

# CLERK OF THE DISTRICT COURT MANUAL

## 5.0 SPECIFIC CRIMINAL PROCEDURES

Revised August 2007

### 5.1 WARRANTS

#### *A. Issuance of Warrants*

It is in the magistrate division that most warrants are first issued. I.C.R. 4(a). Though district court judges and even appellate court judges have authority to issue warrants under Idaho Code §§ 19-502 and 19-503, clerks of the magistrate division will have the greatest exposure to warrants and the warrant process.

No warrant may be issued unless the court has made a finding of probable cause, which can be done with sworn affidavits, sworn testimony, or both. I.C.R. 4 and 41; I.C. § 19-506; I.C. § 19-4403; I.C. § 19-4404. Warrants for the arrest of a person remain active indefinitely until served or quashed by a judge, while warrants to search a person, place or thing must be executed and returned to the issuing judge within 14 days. I.C. § 19-4412. Any time a person is arrested pursuant to a warrant, they must be brought before a magistrate within 24 hours (excluding weekends and holidays) and informed of the reason for their arrest and their rights. I.C.R. 5(b). When a warrant is served, a Return of Service must be filed with the court by law enforcement. I.C.R. 4(h)(5).

#### *B. Types of Warrants*

*Generally:* Warrants are most often encountered in criminal cases, however they may also be issued in civil cases such as child support enforcement or collection cases against a judgment debtor. Criminal cases involve a variety of warrants designed to bring people before the court to address criminal charges as well as search warrants. The procedures for working with warrants, civil or criminal, are similar. However there are some differences depending on the type of warrant used. Each of the most common types of warrants is discussed below.

*Arrest Warrants:* After a criminal Complaint is presented to a magistrate, a warrant for the arrest of the defendant may be issued. I.C.R. 4.

*Warrant of Attachment:* In some cases a judge may issue a warrant of attachment to bring a person before the court to answer to a charge of contempt of court for failure to obey a court order – civil or criminal. I.C. § 7-604.

*Fail to Pay Warrant:* A fail to pay warrant is a type of warrant of attachment. With this type of warrant, the judge may authorize the defendant to pay a specified amount of money, in full, (usually the amount he/she failed to pay) and the warrant will be dismissed and he/she need not appear any further. I.C.R. 46(d).

*Bench Warrants:* This type of warrant is typically issued when a criminal defendant who has posted bail fails to appear for a court proceeding. I.C. § 19-1504.

*Search Warrants:* Search warrants authorize law enforcement officers to search a person, place or thing and seize an item that is contraband or evidence of illegal activity, or a person named in an arrest warrant. I.C.R. 41.

*Agents Warrants:* The agents warrant is a warrant issued by a parole or probation officer to arrest a parolee or probationer or person under drug court or mental health court supervision. When the defendant is arrested the parole and probation officer is required to notify the court of the arrest at once (I.C. § 20-227).

### ***C. Disposition of Warrants***

#### Clerical Duties – all warrants except search warrants and agents warrants:

1. Judge issues warrant.
2. Enter warrant in ISTARs under bench or arrest warrant tab and place a copy in the file.
3. If warrant is not provided, print the warrant.
4. Deliver signed warrant to appropriate law enforcement agency.
5. When the Return of Service is delivered to the court, file stamp and file along with the original warrant (make sure the original warrant is with the return).
6. When Return is filed, go to the appropriate warrant tab, update ISTARs.
7. Notice of the return of service of an arrest warrant for a probation violation must be served by the court upon counsel of record if counsel has not withdrawn from representation pursuant to Idaho Criminal Rule 44.1.

#### Clerical Duties – search warrants:

1. Judge issues search warrant.
2. If issued in connection with a pending criminal case, file affidavit(s) in file and keep copy of search warrant in file. If issued before a criminal case is opened, keep copy of warrant and supporting affidavit(s) in central file according to local practice.
3. When the return is made to the issuing magistrate, file in criminal file (if there is one) and make appropriate entries in ISTARs, or file in central file according to local practice.

#### Clerical duties – agents warrants:

1. File stamp agents warrant and enter in ROA.
2. The deputy clerk who receives the warrant should notify the presiding judge promptly of the arrest, who will provide further instructions.

**Note:** The prosecutor should replace the agents warrant with a bench warrant within 72 hours.

Warrants become inactive in a number of ways. Upon being served they are returned to the court with a completed return of service. Sometimes a judge will dismiss or quash a warrant. When this happens it is important that the original warrant be retrieved and placed back in the court file so it does not accidentally get served. As a clerk, the best way to know a warrant has been inactivated is to get the original warrant back into your possession. If a warrant is served, quashed, or dismissed, the original should be returned to the court file and some indication "QUASHED" or "DISMISSED", should be made on the face of the warrant that it has been disposed of. ISTARs should also be updated.

## **5.2 BAIL AND BAIL BONDS**

Bail (sometimes referred to as “bond” or “bail bond”) is an amount accepted by the court in exchange for a criminal defendant’s release from custody until the case is completed. I.C. § 19-2901. The primary purpose of bail is to assure that a defendant will attend all required court appearances. I.C. § 19-2902; I.C.R. 46(a) and (b). Any person charged with any criminal offense is entitled to post bail, including an offense punishable by death, if allowed by the court; I.C.R. 46(a). This security can be cash, money order or check, real property, or surety bond. See M.C.R. 13(c).

### ***A. 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 fines, fees, and court costs owed by the defendant. I.C. § 19-2923.

#### Clerical Duties:

1. Enter bond in ISTARs.
2. Collect the money and give receipt to the person posting the bond.

### ***B. Surety Bonds***

A surety bond is an agreement made between a person and a bondsman. The bondsman agrees to post a bond in the amount of bail set by the court so the defendant can be released from jail. In doing so, the bondsman is agreeing to pay the full amount of the bail to the court if the defendant fails to appear. This agreement is backed by an insurance company contract signed by the person and the bondsman on behalf of the insurance company. Only a person who has been licensed by the State Department of Insurance may post a surety bond.

#### Clerical Duties:

1. Receive and file stamp the bond, verify the amount submitted is correct.
2. Enter the bond in ISTARs.
3. File the bond in the case file.

### ***C. Property Bonds***

A property bond is a pledge of real property to secure the appearance of the defendant. A property bond can only be pledged by the owner of property within the county where the action is pending, and must have sufficient value to cover the set amount of bail. This method may only be used if a magistrate approves and accepts the bond. M.C.R. 13(c)(4).

#### Clerical Duties:

1. The property bond or a request for hearing on a property bond will be submitted.
2. The property bond has to be approved by the judge. If the judge requires a hearing, set the case for hearing and send out a notice of hearing to all parties.
3. If approved by the judge, a release order or copy of the court's minutes shall be issued to the jail for the defendant's release.
4. Enter the bond into ISTARs.
5. At the judge's instruction, a certified copy of the property bond needs to be recorded in the Recorder's Office in order to have a lien placed on the property. File proof of recording in court file.
6. While the case is pending, it is handled like any other bond, including bond forfeiture notices.

**Note:** The Administrative District Judge may authorize persons other than the clerk (typically law enforcement officials) to receive bonds when the clerk's office is closed or not convenient (M.C.R. 12(a)). These authorized persons receive bonds and issue receipts (M.C.R. 12(b)). They then give the bonds to the clerk, who must ultimately receive the bail for deposit. I.C.R. 46(d).

**Note:** If you receive a bond on an out-of-county warrant, it is important that you immediately notify that county a bond has been posted and forward the bond and the paperwork to the county where the warrant originated.

### ***D. Bond Forfeiture / Failure To Appear / Revocation / Readmittance / Reinstatement***

If a defendant fails to appear, the court may order the deposited bond forfeited and may issue a warrant for the defendant's arrest. I.C.R. 46(e)(1). The clerk shall mail notice within 5 working days of such forfeiture to the last known address of the person who posted the bail. I.C.R. 46(g); I.C. §§ 19-2927 & 19-2929. The party who posted the bail then has 180 days to locate and bring the defendant to the court. If this is not done, then the entire cash bond is paid to the court or, in the case of a surety bond, the bondsman must pay the full amount of bail to the court. If the person does not pay the appropriate amount, the Prosecuting Attorney may file an action to collect it. I.C. 19-2928. Failure

by the clerk to provide proper and timely notice shall result in the person who posted the bail being discharged and/or exonerated. I.C.R. 46(g); I.C. §§ 19-2927 & 19-2929. This means the court loses the security and assurance it had for the appearance of the defendant and greatly reduces the likelihood of the defendant being apprehended in a timely fashion. **Note:** It is very important that this information is sent out in a timely fashion.

Clerical Duties:

1. Within 5 working days of the order of the court forfeiting bond, send notice of forfeiture to the bonding company or the party posting the cash bail.
2. After the expiration of 180 days, advise bonding company to reimburse the county.
3. If forfeiture is not received by 5:00 p.m. of the 180th day, refer to your local practice for collection.

If the Court reinstates the bond within seven (7) days of forfeiture, no written permission is needed from the person posting bond.

If the Court reinstates the bond after seven (7) days of forfeiture, written permission is needed from the person posting bond.

Clerical Duties:

1. Provide written notification to the person posting bond that the bond has been reinstated.
2. File stamp written notification and enter into ROA.
3. Remove the notice of forfeiture date in ISTARs and uncheck the “FTA” box on the bond screen.

**Note:** Readmittance to bail means an order from the court readmitting the defendant to bail (again allowing the defendant to be released on bail) following an order of revocation or recommitment of the defendant. I.C.R. 46(e)(3) and (4), and 46(f), and I.C. § 19-2934.

**Note:** Revocation of bail by court order, a.k.a. recommitment of defendant after bail. Recommitment or revocation of bail means the court which originally admitted the defendant to bail may thereafter order the bail bond revoked and the defendant arrested and jailed if the defendant has breached one or more conditions of bail, such as failure to appear. I.C.R. 46(e)(1), (2), and (3), and I.C. § 19-2930. Once the bail bond has been revoked, the bail bond may be exonerated.

**Note:** Extension / Setting Aside Forfeiture: The Court has no authority to extend the 180 day forfeiture period. *State. v. Vargas*. However, the court may set aside the forfeiture and reinstate the bond upon good cause shown. I.C.R. 46(e); I.C. § 19-2927.

### ***E. Exoneration***

Exoneration means a court order directing the release and discharge from liability of the person posting the bond.

After a case is disposed of, the judge should order any bond deposited exonerated. The person posting the bail may also be exonerated if the defendant is surrendered to the sheriff at any time while the case is pending. I.C. 19-2924(2). If the defendant appears before the court within 180 days of the forfeiture, the court shall rescind the forfeiture and exonerate the bond. Exoneration also occurs when the clerk fails to timely send a Notice of Forfeiture when the defendant fails to appear. I.C.R. 46(g); I.C. §§ 19-2927 & 19-2929. This means the person who posted the bond is discharged from liability and, in the case of a cash bond, is entitled to receive their money back. I.C.R. 46(g); I.C. § 19-2927. Thus, it is important that the Notice of Forfeiture is timely sent.

#### Clerical Duties:

##### *Cash Bond:*

1. File Order (if there is one) exonerating the bond.
2. Indicate exoneration on the bond screen in ISTARs.
3. ISTARs will issue a "Request for Disbursement" that will need to be forwarded to the auditor's office.

**Note:** The cash bond will be returned to the person posting per local practice.

##### *Surety Bonds:*

1. File Order (if there is one) exonerating the bond.
2. Indicate exoneration on the bond screen in ISTARs.
3. Return original surety bond or report disposition of bond to the bonding company per local practice.

##### *Property Bonds:*

1. File Order (if there is one) exonerating the bond.
2. Indicate exoneration on the bond screen in ISTARs.
3. The Order of the Court needs to be taken to the Recorder's office to be recorded, thereby releasing the lien on the property.

### ***F. Conversion***

After a case is disposed of, the judge may order any cash bail deposited converted to pay fines and fees. I.C. § 19-2923.

#### Clerical Duties:

1. Indicate conversion on the bond screen in ISTARs and apply funds towards the outstanding fines, fees, and costs as ordered by the court.
2. Exonerate any unused portion of the bond. Follow the steps under "Exoneration".

### ***G. Cash Bonds Exceeding \$10,000***

Effective February 13, 1995, the Federal Government set forth rules and regulations that require state trial courts to report to the IRS bail in excess of \$10,000 cash for cases involving drug, money laundering or racketeering offenses (These offenses include IC § 18-8201, IC § 18-7804 and all Title 37 drug offenses). The purpose of this reporting is to provide Federal authorities with information that can identify those who evade taxes and those who profit from the drug trade and other criminal activities.

#### Clerical Duties:

1. Maintain a central file labeled "IRS Form 8300" for completed forms. All forms must be kept for five years.
2. Report all cash bail transactions received in excess of \$10,000.00 only for the types of cases listed above. (Cash includes currency, coin, money orders, cashiers checks, traveler's checks, bank drafts or any combination of the same.)
3. Clerks also need to report multiple cash bail transactions any time you receipt total cash payments that exceed \$10,000.00 within any twelve (12) month period for the same defendant/same case. ISTARs will automatically print a notice, warning clerks that cash bail in excess of \$10,000.00 (single or multiple payments) has been receipted and that the clerk may be required to complete the IRS Form 8300 if any offense in the case is for drug, money laundering or racketeering.
4. Make sure to capture the TIN (Taxpayer Identification Number) of the person or persons from whom you receive the cash and the person or person on whose behalf the bail is being posted, if the bail is being posted on the behalf of another person or persons. The TIN for an individual is their social security number. For corporations, partnerships and estates, the TIN is the employer identification number. You do not have to report the TIN of a non-resident alien or foreign organizations.
5. The Clerk has fifteen (15) days after receipt of the cash bail to complete and mail IRS Form 8300. The original form must be mailed to the IRS with a copy to the Idaho U.S. Attorney. It is recommended that a copy be retained in the case file as well as the "IRS Form 8300" central file. It is recommended that you include a copy of the complaint, information or indictment, with IRS Form 8300 so that the IRS can determine the exact offense as filed by the county prosecutor. There are civil penalties for failing to comply.

a. Mail Original Form to:

Internal Revenue Service  
Detroit Computing Center  
PO Box 32621  
Detroit, Michigan 48232

b. Mail a copy to:

U.S. Attorney-District of Idaho  
Washington Group Plaza  
800 Park Boulevard, Suite 600  
Boise, Id 83712-9903

6. If cash bail was taken by a law enforcement agency or any other agency authorized by the court to receive bail, we recommend that you advise them of the requirements as set forth in this section. Make sure that they have copies of IRS Form 8300 or the number to call to obtain those forms. If the law enforcement agency fills out this form, retain a copy in the case file and the "IRS Form 8300" central file. (Additional forms are available by calling the IRS at 1-800-829-3676)
7. Each January, the clerk is required to mail a written statement to each person posting bail whose name is set forth on IRS Form 8300 on or before January 31st of the year following the year in which the cash was received.

Minimum information needed to complete IRS Form 8300:

- a. Name of person posting bail
- b. Social security number
- c. Date of birth
- d. Address
- e. Occupation
- f. Whether or not this transaction is on behalf of another person
- g. If so, name(s) of other person(s)
- h. Case number
- i. Description of Identification and number



- j. Identification issued by
- k. Date cash received and total
- l. Type (currency, cashiers check, money order, draft, traveler's check and amount of \$100 bills or higher.

### **5.3 WITHHELD JUDGMENTS AND EXPUNGEMENTS**

#### ***A. General Principles / Definitions***

A withheld judgment is a form of judgment used when a defendant pleads guilty, but the court does not enter a judgment of conviction. Instead, the judge “withholds” the conviction and places the defendant on probation. The final effect is that the withheld judgment is generally **not** considered a criminal conviction, provided the defendant complies with all terms of probation, at which time the case can be dismissed.

A withheld judgment is often referred to as “expungement” of the defendant’s criminal record. However, the term “expungement” is misleading. “Expunge” means to “erase or strike out” or “to obliterate completely; annihilate.” See, *The American Heritage Dictionary, 2nd Ed.*, *Black’s Law Dictionary, 6th Ed.*, defines “expunge” as “To destroy; blot out, obliterate; erase, efface designedly; strike out wholly. The act of physically destroying information – including criminal records – in files, computers, or other depositories.” Generally, there is no provision in Idaho law allowing expungement of one’s criminal record except for a dismissal following a withheld judgment. See, *State v. Dorn*, 140 Idaho 404, 94 P.3d 709 (Ct. App 2004). Even with a withheld judgment, the court records are not erased or destroyed and no other records of law enforcement or other agencies are erased or destroyed. Thus, a withheld judgment is not an “expungement” of the defendant’s criminal record.

The Idaho code does provide for “expungement” of records in two specific areas. The Juvenile Corrections Act provides for true expungement of court records, law enforcement and other agency records, and any other records available to the public of a juvenile record, after a hearing, except for very serious crimes. I.C. § 20-525A. (See Juvenile section for further information). Also, information regarding sexual offenders may be expunged from the central registry after a hearing and clear and convincing evidence that he or she is no longer a risk to re-offend. I.C. § 18-8310. (See Felony section for further information).

#### ***B. When the Court can grant Withheld Judgment***

Withheld judgments are authorized in felony and misdemeanor cases by the Idaho Code and Court Rules. I.C. § 19-2601(3), M.C.R. 10. There are some crimes for which a withheld judgment is not allowed. I.C. § 19-2604. Otherwise, the judge has the discretion of whether to grant a withheld judgment or not. Before granting such a

judgment, the judge is required to consider several factors listed in the Misdemeanor Criminal Rules. M.C.R. 10(a). A judge cannot grant a second or subsequent withheld judgment unless there are extraordinary circumstances. M.C.R. 10(b), (c). The magistrate court is required to use an Order Withholding Judgment in the form set forth in the Misdemeanor Criminal Rules. M.C.R. 10(d). A withheld judgment may not be granted in an infraction case.

Clerical Duties:

1. File stamp judgment (see M.C.R. 10(d) for form of judgment).
2. On the Disposition screen in ISTARs enter the finding of guilty withheld, and the number of years/months/days applicable along with the disposition date.
3. Enter all other sentencing information on the charge, i.e. retained jurisdiction, fines, license suspension, probation and confinement just as you would with any other finding.
4. Place the original in the file and distribute copies to the defendant and attorneys if requested.

**C. *Effect of Withheld Judgment***

Upon application of the defendant at the end of the period of time determined at sentencing for the withheld judgment (usually the same amount of time as probation for the charge), and upon satisfactory showing that the defendant has complied with the terms and conditions of probation, the court may terminate the sentence or set aside the plea of guilty or conviction and finally dismiss the case and discharge the defendant. I.C. § 19-2604(1). Such a dismissal restores the defendant his or her civil rights.

Clerical Duties:

1. File stamp Order terminating sentence, setting aside plea, and/or dismissing case.
2. From the charge tab in ISTARs go to the disposition tab
3. On the disposition tab, locate the withheld results box.
4. Select “dismissed” in that box and enter the withheld results date (or the date of the order terminating sentence, setting aside plea, and/or dismissing case).
5. This will automatically change the finding of the court from guilty/withheld to dismissed by court. It will also enter a check in the box next to modified sentence and enter a date in that box. This process will “force” ISTARs to report the dismissal of the charge to all agencies who originally received the conviction.
6. Send copies to parties (and ITD?).

**D. *Revocation of a withheld judgment.***

On some occasions a withheld judgment may be revoked by the court for any number of reasons including but not limited to:

1. The court determines that the defendant has been granted a previous withheld judgment in the past.
2. The defendant violates the probation on the case and the sentence is modified and the withheld is revoked and a different sentence is imposed.

Clerical Duties:

1. File stamp Order Revoking Withheld Judgment.
2. From the charge tab in ISTARs go to the disposition tab
3. On the disposition tab, locate the withheld results box.
4. Select revoked and enter the withheld date.
5. This will enter a check in the box next to modified sentence and enter a date in that box. This process will “force” ISTARs to report the new finding or conviction of the charge to all agencies who originally received the withheld conviction.
6. Change the finding from guilty/withheld to guilty.

***E. Expungement of a Record***

Idaho law does not authorize expungement of a criminal record, other than the Juvenile Corrections Act (I.C. § 20-525A) and sex offender registration requirements (I.C. § 18-8310). See, *State v. Dorn*, 140 Idaho 404, 94 P.3d 709 (Ct. App 2004).

**5.4 NO CONTACT ORDERS IN CRIMINAL CASES**

***A. Issuance***

When a person is charged with an offense under IC § 18-901, IC § 18-903, IC § 18-905, IC § 18-907, IC § 18-909, IC § 18-911, IC § 18-913, IC § 18-915, IC § 18-918, IC § 18-919, IC § 18-6710, IC § 18-6711, IC § 18-7905, IC § 18-7906 or IC § 39-6312, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. I.C. § 18-920(1). A no contact order shall be in writing and must be personally served upon the defendant. I.C.R. 46.2(a). No Contact Orders must have a specific termination date when issued. I.C.R. 46.2(a)(3). Each judicial district shall adopt by administrative order a form for no contact orders for that district. I.C.R. 46.2(a). A no contact order may be imposed by order of the court or by an Idaho criminal rule, as a condition of bond. I.C. § 18-922(1). No bond shall be set for violation of a no contact order until the person charged is brought before the court which will then set bond. M.C.R. 13(b).

Clerical Duties:

1. File stamp the No Contact Order and enter into the ROA;
2. Click on the Order tab on the defendant portion of the case screen.
3. Click new
4. Enter the order type

5. In the Comment box, type in the name(s) of the persons who the defendant is not to contact, and any other pertinent information that would be helpful at a glance to the clerk or law enforcement.
6. Enter the issued date (date judge signed the order) and expiration date. Make sure the defendant is served personally if present; otherwise send a copy to the sheriff for them to serve. Send copies to the prosecutor and defense attorney per local protocol.
7. When you receive proof of service of the order, enter the service date as the status date and change the status to “served”.
8. If the order is returned unserved, change the status to unserved and enter the status date.
9. The expiration datebox, will automatically calculate the expiration date field for you.
10. For every no contact order issued, modified, terminated or when the case is dismissed, send a copy to the sheriff's office IMMEDIATELY for entry into ILETS.
11. If the case is dismissed before the termination date of the no contact order, the order is also terminated and the sheriff must be notified in writing IMMEDIATELY.

NOTE: The clerk should have a supply of no contact orders, orders modifying and orders dismissing on the bench for the judge to fill out in open court.

### ***B. Modification/Termination***

A No Contact Order can only be modified or terminated by a judge. I.C.R. 46.2. Either the defendant or the prosecutor can request the modification or termination of a No Contact order. In addition, the alleged victim may also file a written request to modify or terminate such an Order. I.C.R. 46.2(b). Forms for this must be available from the clerk. When the alleged victim makes such a request, a hearing must be held within 14 days and the victim and all parties must be given notice of the hearing.

#### Clerical Duties:

1. File stamp motion or request to modify or terminate and enter in ROA;
2. File stamp notice of hearing from defendant or prosecutor and calendar in ISTARs for the date provided;
3. If the alleged victim is making the request, file stamp it and set for hearing within 14 days and calendar in ISTARs;
4. If the order is modified, a new one should be signed by the judge.
5. Repeat steps 2-9 above.
6. If the order is terminated, the judge should sign an order of termination. The clerk must immediately send a copy to the sheriff and all parties, and in the order tab select the disposition status of vacated, and enter the date the order was signed as the disposition date.

NOTE: The clerk may mark on the outside of the file folder when the no contact order was issued, modified, and dismissed per local practice.

NOTE: A no contact order issued under the provisions of I.C. § 18-920 is not to be confused with a domestic violence protection order under I.C. § 39-6306; however, a violation of a domestic violence protection order may result in a no contact order issued under the provisions of I.C. § 18-920.

## **5.5 REFUSAL TO SUBMIT TO ALCOHOL OR DRUG TESTING (BAC)**

When someone is stopped for a DUI and they refuse to submit to an evidentiary test for the presence of drugs or other intoxicating substances, their driver's license will be seized by the peace officer and forwarded to the court, and a temporary permit for 30 days may be issued. I.C. § 18-8002(4)(a). A civil penalty will also be imposed of two hundred fifty dollars (\$250) at the time of the refusal. I.C. § 18-8002(4)(a).

The defendant has 7 calendar days to file a written request to the court for a hearing to show cause why he refused to submit to or complete the evidentiary testing. I.C. § 18-8002(4)(b).

If the defendant files a written request for a hearing, the clerk shall set a hearing within 30 days from the date of the refusal. This hearing could be extended by the judge if good cause is shown. I.C. § 18-8002(4)(b).

If the defendant does not file a written request with the court for a hearing or does not prevail at the hearing, his drivers license will be suspended for one (1) year if this is his first refusal and two (2) years if this is his second refusal within five (5) years, and the two hundred and fifty dollar (\$250) civil penalty will be sustained by the court. I.C. § 18-8002(4)(c). The defendant then has 30 days to pay the penalty from the date of refusal, unless extended by the court. I.C. § 18-8002(11).

If the defendant prevails at the hearing, his/her license shall be returned and the BAC case closed.

### Clerical Duties:

1. Accept and file stamp the paperwork as submitted by the peace officer and open the case in ISTARs using the civil filing code 9SBA.
2. ISTARs will automatically assign a civil case number which will be printed on the receipt. Write the case number on all paperwork filed.
3. Enter the defendant's name on the civil case as a subject on the case.

4. Set a reminder (or a time limit), which will report the case after 7 days from the date of the refusal for further processing. (see #9)
5. Enter a money due date 30 days from the date of the refusal.
6. Enter the civil penalty of two hundred and fifty dollars for the case.
7. If the subject files a written request for hearing within 7 days, set the hearing within 30 days from the date of the refusal. File stamp the request and notice of hearing, enter in ROA and send notices.
8. If good cause is shown and the case is to be extended for up to an additional 30 days, make sure that the original money due date is changed to the date of the hearing. Reset the hearing in ISTARs, file stamp the notice, enter in ROA and send notices.
9. After the hearing, check the box on the subject tab which indicates that the hearing was held.
10. If the subject does not submit a written request for hearing within 7 days, the clerk will indicate in ISTARs that the license is suspended, by checking that box on the subject tab, and entering the license suspension date as well as the license suspension length of time (1 year or 2 years - you will use the reminder or time limit report to determine the time limit dates as per # 4).
11. If the subject does not prevail at the hearing the clerk will indicate in ISTARs that the license is suspended, by checking that box on the subject tab, and entering the license suspension date as well as the license suspension length of time 1 year or 2 years. (You will use the reminder or time limit report to determine the time limit dates as per # 4.)
12. If the subject does prevail at the hearing, “adjust off” the civil penalty, and enter a civil disposition in favor of the subject and return the license.
13. After disposition enter the civil disposition information on the disposition tab, and close the case.
14. If the subject does not pay the \$250 penalty, the prosecuting attorney may petition the court and seek an order imposing the penalty. I.C. § 18-8002(11). Once ordered, the penalty may be enforced as a final judgment of the court. I.C. § 18-8002(11). Additional costs may be assessed for the cost of attorney fees and interest against any person who fails to pay the civil penalty within the time prescribed. I.C. § 18-8002(11).

**Note: The court may extend the payment in full beyond the 30 days and some courts may allow monthly payments. I.C. § 18-8002(11). The clerk would indicate the extension date in ISTARs.**

***To Assess Court-Ordered Interest:***

Clerical Duties:

1. From the main menu click on Cases on the menu bar at the top;
2. Select (click on) “Batch Process” from the menu which drops down;
3. Select “Interest” from the drop down list;
4. Calculate interest for the civil cases either through today or through the end of the current month.

(The system will apply the correct amount of interest against each case.)

To add additional other costs, you will use the insert tab on the “Civil Penalty/Fees” tab and then add the fees into the appropriate line items listed.

## **5.6 VICTIM’S RIGHTS**

The Idaho Code and Idaho Constitution entitle victims of crimes specific statutory rights. I.C. § 19-5301, et seq.; Idaho Const., Art. I § 22(7). These rights may be exercised by the victim by completing a request form provided by the prosecuting attorney, which is given to the clerk. I.C. § 19-5306(2). Once the form is filed, the clerk shall notify the appropriate authorities as identified on the completed form of the victim’s request. Thereafter, notice shall be given to the victim by the appropriate agency. The victim’s address shall be kept confidential except for carrying out these provisions.

Clerical Duties:

1. File stamp and seal (to assure confidentiality) victim’s rights request form;
2. Send a copy of the request to the appropriate agency (e.g. prosecutor, sheriff, etc.).

## **5.7 EXTRADITION: PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE**

Extradition involves the process of arresting an individual found in the state of Idaho pursuant to warrants issued in another state and delivering them to that state. All extradition proceedings, from the time of initial arraignment on the out-of-state warrant through final identification hearing before the court, are official court proceedings for which a civil file must be opened and the out-of-state warrant and all other court documents must be file-stamped and entered into ISTARs.

Usually, the person is arrested by local law enforcement based upon reasonable information that the accused stands charged with a felony in another state. I.C. § 19-4514(1). When so arrested, the person must be taken forthwith before a magistrate to be advised of the reason for his arrest and his rights, including the right to have a hearing to determine if a warrant and complaint should be issued in Idaho to further detain the person and that he may be extradited to the other state. I.C. § 19-4514(2). The arrested person has the right to post bail pending the hearing. I.C. § 19-4516. If the person cannot post bail, the hearing must take place within 10 days, otherwise the hearing must be held within 20 days. I.C. § 19-4514(2). This hearing is often referred to as a “fugitive ID hearing”. The accused person may choose at any time to waive his right to a hearing and agree to return to the demanding state. This is referred to as “waiving extradition”. Most counties have a form for this purpose which must be executed on the record in the presence of the magistrate.

The purpose of the hearing is to determine whether the person arrested is the person named in the complaint and warrant from the other state and to ensure that the complaint and warrant are valid (shown by certified copies). I.C. § 19-4513. If the certified copies are provided and the court determines that the person arrested is the person named in the documents, probable cause will be found that the person committed the offense and a warrant will be issued by the Idaho court. I.C. § 19-4513(4). The person will then be arrested on the Idaho warrant and committed to jail for “such time as is necessary” to allow the accused to be arrested under a warrant from the governor. I.C. § 19-4515. The accused may still post bail, unless the charge is one punishable in the other state by life in prison or death. I.C. § 19-4516. Once the governor’s warrant is issued, the accused shall then be arrested pursuant to that warrant and shall be delivered to a duly authorized agent of the demanding state. I.C. § 19-4508.

#### Clerical Duties:

1. Upon receiving a copy of a fugitive warrant from law enforcement, or notice that an individual is being held in the county jail on an out-of-state warrant, the clerk shall open a civil file, file-stamp the out-of-state fugitive warrant and file it, and set the matter for court arraignment as soon as possible (generally the next available arraignment session, but not more than 24 hours);
2. If the person executes a waiver of extradition, it should be file stamped and an entry made in ISTARs. If the judge sets a time for the demanding state to pick up the person (often about 14 days), it might be helpful to set the case for a status hearing the day after that period will run in case the accused is not picked up so that the judge may make a further determination regarding additional time. You may close the case at this time;
3. If the person requests an attorney and a hearing at the arraignment, set hearing within 10 days and send order appointing Public Defender (if applicable) and notice of hearing to all parties and enter this information into ISTARs;



4. If bail is posted, process as any other bail;
5. If the court does find that the individual named in the warrant is in fact the person held and seized under the warrant of the demanding state, the court will issue a complaint and warrant for the arrest of the person for a fixed period to allow the Governor's warrant to be processed (often about 90 days). It is a good idea to set a status hearing a day or two after this period in case the governor's warrant does not arrive (this is not uncommon).
6. If the court does not find probable cause after the hearing, the person will be released and close the case in ISTARs.

## **5.8 CHANGE OF VENUE AND TRANSFERS IN A CRIMINAL CASE**

### **A. Change of Venue**

Venue refers to the place where the trial and proceedings in a criminal case occur. Generally, the prosecution and trial in a matter shall take place in the county where the alleged offense occurred. I.C.R. 19; M.C.R. 4. A change of venue involves moving a case or proceeding and its record from the county where the offense is alleged to have occurred to a different county. Either the State or the defendant may request a change in venue on the basis that a fair and impartial trial cannot be had. I.C.R. 21(a). The defendant may request a change of venue for the convenience of parties and witnesses, and in the interest of justice. I.C.R. 21(b). There is no change of venue for infractions (which are not really criminal in nature). I.I.R. 7(b).

If a change of venue is granted to another county within the same judicial district, the original trial judge shall continue to preside over the case, unless the Administrative District Judge assigns it to a different judge. I.C.R. 21(c). If the change of venue is granted to a county outside the judicial district, the matter is referred to the Administrative Director of the Courts for assignment by the Supreme Court. The original judge may request to continue assignment on the case, but the Supreme Court will make the final determination.

**Note:** Occasionally, only the location for the trial of a case may be moved to another county for the purposes of selecting a jury or conducting a trial, but the processing will remain in the original county. In this instance, there will be no additional clerical duties.

Clerical Duties – change of venue within judicial district:

1. Enter Order for change of venue in ISTARs and send copies to all parties;
2. Send all original pleadings and papers and a certified copy of the order to the clerk of the new court in the county of new venue. This should be done by certified mail. A copy of the file should be kept;
3. Enter a finding for the charges of "other". In the "other finding" description box type in the name of the receiving county.

4. Enter the Court of new venue in ROA and close case in ISTARs.

Clerical Duties – change of venue outside the judicial district:

1. Enter Order for change of venue in ISTARs and send copies to all parties;
2. Refer the case to the Administrative Director of the Courts by sending a copy of the Order, along with any request by the judge to continue on the case, and await further instructions regarding which judge is assigned and where to send the file. The form below will assist you in making this referral;
3. When the Supreme Court sends the “Designation of Venue and Assignment of Judge”, file it in the file and send all original pleadings and papers and a certified copy of the order to the clerk of the new court in the county of new venue. This should be done by certified mail. A copy of the file should be kept;
4. Enter a finding for the charges of “other”. In the “other finding” description box type in the name of the receiving county.
5. Enter the Court of new venue in ROA and close case in ISTARs.

Clerical Duties – receiving county

1. Open a case following the procedures for criminal actions as a case transferred in from another county;
2. If transferred from within the same judicial district, then the same judge should still be assigned to the case. If from a different judicial district, then there should be an order from the Supreme Court assigning it to the Administrative District Judge.

**B. Transfers**

There are two other exceptions to the general rule that a criminal case is processed in the county where the offense occurred.

***Misdemeanor Rule 4 Transfers***

First, if the charge is a misdemeanor, at the time the citation or complaint is issued, the officer and the defendant can agree that the matter can be processed in a more convenient county. M.C.R. 4(c)(1). In addition, at any time before the entry of a guilty plea, the prosecutor and defendant may stipulate that the matter be transferred to a more convenient county, with an appearance date of not less than 14 days later. M.C.R. 4(c)(2). If the defendant appears in the chosen county and pleads not guilty, the court shall forward copies of the citation or complaint, along with any bond posted, to the court in the county where the offense is alleged to have occurred. M.C.R. 4(e).

Clerical Duties – sending county

1. If citation or complaint is received from officer after agreement to transfer, or by stipulation of parties, process as in any other misdemeanor case;
2. If the state and defendant agree to transfer to a different county, file stamp stipulation and deliver the citation or complaint, along with any bond and the stipulation, to the court to which the transfer is made, making sure it will be received in time for the appearance date. M.C.R. 4(d).
3. Close the case in ISTARS with finding type “other” and note the county to which it has been transferred.

#### Clerical Duties – receiving county

1. Open a case following the procedures for criminal actions as a case transferred in from another county;
2. Process the case as you would any other misdemeanor.
3. If the defendant pleads not guilty after the transfer, make the appropriate entry in ISTARS and forward citation or complaint, along with any bond, to the court in the county where the offense allegedly took place.
4. Close the case in ISTARS with finding type “other” and note the county to which it has been transferred.

#### ***Criminal Rule 20 Transfers***

If a defendant states in writing that he wishes to plead guilty and consents to disposition in the county where he was arrested, is held or is present, and if the prosecuting attorneys in both counties agree in writing, and if the trial court where the matter is pending approves, the case shall be transferred to the designated county for plea and sentencing. I.C.R. 20(a). If the defendant thereafter pleads not guilty, or otherwise fails to abide by the conditions of the transfer, the matter shall be transferred back to the original county. I.C.R. 20(c)

#### Clerical Duties – sending county

1. File stamp defendant’s statement and stipulation from prosecutors and enter in ROA.
2. Send all original pleadings and papers and a certified copy of the order of transfer, along with any bond, to the clerk of the receiving county. This should be done by certified mail. A copy of the file should be kept;
3. Close the case in ISTARS with finding type “other” and note the county to which it has been transferred.

#### Clerical Duties – receiving county

1. Open a case following the procedures for criminal actions as a case transferred in from another county;
2. Process the case as you would any other criminal case.

3. If the defendant pleads not guilty or otherwise fails to abide by the conditions of transfer, the judge will enter an order transferring the matter back to the originating county. Send all original pleadings and papers and a certified copy of the order of transfer, along with any bond, to the clerk of the originating county. This should be done by certified mail. A copy of the file should be kept;
4. Close the case in ISTARS with finding type “other” and note the county to which it has been transferred.

## **5.9 BUREAU OF CRIMINAL IDENTIFICATION (BCI)**

BCI maintains criminal records, fingerprints and crime statistics that aide all law enforcement agencies in detecting and apprehending criminals, promote public safety and support the justice system. They also maintain the central Sex Offender Registry, Missing Persons Clearinghouse, and AFIS (Automated Fingerprint Identification System). In addition, they coordinate the statewide collection of data for the FBI's Violent Criminal Apprehension Program (ViCAP).

> I.C. 67-3004 states that fingerprints shall be taken on anyone arrested for a retainable offense. This is the responsibility of law enforcement agencies. If the person is in custody and a felony summons or information is filed for an offense separate from the offense for which the person is in custody, the jail has to fingerprint the defendant in connection with the new offense. Also, according to > I.C. 67-3004, if the person is summonsed into court on a felony charge, fingerprints need to be done if the person has not previously been fingerprinted on that charge.

The jail is then responsible for getting the fingerprint number to the court. It may come on an arrest sheet, bailiff sheet, in-custody list, on a bond receipt, a copy of the fingerprint card, etc.

> I.C. 67-3005 requires that the clerk report the disposition to BCI. It is very important for the clerk to enter the fingerprint number into ISTARS as soon as he/she receives it, so disposition information will report to BCI when the disposition is entered. It is important to note that BCI will not enter dispositions into their system unless the person has been fingerprinted on that charge (even if the charge itself is BCI reportable).

When the disposition is reported (by ISTARS) to BCI, they will enter it into their system.

### Clerical Duties:

1. When you receive the fingerprint number, enter it into ISTARS on the defendant portion of the case screen, where it says FPC Number. The number should be a 10-digit number, starting with your county number. (i.e. a Kootenai County number might be 2800001745).

Note: It is possible to receive more than one fingerprint card for the same case, i.e. one on initial arrest, a 2<sup>nd</sup> after reporting to jail to serve the confinement portion of the sentence, even a 3<sup>rd</sup> later on for a probation violation on the original charge. It is not necessary to enter more than one FPC number per case. The original number given is sufficient.