



## **I.C.R. 33. Sentence and Judgment**

### **Idaho Criminal Rule 33. Sentence and Judgment**

#### **(a) Sentence.**

(1) *Time for Judgment and Sentence.* After a plea or verdict of guilty, if the judgment is not stayed or a new trial granted, the court must set a time for pronouncing judgment and sentencing. When sentence is being imposed as a result of a trial resulting in a verdict of guilty, the judge who presided over the trial must also preside over the sentencing unless: (1) the judge who presided over the trial no longer holds the same judicial office that the judge held at the time of the trial; or (2) other extraordinary circumstances exist, such as the judge's disqualification, death, illness, or other disability. In felony cases, the time for pronouncing judgment and sentencing must be at least two days after the verdict unless this time is waived by the defendant. Before imposing sentence the court must give counsel an opportunity to speak on behalf of the defendant and must ask the defendant personally if the defendant wishes to make a statement and to present any information in mitigation of punishment. While awaiting sentencing the court may commit the defendant to custody or may continue or alter the bail.

(2) *Method of Securing Defendant's Appearance at Sentencing.*

(A) If a defendant is in custody the custodial officer must bring the defendant into court for sentencing.

(B) If a defendant, who is at liberty on defendant's own recognizance or on bail pursuant to a previous court order issued in the same criminal action, does not appear for sentencing when defendant's personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may issue a bench warrant for defendant's arrest. On taking the defendant into custody pursuant to the bench warrant the executing peace officer must, without unnecessary delay, cause defendant to be brought into court for sentencing.

(3) *Notification of Right to Appeal.* After imposing sentence the court must advise the defendant of the right to appeal and of the right of a person who is unable to pay the costs of an appeal to apply for waiver of those costs.

**(b) Judgment.** The judgment of conviction must state:



(1) the plea,

(2) the verdict or findings,

(3) the adjudication and sentence, and any credit for time served (for purposes of calculating credit for time served, any portion of a calendar day spent in custody counts as a day of incarceration),

(4) the terms of probation, if any.

If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment must be entered accordingly. The judgment must be signed by the judge and entered by the clerk.

**(c) Withdrawal of Plea of Guilty.** A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court may set aside the judgment of conviction after sentence and may permit the defendant to withdraw a plea of guilty.

**(d) Commutation of Sentence and Suspending or Withholding Judgment; Conditions.** For an offense not punishable by death, the court may commute the sentence, suspend the execution of the judgment, or withhold judgment, and place the defendant on probation as provided by law and these rules. An order withholding judgment must include the terms of probation, if any. The conditions of a withheld judgment or of probation must not include any requirement of the contribution of money or property to any charity or other nongovernmental organization, but may include the rendering of labor and services to charities, governmental agencies, needy citizens and nonprofit organizations. The conditions of a withheld judgment or probation may include, among other lawful provisions, the following:

(1) a requirement that the defendant make restitution to a party injured by the defendant's action;

(2) a requirement that the defendant pay a specific sum of money to the court for the prosecution of the criminal action against the defendant, or a sum of money not to exceed the fine and court costs that could be assessed if the judgment were not suspended or withheld, (to be distributed in the manner provided in Idaho Code § 19-4705 for the distribution of fines and forfeitures); and

(3) a requirement that the defendant perform voluntary services for self-education purposes as part of a positive program of rehabilitation.



**(e) Discretionary Jail Time.** “Discretionary jail time” means jail time to be served at the discretion of the probation officer as a sanction for violating a term or condition of probation. It does not include incarceration in jail in order for a defendant to obtain treatment or programming provided in the jail, even if the probation officer determines that the treatment or programming is needed because of the defendant’s violation of a term or condition of probation.

As a condition of probation, the sentencing court may provide for the service of a specified period of discretionary jail time, to be served as follows:

(1) On receipt of a written statement of facts made under oath or affirmation by the probation officer showing probable cause to believe that the defendant violated any term or condition of probation, a court may order in writing that the defendant serve a specified number of days of the discretionary jail time.

(2) If, without a court order issued under subsection (1), a defendant is arrested under Idaho Code § 20-227 for violating a term or condition of probation, there must be a judicial determination of probable cause within 48 hours after the arrest. If, within that time period, there is no judicial finding that there was probable cause for the arrest, the defendant must be released. If there is a judicial finding of probable cause within that time period, the defendant must be released 72 hours after the arrest unless the sentencing court has ordered a longer period of jail time. If, when delivering the defendant to the jail, the probation officer informs the jail authorities in writing that the defendant is to serve a specific period of time in jail that is less than 48 hours, the defendant may be released on the conclusion of that specific period without further court approval.

(3) The number of consecutive days served as discretionary jail time must not exceed three days.

(4) Any time served in jail as discretionary jail time must be credited against the period of discretionary jail time specified as a condition of probation.

(5) If the defendant is arrested under Idaho Code § 20-227 for violating the conditions of probation and a motion seeking a judicial finding of a probation violation is not filed with respect to the conditions allegedly violated, the time served in jail because of that arrest must be credited against the period of discretionary jail time.

(6) Nothing in this Rule limits the authority of a sentencing court to impose additional terms and conditions of probation including jail time.



**(f) Revocation of Probation.** The court must not revoke probation except after a hearing at which the defendant is present and apprised of the grounds on which revocation is proposed. The defendant may be admitted to bail pending the hearing. The court must not revoke probation unless there is an admission by the defendant or a finding by the court, following a hearing, that the defendant willfully violated a condition of probation.

**(g) Waiver of Fees and Costs.**

(1) A person who has been sentenced by the court following a plea of guilty or finding of guilt may have probation revoked or may be found in contempt for failure to pay a fine, fee, or costs only if the court finds that the person has willfully refused to make payment, or has failed to make sufficient bona fide efforts to legally acquire the resources to make payment.

(2) A fee or cost imposed by statute on persons who plead guilty to, or are found guilty of, any offense may be waived in whole or part by the court only when there is a specific provision in statute allowing for the waiver of the fee or cost.

(3) A court may waive all or part of a fee or costs imposed by statute only on making findings in writing or on the record that each statutory standard for the waiver of the fee or costs has been satisfied. If the court decides to waive a fee or costs in whole or in part, the court must make this finding with regard to each offense on which the defendant is or has been sentenced, and must determine whether the fee or costs will be waived in whole or in part.

([Adopted February 22, 2017, effective July 1, 2017](#) [1]; [amended September 14, 2017, effective January 1, 2018](#) [2]; [amended May 14, 2019, effective July 1, 2019](#) [3].)

**Source URL:** <https://isc.idaho.gov/icr33>

**Links**

[1] <https://isc.idaho.gov/./rules/ICR/ICR-33a-Adoption-of-Newly-Formatted-ICR-022217.pdf>

[2] <https://isc.idaho.gov/./rules/ICR/ICR-33b-ICR-25.1-33.a-34-091417%29.pdf>

[3] <https://isc.idaho.gov/./rules/ICR/ICR-33c-Order-Amending-ICR-Adoption-Rule-37-051419.pdf>