

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 27
EXECUTION

19-2701. AUTHORITY FOR EXECUTION OF JUDGMENT. When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

[(19-2701) Cr. Prac. 1864, sec. 450, p. 268; R.S., R.C., & C.L., sec. 8005; C.S., sec. 9048; I.C.A., sec. 19-2601.]

19-2702. EXECUTION ON JUDGMENT FOR FINE. If the judgment includes the payment of a fine, or costs, or fine and costs, or other monetary sums, execution may be issued thereon for such sums as on a judgment in a civil action.

[(19-2702) Cr. Prac. 1864, sec. 451, p. 268; R.S., sec. 8006; am. 1899, p. 379, sec. 3; reen. R.C. & C.L., sec. 8006; C.S., sec. 9049; I.C.A., sec. 19-2602; am. 1995, ch. 205, sec. 1, p. 700.]

19-2703. EXECUTION OF JUDGMENT OF IMPRISONMENT. If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

[(19-2703) Cr. Prac. 1864, sec. 452, p. 268; R.S., R.C., & C.L., sec. 8007; C.S., sec. 9050; I.C.A., sec. 19-2603.]

19-2704. DELIVERY OF DEFENDANT TO PENITENTIARY GUARD. If judgment is for imprisonment in the state prison, or for the infliction of the death penalty, the sheriff of the county must, upon receipt of the certified copy of judgment, hold the prisoner in his custody until demand for such prisoner is made upon him by the duly authorized guard of said prison, who may be sent to convey such prisoner to the state prison. When such demand is made upon the sheriff by said guard, the sheriff shall deliver the prisoner and said copy of the judgment to said guard, and take a receipt from said guard for the prisoner and said copy of the judgment.

[(19-2704) R.S., sec. 8008; am. 1899, p. 340, sec. 2; reen. R.C. & C.L., sec. 8008; C.S., sec. 9051; I.C.A., sec. 19-2604.]

19-2705. DEATH SENTENCE OR DEATH WARRANT AND CONFINEMENT THEREUNDER -- ACCESS TO CONDEMNED PERSON. (1) Whenever a person is sentenced to death, the judge passing sentence shall, in accordance with section [19-2719](#), Idaho Code, sign and file a death warrant fixing a date of execution not more than thirty (30) days thereafter.

(2) The warrant shall be directed to the director of the Idaho department of correction and shall be delivered to him forthwith.

(3) Whenever a person is under death warrant, execution of which has not been stayed, the warden of the prison in which the person is incarcerated shall keep the condemned person in solitary confinement until execution. No

person shall be allowed access to the condemned person except law enforcement personnel investigating matters within the scope of their duties, the attorney of record, attending physicians, a spiritual adviser of the condemned's choosing, and members of the immediate family of the condemned, and then only in accordance with prison rules. Persons under death warrant will be allowed contact visits with their attorneys of record and the agents of their attorneys of record. Such visits will take place subject to prison rules. No other contact visits shall be permitted. Prison officials have authority to suspend or deny visits when the safe, secure and orderly operation of the facility or public safety could be compromised.

(4) For purposes of this section a "contact visit" is defined as a meeting between a condemned person and another person during which the parties are not separated by a screen or other partition which prohibits physical contact. Contact visits with attorneys of record or agents of the attorneys of record will take place in a private, confidential setting where the prisoner and his attorney are in the same room.

(5) For the purposes of this section, "agents of the attorneys of record" means employees of the attorneys of record including investigators, paralegals, legal interns and mitigation specialists but does not include retained experts or other independent contractors of the attorneys of record.

(6) For the purposes of this section, "legal intern" means a qualified law student or recent law school graduate who, upon application and approval by the Idaho state bar association, is granted a limited license to engage in the practice of law.

(7) No person shall be allowed access to the condemned person under death warrant except law enforcement personnel investigating matters within the scope of their duties, the condemned person's attorneys of record, the agents of the condemned person's attorneys of record, attending physicians, spiritual advisers of the condemned person's choosing and approved visitors.

(8) When a person has been sentenced to death, but the death warrant has been stayed, contact visits between the condemned person and persons other than his attorneys of record and the agents of the attorneys of record may be allowed at the discretion of prison officials.

(9) All visits, contact or noncontact, with a condemned person, whether such person is under sentence of death or death warrant, shall take place only in accordance with prison rules. Prison officials shall have the authority to suspend or deny such visits when public safety or the safe, secure and orderly operation of the prison could be compromised.

(10) In the seven (7) days immediately preceding the scheduled execution of a condemned person, the condemned person may have contact visits with spiritual advisers of the condemned person's choosing and members of the condemned person's family, in addition to the attorneys of record and the agents of the attorneys of record.

(11) When a person has been sentenced to death, but the death warrant has been stayed, the warden is not required to hold such person in solitary confinement or to restrict access to him until the stay of the death warrant is lifted or a new death warrant is issued by the sentencing court; provided however, no condemned person shall be housed in less than maximum security confinement, and provided further that nothing in this section shall be construed to limit the warden's discretion to house such person under con-

ditions more restrictive if necessary to ensure public safety or the safe, secure and orderly operation of the facility.

(12) Nothing in this section shall be construed to create a liberty interest in the condemned person or to expand the right of access to courts under state or federal law.

[(19-2705) (19-2706) 19-2705, added 1984, ch. 159, sec. 2, p. 387; am. and redesig. 1999, ch. 285, sec. 3, p. 710; am. & redesig. 2003, ch. 282, sec. 2, p. 766.]

19-2708. SUSPENSION OF JUDGMENT OF DEATH. No judge, court or officer, can suspend the execution of a judgment of death, except as provided in sections [19-2715](#) and [19-2719](#), Idaho Code.

[(19-2708) Cr. Prac. 1864, sec. 456, p. 268; R.S., R.C., & C.L., sec. 8012; C.S., sec. 9055; I.C.A., sec. 19-2608; am. 1984, ch. 159, sec. 4, p. 387.]

19-2713. PROCEEDINGS WHEN FEMALE SUPPOSED TO BE PREGNANT. If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three (3) physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the prosecuting attorney of the county, and the provisions of sections [19-2710](#), [19-2711](#) apply to the proceedings upon the inquisition.

[(19-2713) Cr. Prac. 1864, sec. 462, p. 269; R.S., R.C., & C.L., sec. 8017; C.S., sec. 9060; I.C.A., sec. 19-2613.]

19-2714. FINDING IN CASE OF PREGNANCY. If it is found by the report that the female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant, the warden must suspend the execution of the judgment, and transmit the report to the district court that imposed the sentence. When the district court that imposed the sentence is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

[(19-2714) Cr. Prac. 1864, secs. 463, 464, p. 269; R.S., R.C., & C.L., sec. 8018; C.S., sec. 9061; I.C.A., sec. 19-2614; am. 1984, ch. 159, sec. 5, p. 388.]

19-2715. MINISTERIAL ACTIONS RELATING TO STAYS OF EXECUTION, RESETTling EXECUTION DATES, AND ORDER FOR EXECUTION OF JUDGMENT OF DEATH. (1) Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section [19-2719](#), Idaho Code, during the automatic review of judgments imposing the punishment of death provided by section [19-2827](#), Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section [20-1015](#), Idaho Code.

(2) Upon remittitur or mandate after a sentence of death has been affirmed, the state shall apply for a warrant from the district court in which the conviction was had, authorizing execution of the judgment of death. Upon

such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(3) If a stay of execution is granted pursuant to subsection (1) of this section and as a result, no execution takes place on the date set by the district court, upon termination of the stay, the state shall apply for another warrant and upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(4) If for any reason, other than those set forth in subsection (1) of this section, a judgment of death has not been executed, and it remains in force, the state shall apply for another warrant. Upon such application, the district court may inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. The warden must execute the judgment accordingly.

(5) Action of the district court under this section is ministerial only. No hearing shall be required for setting a new execution date and the court shall inquire only into the fact of an existing death sentence and the absence of a valid stay of execution.

(6) For purposes of this section, the phrase "stay of execution" shall refer to a temporary postponement of an execution as a result of a court order or an order of the governor postponing the execution while a petition for commutation is pending.

[(19-2715) Cr. Prac. 1864, secs. 465, 466, p. 269; R.S., sec. 8019; am. 1899, p. 340, sec. 4; reen. R.C. & C.L., sec. 8019; C.S., sec. 9062; I.C.A., sec. 19-2615; am. 1984, ch. 159, sec. 6, p. 388; am. 2012, ch. 84, sec. 1, p. 241; am. 2021, ch. 196, sec. 23, p. 540.]

19-2716. METHODS OF EXECUTION. (1) The punishment of death shall be inflicted by the following methods:

(a) Continuous, intravenous administration of a lethal quantity of a substance or substances approved by the director of the Idaho department of correction until death is pronounced by a coroner or a deputy coroner; or

(b) Firing squad.

(2) Not later than five (5) days after the issuance of a death warrant, the director of the Idaho department of correction must determine, and certify by affidavit to the court that issued the death warrant, whether execution by lethal injection, as described in subsection (1) (a) of this section, is available.

(3) If the director certifies that lethal injection is available, the method of execution shall be lethal injection.

(4) If the director does not certify that lethal injection is available, fails to file a certification as required pursuant to subsection (2) of this section, or otherwise determines that lethal injection is unavailable, the method of execution shall be firing squad.

(5) If a court holds that lethal injection is unconstitutional, on its face or as applied, or otherwise determines that firing squad is a constitutionally required method of execution, the method of execution shall be firing squad.

(6) The director shall determine the procedures to be used in any execution.

(7) The provisions of this section shall apply to all executions carried out on and after the effective date of this enactment, irrespective of the date sentence was imposed.

[(19-2716) Cr. Prac. 1864, sec. 467, p. 269; R.S., R.C., & C.L., sec. 8020; C.S., sec. 9063; I.C.A., sec. 19-2616; am. 1978, ch. 70, sec. 1, p. 140; am. 1982, ch. 257, sec. 1, p. 668; am. 2009, ch. 81, sec. 1, p. 228; am. 2023, ch. 141, sec. 1, p. 390.]

19-2716A. PRACTICE OF MEDICINE AND POSSESSION OF CONTROLLED SUBSTANCES -- EXEMPTION -- EXCEPTIONS TO GOVERNMENTAL LIABILITY -- CONFIDENTIALITY -- LICENSURE. (1) Notwithstanding any other provision of law, infliction of the punishment of death in the manner required by section [19-2716](#), Idaho Code, shall not be construed as the practice of medicine. The director of the department of correction and all persons authorized by him to participate in an execution, as provided in section [19-2716](#), Idaho Code, shall be exempt from all laws, rules and regulations governing the practice of medicine.

(2) For the purposes of carrying out the provisions of section [19-2716](#), Idaho Code, any pharmacy, prescriber, manufacturer, wholesale distributor or other entity authorized by law to possess controlled substances may distribute controlled substances to the director or his designees and shall not be subject to criminal or civil liability for the death of the condemned person.

(3) For the purposes of carrying out the provisions of section [19-2716](#), Idaho Code, the director and his designees may obtain, possess, store and administer controlled substances and are exempt from all laws, rules and regulations governing pharmacies and controlled substances, notwithstanding any other provision of law. Any employee of the state of Idaho participating in an execution pursuant to section [19-2716](#), Idaho Code, shall be presumed to be acting within the course and scope of his employment and without malice or criminal intent for purposes of section [6-903](#), Idaho Code. Any employee, agent or contractor of the state of Idaho participating in an execution pursuant to section [19-2716](#), Idaho Code, shall not be subject to criminal or civil liability for the death of the condemned person.

(4) For purposes of carrying out the provisions of section [19-2716](#), Idaho Code, the identities of any of the following persons or entities involved in the planning, training, or performance of an execution shall be confidential, shall not be subject to disclosure, and shall not be admissible as evidence or discoverable in any proceeding before any court, tribunal, board, agency, or person:

(a) The on-site physician and any member of the escort team or medical team; and

(b) Any person or entity who compounds, synthesizes, tests, sells, supplies, manufactures, stores, transports, procures, dispenses, or prescribes the chemicals or substances for use in an execution or that provides the medical supplies or medical equipment for the execution process.

(5) If any person who participates or performs ancillary functions in an execution is licensed by a board, the licensing board shall not suspend or revoke the person's license, or take disciplinary action against the person, because of the person's participation in an execution.

[19-2716A, added 2012, ch. 85, sec. 1, p. 242; am. 2022, ch. 182, sec. 1, p. 590.]

19-2718. RETURN OF DEATH WARRANT. After the execution, the executioner shall make a return upon the death warrant to the district court, showing the time, mode and manner in which it was executed.

[(19-2718) R.S., sec. 8022; am. 1899, p. 340, sec. 6; reen. R.C. & C.L., sec. 8022; C.S., sec. 9065; I.C.A., sec. 19-2618; am. 1941, ch. 150, sec. 3, p. 303; am. 2012, ch. 83, sec. 1, p. 240.]

19-2719. SPECIAL APPELLATE AND POST-CONVICTION PROCEDURE FOR CAPITAL CASES -- AUTOMATIC STAY. The following special procedures shall be interpreted to accomplish the purpose of eliminating unnecessary delay in carrying out a valid death sentence.

(1) When the punishment of death is imposed the time for filing an appeal shall begin to run when the death warrant is filed.

(2) The death warrant shall not be filed until forty-two (42) days after the judgment imposing the death sentence has been filed, or, in the event a post-conviction challenge to the conviction or sentence is filed, until the order deciding such post-conviction challenge is filed.

(3) Within forty-two (42) days of the filing of the judgment imposing the punishment of death, and before the death warrant is filed, the defendant must file any legal or factual challenge to the sentence or conviction that is known or reasonably should be known. The defendant must file any claims of ineffective assistance of appellate counsel within forty-two (42) days of the Idaho supreme court issuing the final remittitur in the unified appeal from which no further proceedings except issuance of a death warrant are ordered.

(4) Any remedy available by post-conviction procedure, habeas corpus or any other provision of state law must be pursued according to the procedures set forth in this section and within the time limitations of subsection (3) of this section. The special procedures for fingerprint or forensic DNA testing set forth in sections [19-4901](#)(a)(6) and [19-4902](#)(b) through (g), Idaho Code, are fully applicable in capital cases and are subject to the procedures set forth in this section, and must be pursued through a petition filed within the time limitations of subsection (3) of this section or by July 1, 2002, whichever is later.

(5) If the defendant fails to apply for relief as provided in this section and within the time limits specified, he shall be deemed to have waived such claims for relief as were known, or reasonably should have been known. The courts of Idaho shall have no power to consider any such claims for relief as have been so waived or grant any such relief.

(a) An allegation that a successive post-conviction petition may be heard because of the applicability of the exception herein for issues that were not known or could not reasonably have been known shall not be considered unless the applicant shows the existence of such issues by (i) a precise statement of the issue or issues asserted together with (ii) material facts stated under oath or affirmation by credible persons with first hand knowledge that would support the issue or issues asserted. A pleading that fails to make a showing of excepted issues supported by material facts, or which is not credible, must be summarily dismissed.

(b) A successive post-conviction pleading asserting the exception shall be deemed facially insufficient to the extent it alleges matters that are cumulative or impeaching or would not, even if the allegations were true, cast doubt on the reliability of the conviction or sentence.

(c) A successive post-conviction pleading asserting the exception shall be deemed facially insufficient to the extent it seeks retroactive application of new rules of law.

(6) In the event the defendant desires to appeal from any post-conviction order entered pursuant to this section, his appeal must be part of any appeal taken from the conviction or sentence. All issues relating to conviction, sentence and post-conviction challenge shall be considered in the same appellate proceeding.

(7) If post-conviction challenge is made under this section, questions raised thereby shall be heard and decided by the district court within ninety (90) days of the filing of any motion or petition for relief timely filed as provided by this section. The court shall give first priority to capital cases. In the event the district court fails to act within the time specified, the supreme court of Idaho shall, on its own motion or the motion of any party, order the court to proceed forthwith, or if appropriate, reassign the case to another judge. When the supreme court intervenes as provided, it shall set a reasonable time limit for disposition of the issues before the district court.

(8) The time limit provided in subsection (7) of this section for disposition of post-conviction claims may be extended only upon a showing of extraordinary circumstances which would make it impossible to fairly consider defendant's claims in the time provided. Such showing must be made under oath and the district court's finding that extraordinary circumstances exist for extending the time shall be in writing and shall be immediately reported to the supreme court, which shall at once independently consider the sufficiency of the circumstances shown and determine whether an extension of time is warranted.

(9) When a judgment imposing the penalty of death is filed, the clerk and the reporter shall begin preparation of the transcripts of the trial, and other proceedings, and the clerk's transcript.

(10) When the procedures specified in this section and section [19-2827](#), Idaho Code, have been carried out and a remittitur issued, and an execution date set as provided by law, the defendant shall be deemed to have exhausted all state remedies.

(11) Any successive petition for post-conviction relief not within the exception of subsection (5) of this section shall be dismissed summarily. Notwithstanding any other statute or rule, the order of dismissal shall not be subject to any motion to alter, amend or reconsider. Such order shall not be subject to any requirement for the giving of notice of the court's intent to dismiss. The order of dismissal shall not be appealable.

(12) A stay of execution while the special appellate procedures specified herein are followed and during the pendency of automatic review of death sentences shall be automatically entered by the clerk of the supreme court at the time the district court transmits to the supreme court the report required by section [19-2827](#), Idaho Code. If the sentence is upheld, the clerk shall dissolve such stay when the remittitur is filed. Thereafter the district court shall set a new execution date.

[19-2719, added 1984, ch. 159, sec. 7, p. 388; am. 1995, ch. 140, sec. 3, p. 596; am. 2001, ch. 317, sec. 1, p. 1127; am. 2010, ch. 135, sec. 1, p. 287; am. 2015, ch. 245, sec. 1, p. 1040.]

19-2719a. APPLICABILITY OF SECTIONS [19-2705](#), [19-2708](#), [19-2714](#), [19-2715](#), [19-2719](#). This act shall apply to all cases in which capital sen-

tences where imposed on or prior to the effective date of this act but which have not been carried out, and to all capital cases arising after the effective date of this act.

[I.C., sec. 19-2719a, as added by 1984, ch. 159, sec. 8, p. 386.]

19-2720. INQUIRY INTO NEED FOR NEW COUNSEL. After the imposition of a sentence of death, the trial judge should advise the defendant that, upon a particularized showing that there is a reasonable basis to litigate a claim of ineffective assistance of trial counsel, new counsel may be appointed to represent the defendant to pursue such a claim in a post-conviction proceeding. If no such request is made, the trial judge shall certify of record that there are no facts that have come to the court's attention upon which such a claim could reasonably be based or, alternatively, the court may appoint new counsel. No deficiency in the application of the procedure described herein shall be grounds for relief from a judgment of conviction or from a sentence.

[(19-2720) 19-2719A, added 1995, ch. 140, sec. 4, p. 598; am. and redesign. 2005, ch. 25, sec. 14, p. 91.]