

## **I.C.R. 33. Sentence and Judgment**

Idaho Criminal Rule 33. Sentence and Judgment.

(a) Sentence.

(1) Time for judgment and sentence. After a plea or verdict of guilty, if the judgment be not arrested nor a new trial granted, the court must appoint a time for pronouncing judgment and sentence, which, in cases of felony, must, unless waived by the defendant, be at least two (2) days after the verdict. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally to ask if the defendant wishes to make a statement and to present any information in mitigation of punishment. Pending sentence the court may commit the defendant or continue or alter the bail.

(2) Method of securing defendant's appearance at sentencing.

A. If a defendant is in custody the custodial officer shall present the defendant before the court for sentencing.

B. If a defendant, who is at liberty on own recognizance or on bail pursuant to a previous court order issued in the same criminal action, does not appear for sentencing when defendant's personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of money deposited may issue a bench warrant for defendant's arrest. Upon taking the defendant into custody pursuant to such bench warrant the executing peace officer must, without unnecessary delay, cause defendant to be brought into court for sentencing.

(3) Notification of right to appeal. After imposing sentence the court shall advise the defendant of the right to appeal and of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis.

(b) Judgment. The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(c) Withdrawal of plea of guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea.

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(d) Commutation of sentence and suspending or withholding judgment, conditions. For an offense not punishable by death, the district court or the magistrates division may commute the sentence, suspend the execution of the judgment, or withhold judgment, and place the defendant upon probation as provided by law and these rules. Provided, however, that the conditions of a withheld judgment or of probation shall not include any requirement of the contribution of money or property to any charity or other nongovernmental organization, but may include the rendering of labor and services to charities, governmental agencies, needy citizens and nonprofit organizations. The conditions of a withheld judgment or probation may also include, among other lawful provisions, the following:

(1) A requirement that the defendant make restitution to a party injured by the defendant's action.

(2) A requirement that the defendant pay a specific sum of money to the court for the prosecution of the criminal proceedings against the defendant, or a sum of money not to exceed the fine and court costs which could otherwise be assessed if the sentence were not suspended or withheld, which funds shall be distributed in the manner provided for the distribution of fines and forfeitures under section 19-4705, Idaho Code.

(3) A requirement that the defendant perform voluntary services for self-education purposes as part of a positive program of rehabilitation.

(e) Discretionary jail time. As used herein, "discretionary jail time" means jail time to be served at the discretion of the probation officer as a sanction for violating a term or condition of probation. It does not include incarceration in jail in order for a defendant to obtain treatment or programming provided in the jail, even if the probation officer determined that such treatment or programming was needed because of the defendant's violation of a term or condition of probation.

As a condition of probation, the sentencing court may provide for the service of a specified period of discretionary jail time, to be served as follows:

(1) Upon receipt of a written statement of facts made under oath or affirmation by the probation officer showing probable cause to believe that the defendant violated any term or condition of probation, a court may order in writing that the defendant serve a specified number of days of the discretionary jail time.

(2) If, without a court order issued pursuant to subsection (1), a defendant is arrested pursuant to Idaho Code Section 20-227 for violating a term or condition of probation, there shall be a judicial determination of probable cause within forty-eight (48) hours of the arrest. If, within that time period, there is no judicial finding that there was probable cause for the arrest, the defendant shall be released. If there is a judicial finding of probable cause within that time period, the defendant shall be released seventy-two (72) hours after the arrest unless the sentencing court has ordered a longer period of jail time. If, when delivering the defendant to the jail, the probation officer informs the jail authorities in writing that the defendant is to serve a specific period of time in jail that is less than forty-eight (48) hours, the defendant may be released upon the conclusion of that specific period without further court approval.

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(3) The number of consecutive days served as discretionary jail time shall not exceed three (3) days.

(4) Any time served in jail as discretionary jail time shall be credited against the period of discretionary jail time specified as a condition of probation.

(5) If the defendant is arrested pursuant to Idaho Code Section 20-227 for violating the conditions of probation and a motion seeking a judicial finding of a probation violation is not filed with respect to the conditions allegedly violated, the time served in jail pursuant to that arrest shall be credited against such period of discretionary jail time.

(6) Nothing herein shall limit a sentencing court's authority to impose additional terms and conditions of probation including jail time.

(f) Revocation of probation. The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing. The court shall not revoke probation unless there is an admission by the defendant or a finding by the court, following a hearing, that the defendant willfully violated a condition of probation.

(g) Waiver of fees and costs.

(1) A person who has been sentenced by the court following a plea of guilty or finding of guilt may have his or her probation revoked or be found to be in contempt for failure to pay a fine, fee, or costs only if the court finds that the person has willfully refused to make such payment, or has failed to make sufficient bona fide efforts to legally acquire the resources to make such payment.

(2) A fee or cost imposed by statute on persons who plead guilty to or are found guilty of any offense may be waived in whole or part by the court only when there is a specific provision in statute allowing for the waiver of such fee or cost.

(3) A court may waive all or part of a fee or costs imposed by statute only upon making findings in writing or on the record that each statutory standard for the waiver of such fee or costs has been satisfied. If the court decides to waive such fee or costs in whole or in part, the court shall make such determination with regard to each offense on which the defendant is or has been sentenced, and shall determine whether such fee or costs shall be waived in whole or in part.

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