

## **I.C.R. 5.3. Initial Appearance on Probation Violations.**

### **Idaho Criminal Rule 5.3. Initial Appearance on Probation Violations**

**(a) Time and Place for Initial Appearance.** A probation violator may be arrested on a bench warrant issued by the sentencing court after a finding of probable cause to believe the probationer has violated a condition of probation, or on an agent's warrant pursuant to Idaho Code § 20-227. In either case, the probationer must be taken before a magistrate or district judge in that judicial district without unreasonable delay. In no event may the delay be more than 24 hours following the arrest excluding Saturdays, Sundays, and holidays. However, the court may delay the initial appearance if the probationer is hospitalized or in a condition which prevents the probationer being taken before the court. The court may immediately, in such instances, appoint counsel for the probationer.

**(b) Determination of Probable Cause in Arrest on Agent's Warrant.** If a probationer is arrested pursuant to an agent's warrant, the court before whom the probationer first appears must make a determination of probable cause to believe that a probation violation has been committed and that the probationer committed it before holding the probationer in custody or requiring bail. The court must determine probable cause in a manner consistent with Rule 5(c). The agent's warrant must state:

- (1) the underlying offense for which the probationer was placed on probation,
- (2) the name of the sentencing judge,
- (3) the date the probationer was placed on probation and the length of probation,
- (4) the term of probation that was violated and a brief description of how it was violated, and
- (5) the date the probationer was taken into custody.

**(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;

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(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.

**(d) Setting Bail.** On advising the probationer of the above rights, the court may set bail for the probationer.

(1) If the arrest is pursuant to a warrant issued by the sentencing court any direction of the sentencing court stated on the warrant must be followed as to the denial of bail or the setting of bail in a certain amount. In the event the probationer posts bail, that fact must be certified on the warrant, the probationer discharged and the warrant and undertaking of bail transmitted to the court in which the probationer is required to appear. Bail set at the initial appearance may only be altered on motion pursuant to Rule 46(l).

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(2) If the arrest is pursuant to an agent's warrant, or no amount of bail is stated on the warrant issued by the sentencing court, then the court may set bail and, if set, bail may only be altered on motion pursuant to Rule 46(l). If the probationer posts bail, that fact must be certified on the warrant, the probationer discharged, and the warrant and undertaking of bail must be transmitted to the court in which the probationer is required to appear.

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