

CLERK OF THE DISTRICT COURT MANUAL

SECTION 3.0 MISDEMEANORS

Revised October 2006

3.1 DEFINITION OF A MISDEMEANOR

Misdemeanors include all offenses where the possible penalty is greater than \$100.00 but does not include those punishable by death or imprisonment in the state prison. I.C. § 18-111. Except in cases where a different punishment is prescribed in the Idaho Code, most offenses declared to be a misdemeanor are punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000), or both I.C. § 18-113. However, some misdemeanors are punishable by imprisonment in a county jail for up to a year. Misdemeanors may be heard by a magistrate or district judge, but are usually heard by a magistrate. I.C.R. 2.2.

The Idaho Misdemeanor Criminal Rules (I.M.C.R.) and many of the Idaho Criminal Rules (I.C.R.) apply to misdemeanor cases. I.C.R. 1; I.M.C.R. 1.

3.2 HOW INITIATED

1. The defendant may be issued a uniform citation by a law enforcement officer, but not necessarily arrested. I.M.C.R. 3 and 5. The officer will note on the citation the date, or range of dates, that the defendant must appear.
2. A person may be arrested by a police officer during or after the commission of a crime. I.C. § 19-603. The officer will then either issue a uniform citation or prepare an affidavit of probable cause. The defendant is then booked and released on bond or held in jail. The original citation or affidavit of probable cause is then forwarded to the Court and copies of the same are forwarded to the prosecuting attorney.
3. The prosecuting attorney may file a formal complaint, signed under oath, stating the charge(s) against the defendant. I.C.R. 3. Upon filing, the prosecutor may ask that a summons be issued for a date certain for the defendant to appear. I.C.R. 4(b). Alternatively, the prosecutor may provide sworn testimony in support of the charge(s) and request a warrant of arrest. I.C.R. 4(a). A summons is the preferred method. I.C.R. 4(c).

3.3 RECEIPT OF COMPLAINT OR CITATION

The involvement of the court in the processing of a misdemeanor begins with the filing of a complaint or citation.

Note: The court may be aware of the defendant and alleged charge prior to filing through an indication that bond was posted or the presence of the name of the defendant on a jail list, but the complaint or citation must be filed to begin court proceedings.

Clerical Duties:

1. File stamp the complaint/citation.
2. Open case in ISTARs and enter appropriate information, the filing date of the case in ISTARs should match the date stamped on the complaint/citation and may need to be back dated if the paperwork was received on an earlier date.
3. If a warrant for arrest is provided, a probable cause hearing must be held, at which time the Judge will determine whether probable cause exists for issuance of the arrest warrant. If the warrant is signed by the judge enter warrant information in ISTARs. If no warrant is provided schedule arraignment hearing and issue summons.
4. Upon return of warrant enter warrant return in ISTARs and schedule hearing. (Hearing must be held within 24 hours or one working day, if the defendant is in custody).
5. If a Bond is posted, file any bond paperwork and enter the bond in ISTARs; schedule hearing and send out notice of hearing.
6. If the defendant is not in custody the clerk will Schedule arraignment/appearance date in ISTARs as provided on the citation and enter any bond information in ISTARs; if a bond has been posted.
7. Optional: Print judgment form and subject history along with the "Notification of subsequent penalties" forms for DUI or DWP to place in file (history is used for judge's information only and judgment form and notification forms are in place when the defendant is sentenced). Also some counties may request record checks from Sheriff's office on non-arrests.

3.4 APPEARANCE BY DEFENDANT/PROCESSING BY CLERK

The defendant must appear before the **clerk** on or before the appearance date to enter a plea. I.M.C.R. 6(a). If the defendant prefers, he or she shall have the right to appear before the Court to enter a plea. I.M.C.R. 6(b). If the defendant requests additional time before entering a plea, the clerk shall continue the case with a Continuance Notice. I.M.C.R. 6(a)(1). The form for this Notice is set forth in I.M.C.R. 6(e)(2). If the defendant enters a plea of Not Guilty, the clerk shall issue a Trial Date Notice. I.M.C.R. 6(a)(2). The form for this Notice is set forth in I.M.C.R. 6(e)(1). If the defendant wishes to enter a plea of guilty, then there are two options. First, if the clerk is authorized by

I.M.C.R. 14 to **accept** the written plea, the clerk shall do so and enter judgment against the defendant according to the amounts set forth in I.M.C.R. 13(a) or (b). Second, for all other cases not covered by I.M.C.R. 14, the defendant may **file** a guilty plea with the clerk, but must appear before the judge for it to be **accepted**. I.M.C.R. 6(a)(3). The Defendant may also appear, plead and have judgment entered through an attorney. I.M.C.R. 6(d). The defendant may make payment in full or sign a Deferred Payment Agreement to make payments according to the form set forth in I.M.C.R. 8.

Clerical Duties – Continuance:

1. Issue Continuance Notice form with new date, give to defendant and send copy to prosecutor.
2. Note defendant's appearance and schedule new appearance date in ISTARS.

Clerical Duties – Not Guilty Plea:

1. Schedule next hearing depending on local practice for pre-trial, jury trial.
2. Send notice of the hearing to the defendant and the prosecutor (along with a copy of the citation).

Clerical Duties - Guilty Plea accepted by Clerk under I.M.C.R. 14:

1. Make sure the plea can be accepted under I.M.C.R. 14.
2. Have the defendant sign the back of the citation, or separate form per local practice, noting the wish to plead guilty.
3. Complete Judgment (either on back of citation or on separate judgment form).
4. Enter the finding of guilty and assess the fines and fees in ISTARS.
5. Collect fine and give defendant a receipt, or have defendant sign Deferred Payment Agreement.
6. Give copy of judgment (and Deferred Payment Agreement, if any) to defendant and send copy to prosecutor.
7. Upon entering the disposition and payment for the final Charge on the case, allow ISTARS to close the case.

Clerical Duties – Guilty Plea filed with clerk but Judge must accept:

1. Send defendant into court for plea (or give date to re-appear for plea and sentencing);
2. Once plea is accepted by judge and sentence is imposed, follow steps 3 through 7 above.

3.5 PROCESSING BY COURT

If the defendant elects to enter a plea in Court, or is required to appear in court for a plea to be accepted, then the matter will proceed as follows:

Arraignment:

The arraignment is to be held within 24 hours of arrest if the defendant is in custody, excluding Saturdays, Sundays and court holidays. I.C.R. 5(a). For non-custody defendants, arraignments are scheduled according to local practice.

The purpose of the arraignment is to inform the defendant of the charges, the maximum possible penalties and his/her Constitutional and statutory rights. I.M.C.R. 6(c). The defendant may enter a plea of guilty at this time. If so, he/she may be sentenced at that time or at a subsequent sentencing hearing. I.M.C.R. 6(b). The defendant may also plead not guilty. If he pleads not guilty, a pre-trial conference and/or jury trial will be set, or a pre-trial conference and/or court trial **if** the defendant waives his right to a jury trial **and** the prosecutor consents in open court. I.C.R. 23. It is also determined whether or not the defendant desires to be represented by an attorney. Many courts require the defendant to complete a financial statement, which outlines the defendant's assets, job status, and financial situation to assist the judge in determining indigence. He may request a public defender who will be appointed if the individual is indigent. I.C. 19-852. A judge may order another hearing for entry of plea, if the defendant is not represented by counsel, and counsel is requested. Additionally, the defendant's custody status and bond or conditions of release are also reviewed. At this time, the judge may also order a change in the defendant's custody status. Otherwise the case is set for a pre-trial, court trial, or jury trial.

Clerical Duties – Guilty Plea at Arraignment:

1. If defendant is not sentenced immediately, set sentencing hearing, issue Notice and any other orders for sentencing, send copies to defendant (or his attorney) and the prosecutor; schedule sentencing hearing in ISTARs.
2. Complete Judgment (either on back of citation or on separate judgment form).
3. Enter the finding of guilty and assess the fines and fees in ISTARs.

4. Collect fine and give defendant a receipt, or have defendant sign Deferred Payment Agreement.
5. Give copy of judgment (and Deferred Payment Agreement, if any) to defendant and send copy to prosecutor.
6. Upon entering the disposition and payment for the final Charge on the case, allow ISTARS to close the case.

Clerical Duties – Not Guilty Plea at Arraignment:

1. If a public defender is appointed, add attorney's name to defendant's screen in ISTARS, prepare Order Appointing Public Defender, file stamp and send to public defender along with a copy of the complaint or citation and any other orders entered or notices of hearing.
2. Schedule pre-trial and/or trial date in ISTARS.
3. Issue Trial Date Notice form and send copy to defendant (or his attorney) and prosecutor (and jury commissioner if jury trial, according to local practice).
4. Prepare commitment order or release order (if needed) and send to parties and sheriff.

Pre-trial Conference and Trial:

Prior to trial, the defendant with his attorney and the prosecutor may appear before the judge to determine whether or not a plea agreement may be reached. If a plea agreement is reached, the defendant may be sentenced immediately or a sentencing hearing may be set in the future. If not, the matter remains on the trial calendar. At the trial, the defendant can be convicted or acquitted (found not guilty), the case could be dismissed for various reasons, or there could be a mistrial requiring a new trial at a later date.

Clerical Duties:

1. If a plea is entered at the pre-trial conference, follow procedures for Guilty Pleas above.
2. If convicted at trial, file the verdict form (if jury) and follow procedures for Guilty Pleas above.
3. If acquitted or the case is dismissed, file stamp Order Of Dismissal and file, send copies to both parties, enter dismissal in ISTARS and close out file;
4. If mistrial is ordered by judge, file stamp order, send copies to parties, schedule new trial date in ISTARS and send Notice to both parties.

3.6 FORFEITURE OF BOND FOR TRAFFIC OFFENSES

When a person has received a written uniform misdemeanor traffic citation, summons or complaint containing a notice to appear before a magistrate, the prosecuting attorney and the defendant may concur that it is in the best interest of justice for the defendant to post and forfeit an amount of bond agreed upon by the parties. The court shall dismiss the charge. When bond is forfeited under the provisions of this statute, no violation points shall accrue. A forfeiture of bond under the provisions of this subsection shall not be recorded as a conviction, but the proceeds of the bond shall be distributed as court costs and fines as though there were a conviction. I.C. § 49-240(1). Some prosecutors do not do this. Bond forfeitures are not available for certain charges (DWP, DUI, Aggravated DUI, Reckless and Inattentive Driving), or infractions, **unless** they are amended to an appropriate misdemeanor charge. I.C. § 49-240(2).

Bond forfeitures are to be distributed in the same manner as a fine, after court costs are deducted. I.C. § 19-4705.

Clerical Duties:

1. File stamp citation and open case in ISTARs.
2. Enter cash bond and issue receipt.
3. **Do not** enter a plea for the charge.
4. Enter the case disposition finding as dismissed.
5. Enter the appropriate fine amount, including court costs.
6. Convert the bond to pay the fine and costs. Do not forfeit the bond.
7. Close the case in ISTARs.

3.7 CASE DISMISSAL FOR INACTIVITY

A court may dismiss a criminal case if it is determined that to do so would serve the ends of justice and the effective administration of the court's business. I.C.R. 48. Make sure the assigned judge agrees with the process of inactivity dismissals and the time period they want to use (*i.e.*, 6 months).

Clerical Duties:

1. Run ISTARs criminal case and juvenile case inactivity list.
2. Determine which cases need to be up for dismissal.

3. Provide a Notice of Proposed Dismissal to the prosecuting attorney fourteen days prior to the dismissal of the case.
4. If a response is received from the prosecutor to retain the case, forward the response to the judge for review. If the judge decides to retain the case, enter that action into the Register of Actions on ISTARS and schedule any required hearings.
5. If the judge signs an order to dismiss, recall any pending warrant, dismiss the case and close out file.