



## **I.C.R. 5.1. Preliminary Hearing - Probable Cause Hearing - Discharge or Commitment of Defendant - Procedure.**

### **Idaho Criminal 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 magistrate must immediately file a written order in the district court requiring the defendant to answer. If a waiver of preliminary hearing form is used, the waiver form must be the Supreme Court waiver of preliminary hearing form found in Appendix A of these rules. 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.

**(b) Probable Cause Finding.** If the magistrate finds that a public offense has been committed and that there is probable or sufficient cause to believe that the defendant committed the offense, the magistrate must immediately require the defendant to answer in the district court. The finding of probable cause must be based on substantial evidence on every material element of the offense charged. Hearsay in the form of testimony or affidavits, including written certifications or declarations under penalty of perjury, may be admitted to show the following:

- (1) the existence or nonexistence of business or medical facts and records,
- (2) judgments and convictions of courts,
- (3) ownership of real or personal property, and
- (4) reports of scientific examinations of evidence by state or federal agencies or officials or by state-certified laboratories, provided the magistrate determines the source of said evidence to be credible. Nothing in this rule prevents the admission of evidence under any recognized exception to the hearsay rule of evidence. The defendant is entitled to cross-examine witnesses produced against the defendant



at the hearing and may introduce evidence in the defendant's own behalf. Motions to suppress must be made in a trial court as provided in Rule 12. However, if at the preliminary hearing the evidence shows facts which would ultimately require the suppression of evidence sought to be used against the defendant, the evidence must be excluded and must not be considered by the magistrate in determining probable cause. A record of the proceedings must be made by stenographic means or recording devices.

**(c) Discharge of Defendant.** If the magistrate determines that a public offense has not been committed or that there is not probable or sufficient cause to believe that the defendant committed the offense, the magistrate must dismiss the complaint and discharge the defendant.

**(d) Records.** After concluding the proceeding, the magistrate must immediately deliver all papers in the proceeding to the clerk of the district court.

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

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## Links

[1] <https://isc.idaho.gov/./rules/ICR/ICR-5.1a-Adoption-of-Newly-Formatted-ICR-Feb-22-2017.pdf>

[2] <https://isc.idaho.gov/./rules/ICR/ICR-5.1b-Order-Amending-ICR-Adoption-Rule-37.pdf>

[3] <https://isc.idaho.gov/./rules/ICR/ICR-5.1c-Order-Amending-ICR-5%28e%29-5.1-Appendix-A-Forms-08-01-19.pdf>