

## **Proposed Amendments to the Criminal Rules.**

The Criminal Rules Advisory Committee met on March 6, 2019, and the Committee is proposing two amendments and one new rule. Please send any comments to Cathy Derden, Staff Attorney, Idaho Supreme Court, [cderden@idcourts.net](mailto:cderden@idcourts.net) by **Friday April 12, 2019**.

Amend Rule 35(b) to add back in the reference to “a sentence imposed in an illegal manner” that was inadvertently omitted when the rules were updated in 2017.

### Idaho Criminal Rule 35. Correcting or Reducing a Sentence

(a) **Illegal Sentences.** The court may correct a sentence that is illegal from the face of the record at any time.

(b) **Sentences Imposed in an Illegal Manner or Reduction of Sentence.** Within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction, a motion may be filed to correct a sentence that has been imposed in an illegal manner or reduce a sentence and the court may correct or reduce the sentence. The court may also reduce a sentence on revocation of probation or on motion made within 14 days after the filing of the order revoking probation. Motions are considered and determined by the court without additional testimony and without oral argument, unless otherwise ordered. A defendant may only file one motion seeking a reduction of sentence.

(c) **Credit for Time Served.** A motion to correct a court's computation of credit for time served, granted pursuant to Idaho Code § 18-309 or 19-2603, may be made at any time.

Amend Rule 33(b) to clarify that, when giving credit for time served, any portion of a calendar day spent in custody must be credited as a day served.

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

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(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.

Adopt new Rule 37, on prosecuting attorney fees as restitution costs pursuant to I.C. § 37-2732(k), to address what must be submitted by the prosecutor in support of the request.

Idaho Criminal Rule 37. Restitution pursuant to Idaho Code Section 37-2732(k); prosecuting attorney fees. A motion for attorney fees as costs incurred by the

prosecuting attorney must be supported by an affidavit of the attorney setting forth:

- the basis and method of computation;
- the number of hours actually spent on the case;
- the hourly rate;
- a brief description of the tasks performed, and
- a certification that the statement of costs is correct.