

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO CRIMINAL )  
RULES 4, 5, 5.1, 5.3, 11, 32, 33, 35, 48, Appendix A ) ORDER  
AND ADOPTION OF NEW RULE 37 )

The Court, having received a recommendation to amend the Idaho Criminal Rules, and being fully informed as to the recommendation:

NOW, THEREFORE, IT IS ORDERED that the Idaho Criminal Rules are amended as follows:

1. That Rule 4 be amended as follows:

## **Rule 4. Arrest Warrant; Summons; Determination of Probable Cause**

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(d) Form; Transmission.

(1) Arrest Warrant. The arrest warrant must be signed by the magistrate and must: be on the Supreme Court form found in Appendix A.

~~(A) state the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;~~

~~(B) state the offense charged in the complaint; and~~

~~(C) command that the defendant be arrested and brought before the nearest available magistrate.~~

The amount of bail may be determined by the issuing magistrate and stated on the warrant at the time of its issuance.

(2) Transmission of a Warrant of Arrest. A warrant of arrest may be sent by email or by facsimile process to any peace officer or other officer serving the warrant.

(3) Summons. The summons must be signed by either the magistrate or the clerk of the court and must contain the same information as the warrant. The summons must be on the Supreme Court form found in Appendix A.

~~The summons must require the defendant to appear before a magistrate at a stated time and place and advise the defendant that if the defendant fails to appear at that time and place a warrant will issue for the defendant's arrest.~~

2. That Rule 5 be amended as follows:

## **Rule 5. Initial Appearance Before Magistrate; Determination of Probable Cause; Advice to Defendant; Plea in Misdemeanors; Initial Appearance on Grand Jury Indictment**

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(e) Advice to Defendant on Initial Appearance. At the initial appearance, the magistrate must advise the defendant of the following:

- (1) the defendant is not required to make a statement and that any statement made may be used against the defendant;
- (2) the nature of the charge or charges against the defendant;
- (3) the defendant's right to bail;
- (4) the defendant's right to counsel as provided by law;
- (5) if in a county other than that in which the offense occurred, of the defendant's right to proceed under Rule 20 of these rules;
- (6) if in the county in which the offense occurred, of defendant's right to a preliminary hearing, if provided by law, the nature of a preliminary hearing, and the effect of a waiver of a preliminary hearing, and
- (7) the defendant's right to communicate with counsel and immediate family, and that reasonable means will be provided for the defendant to do so.

In addition, the defendant must sign and submit the Supreme Court form found in Appendix A entitled "Notification of Rights (Felony)".

3. That Rule 5.1 be amended as follows:

**Rule 5.1. Preliminary Hearing; Probable Cause Finding; Discharge or Commitment of Defendant; Procedure**

(a) Preliminary Hearing. Unless indicted by a grand jury, a defendant charged in a complaint with any felony is entitled to a preliminary hearing. If the defendant waives the preliminary hearing, the waiver must be on the Supreme Court form found in Appendix A, and the magistrate must immediately file a written order in the district court requiring the defendant to answer. If the defendant does not waive the preliminary hearing, the magistrate must schedule a preliminary hearing within a reasonable time, but in any event not later than 14 days following the defendant's initial appearance if the defendant is in custody and no later than 21 days after the initial appearance if the defendant is not in custody. Time limits in this subsection may be extended with the consent of the defendant and on showing of good cause, taking into account the public interest and prompt disposition of criminal cases. In the absence of consent by the defendant, time limits may be extended only on a showing that extraordinary circumstances exist. Extraordinary circumstances include disqualification of the magistrate by the defendant pursuant to Rule 25.

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4. That Rule 5.3 be amended as follows:

**Rule 5.3. Initial Appearance on Probation Violations**

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- (c) Initial Appearance. At the arraignment on the alleged probation violation, the court must:
- (1) advise the probationer that he or she is not required to make a statement and that any statement made may be used against the probationer;
  - (2) advise as to the nature of the probation violation(s) filed against the probationer and ensure the probationer receives written notice of the alleged violation(s);
  - (3) advise that the probationer has a right to counsel as provided by law, and if requested and appropriate, appoint counsel;
  - (4) advise that the probationer has a right to communicate with counsel and immediate family, and that reasonable means will be provided for the probationer to do so;
  - (5) determine what form of release, if any, is appropriate;
  - (6) if the probationer is arrested in the county where placed on probation, set a time certain for the probationer to appear before the sentencing court;
  - (7) if the probationer is arrested outside the county where placed on probation, the court must also:
    - (A) advise that, if the probationer remains in custody, he or she will be transported and arraigned in the sentencing county within a reasonable time not to exceed 14 days, unless the time is extended on a showing of good cause;
    - (B) advise that, if the probationer posts bond, he or she will be given a date to appear before a magistrate for arraignment in the county of sentencing, where counsel will be appointed if requested and appropriate, and the probationer will be given a time to appear before the sentencing court; and
    - (C) cause the clerk to provide written notice to the clerk of the county where the probationer was placed on probation of the dates of the probationer's arrest and appearance before the court so that timely transport can be provided to the sentencing county. On receipt of the written notice, the clerk of the county where the probationer was placed on probation must provide a copy of the notice to the parties in the case.

In addition, the defendant must sign and submit the Supreme Court form found in Appendix A entitled "Notification of Rights (Probation Violation)".

5. That Rule 11 be amended as follows:

**Rule 11. Pleas.**

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(e) Plea Advisory Form. As an aid in taking a plea of guilty, the court may require the defendant to fill out and submit ~~the~~ a plea advisory form. If a plea advisory form is used it must be the Supreme Court plea advisory form found in Appendix A of these rules. In addition to the form, the court must make a record showing:

(1) the defendant understands the nature of the charge(s), including any mental element such as intent, knowledge, or state of mind;

(2) the defendant understands the maximum and minimum punishments, and any other direct consequences that may apply;

(3) the defendant understood the contents of the guilty plea advisory form, and the defendant's plea is voluntary.

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6. That Rule 32 be amended as follows:

**Rule 32. Presentence Investigations and Reports.**

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(h) Disclosure of Presentence Reports.

(1) Custody of Presentence Report. Any presentence report must be available for the purpose of assisting a sentencing court and once prepared may be released to any district judge for that purpose. After use in the sentencing procedure, the presentence report must be sealed by court order, after which it cannot be opened without a court order authorizing release of the report or parts of it to a specific agency or individual. The presentence report must, however, be available to the Idaho Department of Corrections and the Idaho Commission of Pardons and Parole so long as the defendant is committed to or supervised by the Department, and may be retained by the Department for three years after the defendant is discharged. If probation or parole supervision is transferred to another state, the Department may provide a copy of the presentence report to the supervising entity in that state. In addition, when preparing a report on a defendant, a presentence investigator must have access to previous presentence reports, including all attachments and addendums, prepared on that defendant, whether in the same case or in previous cases. The presentence investigator's own copy of the presentence report is restricted from use by all but authorized court personnel. Neither the defendant, defendant's counsel, the prosecuting attorney nor any person authorized by the sentencing court to receive a copy of the presentence report may release to any other person or agency the report itself or any information contained in it. As provided in Article 1, Section 22(9) of the Idaho Constitution, the victim has a right to read, but not to have a copy of, the presentence report. Any violation of this rule is a contempt of court and subject to appropriate sanctions.

7. That Rule 33(b) be amended as follows:

**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.

8. That Rule 35 be amended as follows:

**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 to 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.

9. That a NEW Rule 37 be ADOPTED as follows:

**Rule 37. Reimbursement 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.

10. That Rule 48 be amended as follows:

**Rule 48. Dismissal by the Court.**

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(c) **Effect of Dismissal.** An order for dismissal is a bar to any other prosecution for the same offense if it is a misdemeanor, unless the order of dismissal is due to the defendant's agreement to participate in a diversion program pursuant to Idaho Code § 19-3509, in which case the action may be refiled for failure to complete the diversion program. An order for dismissal but it is not

a bar if the offense is a felony.

11. That Appendix A be amended as follows:

APPENDIX A to CRIMINAL RULES

Rule 4(d)(1) - Warrant of Arrest (Felony) Form; Warrant of Arrest (Misdemeanor) Form

Rule 4(d)(3) - Summons (Felony) Form; Summons (Misdemeanor) Form

Rule 5(e) - Notification of Rights (Felony) Form

Rule 5.1 (a) - Waiver of Preliminary Hearing Form

Rule 5.3 (c) - Notification of Rights (Probation Violation)

Rule 11(e) - Guilty Plea Advisory Form

Rule 16(e)(2) - Request for Discovery

Rule 16(f)(3) - Response to Request for Discovery

Rule 33.1(b) - Findings of the Court in Considering Death Penalty

Rule 33.2(b) - Report on Imposition of Death Penalty

Rule 39(a) - Petition for Post-Conviction Relief

Rule 46.2 -

No Contact Order (for use when there is one or more protected person(s) with the same exceptions)

No Contact Order (for use when there are multiple protected persons with different exceptions)

Rule 54(g)(3) - Certificate of Transcription

IT IS FURTHER ORDERED, that this order and these amendments shall be effective July 1, 2019.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED, other than the addition of new forms in Appendix A. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules.

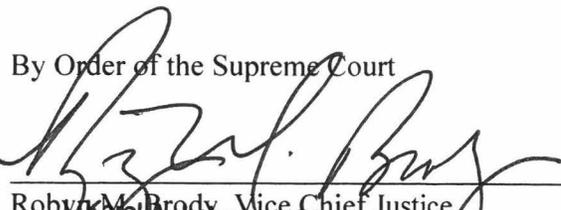
IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 14<sup>th</sup> day of May, 2019.

ATTEST:

Clerk

By Order of the Supreme Court



Robyn K. Brody, Vice Chief Justice  
Karel A. Lehrman, Clerk of the Supreme Court/  
Court of Appeals of the State of Idaho, do hereby

certify that the above is a true and correct copy of  
the Order

entered in the above entitled cause and now on  
record in my office.

WITNESS my hand and the Seal of this Court 5-14-19

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KAREL A. LEHRMAN

Clerk

By:  Chief Deputy

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF IDAHO  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

DOB: \_\_\_\_\_

Case No. \_\_\_\_\_

Warrant of Arrest (Felony)

DL #:	Gender:	Hair Color:
Race:	Height:	Weight:

To any law enforcement officer of the State of Idaho:

Information, under oath, having been presented to me on \_\_\_\_\_, and there appearing to be probable cause to believe that the following public offense(s) of Idaho Code section(s):

<u>Count</u>	<u>Statute</u>	<u>Charge Description</u>

have/has been committed, and accusing \_\_\_\_\_ thereof, you are ordered to arrest and bring the Defendant before the Court at \_\_\_\_\_, County of \_\_\_\_\_, State of Idaho, or, in the case of my absence or inability to act or if the Defendant is arrested outside of this county, before the nearest available magistrate within the judicial district where the Defendant is arrested.

BAIL: \_\_\_\_\_.

The arrest may be on any day, and at any time day or night, including inside a person's residence. I.C. § 19-607.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

RETURN OF SERVICE

I certify that I received this Warrant on the (date) \_\_\_\_\_ and served it on the defendant on the (date) \_\_\_\_\_ at \_\_\_\_\_ a.m., p.m.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed/Printed Name)

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF IDAHO  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

DOB: \_\_\_\_\_

Case No. \_\_\_\_\_

Warrant of Arrest (Misdemeanor)

DL #:	Gender:	Hair Color:
Race:	Height:	Weight:

To any law enforcement officer of the State of Idaho:

Information, under oath, having been presented to me on \_\_\_\_\_, and there appearing to be probable cause to believe that the following public offense(s) of Idaho Code section(s):

<u>Count</u>	<u>Statute</u>	<u>Charge Description</u>

have/has been committed, and accusing \_\_\_\_\_ thereof, you are ordered to arrest and bring the Defendant before the Court at \_\_\_\_\_ County of \_\_\_\_\_, State of Idaho, or, in the case of my absence or inability to act or if the Defendant is arrested outside of this county, before the nearest available magistrate within the judicial district where the Defendant is arrested.

- Bail: \_\_\_\_\_.
- Book and release on own recognizance.

The arrest shall not be made inside a person's residence between 8:00 p.m. and 8:00 a.m., unless otherwise authorized or where consent was given to enter the residence by a person with real or apparent authority. I.C. § 19-607.

- Residential execution between 8:00 p.m. and 8:00 a.m. authorized. I.C. § 19-607.

Defendant shall be transported:

- from \_\_\_\_\_ Judicial District(s) only.
- from \_\_\_\_\_ counties only.
- from any and all counties in the State of Idaho.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

RETURN OF SERVICE

I certify that I received this Warrant on the (date) \_\_\_\_\_ and served it on the defendant on the (date) \_\_\_\_\_ at \_\_\_\_\_ a.m., p.m.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed/Printed Name)

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF IDAHO  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

Case No. \_\_\_\_\_

Summons (Felony)

The Defendant is summoned to appear for an initial appearance on  
\_\_\_\_\_ at \_\_\_\_\_, at the \_\_\_\_\_ County  
Courthouse, \_\_\_\_\_ to answer the charge(s) of:

<u>Count</u>	<u>Statute</u>	<u>Charge Description</u>

Failure to appear may result in a warrant being issued for the Defendant's arrest.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

RETURN OF SERVICE

I certify that I received this Summons on the (date) \_\_\_\_\_ and served it on the  
defendant on the (date) \_\_\_\_\_ at \_\_\_\_\_ a.m., p.m.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed/Printed Name)

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF IDAHO  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

Case No. \_\_\_\_\_

Summons (Misdemeanor)

The Defendant is summoned to appear:

- Before the Judge  
 Before the Court Clerk

on \_\_\_\_\_ at \_\_\_\_\_ at the \_\_\_\_\_ County Courthouse,  
\_\_\_\_\_, to answer the charge(s) of:

<u>Count</u>	<u>Statute</u>	<u>Charge Description</u>

Failure to appear may result in a warrant being issued for the Defendant's arrest.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

RETURN OF SERVICE

I certify that I received this Summons on the (date) \_\_\_\_\_ and served it on the  
defendant on the (date) \_\_\_\_\_ at \_\_\_\_\_ a.m., p.m.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed/Printed Name)

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF IDAHO  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

Case No. \_\_\_\_\_

Notification of Rights (Felony)

You have been charged with the felony criminal offense(s) of:

<u>Count</u>	<u>Statute</u>	<u>Charge Description</u>

It is very important that you read this notification of your rights and understand them fully before signing this document. If you have any questions concerning these rights, you may ask the judge when your case is called or consult an attorney.

Please initial each item which is fully understood; Leave blank any items which you do not understand.

- \_\_\_ 1. You have the absolute right to remain silent and the privilege against self-incrimination (the state cannot force you to testify against yourself). Any statement you make is a part of the record and may be used against you.
- \_\_\_ 2. You have the right to represent yourself and present your case without the aid of an attorney.
- \_\_\_ 3. You have the right to hire your own attorney to represent you in this matter. If you wish to be represented by an attorney but feel you cannot afford one, you may apply to the Court to appoint an attorney for you, but you may be required to repay the County for the attorney fees.
- \_\_\_ 4. Under the law, you are presumed innocent unless you plead "guilty" or are proven as such.
- \_\_\_ 5. The charge(s) pending before the Court are felony matters. If you are charged by a criminal complaint, they must be set for a preliminary hearing within fourteen (14) days

if you are in custody or twenty-one (21) days if you are not in custody, unless you waive the time period.

- \_\_\_6. At the preliminary hearing, the State must prove that it is more probable than not that you committed the alleged crime(s) for which you have been charged. If the State meets this minimal burden of proof you will be bound over to District Court to answer to the charge(s) and that is where you will enter your plea.
- \_\_\_7. If you are being charged by a Grand Jury Indictment you will be arraigned on that Indictment before another court on \_\_\_\_\_ before District Judge \_\_\_\_\_.
- \_\_\_8. You have the right to a public and speedy jury trial or a court trial. If your case goes to trial, the burden will be upon the State to prove guilt beyond a reasonable doubt. At trial, you can question any witness who is going to testify against you and call your own witnesses to testify for you, as well as present evidence on your behalf.
- \_\_\_9. If you are not satisfied with the decision of the Court, you may appeal to the next higher Court, so long as your Notice of Appeal is filed within forty-two (42) days of the entry of the decision.
- \_\_\_10. If you are in custody, you have the following additional rights:
- a. That you have a right to communicate with an attorney or immediate family, and reasonable means will be provided for you to do so.
  - b. You have a right to bail which is an amount of money necessary to allow your release and assure your presence in Court at a future date.
- \_\_\_11. If you have been arrested or are being held on a charge from a county other than this county you may request in writing that you wish to plead guilty to the charge in this county and consent to a disposition of the case in the county in which you were arrested, held, or are present, subject to approval by the prosecutors in each county.
- \_\_\_12. Your exercise of any of these rights shall not be held against you. If you have any questions about these rights, ask the Judge at the next hearing.

Please mark the appropriate box to the following questions:

- Yes  No      Have you received a copy of the charging document filed in this case?
- Yes  No      Do you understand what you have been charged with?
- Yes  No      Are you under the influence of any drugs or alcohol at this time?
- Yes  No      Has anyone made you any promises or coerced you to act in this matter?
- Yes  No      Would you like the Court to read the charging document to you?

Please choose any of the following options concerning your representation in this matter:

- Yes  No I wish to retain/hire my own attorney.
- Yes  No I wish to apply for a court appointed attorney to represent me.
- Yes  No I wish to be given a continuance:
- to decide how I would like to be represented.
- to discuss my plea with an attorney.
- Yes  No I wish to waive my right to be represented by an attorney. I will represent myself.

If you are on probation or parole a plea of guilty could serve as a basis for violating your probation or parole.

A plea of guilty or a conviction may impact your right to own or possess firearms. A plea of guilty or a conviction of certain charges may result in the loss of your driving privileges.

If you are not a citizen of the United States, and if you plead guilty or are found guilty you could be removed from the country, excluded from entering this country, and denied the opportunity to obtain legal status or become a naturalized citizen. You have the right to request additional time to consult with an Immigration Attorney before you enter your plea.

**By signing this document, I acknowledge that I have read and fully understand my rights as indicated above.**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Typed/Printed Name

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF IDAHO  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

Case No. \_\_\_\_\_

Waiver of Preliminary Hearing

1. I have received a copy of the complaint charging me with the crime(s) of

<u>Count</u>	<u>Statute</u>	<u>Charge Description</u>

2. I understand I have the right to a preliminary hearing on each charge.
3. I understand that at the preliminary hearing the State must present evidence which shows that a crime has been committed and there is probable cause to believe I committed the crime.
4. I understand that if the State is able to show that I probably committed the crime, I will be required to appear in District Court and enter a plea to the charge(s) against me.
5. I understand if I waive my right to a preliminary hearing, I will be required to appear in District Court to enter a plea to the charge(s) against me.
6. I understand that by waiving my right to a preliminary hearing, I DO NOT admit that I am guilty.
7. I understand that by waiving my right to a preliminary hearing, I DO NOT WAIVE ANY OTHER RIGHT which I have.
8. I have discussed all the facts of this case with my attorney.
9. I read and understand the English language or have had the assistance of a court approved interpreter.
10. I have no questions regarding the way my attorney has handled my case.
11. No one has promised me anything or threatened me in any way to get me to waive my right to a preliminary hearing.

- 12. My attorney has fully discussed this questionnaire with me.
- 13. I fully understand all statements and questions in this questionnaire.
- 14. In exchange for this waiver, the State has promised me

\_\_\_\_\_

\_\_\_\_\_

I understand these rights, and by signing below I waive my right to a preliminary hearing.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Typed/Printed Name

This is an accurate statement of the Defendant's waiver.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Attorney

**CERTIFICATE OF SERVICE**

I certify that on this date, I served a copy of the attached to:

\_\_\_\_\_

- By E-mail     By mail
- By fax (number) \_\_\_\_\_
- By overnight delivery/Fed Ex
- By personal delivery

\_\_\_\_\_

- By E-mail     By mail
- By fax (number) \_\_\_\_\_
- By overnight delivery/Fed Ex
- By personal delivery

\_\_\_\_\_

- By E-mail     By mail
- By fax (number) \_\_\_\_\_
- By overnight delivery/Fed Ex
- By personal delivery

\_\_\_\_\_  
Clerk of the Court

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF IDAHO  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

Case No. \_\_\_\_\_

Notification of Rights (Probation Violation)

Idaho Criminal Rule 5.3

You have been charged with a probation violation under the laws of the State of Idaho. It is very important that you read this notification of your rights and understand them fully before signing this document. If you have any questions concerning these rights, you may ask the judge when your case is called or consult an attorney.

Please initial each item which is fully understood; Leave blank any items which you do not understand.

- \_\_\_\_\_ 1. You have the absolute right to remain silent and the privilege against self-incrimination (the state cannot force you to testify against yourself). Any statement you make is a part of the record and may be used against you.
- \_\_\_\_\_ 2. You have the right to represent yourself and present your case without the aid of an attorney.
- \_\_\_\_\_ 3. You have the right to hire your own attorney to represent you in this matter. If you wish to be represented by an attorney but feel you cannot afford one, you may apply to the court to appoint an attorney for you, but you may be required to repay the county for the attorney fees.
- \_\_\_\_\_ 4. You have the right to deny or admit the allegations presented.
- \_\_\_\_\_ 5. Should you "admit" to the allegations, you are waiving the rights herein and there is no need for the State to prove the violation, but rather, the issue becomes one of determining the appropriate sentence. Since there is no right to a jury trial for probation violations, should you "deny" the allegations, your case will be set for an evidentiary hearing (where the judge will determine whether you have violated the terms of your probation). At an evidentiary hearing for a probation violation, the rules

of evidence are greatly relaxed and the burden will be upon the State to prove guilt by a preponderance of the evidence.

- \_\_\_\_\_ 6. You can question any witness who is going to testify against you, you can call your own witnesses, and you have the rights to the subpoena power at no cost to you.
- \_\_\_\_\_ 7. If you admit to a probation violation, or are found to have committed such an offense, the potential penalty could include the imposition of any previously suspended jail sentences or fines. There are often recommendations for penalties contained in the probation violation. These recommendations are not binding on the court but can be considered in rendering its decision.
- \_\_\_\_\_ 8. If you are not satisfied with the decision of the court, you may appeal to the next higher court, so long as your notice of appeal is filed within forty-two (42) days of the entry of the judgment.
- \_\_\_\_\_ 9. If you are in custody, you have the right to communicate with your immediate family and attorney through a reasonable means provided by the jailer. I.C.R. 5.3(c).
- \_\_\_\_\_ 10. If you are in custody, the court may or may not set bail in your case. Bail is an amount of money necessary to allow your release and assure your presence in court at a future date.
- \_\_\_\_\_ 11. Your exercise of any of these rights will not be held against you. If you have any questions about these rights, ask the judge at the next hearing.
- \_\_\_\_\_ 12. You have the right to have a copy of the alleged probation violation(s).

By signing this document, I acknowledge that I have read and fully understand my rights as indicated above.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Typed/Printed Name

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF IDAHO  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

Case No. \_\_\_\_\_

Guilty Plea Advisory

Idaho Criminal Rule 11(e)

**TO BE FILLED OUT BY THE DEFENDANT**

Defendant's Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

**STATEMENT OF CONSTITUTIONAL RIGHTS  
(Please initial each response)**

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you elect to have a trial, the State may not call you as a witness or ask you any questions. If you do decide to testify the State will be permitted to ask you questions and anything you say can be used as evidence against you in court.

I understand that by pleading guilty I am waiving my right to remain silent as to the elements of the crime(s) to which I am entering this plea. \_\_\_\_\_

2. The waiver of your right to remain silent applies to your plea of guilty to the crime(s) in this case. Unless otherwise stated in your plea agreement, even after pleading guilty, you still have the right to refuse to answer any question or to provide any information that might tend to show you committed some other crime(s). Unless otherwise stated in your plea agreement, you can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty.

I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence. \_\_\_\_\_

I understand that as a term of my plea agreement, I have waived my right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence. \_\_\_\_\_

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the Judge for an attorney. You may be required to reimburse the county for the cost of this representation. \_\_\_\_\_
4. You are presumed to be innocent. You will be found guilty if: 1) you plead guilty in front of the Judge; or 2) you are found guilty at a jury trial. I understand that by pleading guilty I am waiving my right to be presumed innocent. \_\_\_\_\_
5. You have the right to a speedy and public jury trial before twelve persons. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. You are not required to do so, however. The State must convince all of the jurors of your guilt beyond a reasonable doubt.

I understand that by pleading guilty I am **waiving** my right to a speedy and public jury trial.  
\_\_\_\_\_

6. You have the right to question (confront) the witnesses testifying against you. This occurs during a jury trial. At trial, the State must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call witnesses of your choosing to testify on your behalf. If you do not have the funds to bring those witnesses to court, the State will pay the cost of bringing your witnesses to court and will compel their attendance by the use of the subpoena power of the court.

I understand that by pleading guilty I am waiving my right to question (confront) the witnesses against me, and present witnesses and evidence in my defense. \_\_\_\_\_

7. The State has the burden of proving you guilty beyond a reasonable doubt.  
I understand that by pleading guilty, I am waiving my right to require the State to prove my guilt beyond a reasonable doubt. \_\_\_\_\_

## QUESTIONS REGARDING ABILITY TO ENTER PLEA

**(Please answer every question. If you do not understand a question, consult your attorney before answering.) Please check the correct answer**

1. Do you read and write the English language? YES \_\_\_ NO \_\_\_  
If not, have you been provided with an interpreter to help you fill out this form? YES \_\_\_ NO \_\_\_  
Do you want an Interpreter? YES \_\_\_ NO \_\_\_
2. What is your true and legal name? \_\_\_\_\_
3. What was the highest grade of school you completed? \_\_\_\_\_
4. If you did not complete high school, have you received either a general education diploma or high school equivalency diploma? YES \_\_\_ NO \_\_\_
5. Are you currently under the care of a mental health professional? YES \_\_\_ NO \_\_\_
6. Have you ever been diagnosed with a mental health disorder? YES \_\_\_ NO \_\_\_  
If so, what was the diagnosis and when was it made?  
\_\_\_\_\_
7. Are you currently prescribed any medication? YES \_\_\_ NO \_\_\_  
If yes, what medications are you taking at this time?  
\_\_\_\_\_
8. If you answered "yes," have you taken your prescription medication during the past twenty-four (24) hours? YES \_\_\_ NO \_\_\_
8. In the last forty-eight (48) hours, have you taken any medication or drugs, including over the counter, or have you consumed any alcoholic beverages which you believe affect your ability to understand these questions or to make a reasoned and informed decision in this case? YES \_\_\_ NO \_\_\_
9. Are you under the influence of any alcohol, drugs, or other medication at this time? YES \_\_\_ NO \_\_\_
10. Are you capable of understanding these proceedings? YES \_\_\_ NO \_\_\_
11. Do you claim that you are mentally incapable of understanding these proceedings or what it means to plead guilty to a crime? YES \_\_\_ NO \_\_\_
12. Is there anything going on in your life that affects your ability to enter a voluntary guilty plea? YES \_\_\_ NO \_\_\_

13. Are you having any difficulty in understanding what you are doing by filling out this form? YES \_\_\_ NO \_\_\_

14. Is there any other reason that you cannot make a reasoned and informed decision in this case? YES \_\_\_ NO \_\_\_

If yes, what is the reason?

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### PLEA AGREEMENT

15. Is your guilty plea the result of a plea agreement? YES \_\_\_ NO \_\_\_

If so, what are the terms of that plea agreement? (If available, a written plea agreement must be attached hereto as "Addendum 'A'")

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16. If a written plea agreement was done, have you read the plea agreement? YES \_\_\_ NO \_\_\_

17. Do you understand your plea agreement? YES \_\_\_ NO \_\_\_

18. There are two types of plea agreements. Please initial the one paragraph below which describes the type of plea agreement:

a. I understand that my plea agreement is a non-binding plea agreement. This means that the Court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, up to the maximum sentence. The Court is not bound by the agreement, if the District Court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea. I understand I do not have the right to withdraw my guilty plea if the Court chooses not to follow the agreement. \_\_\_\_\_

b. I understand that my plea agreement is a binding plea agreement. This means that, I will be allowed to withdraw my plea of guilty and proceed to a jury trial. \_\_\_\_\_

19. Has your attorney or anyone else forced or coerced you in any way into accepting this plea agreement? YES \_\_\_ NO \_\_\_

20. Have any other promises been made to you that have influenced your decision to plead guilty? YES \_\_\_ NO \_\_\_

21. Has anyone told you what your sentence will be? YES \_\_\_ NO \_\_\_

If so, what have you been promised?

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**APPELLATE RIGHTS**

22. Is this a conditional guilty plea in which you are reserving your right to appeal any specified adverse ruling? YES \_\_\_ NO \_\_\_

What rulings have you reserved the right to appeal?

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23. If it is not a conditional guilty plea do you understand that by pleading guilty you are waiving your right to appeal any ruling made by the judge prior to entering your guilty plea? YES \_\_\_ NO \_\_\_

24. Have you waived your right to appeal your sentence as part of your plea agreement? YES \_\_\_ NO \_\_\_

Under what condition can you appeal your sentence?

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**POTENTIAL SENTENCE**

I am charged with the crime(s) of:

I understand the Minimum & Maximum - Fine and Imprisonment:

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25. If you plead guilty to more than one crime do you understand that your sentences for each crime could be ordered to be served either **concurrently** (at the same time) or **consecutively** (one after the other)? YES \_\_\_ NO \_\_\_

26. Do you understand that if you plead guilty and you commit crimes in the future, this conviction could be considered in the future case and could cause more severe penalty in the future case? YES \_\_\_ NO \_\_\_

**ADDITIONAL CONSEQUENCES OF A GUILTY PLEA**

27. Are you currently on probation or parole? YES \_\_\_ NO \_\_\_
- If so, do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole (**WHICH MEANS THAT ANY SUSPENDED SENTENCE COULD BE IMPOSED AND ANY PAROLE REVOKED**)? YES \_\_\_ NO \_\_\_
28. Are you aware that if you are not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, and/or denial of an application for United States citizenship? YES \_\_\_ NO \_\_\_
29. Does the crime to which you will plead guilty require you to register as a **sex offender**? I.C. § 18-8304. YES \_\_\_ NO \_\_\_
30. Are you aware that if you plead guilty you may be required to pay **restitution** in this case? I.C. § 19-5304. YES \_\_\_ NO \_\_\_
31. Are you pleading guilty to a crime for which you may be required to pay the **costs of prosecution and investigation**? I.C. § 37-2732 (k), I.C.R. 33(d)(2). YES \_\_\_ NO \_\_\_
- If so, have you and the State agreed upon the amount of this reimbursement? YES \_\_\_ NO \_\_\_
- If you have, what is the amount? \_\_\_\_\_
32. Have you agreed to pay restitution as a condition of your plea agreement? YES \_\_\_ NO \_\_\_
33. Do you understand that you cannot withdraw your guilty plea even if the restitution amount is determined to be higher than you thought it might be or should be? YES \_\_\_ NO \_\_\_
34. Is a license suspension required as a result of a guilty plea in this case? YES \_\_\_ NO \_\_\_
35. Do you understand that if you plead guilty you will be required to submit a DNA sample and right thumbprint impression to the State? I.C. § 19-5506. YES \_\_\_ NO \_\_\_
36. Are you pleading guilty to a crime for which the Court could impose a civil penalty for a crime of violence of up to \$5,000, payable to the victim of the crime? I.C. § 19-5307. YES \_\_\_ NO \_\_\_
37. Do you understand that if you plead guilty to a felony, you will lose your right to **vote** in Idaho during the period of your sentence? Id. Const. art. 6, §3. YES \_\_\_ NO \_\_\_
38. Do you understand that if you plead guilty to a felony, you will lose your right to **hold public office** in Idaho during the period of your sentence? Id. Const. art. 6, §3. YES \_\_\_ NO \_\_\_

39. Do you understand that if you plead guilty to a felony, you will lose your right to **perform jury service** in Idaho during the period of your sentence? Id. Const. art. 6, §3. YES\_\_\_ NO\_\_\_
40. Do you understand that if you plead guilty to a felony and or to a misdemeanor crime of domestic violence you will lose your right to purchase, possess, or carry **firearms**? I.C. § 18-310, 18 U.S.C. § 922(g)(9). YES\_\_\_ NO\_\_\_
41. Do you understand that by pleading guilty to a felony, you run the risk that if you have new felony charges in the future, you could be charged as a Persistent Violator? I.C. §§ 19-2514, 37-2739. YES\_\_\_ NO\_\_\_

**RELATIONSHIP WITH YOUR ATTORNEY**

42. Have you had sufficient time to discuss your case with your attorney? YES\_\_\_ NO\_\_\_
43. Have you had adequate time to fill out this form? YES\_\_\_ NO\_\_\_
44. Have you had adequate access to your attorney's assistance in filling out this form? YES\_\_\_ NO\_\_\_
45. Your attorney can obtain various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called "discovery." Have you had the opportunity to review the discovery provided by your attorney? YES\_\_\_ NO\_\_\_
46. Do you want your attorney to take any further action in this case? YES\_\_\_ NO\_\_\_
47. If you are not a citizen of the United States, have you talked to your attorney about the impact of your guilty plea on deportation, on your legal status in the United States and on obtaining United States citizenship? YES\_\_\_ NO\_\_\_
48. Do you understand that no one, including your attorney, can force you to plead guilty in this case? YES\_\_\_ NO\_\_\_
49. Are you satisfied with your attorney's representation? YES\_\_\_ NO\_\_\_

If not, please state why you are dissatisfied?

\_\_\_\_\_

\_\_\_\_\_

50. Do you understand that by pleading guilty you will waive (or give up) any defenses, both factual and legal, that you believe you may have in this case? YES\_\_\_ NO\_\_\_

**IF YOUR GUILTY PLEA IS THE RESULT OF A PLEA AGREEMENT REACHED THROUGH MEDIATION:**

51. Did you voluntarily enter mediation? YES\_\_\_ NO\_\_\_

52. Did anyone force you, or coerce you, to enter into the plea agreement in the mediation? YES \_\_\_ NO \_\_\_

53. Were you satisfied with the conduct of the mediation? YES \_\_\_ NO \_\_\_

### ENTRY OF PLEA

54. Are the answers throughout this form your own answers? YES \_\_\_ NO \_\_\_

55. Are you entering your plea freely and voluntarily? YES \_\_\_ NO \_\_\_

56. Are you admitting to all the elements of the crime(s) to which you are pleading guilty? YES \_\_\_ NO \_\_\_

57. Or are you pleading guilty because you are entering an Alford Plea? YES \_\_\_ NO \_\_\_

58. If you are entering an Alford Plea, do you understand that the Court will consider you just as guilty as if you enter a non-Alford plea? YES \_\_\_ NO \_\_\_

59. Have you had any trouble answering any of the questions in this form which you could not resolve by discussing the issue(s) with your attorney? YES \_\_\_ NO \_\_\_

60. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter? YES \_\_\_ NO \_\_\_

61. Do you need any additional time before you enter your guilty plea(s)? YES \_\_\_ NO \_\_\_

62. Do you understand that if the Court accepts your guilty plea(s) that you may not be able to withdraw your plea(s) at a later date? YES \_\_\_ NO \_\_\_

63. Is there anything else you want to tell the court about why you are pleading guilty? YES \_\_\_ NO \_\_\_

64. Have you discussed the elements of the offense(s) for which you are charged with your attorney? YES \_\_\_ NO \_\_\_

I have answered the questions on pages 1-7 of this Guilty Plea Advisory Form truthfully, I understand all of the questions and answers herein, I have had the opportunity to discuss each question and answer with my attorney, and I have completed this form freely and voluntarily **WITH A COMPLETE UNDERSTANDING OF THE CHARGE(S) TO WHICH I AM PLEADING GUILTY AND WITH KNOWLEDGE OF THE POTENTIAL CONSEQUENCES OF THIS PLEA.** Furthermore, no one has forced me or threatened me to plead guilty.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Typed/Printed Name

I have reviewed this form with the Defendant.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Attorney

**POST PLEA RIGHTS**

A presentence investigation will be ordered by the Court unless both you and the State waive that report and the Court approves that waiver. If waived, you will not be eligible for probation. The Court may order evaluations as part of this investigation **AND THESE REPORTS WILL BE USED TO DETERMINE YOUR SENTENCE. Unless you have waived the right to remain silent as part of your plea agreement, you have the right to remain silent during all proceedings and interviews from now until sentencing WHICH INCLUDES THE PRESENTENCE INVESTIGATION AND ANY COURT ORDERED EVALUATIONS.**

The information in the presentence interview and any evaluations (which will include any statements you make in these processes) will be used by the Court in determining your sentence. In particular if you are ordered to undergo a psychosexual evaluation (which can include a polygraph examination), a domestic violence evaluation, a substance abuse evaluation or a mental health examination (which can include a psychological or psychiatric examination) you will be asked extensive questions and your answers to those questions may be used against you during sentencing.

- 1. Have you discussed the right to remain silent with your attorney? YES \_\_\_ NO \_\_\_
- 2. Do you understand the nature of this right? YES \_\_\_ NO \_\_\_
- 3. Do you understand that you may waive this right? YES \_\_\_ NO \_\_\_
- 4. Have you waived any of this right in your plea agreement? YES \_\_\_ NO \_\_\_
- 5. Do you have any questions concerning either this right or the waiver of these rights? YES \_\_\_ NO \_\_\_
- 6. Have you discussed with your attorney your rights regarding your attorney's attendance and presence during the presentence investigation or these various evaluations? YES \_\_\_ NO \_\_\_
- 7. Do you want the Court to order any particular evaluations to assist the Court in determining your sentence in this case? YES \_\_\_ NO \_\_\_

If yes, which evaluations and why?

\_\_\_\_\_  
\_\_\_\_\_

I ACKNOWLEDGE THE FOREGOING POST PLEA RIGHTS.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Typed/Printed Name