

District Court Criminal Case Processing

I. CRIMINAL PROCEDURE

a. Idaho Code, Title 19

b. Idaho Criminal Rules, I.C.R.

c. IN ALL CASES WHERE THE DEFENDANT IS IN NEED OF AN INTERPRETER, IT IS THE RESPONSIBILITY OF THE CLERK TO SEE THAT A QUALIFIED INTERPRETER IS MADE AVAILABLE FOR ALL HEARINGS

II. COMMENCEMENT OF A FELONY CASE

a. The district court only hears felony cases unless there are misdemeanor offenses that arise out of the felony that are filed in the felony complaint or if filed separately and consolidated with the felony case.

1. A felony is an offense that is punishable by death or imprisonment in the state prison.
2. How are E-Citations being processed when there is a felony associated with the charges in the citation?

b. The process starts with the filing of a criminal complaint or a grand jury indictment

1. I.C.R. 3 – Criminal Complaint
2. I.C.R. 6.1-6.9; 7 – Indictment

c. The defendant is brought before the court by summons or arrest warrant (within 24 hours of arrest, excluding weekends and holidays), I.C.R. 5

1. I.C.R. 5 – Initial Appearance (Arraignment) - before the magistrate
2. The defendant is advised of his rights, charges and maximum penalties and bail is set with or without conditions or O.R. release
3. Counsel appointed if indigent
4. Preliminary Hearing date set-within 14 days if in custody/otherwise within 21 days (No preliminary hearing on grand jury indictment) I.C.R. 5.1(a)

d. A Preliminary Hearing is held before the magistrate requiring the State to put on evidence of probable cause that the crime alleged was committed and that the defendant committed the crime. I.C.R. 5.1

1. The preliminary hearing is digitally recorded however on occasion a court reporter may also be present.

2. A transcript of the PH may be requested and prepared for the parties. I.C.R. 5.2

3. At the conclusion of the PH if the magistrate finds no probable cause the defendant is discharged. I.C.R. 5.1(c) If there is a finding of probable cause the magistrate enters a order binding the defendant over and requiring him to answer in the district court (Bind Over Order). I.C.R. 5.1(b)

(i) The Bind-Over Order should be a standard magistrate form prepared by the Clerk and placed in the file at the time of the preliminary hearing and it should not be left to the State to prepare and file it with the court. The time to file the information runs from the date of the filing of the magistrate order. If that order is not filed the time never starts to run. In some districts the courts leave it to the prosecutor to prepare the order and it is submitted together with the Information. (This could have an impact on speedy trial).

(ii) The magistrate should order the defendant to appear in district court (date and time) at the earliest opportunity for his arraignment in district court and entry of plea.

e. After there is a determination of probable cause the State must file the Information within 14 days of the Bind Over Order filed by the magistrate. I.C.R. 7(f)

1. The Information and its content is governed by I.C.R. 7.

(i) It should be a mirror image of the felony charge in the criminal complaint upon which the magistrate found probable cause. You may have a criminal complaint that charged multiple felonies, Counts I-IV and the magistrate only found probable cause on Counts I & IV. The Information should set forth Counts I & IV and the Counts are not renumbered in the Information.

(ii) In some cases there may be filed an Information Part II which would be the basis for sentencing enhancements, such as Persistent Violator (I.C. 19-

**2514) ; Felony DUI (I.C. 18-8005); Previous Conviction of the Uniform
Controlled Substance Act (I.C. 37-2739)**

III. Arraignment in District Court

- a. The defendant appears for arraignment on the Information in District Court, I.C.R. 10
- b. Defendant advised again of his rights, charges and penalties.
- c. Defendant enters his plea or entry of plea may be delayed
- d. After entry of not guilty plea, the case is set for jury trial and pre-trial conference.
 - 1. Speedy Trial (Six (6) months) runs from the date of the filing of the Information or in the event of an Indictment from the date of arraignment. I.C. 19-5301
 - 2. The trial date should for the majority of the cases be set within 90 days of arraignment.
 - 3. A Pre-Trial Conference should be set within 14 days of the trial date
 - 4. Recommend a Status Hearing approximately 30 days after arraignment to determine if there are any witness availability issues or evidentiary issues that need to be resolved prior to the pre-trial conference.

5. Minute Entries Generally:

NOTE: Minute entries are not intended to be a verbatim account of the proceedings – that is the job of the Court Reporter. However, all criminal minute entries should contain the following:

- Case Name and Number and heading.
- Judge, Court Reporter, Clerk, interpreter
- Date of hearing; time hearing began and ended
- Appearance of Counsel and defendant; defendant's custody status

Specifically for Arraignment:

- Defendant received a copy of the information or charging document and was advised of rights, charges and penalties
- Bond set or O.R. granted and a list of any conditions for release (i.e. testing requirements or no contact orders)
- The plea entered by the defendant (See I.C.R. 11)
- The trial, pre-trial and status hearing dates.

IV. Pleadings and Motions Prior to Trial

a. Pre-trial motions are set forth in I.C.R. 12(b)

- 1. As a general rule 12(b) motions must be filed within 28 days of entry of not guilty plea and must be heard within 14 days of the filing of the motion.**

Note: If such a motion is filed without a notice of hearing it is suggested that the clerk set the motion for hearing within the 14 day period on your judge's law and motion calendar.

2. Clerk's Minutes specific to motion hearings should include:

- names of witnesses who testified, sworn by the Clerk, as well as the time their testimony began and ended, direct, cross, and re-direct examination.**
- Exhibits identified, admitted or rejected**
- Whether the motion was granted or denied in whole or in part or taken under advisement by the judge.**

V. STATUS/PRE-TRIAL HEARINGS

a. Clerk's Minute Entries Specific to status hearings should also include:

- Whether or not the case is to remain on the trial calendar**
 - for example if the defendant entered a change of plea or the matter was set for a change of plea on another date or time**
- Whether or not there are any witness availability issues**
- Whether there are any evidentiary issues to be set for hearing and the date and time of such a hearing**
- Motions in limine**
- Any changes in Bond or other conditions of release for the defendant**

b. Pre-Trial Conference Minutes

- 1. Does your judge hold this conference on the record in court or off the record in chambers? In either case minutes are required and should include:**

- Any change in the trial date**
- Continuance of the trial date: the party that requested the continuance and the reason for the continuance**

- change of plea: the terms of the plea agreement as stated by counsel
- If the trial is to proceed
- set forth the judges pretrial orders:
- number of preemptory challenge (7 per side or 11 per side, if life or death is the penalty)-assumes 1 alternate
- time each side has for voir dire
- date counsel to submit jury instructions, witness list and exhibit list
- instructions re pre-marking exhibits

VI. CHANGE OF PLEA

a. Change of Plea Minutes should also include:

- terms of the plea agreement
- type of plea agreement: whether it is binding/non-binding on the judge
- type of plea:
 - guilty plea
 - Alford plea (guilty plea but defendant does not admit the elements of the crime and only admits there is a sufficient factual basis)
 - Conditional guilty plea (defendant reserves the right to appeal an adverse ruling of the court)
- that the defendant was placed under oath
- summary of the courts questioning of the defendant under oath
- the entry of the plea by the defendant
- the acceptance of the plea by the court
- the date and time set for sentencing
- the courts order for the PSI and any other evaluations for sentencing

(How do you handle the PSI orders? They should be faxed or pdf'd to P&P and the PSI officer as soon as possible after the hearing)

VII. JURY TRIAL

a. Jury Selection (How does your court select a jury)?

- how many jurors do you need?
- factors to consider: publicity; nature of the charge; defendant's familiarity with the community

-Pre-Selection/Jury Questionnaires

-Seating Chart/Juror Numbers

-Clerk swears in the panel for voir dire

- Clerk minutes for trial should also reflect:

The hour and minute recorded:

- a. At the beginning of each hearing/trial and each new day.**
- b. All recesses and reconvening of court after each recess**
- c. When a jury retires to start their deliberations**
- d. When a jury returns to the courtroom with their final decision**
- e. At the conclusion of each hearing.**

-Voir dire Process

-Challenges for Cause

-Peremptory Challenges (6 or 10 plus alternates-depends on the case)

b. After the Jury is selected

-Clerk swears in the prospective jurors.

-The Clerk or the Judge may read the Information/Indictment to the jury and state the defendant's plea

-Opening Statements by Counsel

-Exhibits:

a) General handling of exhibits by the court clerk.

b) Custody of Exhibits – Clerk's responsibility (contraband, weapons, drugs, hazardous materials, weapons)

c) Distinctions of Exhibits:

-Pre-Marked by Counsel

-Identified

-Offered

-Admitted

-Refused

- a. Note in the minutes when each exhibit is marked, offered, admitted or rejected.
- b. The identification of the exhibit as given by the witness (or from the list of exhibits provided by counsel).
- c. Record ALL objections to exhibits, by whom they were made, and the Court's ruling. Objections are overruled or sustained, however, if the Court does not rule simply record "No ruling."
- d. If a COPY of an exhibit is ordered by the Court to be substituted for the original, so state in the minutes and make the substitution at the direction of the Court.
- e. Identify each exhibit plainly as "Admitted," "Denied," or "Rejected," or "Illustrative Only" in the minutes

-General Testimony

Each witness with the name correctly spelled and entered as given by the witness from the stand and that he/she was sworn; direct, cross, re-direct examination.

Be complete and accurate, but not in great detail; the gist of the testimony will give the reader an idea of the kind of discussion that was held and give the reporter or the other court official an idea where to find what they need in a transcript or recording.

-Final Jury Instructions

-Counsel's Closing Argument

-Selection of Alternate Jurors

-Swear in Bailiff for Jury Deliberations

-Verdict: Reading and Polling Jury

a) Acquittal – Case is Dismissed and Judgment of Acquittal entered

b) Guilty Order PSI and any necessary Evaluations

VIII. SENTENCING

a. Confidential/Sealed Documents: I.C.R. 32

-PSI and Evaluations: SAE, MHE, PSE

- b. **Felony judgments – (Recommend that the Court’s law clerk prepare judgments to be ready at sentencing, do not leave it to the prosecutor (or the court clerk) to prepare judgments).**

Judgments should include:

- a) **date and type of plea/verdict; maximum penalty to each count**
- b) **the sentencing date proceedings, the terms of the sentence, amount of credit for time served, bond exoneration, restitution and jail time.**
- c) **attached to each judgment is a Certificate of Service, which certifies the parties were served the judgment or a certificate of hand delivery on date stated.**

-Clerk to file the judgment by placing the filing stamp on original. Copies are served on:

- (1) State**
- (2) Defendant**
- (3) defense counsel**
- (4) Sheriff office/Jail**
- (5) IDOC, Central Registry & Probation & Parole**

-Enter the judgment in the register of actions and enter the disposition information as soon as practicable, preferably the same day of sentencing when possible.

-Place into an envelope the pre-sentence reports from the court and counsel (indicate which is the court's copy), psychological evaluation and any other reports prepared in determining the defendants' judgment. Seal and mark the envelope confidential--open only upon order by the court.

WITHHELD JUDGMENTS: Enter the appropriate ROA code and remember to indicate in the disposition screen that the judgment was withheld and for what number of years. Withheld judgment does not stay the imposition of a license suspension, fines, fees or restitution generally.

NO CONTACT ORDERS: Be sure to enter any no contact order on the front screen of ISTARs under “Court Orders” tab.

IX. BONDS AND FORFEITURES

Bail or bond (in this case, bail and bond mean the same thing) is an amount of money in cash or surety for the purpose of making sure that a person attends all required court appearances. Bond allows an arrested person (defendant) to be released from jail until his or her case is completed. Any person can post his or her own bond. If the defendant can't afford to bond himself or herself out of jail, any other person over the age of 18 can post the bond. (See ICR 46) There are three ways bond can be posted:

1. Cash Bond--A cash bond is the full amount of the bond required, paid in cash, to release a defendant from jail. All sums on deposit at the conclusion of an action shall, upon order of the court, be applied to payment of all fines and court costs owed by the defendant.
2. Surety Bonds-A surety bond is an agreement made between a person and a bondsman. The bondsman agrees to post the necessary bond so the defendant can be released from jail. This agreement is backed by an insurance company contract signed by the person and the bondsman on behalf of the insurance company. There has to be enough cash or collateral to cover the full amount of the bond in case the defendant misses his or her court date. Only a person who has been licensed by the State Department of Insurance may post a surety bond.
3. Property Bonds-A property bond can only be pledged by the owner and must have sufficient value to cover the bond.

Bond Forfeiture -This procedure applies to both cash and surety bail bonds. (IC § 19-2927). If a party fails to appear, the court may order the deposited bond forfeited after proper notice. The clerk shall **NOTE IN THE MINUTE ENTRY THE DATE AND TIME OF THE ORDER OF FORFEITURE BY THE COURT** and shall mail notice within 5 days of the forfeiture for failure to appear to the last known address of the person posting bail; a failure to give timely notice shall exonerate the bail. The bonding company or the posting party has 180 days to locate and bring the defendant to the court or the bond will be forfeited.

X. CONFIDENTIALITY /ETHICS ISSUES

A. Abuse of position occurs when a person uses their job to get something they want which they wouldn't get if they didn't have the job; or if they use their position to add a burden to someone else who wouldn't otherwise get that burden. For example, attempting to alter court records in a case which involved yourself would be an abuse of position.

B. Confidentiality refers to keeping a record or information away from everyone except those authorized to have that record or information. Specifically it refers to the judge's work product and draft decisions or opinions the court may be working on. It sometimes means that even the existence of the record is a secret. (For example the existence of an arrest or search warrant before the arrest or the search has taken place is confidential.)

C. Conflict of interest occurs when a person has a personal stake and an official duty in regards the same thing. That's why judges can't judge their own cases, or why deputy clerks shouldn't be assigned to handle a file where they (or someone close to them) is involved in the case.

D. Impropriety may occur when a person who works for the court says or does something contrary to the values, principles or rules of the Court. For example, giving out confidential information to someone who isn't authorized to receive it is an impropriety. Expressing bias or prejudice about a person involved in a court case is an impropriety. In general, any unprofessional behavior at work may be an impropriety, although sometimes it's on the level of bad manners.

XI. POST-CONVICTION / I.C.R. 35

XII. APPEALS TO SUPREME COURT: IDAHO APPELLATE RULES (I.A.R.)

-Notice of Appeal filed

-Motion for Appointment of SAPD

-Clerk prepares Certificate of Appeal, I.A.R. 23(f)

-Certificate form, I.A.R. 23(g)

-Certificate of Appeal sent to Supreme Court. Supreme Court will then notify Clerk and Court Reporter of the Due Dates for the Clerk's Record and Reporter Transcript's

-Clerk's Record, I.A.R. 27

-ready for service on parties within 30 days of the filing of notice of appeal

-forwarded to Supreme Court in accordance with I.A.R. 29

-content of clerk's record, I.A.R. 28

-Reporter's Transcript, I.A.R. 26, 26.1, 29

XIII. DISCHARGE OF DEFENDANT AND AMENDMENT OF JUDGMENT, I.C. 19-2604

-I.C. 19-2604(1)(a): suspended/withheld sentence with probation

-I.C. 19-2604(1)(b):suspended/withheld sentence with drug or mental health court

-court may set aside plea of guilty and dismiss case, or

-reduce charge to misdemeanor

-See ISTAR codes 19-2604(1)(a) or 19-2604(1)(b)

-I.C. 19-2604(2)(a): sentence suspended with retained jurisdiction and successful completion of probation

-I.C. 19-2604(2)(b): sentence suspended with retained jurisdiction and successful completion drug or mental health court and probation

-court may reduce charge to misdemeanor

-See ISTAR codes 19-2604(2)(a) or 19-2604(2)(b)

XIV. OTHER ISSUES:

- How to handle pro se litigants and correspondence from inmates

- How to handle KITES from the jail (inmate requests)