

## **Proposed Amendments to Rule 5(b) of the Idaho Misdemeanor Criminal Rules**

The following amendments to Rule 5(b) of the Idaho Misdemeanor Criminal Rules are being recommended by the Idaho Supreme Court's Misdemeanor/Infraction Rules Advisory Committee. The proposal to revise the rule originated with the Idaho Supreme Court's Misdemeanor Sentencing Committee. The Misdemeanor/Infraction Rules Advisory Committee has approved all of the proposed revisions and is recommending that they be adopted by the Idaho Supreme Court.

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### **Rule 5. Uniform citation – Issuance – Service – Form – Number – Distribution.**

**(a) Peace Officer Citation.** A peace officer may issue a uniform citation for a citable offense in which the officer shall certify that the officer has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. The citation shall require the defendant to appear in court on the citation at the time certain which shall not be less than five (5) nor more than twenty-one (21) days after the date of the citation; provided, the administrative district judge may order that in specific counties that the appearance date shall be on or after one day and on or before a second date, and the Idaho Uniform Citation form may be amended accordingly. If a defendant appears on a citation within the time stated in the citation and the citation has not been delivered to the court, the court may dismiss the citation.

**(b) Exception – Second Offense or Enhanced DUI; Stalking in the Second Degree; Domestic Assault or Battery; Violation of a Domestic Violence Protection Order; Violation of a No Contact Order; Sexual Battery; or Violation of a Protection Order for Malicious Harassment.** Notwithstanding subsection (a), a defendant arrested or cited and subsequently released for “Driving Under the Influence (Second Offense),” Idaho Code § 18-8005(4); ~~or~~ “Driving Under the Influence (Enhanced Penalty),” Idaho Code § 18-8004C; “Stalking in the Second Degree,” Idaho Code § 18-7906; “Domestic Violence,” Idaho Code § 18-918 (assault or battery); “Violation of a Domestic Violence Protection Order,” Idaho Code § 39-6312; “Violation of a No Contact Order,” Idaho Code § 18-920; “Sexual Battery,” Idaho Code § 18-924; or “Violation of a Protection Order for Malicious Harassment,” Idaho Code § 18-7907, shall personally appear before a magistrate, for arraignment, within forty-eight (48) hours following the arrest or citation excluding Saturdays, Sundays and holidays. Provided, the court may postpone the arraignment if the defendant is hospitalized or otherwise in a condition which prevents the defendant being taken before the magistrate. At the arraignment, the court may order any appropriate conditions of release pursuant to Idaho Criminal Rule 46 and Idaho Criminal Rule 46.2. Failure to conduct the arraignment within forty-eight (48) hours shall not constitute grounds for dismissal. A person arrested or cited who remains in custody shall make an initial appearance before a magistrate as provided in Idaho Criminal Rule 5.

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