



## **I.C.R. 4. Warrant - Summons - Determination of Probable Cause**

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

**(a) Issuance of Arrest Warrant.** After a complaint is presented to a magistrate, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate may issue a warrant for the arrest of the defendant only after making a determination that there is probable cause to believe that an offense has been committed and that the defendant committed it.

(1) *In General.* The finding of probable cause must be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis, considering the totality of the circumstances, to believe probable cause exists for the warrant. The magistrate may rely on information provided in the form of an affidavit or sworn oral statement.

(2) *Warrant on an Affidavit.* When a law enforcement officer or a prosecutor presents an affidavit or declaration in support of a warrant, the magistrate may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(3) *Warrant on Sworn Oral Statement.* When the magistrate bases his or her findings on a sworn oral statement, the statement must be recorded and is considered part of the record. All sworn statements given in support of an application for a warrant must be given on oath or affirmation and must identify the speaker.

(4) *Requesting a Warrant by Telephonic or Other Reliable Electronic Means.* A magistrate may issue a warrant based on information communicated by telephone or other reliable electronic means. The affidavit or sworn oral statement as recorded must be filed with the clerk of the court, and transcribed by the court upon request.

**(b) Issuance of Summons.** After a complaint is filed with a court, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate, or the clerk of the court, may issue a summons requiring the defendant to appear before the court at a time certain without first making a determination of whether there is probable cause.

**(c) Issuing Arrest Warrant or Summons, Preference for Summons.** If the magistrate finds probable cause for a complaint, in determining whether a warrant or summons should issue, the magistrate must give preference to the issuance of a summons. In making the determination as to



whether to issue a warrant or summons, the magistrate must consider the following factors:

- (1) the residence of the defendant,
- (2) the employment of the defendant,
- (3) the family relationships of the defendant in the community,
- (4) the past history of response of the defendant to legal process,
- (5) the past criminal record of the defendant,
- (6) the nature of the offense charged, and
- (7) whether there is reasonable cause to believe that the defendant will flee prosecution or will fail to respond to a summons.

**(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. An electronic signature may be used as provided in Rule 2.2. In addition, if the warrant is based on information communicated by telephone or other reliable electronic means, the magistrate may verbally authorize a law enforcement officer to sign the magistrate's name, which verbal authorization must be recorded. After service of the warrant, the warrant must be returned to the magistrate who authorized the signing of his or her name on it. The magistrate must then endorse his or her name and enter the date on the warrant when it is returned to the magistrate. Any failure of the magistrate to make such an endorsement does not in itself invalidate the warrant.

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 Complaint or Warrant of Arrest.* A complaint or warrant of arrest may be presented to a magistrate by email, facsimile or other electronic process and subsequently transmitted



between the prosecutor, the magistrate and to any law enforcement officer or other officer involved in serving the warrant. The complaint or citation need not have been filed with the court prior to its presentation to the magistrate for consideration of an arrest 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.

### **(e) Execution or Service, and Return.**

(1) *By Whom*. The warrant must be executed by a peace officer or other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action, or by mail.

(2) *Territorial Limits*. The warrant may be executed or the summons may be served at any place within the state of Idaho.

(3) *Manner of Service of Warrant*. The warrant must be executed by the arrest of the defendant. The officer need not have the warrant in possession at the time of the arrest, but the officer must show the warrant to the defendant as soon as possible. If the officer does not have the warrant in possession at the time of arrest, the officer must then inform the defendant of the offense charged and of the fact that a warrant has been issued. A copy of the warrant of arrest may be used by the officer at the time of the arrest or for the purpose of showing the warrant to the defendant after the defendant's arrest.

(4) *Manner of Service of Summons*. The summons must be served on a defendant by delivering a copy of the summons and complaint to the defendant personally, or by leaving copies at the defendant's dwelling or usual place of abode with some person over the age of eighteen (18) years residing there, or by mailing it to the defendant's last known address. A summons to a corporation must be served in the same manner as service of a summons on a corporation in a civil action.

(5) *Return on Warrant*. The officer executing a warrant must return it to the issuing magistrate or any other magistrate before whom the defendant is brought pursuant to Rule 5. At the request of the prosecuting attorney any unexecuted warrant must be returned to the magistrate by whom it was issued and must be canceled by the magistrate.

(6) *Return on Summons*. On or before the return date, the person who made service of a summons must return it to the magistrate as provided in subsection (e)(5). At the request of the prosecuting attorney, made at any time while the complaint is pending, a warrant returned unexecuted and not canceled, or an unserved summons or a duplicate original, may be delivered by the magistrate to an officer or other authorized person for execution or service.



([Adopted February 22, 2017, effective July 1, 2017](#) [1]; [amended May 14, 2019, effective July 1, 2019](#) [2]; [amended and effective August 23, 2019](#) [3].)

**Source URL:** <https://isc.idaho.gov/icr4>

## **Links**

[1] <https://isc.idaho.gov/./rules/ICR/ICR-4a-Adoption-of-Newly-Formatted-ICR-Feb-22-2017.pdf>

[2] <https://isc.idaho.gov/./rules/ICR/ICR-4b-Order-Amending-ICR-Adoption-of-Rule-37-051419.pdf>

[3] <https://isc.idaho.gov/./rules/ICR/ICR-4c-Order-Amending-ICR-4-082319.pdf>