I.C.R. 5. Initial Appearance Before Magistrate - Advice To Defendant - Plea in Misdemeanors - Initial Appearance on Grand Jury Indictment.

Idaho Criminal Rule 5. Initial Appearance Before Magistrate - Advice To Defendant - Plea in Misdemeanors - Initial Appearance on Grand Jury Indictment.

(a) Initial appearance. The "initial appearance" before a magistrate shall be the first appearance of the defendant before any magistrate. In the event a defendant appears before more than one magistrate, the first appearance before the first magistrate shall constitute the "initial appearance."

(b) Place of initial appearance. A defendant arrested, whether or not pursuant to a warrant, shall be taken before a magistrate in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays, and holidays. Provided, the court may delay the initial appearance if the defendant is hospitalized or otherwise in a condition which prevents the defendant being taken before the magistrate. The court may immediately, in such instances, appoint counsel for the defendant. In the event it is not possible to take a defendant before a magistrate within the county where the alleged offense occurred within the said time limit, then the defendant shall be taken to any available magistrate within the judicial district without unnecessary delay within the time limit described above.

(c) Determination of probable cause. In the event the defendant was arrested without a warrant, the magistrate before whom the defendant first appears shall not hold the defendant in custody nor require bail without first making a determination as to whether there is probable cause to believe that an offense has been committed and that the defendant committed it as provided in Rule 4 unless such a finding has been made by a magistrate in a county in which the offense is alleged to have been committed. The probable cause hearing may be an ex parte hearing which does not require the presence of the defendant and shall be held within forty-eight (48) hours, including Saturdays, Sundays, and holidays, after a defendant is arrested without a warrant. The magistrate may hold the hearing on sworn statements, which includes written certifications or declarations under penalty of perjury, without the officer or witness present.

(d) Advice to defendant on initial appearance outside. In the event a defendant is taken before a magistrate in a county other than the county in which the alleged offense occurred, the magistrate shall advise the defendant:

(1) That the defendant is not required to make a statement and that any statement made may be used against the defendant;

(2) The charge or charges against the defendant;

(3) Defendant's right to bail;

(4) Defendant's right to counsel as provided by law;

(5) Defendant's right to proceed under Rule 20 of these rules;

(6) That defendant has a right to communicate with counsel and immediate family, and that reasonable means will be provided for the defendant to do so.

(e) Setting bail. Upon advising the defendant of the above rights, the magistrate shall set bail for the defendant, and in the event the arrest is pursuant to a warrant, said bail shall be in the amount endorsed upon the warrant unless the magistrate finds good cause to alter the amount of the bail. In the event the defendant posts bail, the magistrate shall certify that fact upon the warrant, order the defendant to appear before the court issuing the warrant at a time and place certain, discharge the defendant, and transmit the warrant and undertaking of bail to the court in which the defendant is required to appear.

(f) Advice to defendant on initial appearance in county where alleged offense occurred. In the event a defendant is taken before a magistrate in the county where the alleged offense occurred, the magistrate shall advise the defendant:

(1) That the defendant is not required to make a statement and that any statement made may be used against the defendant;

(2) The charge or charges against the defendant;

(3) Defendant's right to bail;

(4) Defendant's right to counsel as provided by law;

(5) Defendant's right to a preliminary hearing, if provided by law, the nature of a preliminary hearing and the effect of a waiver thereof;

(6) That the defendant has a right to communicate with counsel, or immediate family, and that reasonable means will be provided for the defendant to do so.

(g) Right to Counsel.

(1) If a defendant is charged with an offense the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility regardless of whether actually imposed, and the defendant appears without counsel, the court shall advise the defendant of:

(A) the right to counsel;

(B) the right to apply for court appointed counsel if the defendant cannot afford to hire private counsel; and

(C) the right to request counsel at any stage of the proceedings.

(2) If the defendant wishes to represent himself or herself, the court shall ensure that a knowing, voluntary, and intelligent waiver of the right to counsel is entered on the record.

(3) Prior to accepting any waiver pursuant to subsection (2), the trial court shall advise the defendant of the following:

(A) the nature of the charges;

(B) the range of allowable punishments;

(C) that there may be defenses;

(D) that there may be mitigating circumstances; and

(E) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the dangers and disadvantages of the decision to waive counsel.

(4) The court may appoint counsel for the limited purpose of advising and consulting with the defendant as to the waiver.

(h) Arraignment on misdemeanor complaint. The arraignment upon a misdemeanor complaint is the reading of the complaint to the defendant, unless waived by the defendant, and taking a plea of the defendant to the complaint. The arraignment upon a complaint for a misdemeanor may take place at the initial appearance, or at such later time as ordered by the court. A plea of the defendant at the arraignment in a county other than the county where the alleged offense occurred may be taken by the magistrate only as provided by Rule 20. The defendant may appear in person at the arraignment and enter a plea to the complaint or the defendant may appear at the arraignment through counsel who shall either appear in person or shall file, at or before arraignment, a written appearance and plea on behalf of the defendant.

(i) First appearance on indictment by grand jury. A defendant arrested on a warrant issued pursuant to an indictment by grand jury shall be taken before a magistrate judge or district court judge in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays and holidays. The magistrate judge or district court judge shall have the authority to set bail and shall advise the defendant:

(1) That the defendant is not required to make a statement and that any statement made by defendant may be used against the defendant;

(2) The charge or charges against the defendant;

(3) The defendant's right to bail;

(4) The defendant's right to counsel as provided by law;

(5) The date that defendant will be arraigned in the district court.

(Adopted December 27, 1979, effective July 1, 1980; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended effective August 21, 1991; amended February 10, 1993, effective July 1, 1993; amended April 22, 2004, effective July 1, 2004; amended March 28, 2007; effective July 1, 2007; amended June 20, 2013; effective July 1, 2013.)

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