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Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Senators LAKEY, Lee, Burgoyne and,
Representatives CHANEY, Monks, Gannon

FROM: Ryan Bush - Principal Legislative Drafting Attorney

DATE: March 04, 2020

SUBJECT: Temporary Rule

IDAPA 50.01.01 - Rules of the Commission of Pardons and Parole - Adoption of Temporary Rule -
Docket No. 50-0101-2001

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Ryan Bush at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 50 – IDAHO COMMISSION OF PARDONS AND PAROLE

50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE

DOCKET NO. 50-0101-2001

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 13, 2020.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 20-223, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

150.03 SERVICE OF PROCESS ON COMMISSIONERS OR COMMISSION STAFF

All service of summons, complaints, subpoenas and other legal process for any cause of action arising from or related to the actions, duties or employment of the Commission or any employee of the Commission, shall be made upon the deputy attorneys general assigned to the Commission in the manner and form required by state and federal rules of procedure.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule provides protection and privacy to the Commissioners and Commission staff by not allowing service of process to their residences.

“The commission identified language to remove from the rules that includes the definition of “reprieve” which is a power of the governor and is not otherwise used in the rules, a statement regarding staff professionalism in the workplace that is unnecessary, and language regarding the practice of polling commissioners outside of a meeting that is not used and is in conflict with the open meeting requirements”.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Mary Schoeler (208) 334-2520

Dated this 13th day of January, 2020.

Ashley Dowell
Executive Director
Commission of Pardons and Parole
3056 Elder St.
Boise, ID 83705
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 50-0101-2001
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

- 01. Absconder.** An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. (3-21-18)
- 02. Case Worker/Manager.** For purposes of reference, the case worker/manager is an Idaho Department of Correction employee who is involved with assisting offenders/parolees regarding their problems, needs, and adjustments. Such case worker/manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician. (4-11-15)
- 03. Commission.** The Idaho Commission of Pardons and Parole. (4-11-15)
- 04. Commission Warrant.** Warrant of arrest for alleged parole violation issued by the Executive Director or a Commissioner. This warrant is a non-bondable warrant. (3-23-98)
- 05. Commissioner.** A member of the Commission who is appointed by the Governor to carry out decision-making functions regarding parole, parole revocations, pardons, commutations, remission of fines, and firearm rights restoration. (3-21-18)
- 06. Commutation.** Clemency powers granted to the Commission, or the Governor, or both, which allow for a sentence to be modified. (4-11-15)
- 07. Concurrent Sentence.** Sentence served at the same time as another. (3-23-98)
- 08. Conditions of Parole.** Conditions under which an offender is released to parole supervision. (4-11-15)
- 09. Confidential.** Privileged from disclosure. (3-23-98)
- 10. Consecutive Sentence.** Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)
- 11. Decision.** A determination arrived at after consideration, a conclusion. (3-23-98)
- 12. Detainer.** A document authorizing the detention of an offender in custody for a new felony crime or parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. (4-11-15)
- 13. Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (4-11-15)
- 14. DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)
- 15. Early Parole Discharge.** Release from further custody of parole supervision prior to the maximum expiration date and after statutory minimum of one (1) year of their sentence has been completed. (4-11-15)
- 16. Escape.** Flight from confinement. (3-23-98)

17. **Executive Session.** Any meeting or part of a meeting of the Commission that is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. (4-11-15)
18. **Fixed Term.** Portion of sentence during which the convicted person is not eligible for parole. (3-23-98)
19. **Full Term Release Date.** The date an offender completes the term of sentence without good time credits. (4-11-15)
20. **Hearing.** The opportunity to be interviewed by the Commission, a Commissioner, or other designated Commission staff. (4-11-15)
21. **Hearing Officer.** An impartial person employed by the Commission and selected by the Executive Director to conduct an interview and take testimony from an offender regarding offender's history, criminal record, social history, present condition of offender, and offense. (4-11-15)
22. **Hearing Session.** A series of hearings conducted by the Commission. (3-23-98)
23. **Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (4-11-15)
24. **Jacket, File, or Case Review.** Review of central file, Commission file, and/or additional information submitted, without testimony or interview of offender or parolee. (4-11-15)
25. **Member or Members.** A member of the Commission, Commissioner, or Commissioners. (3-21-18)
26. **NCIC.** National Crime Information Center. (3-23-98)
29. **Non-Technical Violation.** Violation of parole by absconding or a new felony or misdemeanor conviction. (3-8-16)
30. **Offender.** A person under the legal care, custody, supervision, or authority of the board of correction, including a person within or without Idaho pursuant to agreement with another state or contractor. (3-21-18)
31. **On-Site Parole Violation Hearing.** Parole violation hearing to determine guilt or innocence of the alleged parole violator, which must be held reasonably near the site of the alleged violation(s). (3-21-18)
32. **Open Parole Date.** Tentative parole granted without setting an actual tentative release date and subject to release by Commission authorization; offender's parole eligibility date has passed when a tentative parole date is granted. A tentative parole date will become an open parole date if the tentative parole date passes without the offender being released to an acceptable plan on the specific date. (4-11-15)
33. **Pardon.** Clemency powers granted to the Commission or the Governor that allows the applicant to be released from the consequences of conviction of a crime and restores the applicant's civil rights. (3-21-18)
34. **Parole.** Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and offender. Parole is not a right, but is a matter of grace. (4-11-15)
35. **Parole Eligibility Date.** The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. (4-11-15)
36. **Parole Hearing Interview.** An interview conducted by a hearing officer for the purpose of gathering information and testimony from the offender regarding the offender's history, criminal record, social

history, present condition, instant offense, and other factors, when the offender is scheduled for a forthcoming parole consideration hearing. (4-11-15)

37. Parole Revocation Hearing. A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. (3-21-18)

38. Parole Violation Hearing. A fact-finding hearing conducted by a hearing officer to determine a parolee's guilt or innocence of alleged violations of parole. The hearings are conducted for both technical and non-technical violations, and may be held on-site, or at a location as determined by the Executive Director or the hearing officer. (3-21-18)

39. Parolee. Offender being supervised on parole. (4-11-15)

40. Preliminary Hearing. A hearing conducted by an objective representative of the supervising authority or an individual appointed by the Executive Director to determine if there is probable cause to believe the alleged violations of the parole contract occurred. (3-21-18)

~~**41. Reprieve.** *Temporary suspension of the execution of sentence; delay a punishment.* (3-23-98)~~

42. Risk Assessment. Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)

43. Self-Initiated Parole Reconsideration (SIPR). A process in which an offender may request reconsideration of the last hearing decision of the Commission. (3-21-18)

44. Session. See "Hearing Session." (4-11-15)

45. Special Meeting. A hearing called by the Commission or the Executive Director outside of the regularly scheduled hearing session. The Commission will consider whether to reinstate, modify, or revoke parole when the parole violation decision is not unanimous between the two (2) Commissioners. (3-21-18)

46. Supervising Authority. The agency responsible for community supervision of parolees which is Idaho Department of Correction. (3-21-18)

47. Technical Violation. Violation of parole by not conforming to conditions of parole, but not to include absconding or a new criminal conviction. (3-8-16)

(BREAK IN CONTINUITY OF SECTIONS)

106. ~~INDIVIDUAL POLLING OF THE COMMISSION.~~ (RESERVED)

~~*The executive director may conduct an individual poll of the commission to obtain a majority vote regarding a case or business matter in which a decision must be made prior to the next session or meeting.* (3-23-98)~~

(BREAK IN CONTINUITY OF SECTIONS)

150. COMMISSION AND STAFF.

01. Commission Members. (3-23-98)

a. The Commission is composed of seven (7) members appointed by the governor for three (3) year terms. Vacancies for unexpired terms will be for the remainder of the term and appointees may be reappointed. (3-21-18)

- i. No more than four (4) members will be from one (1) political party. (3-21-18)
- ii. Appointments are subject to the advice and consent of the senate. (3-23-98)
- b.** The Commissioners are compensated as provided by Sections 20-210, 59-509(I), and 67-2008, Idaho Code. (4-11-15)
- 02. Commission Staff.** (3-23-98)
- a.** The Commission has delegated to the Executive Director the authority to approve recommended conditions of parole following the hearing process, issue Commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to paroles, commutations, pardons, firearms rights restoration, and remissions of fines. (3-21-18)
- b.** The Executive Director assumes all authority and duties as may be delegated by the Commission and the governor. (3-30-01)
- ~~**c.** *The Commission, the Executive Director, and all staff will maintain professional integrity in all matters of Commission business.* (3-23-98)~~
- 03. Service of Process on Commissioners or Commission Staff.** All service of summons, complaints, subpoenas, and other legal process for any cause of action arising from or related to the actions, duties, or employment of the Commission or any employee of the Commission, shall be made upon the deputy attorneys general assigned to the Commission in the manner and form required by state and federal rules of procedure. (1-13-20)T