

## **I.C.R. 5. Initial Appearance Before Magistrate - Advice To Defendant - Plea in Misdemeanors - Initial Appearance on Grand Jury Indictment.**

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

**(a) Initial Appearance.** The "initial appearance" before a magistrate is the first appearance of the defendant before any magistrate. In the event a defendant appears before more than one magistrate, the first appearance before the first magistrate constitutes the "initial appearance."

**(b) Place of Initial Appearance.** A defendant arrested, whether or not pursuant to a warrant, must be taken before a magistrate in the judicial district of the arrest without unreasonable delay. In no event may the delay be more than 24 hours following the arrest, excluding Saturdays, Sundays, and holidays. The court may, however, delay the initial appearance if the defendant is hospitalized or otherwise in a condition that prevents the defendant being taken before the magistrate. The court may immediately, in that event, appoint counsel for the defendant. In the event it is not possible to take a defendant before a magistrate in the county where the alleged offense occurred within the time limit, then the defendant must be taken to any available magistrate in the judicial district without unnecessary delay within the time limit described above.

**(c) Determination of Probable Cause.** At or before the first appearance of a defendant who is arrested without a warrant or appears pursuant to a summons, the magistrate must determine there is probable cause as defined in Rule 4(a) before the defendant is retained, ordered into custody or required to post bond. The defendant must be released on the defendant's own recognizance unless and until a determination of probable cause has been made by a magistrate or unless immediate disposition of the complaint has been made; but the complaint must not be dismissed pending a determination or disposition. If a defendant fails to appear in response to a summons, a warrant must be issued if probable cause has been shown.

**(d) Probable Cause Hearing.** The probable cause hearing is an informal non-adversary proceeding. It may be an ex parte hearing which does not require the presence of the defendant. The defendant does not have the right to confrontation and cross-examination of witnesses or the right to counsel. The hearing must be held within 48 hours, including Saturdays, Sundays, and holidays, after a defendant is arrested without a warrant. The magistrate may hold the hearing on sworn statements, which includes written certifications or declarations under penalty of perjury, without the officer or witness present. The finding of probable cause must be based on substantial evidence that there is a factual basis for the information furnished. Before making the determination of probable cause, the magistrate may require any person, other than the defendant, who appears likely to have knowledge relevant to the offense charged, to appear personally and give testimony under oath. In making the determination of probable cause, the magistrate must consider all facts as to whether an offense has been committed and whether the defendant has committed it. If the magistrate finds there is no probable cause, the magistrate must exonerate any bond posted and order the release of the defendant if the defendant is in custody. A finding of a lack of probable cause does not require the dismissal of the complaint.

**(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.

**(f) Setting Bail.** On advising the defendant of the above rights, the magistrate must set bail for the defendant, and in the event the arrest is pursuant to a warrant, bail must be in the amount stated on the warrant unless the magistrate finds good cause to alter the amount of the bail. In the event the defendant posts bail, the magistrate must certify that fact on the warrant, order the defendant to appear before the court issuing the warrant at a time and place certain, discharge the defendant, and transmit the warrant and undertaking of bail to the court in which the defendant is required to appear.

**(g) Right to Counsel.**

(1) If a defendant is charged with an offense the penalty for which includes the possibility of confinement in a correctional facility, regardless of whether actually imposed, and the defendant appears without counsel, the court must advise the defendant of:

(A) the right to counsel;

(B) the right to apply for court-appointed counsel if the defendant cannot afford to hire private counsel; and

(C) the right to request counsel at any stage of the proceedings.

(2) If the defendant wishes to represent himself or herself, the court must ensure that a knowing, voluntary, and intelligent waiver of the right to counsel is entered on the record.

(3) Prior to accepting any waiver pursuant to subsection (2), the trial court must advise the defendant of the following:

(A) the nature of the charges;

(B) the range of allowable punishments;

(C) that there may be defenses;

(D) that there may be mitigating circumstances; and

(E) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the dangers and disadvantages of the decision to waive counsel.

(4) The court may appoint counsel for the limited purpose of advising and consulting with the defendant as to the waiver.

**(h) Arraignment on Misdemeanor Complaint.** The arraignment on a misdemeanor complaint is the reading of the complaint to the defendant, unless waived by the defendant, and taking a plea of the defendant to the complaint. It may take place at the initial appearance or at any later time as ordered by the court. A plea of the defendant at the arraignment in a county other than the county where the alleged offense occurred may be taken by the magistrate only as provided by Rule 20. The defendant may appear in person at the arraignment and enter a plea to the complaint or the defendant may appear at the arraignment through counsel who must either appear in person or file, at or before arraignment, a written appearance and plea on behalf of the defendant.

**(i) First Appearance on Indictment by Grand Jury.** A defendant arrested on a warrant issued pursuant to an indictment by grand jury must be taken before a magistrate judge or district court judge in that judicial district within 24 hours following the arrest, excluding Saturdays, Sundays and holidays. The magistrate judge or district court judge has the authority to set bail and 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) the date that defendant will be arraigned in the district court.

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