing application processing fee structure will be applicable to both certification levels as follows:

- 1) Seventy-five dollars (\$75) for initial senior/approved or associate/supervised level post-conviction sexual offender polygraph examiner certification applications; and
- 2) Fifty dollars (\$50) for biennial certification renewal applications for both certification levels.

This fee structure is consistent with that already imposed by the SOMB for senior/approved and associate/supervised level psychosexual evaluator and sexual offender treatment provider certification applicants.

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:

The SOMB does not anticipate any fiscal impact to the state general fund from the Rule changes resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 3, 2016 Idaho Administrative Bulletin, [Volume 16-8, page 129](#).

The agency directly notified the impacted psychosexual evaluators, sexual offender treatment providers and post-conviction sex offender polygraph examiners to solicit feedback on the standards modifications as well as posted the documents on its website. Forums for discussion and comments were also offered to complete drafting of the standards modifications and proposed modifications to the IDAPA Rule language.

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:

The Sexual Offender Management Board is legislatively mandated to establish standards, qualification and certification procedures for post-conviction psychosexual evaluations/evaluators; sexual offender treatment and the providers who offer these services; and post-conviction sexual offender polygraph examiners. Rulemaking authority was granted to the board to carry out these provisions.

The practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are compiled into documents entitled “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices”; Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports;” “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders;” Sexual Offender Management Board’s “Required Format for Juvenile Psychosexual Evaluation Reports,” which are all incorporated by reference into this rulemaking to give them the force and effect of law. These documents are not being reprinted in this chapter of rules due to their length and format as well as the cost for republication. They can be found on the agency’s website: <http://somb.idaho.gov>

Further, the existing reference to the incorporated document “Bylaws of the American Polygraph Association” is being updated to reflect a new effective date.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Aileen Lucas at (208) 658-2146.

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, 2016.

DATED this 18th day of August, 2016.

Aileen Lucas, Administrative Assistant
Sexual Offender Management Board
1299 N Orchard St Ste 110
Boise, ID 83706
Phone: (208) 658-2146
Fax: (208) 287-3322
Email: somb@idoc.idaho.gov

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 57-0101-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-20-14)

01. “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, Website <http://www.atsa.com/>. (3-20-14)

02. “Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,” 2014 edition, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, website <http://www.atsa.com/>. (4-11-15)

03. “Bylaws and Constitution of the American Association of Police Polygraphists,” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)

04. “Bylaws of the American Polygraph Association,” effective ~~January~~ September 201~~2~~5, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. ~~(3-20-14)~~()

05. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” ~~edition 2013 November~~, December 201~~3~~6 revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <http://somb.idaho.gov/>. ~~(3-20-14)~~()

06. “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,” ~~November~~ December 201~~4~~6 ~~edition~~ revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ~~(4-11-15)~~()

07. The Sexual Offender Management Board’s “Required Format for Juvenile Psychosexual Evaluation Reports,” ~~effective December~~ 201~~5~~6 ~~revision~~, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ~~(4-11-15)~~()

08. The Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports,” ~~effective December~~ 201~~5~~6 ~~revision~~, is herein incorporated by reference and is available from the Board’s office and on the Board’s website, <http://somb.idaho.gov/>. ~~(4-11-15)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Board. The Sexual Offender Management Board described in Section 18-8312, Idaho Code. (3-20-14)

02. Central Roster. A roster of evaluators, treatment providers and polygraph examiners, who meet the qualifications and are certified by the Board to conduct psychosexual evaluations, provide sexual offender treatment or conduct post-conviction sexual offender polygraphs. (3-20-14)

03. Certificate Holder. A person who has been approved by the Board and certified as meeting

qualifications to conduct or assist in the conduct of psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

04. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 18, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of sexual offenders, shall meet the qualifications and shall be approved by the Board to perform psychosexual evaluations in this state, as described in Section 18-8314, Idaho Code. A person meeting this definition may be certified by the Board as either a senior/approved certified evaluator or an associate/supervised certified evaluator. (3-20-14)

05. Certified Post Conviction Sex Offender Polygraph Examiner. A polygraph examiner who has received specialized post conviction sexual offender testing training, and who is certified by the Board to conduct post conviction sexual offender polygraph examinations as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole. A person meeting this definition may be certified by the Board as either a senior/approved post conviction sexual offender polygraph examiner or an associate/supervised post conviction sexual offender polygraph examiner. (3-20-14)()

06. Certified Treatment Provider. A person who has been certified by the Board as meeting qualifications to provide sexual offender treatment as ordered by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or Idaho Department of Juvenile Corrections. Such person shall be licensed by this state or another state or jurisdiction as a psychiatrist, or a master's or doctoral level mental health professional, and who has by education, experience and training, expertise in the treatment of sexual offenders. A person meeting this definition may be certified by the Board as either a senior/approved sex offender treatment provider or an associate/supervised sex offender treatment provider. (3-20-14)

07. Client. An adult or juvenile receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. (4-11-15)

08. Established Standards. The "Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices" and the "Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders" as referenced in Section 004 of these rules and established pursuant to Section 18-8314, Idaho Code. (4-11-15)

09. Provisional/Supervised Psychosexual Evaluator. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to assist with the conduct of psychosexual evaluations under the direct clinical supervision of a senior/approved psychosexual evaluator. A person with a provisional/supervised psychosexual evaluator certificate is not considered to be a certified evaluator as defined in Section 18-8303, Idaho Code or for the purposes of conducting a psychosexual evaluation in accordance with Section 18-8316, Idaho Code. Certification approval is specific to adult or juvenile clients. (4-11-15)()

10. Provisional/Supervised Sex Offender Treatment Provider. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to provide sexual offender treatment under the direct clinical supervision of a senior/approved sex offender treatment provider. Certification approval is specific to adult or juvenile clients. (4-11-15)()

11. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing a person's sexual development, sexual deviancy, sexual history and risk of re-offense. A psychosexual evaluation for the purpose of these rules is conducted post conviction, as ordered by the court pursuant to Section 18-8316, Idaho Code, or Title 20, Chapter 5, Idaho Code, by a person who has been certified by the Board. (4-11-15)

12. Quality Assurance. Processes established by the Board to review psychosexual evaluations and sexual offender treatment procedures to assure minimum standards and certificate holder qualifications are met. All quality assurance reviews will be conducted under the direction of the Board. (3-20-14)

13. Sexual Offender. A person adjudicated or convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts; or who has been adjudicated or convicted of a sexual offense-related crime. (4-11-15)

14. Sexual Offender Classification Board. A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. (3-20-14)

15. Supervision. (3-20-14)

a. For purposes of clinical practice supervision for associate/supervised psychosexual evaluator or associate/supervised sex offender treatment provider certification, supervision is generally considered as face-to-face direct contact, documented teleconferencing, or interactive video conferencing with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every twenty (20) hours of direct service provided; or (3-20-14)

b. For purposes of clinical practice supervision for provisional/supervised psychosexual evaluator or provisional/supervised treatment provider certification, supervision is considered as continual face-to-face direct contact with a Board-approved supervisor for the first two hundred fifty (250) hours of direct service provided followed by face-to-face direct contact with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every fifteen (15) hours of direct service provided; or (~~3-20-14~~)()

c. For purposes of supervision for associate/supervised post conviction sexual offender polygraph examiners, supervision is generally considered as face-to-face direct contact with a Board-approved supervisor during conduct of the supervisee's first five (5) PCSOT polygraphs followed by review by a Board-approved supervisor of one (1) PCSOT polygraph for every five (5) PCSOT polygraphs conducted by the supervisee. Such review shall include chart and report review. ()

16. Treatment. For purposes of certification eligibility the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense or sexual offense-related crime. Treatment must be directly relevant to the client's sexually offending behavior. (3-20-14)

17. Violent Sexual Predator. A person who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise. (3-20-14)

011. ABBREVIATIONS.

01. APA. The American Polygraph Association. ()

02. ATSA. The Association for the Treatment of Sexual Abusers. (3-20-14)

03. DSM. The "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association. (3-20-14)

04. IDOC. The Idaho Department of Correction. (3-20-14)

05. IDJC. The Idaho Department of Juvenile Corrections. (4-11-15)

06. PCSOT. "Post conviction sexual offender testing" is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sexual offenders. (~~3-20-14~~)()

07. SOCB. The Sexual Offender Classification Board. (3-20-14)

08. SOMB. The Sexual Offender Management Board. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

041. LEVELS OF PSYCHOSEXUAL EVALUATOR CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person's training and experience specific to the population to be served: (4-11-15)

01. Senior/Approved Psychosexual Evaluator. (3-20-14)

a. Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of one thousand five hundred (1,500) hours ~~which were~~. Of this requirement, a minimum of five hundred (500) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and

~~(3-20-14)~~()

c. Has conducted a minimum of nine (9) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level. (3-20-14)

02. Associate/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of five hundred (500) hours ~~which were~~. Of this requirement, a minimum of three hundred (300) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board;

~~(3-20-14)~~()

c. Has conducted a minimum of six (6) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level; and (3-20-14)

d. Shall only conduct psychosexual evaluations under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; (3-20-14)

c. May assist with the conduct of psychosexual evaluations only under the direct clinical supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. ~~(3-20-14)~~()

(BREAK IN CONTINUITY OF SECTIONS)

081. LEVELS OF SEXUAL OFFENDER TREATMENT PROVIDER CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person's training and experience specific to the population to be served: (4-11-15)

01. Senior/Approved Sexual Offender Treatment Provider. (3-20-14)

a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; and (3-20-14)

b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of one thousand five hundred (1,500) hours ~~which were~~ Of this requirement, a minimum of five hundred (500) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board. ~~(3-20-14)~~()

02. Associate/Supervised Sexual Offender Treatment Provider. (3-20-14)

a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of five hundred (500) hours ~~which were~~ Of this requirement, a minimum of three hundred (300) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and ~~(3-20-14)~~()

c. Shall only provide treatment services under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Sexual Offender Treatment Provider. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; and (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

c. Shall only provide treatment services under the direct clinical supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. ~~(3-20-14)~~()

(BREAK IN CONTINUITY OF SECTIONS)

150. REQUEST FOR CONDITIONAL WAIVER.

01. Conditional Waiver. The Board may consider an applicant's request for a time limited conditional waiver for deficiencies in experience and specialized training qualifications as set forth in the established standards issued by the Board. ~~Conditional waiver requests shall only be considered for psychosexual evaluator or sexual~~

~~offender treatment provider applicants at the senior/approved or associate/supervised level. (3-20-14)()~~

02. Duration. A conditional waiver is limited to a period of two (2) years. Conditional waivers may ~~not~~ be extended ~~or renewed after the third year~~ for one (1) year upon a finding of good cause. (3-20-14)()

03. Frequency. A conditional waiver request shall only be considered one (1) time each for: ()

a. An initial certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level; ()

b. A renewal certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level; ()

c. A renewal certification application for post conviction sexual offender polygraph examiner applicants at the senior/approved level; and ()

d. A person certified as an associate/supervised post conviction sexual offender polygraph examiner who, after the two (2) year time limitation at this status has expired, does not meet qualifications for advancement to post conviction sexual offender polygraph examiner certification at the senior/approved level. ()

04. Good Cause. Good cause may include the certificate holder experiencing a period of physical disability, serious illness, hardship, or other extenuating circumstances accepted by the Board. ()

151. ~~CRITERIA EXCEPTION FOR PSYCHOSEXUAL EVALUATORS. (RESERVED)~~

~~Any person currently certified by the Board to conduct psychosexual evaluations on the date the established standards issued by the Board become effective and in force will be granted continued certification by the Board upon application. The certificate holder shall be assigned to the level of certification reflective of his training and experience in accordance with the established standards issued by the Board. (3-20-14)~~

(BREAK IN CONTINUITY OF SECTIONS)

201. LEVELS OF POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINER CERTIFICATION.

The Board issues certificates within two (2) levels reflective of a person's experience in conducting post conviction sexual offender polygraphs. ()

01. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner. ()

a. Has graduated from an APA-accredited polygraph school; ()

b. Has successfully completed a minimum of forty (40) hours of formal post conviction sexual offender polygraph testing beyond the basic polygraph training course requirements from an APA-accredited program or school; ()

c. Has successfully completed a minimum of one hundred (100) polygraph examinations. Of this requirement, a minimum of ten (10) sexual history polygraph examinations and a minimum of ten (10) PCSOT maintenance polygraph examinations shall have been conducted within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; ()

02. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner. ()

a. Has graduated from an APA-accredited polygraph school; ()

b. Has successfully completed a minimum of forty (40) hours of formal post conviction sexual offender polygraph testing beyond the basic polygraph training course requirements from an APA-accredited

program or school: ()

c. Shall only conduct polygraphs under the supervision of a Board-approved supervisor as defined in Paragraph 010.15.c. of these rules, and under the terms of a formal supervision agreement. ()

202. CRITERIA EXCEPTION FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.

A person currently certified by the Board to conduct post conviction sexual offender polygraph examinations on the date the established standards issued by the Board for senior/approved and associate/supervised level post conviction sexual offender polygraph examiners become effective and in force will be granted continued certification by the Board upon application. Within sixty (60) days of the standards going into effect, the certificate holder will be required to submit information as to the number of polygraph examinations completed and will be assigned to either the senior/approved or associate/supervised post conviction sexual offender polygraph examiner certification level pursuant to Section 201 of these rules. ()

~~2043.~~ -- ~~22930.~~ (RESERVED)

~~**230. SPECIALIZED TRAINING FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.**~~

~~For initial certification as a post conviction sexual offender polygraph examiner, an applicant must have successfully completed a minimum of forty (40) hours of formal post conviction sex offender polygraph testing (PCSOT) training, beyond the basic polygraph training course requirements, from an accredited American Polygraph Association program or school. (3-20-14)~~

231. CONTINUING EDUCATION FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.

To maintain certification as a post conviction sexual offender polygraph examiner, a certificate holder must receive a minimum of ~~forty (40)~~ thirty (30) hours of continuing education related to the field of polygraphy in the form of formal conferences, symposia, seminars, or workshops over the course of the two (2) year period prior to each renewal period as set forth in the established standards issued by the Board. ~~Twenty (20) hours of such continuing education shall pertain to specialized sexual offender polygraph training.~~ (3-20-14)()

232. -- 299. (RESERVED)

300. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

01. General Considerations for Certified Evaluators and Certified Treatment Providers. Each person who is certified by the Board to conduct or assist with the conduct of psychosexual evaluations or provide sexual offender treatment shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's respective discipline and area of professional licensure; (3-20-14)

b. Adhere to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Guidelines, as referenced in Section 004 of these rules; (4-11-15)

c. Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment; (3-20-14)

d. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; (3-20-14)

e. Be committed to community protection and safety; (3-20-14)

f. Provide services in a manner that ensures humane and ethical treatment of clients; (3-20-14)

g. Conduct testing in accordance with the person's licensing body, qualifications and experience, and

in a manner that ensures the integrity of testing data; (3-20-14)

h. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (3-20-14)

i. Have no sexual relationships with any client. (3-20-14)

02. General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners.
Each person who is certified by the Board to conduct post conviction sexual offender polygraph examinations shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's discipline, area of professional practice, or licensure as promulgated by any applicable regulatory board or licensing authority; (3-20-14)

b. Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the American Polygraph Association APA; ~~(3-20-14)~~()

c. Adhere to the ethical principles and codes, and all practice standards and guidelines for the administration of polygraph examinations generally, as promulgated by the American Polygraph Association APA or the American Association of Police Polygraphists, as referenced in Section 004 of these rules; ~~(3-20-14)~~()

d. Adhere to the current practice standards and guidelines pertaining to post conviction sexual offender polygraphs within the context of sexual offender management as established by the Association for the Treatment of Sexual Abusers ATSA, as referenced in Section 004 of these rules; ~~(3-20-14)~~()

e. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; (4-11-15)

f. Have no sexual relationships with any client; ~~and~~ ~~(4-11-15)~~()

g. Take factors such as age, mental capacity and co-occurring mental health concerns into consideration when utilizing polygraphy with juvenile offenders. (4-11-15)

h. Be committed to community protection and safety; and ()

i. Provide services in a manner that ensures humane and ethical treatment of clients. ()

(BREAK IN CONTINUITY OF SECTIONS)

332. FEES.

The following non-refundable application processing fees are established by the Board: (3-20-14)

01. Initial Certification. Application processing fees for initial certification shall be: (3-20-14)

a. Senior/Approved Psychosexual Evaluator, ~~or~~ Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). ~~(3-20-14)~~()

b. Associate/Supervised Psychosexual Evaluator, ~~or~~ Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). ~~(3-20-14)~~()

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50). (3-20-14)

~~**d.** Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (3-20-14)~~

02. Renewal Certification. Application processing fees for renewal certification shall be: (3-20-14)

a. Senior/Approved Psychosexual Evaluator, ~~or~~ Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). ~~(3-20-14)~~()

b. Associate/Supervised Psychosexual Evaluator, ~~or~~ Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). ~~(3-20-14)~~()

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Thirty dollars (\$30). (3-20-14)

~~**d.** Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). (3-20-14)~~

03. Change in Certification Level. Application processing fees for a change in certification level shall be as referenced in Section 155 of these rules. (3-20-14)

333. CERTIFICATION PERIOD.

Provided that the certificate holder continues to meet the criteria for certification and such certification has not been suspended, revoked, otherwise restricted or placed on voluntary inactive status, the effective period for certification is as follows: (3-20-14)

01. Senior/Approved Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter, unless extended by conditional waiver. ~~(3-20-14)~~()

02. Associate/Supervised Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter, unless extended by conditional waiver. ~~(3-20-14)~~()

03. Provisional/Supervised Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for one (1) year. Certification renewal shall typically occur during the certificate holder's month of birth one (1) year following initial certification and annually thereafter. Certification at the provisional/supervised level is limited to a period of three (3) years, at which time the certificate holder must meet minimum requirements for upgrade to the associate/supervised level to be eligible for certification renewal. (3-20-14)

04. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter unless extended by conditional waiver. ~~(3-20-14)~~()

05. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner. Certification shall remain in effect for two (2) years from the certificate holder's month of birth following initial certification. Thereafter, the certificate holder must meet minimum requirements for upgrade to the senior/approved level to be eligible for certification renewal, unless extended by conditional waiver. ()

(BREAK IN CONTINUITY OF SECTIONS)

350. CENTRAL ROSTER OF PSYCHOSEXUAL EVALUATORS, SEXUAL OFFENDER TREATMENT PROVIDERS AND POST CONVICTION SEXUAL OFFENDER POLYGRAPH PROVIDERS EXAMINERS.

01. Identification. The Board shall publish a central roster of psychosexual evaluators, sexual offender

treatment providers and post conviction sexual offender polygraph ~~providers~~ ~~examiners~~ pursuant to Sections 18-8312 through 18-8316, Idaho Code. The central roster shall indicate: ~~(3-20-14)~~ ()

- a. The certificate holder's name; (3-20-14)
- b. The certificate holder's business address and telephone number; (3-20-14)
- c. Whether the certificate holder is certified or approved by conditional waiver; (3-20-14)
- d. The category and applicable level of certification; (3-20-14)
- e. The expiration date of the certification or conditional waiver; (4-11-15)
- f. Whether the certificate holder is approved to provide services to adult or juvenile clients, or both; (4-11-15)
- and
- g. Current formal disciplinary action imposed on a certificate holder by the Board. (3-20-14)

02. Availability. A copy of the central roster may be obtained from the Board, and shall be posted on the Board's website. (3-20-14)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: _____ **Sexual Offender Management Board** _____

Agency Contact: _____ **Aileen Lucas** _____ Phone: _____ **685-2146** _____

Date: _____ **8/25/16** _____

IDAPA, Chapter and Title Number and Chapter Name:

_____ **IDAPA 57, Sexual Offender Management Board, Chapter 57.01.01 Rules of the Sexual Offender Management Board** _____

Fee Rule Status: _____ **X** _____ Proposed _____ Temporary

Rulemaking Docket Number: _____ **57-0101-1601** _____

STATEMENT OF ECONOMIC IMPACT:

The Sexual Offender Management Board (SOMB) assesses application processing fees for each of the provider types that it certifies. These provider types include 3 classifications (senior, associate and provisional) of adult and juvenile psychosexual evaluators; 3 classifications (senior, associate and provisional) of adult and juvenile sex offender treatment providers; and post-conviction sex offender polygraph examiners. The certification application processing fee rates already in effect are:

Initial Senior and Associate Evaluator or Treatment Provider Certification	\$75
Initial Post-Conviction Sex Offender Polygraph Examiner Certification	\$75
Biennial Senior and Associate Evaluator or Treatment Provider Renewal	\$50
Biennial Post-Conviction Sex Offender Polygraph Examiner Renewal	\$50
Initial Provisional Evaluator or Treatment Provider Certification	\$50
Annual Provisional Evaluator or Treatment Provider Renewal	\$30

The SOMB received \$4915 in certification application processing fees in Fiscal Year 2016. This will not be a typical yearly revenue amount as \$3250 in deposits was from initial juvenile sex offender evaluator and juvenile sex offender treatment certification applicants. In the future, this group of applicant certifications will be subject to biennial certification renewals at a reduced fee. The SOMB began certifying sex offender treatment providers for adult clients and post-conviction sex offender polygraph examiners in 2014. Certification of adult psychosexual evaluators initially began in 2005. The majority of the state's providers of each of these services are now certified by the SOMB.

The current rate of certification application fees will be unchanged with this rulemaking. This rulemaking impacts the existing single classification of post-conviction sex offender polygraph examiner certification by proposing the creation of two post-conviction sex offender polygraph examiner classification levels (senior and associate) to provide for certification of a less-experienced polygraph examiner with supervision requirements. The certification

application fees for both classifications of post-conviction sexual offender polygraph examiner status will be the same for each: \$75 for an initial certification application and \$50 for a biennial certification renewal application. The number of individuals seeking certification as an associate post-conviction sex offender polygraph examiner status is unknown. There are currently 13 post-conviction sex offender polygraph examiners statewide who are certified by the SOMB. It is anticipated that each of these examiners will qualify for movement into the senior classification status.

Certification fees are deposited into a dedicated fund to assist with miscellaneous costs associated with the certification process and SOMB-sponsored professional development offerings for certificate holders. Section 18-8314, Idaho Code provides the SOMB with statutory authorization for collection of certification processing fees, at rates of not to exceed \$150 for each initial and each renewal certification.

No additional costs to the SOMB, state or other entities are anticipated to implement the proposed changes and there will be no additional costs to the community providers impacted by this rulemaking.

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

SEXUAL OFFENDER MANAGEMENT BOARD
IDAPA 57.01.01 - Rules Governing the Sexual Offender Management Board
Proposed Rulemaking - Docket No. 57-0101-1601

The following incorporated documents are being modified in the proposed rulemaking:

1. *"Bylaws of the American Polygraph Association."* This is a national organization applicable to the post-conviction sexual offender polygraph examiners that are certified by the Sexual Offender Management Board (SOMB). The document was updated by the organization to reflect current practices. The incorporation reference is being modified to reflect the new revision date.
2. *"Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices."* This document is incorporated into IDAPA 57 to enable enforcement of the standards developed by the SOMB. Many of the proposed changes in this document are included in the coinciding IDAPA rule language modifications that are also being proposed with this rulemaking.

Substantial modifications to this document include:

- Modification of the clinical supervision requirements for provisional level psychosexual evaluators and sex offender treatment providers. Previously the standard required continual face-to-face supervision during clinical practice by the supervising provider for the duration of the provisional level provider's certification at that status. The update modifies supervision to include face-to-face supervision during the first 250 hours of direct services provided followed by face-to-face supervision at a ratio of 1 hour of clinical supervision for every 15 hours of direct services for the remainder of time the provisional level provider is certified as such.
- Clarification that educational or licensure supervision may exceed the supervision requirements for purposes of provisional level psychosexual evaluator or sex offender treatment provider certification.
- Modification of the combined clinical practice and specialized training hour requirements for initial certification at the senior or associate level as a psychosexual evaluator or sex offender

treatment provider. The current clinical/training hourly requirements are to have been accumulated within the 3 years prior to certification application. The proposed modifications reduce the number of hours required to have been met within the previous 3 years, with an unlimited amount of previous years to meet the remaining number of hours. This will allow a provider who has had previous experience/training beyond the 3 year mark to qualify for certification.

- Clarification that a person who is seeking dual population certifications as a psychosexual evaluator for adult and juvenile clients may have a combination of adult and juvenile-centered specialized training to meet certification requirements instead of having to meet the hourly specialized training requirements separately as applicable to each population served. This change also applies to sex offender treatment providers seeking dual population certification.
- A requirement is being added for SOMB approval of a new supervision agreement if there is a change in supervisor for an associate or provisional level psychosexual evaluator or sex offender treatment provider.
- The conditional waiver provisions for psychosexual evaluator and sex offender treatment provider applicants who are requesting an exception to experience and/or training requirements are being modified. Currently the provision allows for one conditional waiver request for initial application and the subsequent duration of certification. The modification allows for one waiver request for an initial certification application and a second waiver request during the subsequent duration of a provider's certification. Also included is a provision for waiver consideration for "good cause" in instances of illness, disability, hardship or extenuating circumstances.
- A grandfathering provision in the psychosexual evaluator certification standards is being eliminated as it is no longer applicable.
- The qualifications standards for post-conviction sex offender polygraph examiner certification are being amended to replace the single level of certification with two levels (senior and associate) to provide for certification of a less experienced polygraph examiner with supervision requirements. Application procedures and certification application processing fees are further explained as well as inclusion of a grandfathering provision for current certificate holders who meet the senior level requirements.
- Conditional waiver provisions are being added to the post-conviction sex offender polygraph examiner standards to include a provision for requesting a one-time exception to the continuing education requirements for certification renewal, a provision for waiver consideration for "good cause" in instances of illness, disability, hardship or extenuating circumstances, and a provision for associate level providers to request a one-time exception to the experience requirements for advancement to senior certification status.
- The quality assurance standards for psychosexual evaluators and sex offender treatment providers are being modified as the existing standards are impractical for the SOMB to accomplish with the availability of existing resources. The existing quality assurance processes are currently under review by the SOMB and have not yet been implemented. The current audit tools are being eliminated from the document and will be revised at a later date with

publication of the tools on the agency website. The arduous provider selection process for quality assurance review is being eliminated. Additionally, provisions for what are currently written as mandatory office-visit quality assurance reviews with specified actions will be modified to provide that office visit reviews *may* be conducted. Providers will be notified of the criteria and processes to be utilized in the quality assurance review prior to a review taking place.

3. *“Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders.”* This document is very similar to and has the same purpose as the SOMB’s *Guidelines for Adult Sexual Offender Management Practices*, but with applicability to management practices for juvenile sexual offenders. This document is incorporated into IDAPA 57 to enable enforcement of the standards developed by the SOMB.

Substantial modifications to this document include the same modifications applicable to psychosexual evaluator and sex offender treatment provider certifications for adult clients above.

4. *The Sexual Offender Management Board’s “Required Format for Juvenile Psychosexual Evaluation Reports.”* This document is being updated with revised testing version citations. Further, the BASC-2 assessment is being eliminated as one of the options in the mandatory personality and mood testing measures category with movement to the category for optional additional testing measures that may be used.
5. *The Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports.”* This document is being updated to make technical wording corrections in the Specialized Risk Assessment Measures and Measures of Sexual Behavior category.