



# BOARD OF CORRECTION

DAVID MCCLUSKY  
Chair

DODDS HAYDEN  
Vice Chair

VACANT  
Secretary

## MINUTES

### BOARD OF CORRECTION MEETING

May 20, 2019, 9:00 AM – 1:00 PM MT

#### Location:

Idaho Department of Correction, 1299 N. Orchard Street, Suite 110, Boise, ID 83706

#### Members Present:

Dr. David McClusky, Chair  
Dodds Hayden, Vice Chair

#### Others Present:

Attendee sign in sheet on file

- Call to order
  - ❖ Chair McClusky called the meeting to order at 9:05 a.m. Attendees introduced themselves.
- Board of Correction meeting minutes approval

**Vice Chair Hayden moved to accept the March 28, 2019 meeting minutes; Chair McClusky seconded the motion; Vote taken: Chair McClusky – yes, Vice Chair Hayden – yes.**
- Director's Update – Josh Tewalt
  - ❖ Introduced Bree Derrick as new Chief of Staff with IDOC. Came to IDOC from Council of State Government.
  - ❖ Change in Employee Compensation (CEC) has been approved since last meeting's briefing. All staff have been notified, and changes took effect as of May 17, 2019 payroll. A total of \$8.6 million to raise starting pay for COs and PPOs
  - ❖ Josh provided a review of Board functions to include the statutory and constitutional directives. He also reviewed the legislative action necessitating reauthorization of Board rules and highlighted how the Board process for promulgating rules differs from other state agencies. Specifically, he highlighted the Board's exemptions from the Administrative Procedures Act with three notable exceptions:
    - Review by germane legislative committees
    - Review by the Legislature
    - Automatic expiration of rules unless reauthorized by the Legislature
- Action Item – Out-of-State Request for Proposal (RFP) – Pat Donaldson
  - ❖ Handout titled, "Out-of-State Housing RFP Brief"
    - Due to a sudden increase in our inmate population, the Division of Purchasing (DOP) authorized IDOC to enter into an emergency contract for housing inmates in an out-of-state, privately-operated correctional facility while the IDOC developed a RFP for a long term solution. The emergency contract was awarded to The GEO Group, located in two facilities in Karnes County, TX and Eagle Pass, TX.
    - Emergency Contract
      - 2 year term, ending October 1, 2020
      - Per diem rate of \$69.95/inmate/day

- Unfavorable aspects of Emergency Contract:
  - a. Assignment Criteria: GEO will not accept inmates with:
    - i. record of institutional violence involving the use of a deadly weapon
    - ii. pattern of violence while confined in ID
    - iii. record of escape or attempted escape from secure custody
    - iv. chronic care or mental health care needs
- Transport Costs: IDOC Expense
- Medical Costs: IDOC expense over \$2,500
- Policies: GEO policies govern inmate operations
- Out-of-State Housing RFP Development & Overview
  - Timeline:
    - a. publish - June 2019
    - b. award - September 2019
    - c. contractor prep for transfer – October-November 2019
    - d. initial transfer (from GEO) December 2019
  - Term: 5-year initial term instead of typical 3 years to allow vendors to recoup capital investments, if any
  - Transport Costs: Contractor expense
  - Healthcare: Contractor expense (no limit), requirements based on NCCHC standards.
  - IDOC policy requirement for:
    - a. Use of Force
    - b. Inmate Discipline
    - c. Restrictive Housing
    - d. Suicide Risk
    - e. Grievance Policies.
  - Assignment Criteria: To include:
    - a. medium security (up to 1,100)
    - b. close custody (up to 100)
    - c. controlled chronic conditions
    - d. mental health conditions
  - RFP Evaluation Criteria
    - a. Evaluation criteria and weights:
 

i. Technical Evaluation	400 Points
ii. Facility Review	300 Points
iii. Per Diem (Cost Proposal)	300 Points
iv. Total	1,000 Points
    - b. Technical Evaluation: Weighted scoring of responses to 29 separate RFP sections. The top 10 criteria are: Number of facilities proposed to house 1,200 inmates (the least number gets the highest score); Facility Operations, Security and Control, Healthcare and Mental Healthcare Services, Key Personnel, Staffing Plan, Food Service, Suicide Management & Prevention, Education and Vocational Training, Treatment and Recreational Programs.
    - c. Facility Evaluation: 4 mandatory Pass/Fail criteria; if facility passes then an in person visit and weighted scoring of responses to 21 operational and structural capabilities of the proposed facility. The top 5 criteria are: Facility proximity to Boise; Medical Services Area; Facility proximity to a hospital, Recreation Areas; and Security, Control and Communication Equipment and Housing Areas.
    - d. Cost Evaluation: Review of proposer’s Per Diem price per Inmate per day. Cost represents 30% of proposal evaluation.

- e. Ability to award multiple contracts and/or multiple facilities in the best interest of the IDOC. Potential to utilize new DOP IDAPA 38.05.01.094; allows for Competitive Negotiations.
  - i. Pat explained that IDOC can ask for permission to negotiate with vendors based on new IDAPA rule to be able to interview them and ensure we are getting the best “fit” for our needs.
  - ii. Dodds Hayden asked about reviewing contractors’ past performance. Pat explained that there are options within the contract to do that.
  - iii. Josh Tewalt reiterated that it is never our preference to move inmates out of state, but if it is required, IDOC wants to ensure that we are providing the most meaningful opportunities possible for those inmates.
  - iv. Dodds Hayden asked how long it would typically take if IDOC were to decide to build a new facility within Idaho. Pat D. responded that it would generally take about 3 years.
  - v. Dr. McClusky commended Pat and IDOC for the thoughtfulness put into this proposal.
  - vi. Dodds Hayden asked what the performance standards requirements are for contractors. While there are no incentives for performance, there are penalties for non-performance.
  - vii. Dodds Hayden asked if there are a minimum number of bids that are required to be received. Pat responded that there are a limited number of vendors, so expect to receive 2-3 bids.

**Vice Chair Hayden moved that the Department proceed with an RFP to house inmates out-of-state.; Chair McClusky seconded the motion; Vote taken: Chair McClusky – yes, Vice Chair Hayden – yes.**

- Action Item – Inmate Savings Accounts – Tim Leigh
  - ❖ PowerPoint presentation titled, “Reentry Savings Program”
    - Treatment and Transitional Funding (TTF) Overview/Reentry Savings Plan
      - General Offenders - \$450/month
      - Sex Offenders - \$1,100/month
      - Average Inmate in Facilities - \$2,050/month
      - Reentry Savings:
        - a. 25% of all inmate deposits
        - b. \$3,000 maximum
        - c. August 1<sup>st</sup>, projected implementation date
      - \$191,000 in potential savings per year (using approx. 18 months of data)
        - a. Conservative estimate
        - b. Includes all offenders – each individual dollar
      - This is just an estimate of savings for TTF offenders
        - a. Take 1-2 years to build up account balances
      - This figure will be much larger for general population
        - a. More analysis needed to determine this impact...
        - b. Savings for general offenders should provide an additional benefit
        - c. Dodds Hayden asked about how inmates qualify for TTF funds. Tim Leigh explained that indigent offenders can apply for housing funds, but they are paid directly to the housing provider, not to the inmate being released.
      - First 24 to 48 Month Savings; After amount will increase in TTF Savings
    - Reentry Savings – Inmate Banking Notes
      - Portion of all deposits to an inmate’s account will be automatically transferred to a non-interest bearing savings account
        - a. Deposits include family/friends, inmate pay and misc. (tax refunds, inheritance, etc.)

- System currently supports this functionality
  - a. Individual Inmate Accounts must be updated to turn on automatic savings program
- Automatic Savings will be treated as 'obligation attachment' to inmate's primary trust account (e.g. child support, restitution, DOR sanctions)
- Process for implementation:
  - a. New inmates received by RDU will have an account created
    - i. Information entered into Reflections/CIS is transmitted to ATG Offender Account Management System to create account
    - ii. Reentry Savings will automatically be active for new inmate accounts created
  - b. Existing inmate accounts
    - i. Each existing inmate account will require the Reentry Savings function to be manually activated
      - 1. This includes any offenders who have previously been incarcerated or under P & P supervision with an ATG offender account management system inmate account previously created
    - ii. Manual process for updating inmate accounts will require data entry into primary account
- ATG Offender Account Management System – Obligation Priority Matrix
  - a. 10% of total deposit for Inmate's Primary Trust Account
    - i. This serves as a place holder to ensure that at least 10% of the total amount deposited will be applied to the inmate's account after all other obligation deductions have been taken.
  - b. Child Support (Inmate Pay Deposits greater than \$20)
    - i. If an inmate has an open Income Withholding Order on file for child support, up to 50% will be withheld from inmate pay deposits until the monthly maximum is reached. This applies to inmate workers, special projects, CI, CRC private sector, etc.
  - c. Restitution
    - i. As required by I.C. 20-209H, 20% of all deposits to an inmate account will be withheld if inmate owes restitution.
  - d. Maintenance Fees (CRC Private Sector workers only)
    - i. For CRC workers, 35% of their gross earnings will be withheld for CRC Maintenance fees
  - e. Court Filing Fees
    - i. If an inmate has been ordered to pay filing fees, 20% will be withheld from deposits over \$10
  - f. DOC Sanctions
    - i. Restitution ordered as a DOR sanction, up to 50%. This obligation type is also used for special projects workers at SICI and ICIO to purchase work items from IDOC.
  - g. Release Savings
    - i. The existing automatic savings program in the offender account management system, if activated, will deduct a specified percentage from all deposits and transfer to the inmate's existing savings account. Current defaults – 10% up to \$3,000 required savings balance. Can specify (manually) different percentage and whether deductions should stop at a specified required balance.
  - h. PIE Savings
    - i. PIE Program inmate workers mandatory savings. Based on rules established by PIE Savings Agreement.

- i. Dodds Hayden asked what percentage of our inmate population pay restitution. Josh Tewalt replied that there are roughly 600 restitution accounts.
- j. Dodds Hayden asked for more details on the 35% maintenance fee. Karin Magnelli replied that it is a statutory fee for inmates residing in a Community Reentry Center.
- k. Director Tewalt explained that we are still doing final checks on legal details such as interest/non-interest bearing accounts.
- l. Dodds Hayden asked whether we have communicated details to the inmate population. Josh Tewalt replied that IDOC wanted to get direction from the Board first. Response from the inmate population is likely to be mixed, but details will be well communicated.
- m. Dodds asked if IDOC considered whether the deduction would fluctuate based on the source of the income. This would require some reprogramming of our systems.
- n. Dodds Hayden asked when inmates are able to start applying for jobs prior to release. Josh Tewalt replied that this is varied based on their custody and risk level at time of release.
- o. Dr. McClusky noted that this is a good program, and it's our responsibility to give inmates a better opportunity to be successful upon release.

**Vice Chair Hayden moved that the Board authorize the Department to establish inmate reentry savings program and present the final program to the Board when it is ready to be activated.; Chair McClusky seconded the motion; Vote taken: Chair McClusky – yes, Vice Chair Hayden – yes.**

- Action Item – Public Records Exemptions – Jeff Zmuda, Karin Magnelli
  - ❖ PowerPoint presentation titled, “Public Records Exemptions”
    - Idaho Code 74-105(4)(a) The following records of the department of correction:
      - (i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code;
      - (ii) Records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses;
      - (iii) Records that reflect future transportation or movement of a prisoner;
      - (iv) Records gathered during the course of the presentence investigation;
      - (v) Records of a prisoner, as defined in section 74-101(10), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.
    - IDAPA Rule 108 Language, in part, that corresponds to the statute:
      - Records to be exempt in their entirety:
        - a. (i.) Records of the Department that define specific building design details, such as facility blueprints, that if disclosed would jeopardize public safety and the security of the facility;
          - i. Security Cameras
            1. Numbers
            2. Locations
            3. Recordings
          - ii. Dodds Hayden asked the Director to weigh in on the pros and cons of keeping security camera information confidential. Josh Tewalt replied that the purpose is to clarify broad authority and to get the Board's direction on what information should remain protected versus being available to the general public. In the case of security cameras, we have had requests from law enforcement, press, general public, etc. for specific footage of specific events.

- b. (iv.) Records containing information specific to the habilitation of any offender, including information tracking the behavior, progress or digression of a particular offender under the legal care, custody, supervision or authority of the Board, including a person within or without the state pursuant to an agreement with another state or a contractor. Notwithstanding this exemption, records of this nature specific to inmates sentenced to death shall be available to counsel of record for inmates sentenced to death, subject to redaction;
  - i. Visitor Logs, Inmate Visitor Information
  - ii. Telephone Recordings and Logs
  - iii. Electronic Messages
    1. Email, Photos, E-Cards, Video Grams
  - iv. Inmate Banking Account
  - v. GPS Information
- c. Dodds Hayden asked for a more specific definition of habilitation. He asked Director Tewart to research whether there is a more accurate word we could use in code.
- d. Jeff Zmuda explained that the purpose of this discussion is to specifically define certain items to clarify that we are releasing information based on the will of the Board, not on IDOC's interpretation of what we think the Board wants.

**Vice Chair Hayden moved that the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure of:**

- **Security camera locations**
- **Inmate visitor logs and visitor information**
- **Inmate telephone logs**
- **Inmate electronic messages to include email, photos, e-cards and video grams**
- **Inmate trust account information**
- **Offender GPS records and information;**

**Chair McClusky seconded the motion; Vote taken: Chair McClusky – yes, Vice Chair Hayden – yes.**

- Action Item – IDAPA Rules Review – Josh Tewart, Jamie Hess Smith
  - ❖ PowerPoint presentation titled, “IDAPA 06 Rules Review:
    - Red Tape Reduction Act
      - Table detailing original page count, new page count, original word count, and new word count.
      - Overall, new drafts have a total savings of 18 pages and 7,761 words
    - Our Approach:
      - Rules are to interpret statute
      - General in scope
      - Prompt Standard Operating Procedure (SOP)
    - Basic Clean-up
      - Rewording/revising for clarity
      - Updating nomenclature
      - Removing:
        - a. Statute restated verbatim
        - b. Citation down to SOP
        - c. Outdated processes
  - ❖ Handout titled, “IDAPA 06 Administrative Rule Revisions”
    - During the last session, the Legislature did not codify the existing IDAPA rules, essentially letting all rules expire by July 1, 2019. To avoid rule expiration, the Governor’s Office and Division of Financial Management outlined a process for agencies to reauthorize their rules.

In light of the Governor's Red Tape Reduction Act prompting agencies to revisit and reduce their rules, IDOC took this opportunity to review and update IDAPA 06 in its entirety.

- Handout provided a summary of nine general revisions found in all rules, including but not limited to things like: terminology changes (ex: CWC to CRC), removing/updating division names (ex: OPS to SIU), updating appropriate pronouns and positions, and minor adjustments to update or remove outdated/inapplicable references.
- Handout also updated substantive changes for the following rules:
  - IDAPA 06.06.01 Rules of the Board of Correction
    - a. 104 Tobacco Free Environment: revised to apply prohibition against use and possession in correctional facilities and CRC's, but just prohibit use inside or on Department Property.
    - b. 108 Idaho Public Records Act
      - i. 01 Intent of the Board: removed sentence stating disputes would be handled informally since there is no process for doing so.
      - ii. 04a(x): added to reference execution documents that are exempt.
    - c. 109 Non Department Literature Distribution: removed in its entirety.
    - d. 114 Inmate Trust Account: added to allow Department to establish a Reentry Savings Account program for inmates.
    - e. Sections 117 Department Visitors, 123 Public Visits and Tours of Facilities, 511 Access to Department Properties, 601 Public Participation in Inmate Athletic Events, 604 Visiting Inmates, and 607 Public Participation in Program Activities were combined and called 117 Access to Department Properties.
      - i. Significantly revised to remove duplication, provide clarity, and remove language already covered in statute or in SOP.
      - ii. 04 Possessing Firearms and Other Deadly or Dangerous Weapons: revised to clarify no firearms or deadly or dangerous weapons would be permitted in any Department Property unless the Director or Chiefs authorize.
    - f. 134 Research Requests
      - i. 01 Archival Research: revised to align with practice.
      - ii. 02 Research Conducted with Human Subjects and 04 Rights of Research Subjects: revised to include both offenders and employees as potential research subjects.
      - iii. 03 Required Documentation: referenced consent form and added memorandum of understanding between the Department and researcher as a required document upon approval of a written proposal.
    - g. 135 Executions
      - i. 05 Disclosure: added to provide clarity on information that will be disclosed.
      - ii. Josh Tewalt noted this is an area that rightly generates a great deal of public scrutiny, legal activity and information requests. He noted IDOC's commitment to transparency and referenced conversations with diverse stakeholders to better understand the reasons behind requests for certain information. Much of those conversations focused on the importance of certain information that helps ensure the integrity of the process. Josh recommends adding a section on disclosure to ensure information critical to the integrity of the process remains in the public domain and subject to disclosure. Josh also discussed the importance of refining the rules to provide for the narrowest possible exemptions from disclosure.
      - iii. Dodds Hayden asked about section A (Oversight of Director). Director Tewalt replied the only option provided in statute to

carry out capital punishment is lethal injection. IDOC is required to develop written procedures in the form of SOP, and that process has been upheld by the federal courts. Dodds expressed surprise that responsibility fell on the Director without additional oversight. Karin Magnelli weighted in that these responsibilities are in statute. Josh noted that while the responsibility may be placed on the Director in statute, Board Rule 135 directs the Director to “prepare written procedures to be used in any execution to be reviewed by the Board.”

- h. 143 Advisory Boards: Removed section in its entirety. Not required by statute and not utilized in practice.
  - i. 302 Housing Offenders in County Facilities
    - i. 03 Accepting the Offender for Transport to a Department Facility: added sentence to subsection b to include Director approval if the sheriff transfers an offender to an out of state jail.
  - j. 311 Inmate Marriages: Removed “of the opposite gender.”
  - k. 405 Court Proceedings Within A Facility: Added “in consultation with the court” in regard to the public observing.
  - l. 503 Telephones: Changed “monitor” to “record” to reflect practice and specified calls from the offender phone system are recorded.
  - m. 701 Probation and Parole Supervision: removed from this rule and placed in 060201.
  - n. Dodds Hayden noted that on page 10 of the redline, the word “with” needs to be inserted.
- IDAPA 06.01.02 Rules of Idaho Correctional Industries
    - a. 011 Abbreviations: Added “Idaho Correctional Industries (ICI)” and changed all instances of “Correctional Industries” to ICI.
    - b. 013 Disbursement of Funds: Revised ICI Betterment Account for broader application and accuracy.
    - c. 03 Reentry Savings Account: added to allow ICI to establish a Reentry Savings Account.
  - IDAPA 06.02.01 Rules Governing the Supervision of Offenders on Probation or Parole
    - a. IDAPA 060202 Rules Governing Establishment and Operation of a Limited Supervision Unit by the Department of Correction, Division of Probation and Parole was combined with 060201 Rules Governing the Supervision of Offenders on Probation or Parole by the Department of Correction, Division of Probation and Parole.
    - b. IDAPA 060201 was renamed, “Rules Governing the Supervision of Offenders on Probation and Parole.”
    - c. 012 General Supervision: renamed from Required Departmental Policies and Documents
    - d. Supervision Standards, Supervision of Offenders, Idaho Response Matrix, and Use of Idaho Response Matrix were revised for more succinct language and moved to Section 012 General Supervision or Section 013 Use of IRM.
    - e. 014 was created to include “Establishment of LSU” from IDAPA 060202.
      - i. Establishment of LSU as originally written in 060202 was revised significantly to reflect current standards, more precise language, and removal of language more appropriate in SOP.
      - ii. 014 Establishment of LSU, subsection b3(iii) under Disqualifying Factors was revised to allow those with an interlock device to still be eligible for LSU as long as there is no indicator of alcohol use.
      - iii. Dodds Hayden asked for clarification of the double negative regarding the interlock device. Jamie will edit to make this more clear.



- IDAPA 06.02.02 Rules Governing Release Readiness
    - a. 012 Offender Programming was renamed from “Offender Case Management” and moved from 013 to 012
      - i. References to pathways and the pathway process were removed, 03 a, b, and c
      - ii. 02a Motivational Interviewing was revised to state communication methods designed to enhance motivation.
      - iii. 04 Reentry Plan was renamed from “Offender Management Plans”
        - 1. OMP is in reference to a module in CIS; the document used for case management is called a Reentry Plan.
      - iv. 09 Parole Hearing Process was revised to reflect practice.
    - b. 013 Correctional Case Management was renamed from “Case Management” and moved from 012 to 013
      - i. References to a reentry checklist were replaced with “Reentry Plan”
      - ii. 01 General Procedures
        - 1. Removed a through c
          - a. a. was revised and added to the main paragraph of 01
          - b. b. Department no longer has PSRS, PRS or DARS in correctional facilities
          - c. c. was removed since the core philosophy is covered in section 012 Offender Programming
      - iii. 03 Reentry Plan was renamed from Reception and Diagnostic Unit Reentry Checklists
        - 1. Removed 03b since it’s already covered in 05
      - iv. 04 Mental Health and Healthcare Services Discharge Planning was revised for clarity
- ❖ Additional handouts were distributed as follows:
  - 06.01.01 – RULES OF THE BOARD OF CORRECTION (Clean Copy)
  - 06.01.01 – RULES OF THE BOARD OF CORRECTION (Redline)
  - 06.01.02 – RULES OF IDAHO CORRECTIONAL INDUSTRIES (Clean Copy)
  - 06.01.02 – RULES OF IDAHO CORRECTIONAL INDUSTRIES (Redline)
  - 06.02.01 – RULES GOVERNING THE SUPERVISION OF OFFENDERS ON PROBATION OR PAROLE (Clean Copy)
  - 06.02.01 – RULES GOVERNING THE SUPERVISION OF OFFENDERS ON PROBATION OR PAROLE (Redline)
  - 06.02.02 – RULES GOVERNING RELEASE READINESS (Clean Copy)
  - 06.02.02 – RULES GOVERNING RELEASE READINESS (Redline)

**Vice Chair Hayden moved that the Board approve the IDAPA Rules as presented today (and incorporate any amendments as discussed) and the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure of the information related to an execution identified in Rule 135.; Chair McClusky seconded the motion; Vote taken: Chair McClusky – yes, Vice Chair Hayden – yes.**

**Vice Chair Hayden moved that the expiration of the Board’s IDAPA rules on June 30, 2019 jeopardizes public health, safety and welfare, and IDOC provide a proclamation to be signed by the Governor is necessary to ensure the Board’s rules will be effective on July 1, 2019.; Chair McClusky seconded the motion; Vote taken: Chair McClusky – yes, Vice Chair Hayden – yes.**

➤ Executive Session

**Vice Chair Hayden moved to go into executive session at 11:25 a.m.; Chair McClusky seconded the motion. Vote taken: Chair McClusky – yes, Vice Chair Hayden – yes.**

*I.C. 74-206 (1)(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student.*

*I.C. 74-206 (1)(f) To communicate with legal counsel for the Idaho Department of Correction to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.*

**Vice Chair Hayden moved to adjourn executive session at 12:34 p.m. and return to regular session; Chair McClusky seconded the motion. Vote taken: Chair McClusky – yes, Vice Chair Hayden – yes.**

- Adjourn
  - ❖ Meeting adjourned at 12:35 p.m.

Submitted by:

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Cheryl Iseri, Program Coordinator

\_\_\_\_\_  
Date

Approved by:

\_\_\_\_\_  
Dr. David McClusky, Chair

\_\_\_\_\_  
Date