

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 29
IDAHO BAIL ACT

19-2901. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Bail Act."

[19-2901, added 2009, ch. 90, sec. 2, p. 259.]

19-2902. STATEMENT OF POLICY. (1) The legislature finds and declares that:

(a) Bail, in criminal cases, is a constitutional right subject to certain limitations;

(b) It is necessary to establish a statewide process to uniformly implement this right and the limitations.

(2) The purpose of this chapter is to provide a uniform and comprehensive statewide process for the administration of bail in criminal cases in order to:

(a) Ensure the appearance of defendants before the courts;

(b) Protect the right of defendants to bail, as constitutionally provided; and

(c) Ensure the protection and safety of victims, witnesses and the public.

[19-2902, added 2009, ch. 90, sec. 2, p. 260.]

19-2903. RIGHT TO BAIL -- LIMITATIONS. Any person charged with a crime who is not released on his own recognizance is entitled to bail, as a matter of right, before a plea or verdict of guilty, except when the offense charged is punishable by death and the proof is evident or the presumption is great. The setting of bail on a bench warrant following a failure by a defendant to appear before the court as ordered and without sufficient excuse shall be determined under the provisions of section [19-2915](#), Idaho Code. In the discretion of the court, bail may be allowed in the following cases:

(1) After the defendant is found guilty or pleads guilty and before sentencing;

(2) While an appeal is pending from a judgment of conviction, an order withholding judgment or an order imposing sentence, except that a court shall not allow bail when the defendant has been sentenced to death or life imprisonment;

(3) Upon a charge of a violation of the terms of probation; and

(4) Upon a finding of a violation of the conditions of release pursuant to section [19-2919](#), Idaho Code.

[19-2903, added 2009, ch. 90, sec. 2, p. 260; am. 2015, ch. 182, sec. 1, p. 586.]

19-2904. BAIL, RELEASE ON RECOGNIZANCE AND CONDITIONS OF RELEASE. The court may release a person on his own recognizance or set an amount of bail, and may impose any conditions of release. In making these determinations the court shall consider the following objectives:

(1) Ensuring the appearance of the defendant;

- (2) Ensuring the integrity of the court process including the right of the defendant to bail as constitutionally provided;
- (3) Ensuring the protection of victims and witnesses; and
- (4) Ensuring public safety.

[19-2904, added 2009, ch. 90, sec. 2, p. 260.]

19-2905. DEFINITIONS. As used in this chapter, unless the context requires otherwise:

(1) "Bail" means a monetary amount required by the court to release the defendant from custody and to ensure his appearance in court as ordered.

(2) "Bail agent" means a producer licensed by the state of Idaho in the line of surety insurance who is authorized by an insurer to execute or countersign undertakings of bail in connection with judicial criminal proceedings.

(3) "Bail bond" means a financial guarantee, posted by a bail agent and underwritten by a surety insurance company, that the defendant will appear as ordered.

(4) "Bench warrant" means a warrant issued by the court because the defendant failed to appear as ordered, failed to comply with a condition of release or the sureties are no longer sufficient.

(5) "Cash deposit" means payment in the form of United States currency, money order, certified check, cashier's check or such other form of payment as provided by the rules of the supreme court.

(6) "Certificate of surrender" means a certificate in a form approved by the supreme court that is completed by a surety insurance company or its bail agent, or a person who has posted a property bond or cash deposit, and provided to the sheriff of the county where the action is pending for signature.

(7) "Conditions of release" means any reasonable restrictions, conditions or prohibitions placed upon the defendant's activities, movements, associations or residences by the court, excluding the court order requiring the defendant to appear in court.

(8) "Exoneration" means a court order directing the full or partial release and discharge from liability of the surety underwriting a bail bond or the person posting a cash deposit or a property bond.

(9) "Forfeiture" means an order of the court reciting that the defendant failed to appear as ordered and stating that bail is forfeited.

(10) "Order of recommitment" means an order of the court committing the defendant back to the custody of the sheriff.

(11) "Person" means a natural person, legal corporation, limited liability corporation, partnership, sole proprietorship or any other business entity recognized by the state of Idaho.

(12) "Property bond" means a financial guarantee approved by the court, secured by property, real or personal, that the defendant will appear in court as ordered.

(13) "Readmittance to bail" means an order of the court allowing the defendant to post new bail following an order of revocation.

(14) "Recommitment" means the return of the defendant to the custody of the sheriff following revocation or forfeiture of bail.

(15) "Reinstatement of bail" means an order of the court allowing the defendant to be released on the same bail previously posted that has been ordered forfeited.

(16) "Revocation of bail" means an order by the court revoking the defendant's release on bail.

(17) "Surety insurance company" means an admitted insurer authorized in the line of surety pursuant to [title 41](#), Idaho Code.

(18) "Surrender" means the voluntary surrender or delivery of the defendant into the custody of the sheriff of the county where the action is pending.

[19-2905, added 2009, ch. 90, sec. 2, p. 260.]

19-2906. ADMISSION TO BAIL. Admission to bail is the order of a competent court that the defendant shall be released from actual custody of the sheriff upon posting bail.

[19-2906, added 2009, ch. 90, sec. 2, p. 261.]

19-2907. POSTING BAIL -- SUFFICIENT SURETIES. (1) The posting of bail consists of filing sufficient sureties with the court, as required by the court, to ensure the defendant's appearance. Sufficient sureties shall consist of any one (1) of the following:

- (a) A bail bond;
- (b) A property bond; or
- (c) A cash deposit.

(2) Although bail may be posted in the form of a cash deposit pursuant to the provisions of subsection (1) of this section, a defendant shall not be required to post bail in the form of a cash deposit.

[19-2907, added 2009, ch. 90, sec. 2, p. 261.]

19-2908. CASH DEPOSIT APPLIED TO PAYMENTS OF FINES, FEES, COSTS AND RESTITUTION. When bail has been posted by cash deposit and remains on deposit at the time of the judgment or order withholding judgment, the clerk of the court shall, under the direction of the court, apply the money in satisfaction of fines, fees, costs and restitution imposed in the case and fines, fees, costs and restitution that have been imposed against the defendant in any other criminal or infraction action, and after satisfying the fines, fees, costs and restitution, shall refund the surplus, if any, to the person posting the cash deposit.

[19-2908, added 2009, ch. 90, sec. 2, p. 261; am. 2019, ch. 148, sec. 1, p. 498.]

19-2909. PROPERTY BOND. A property bond may be posted by the defendant or third person on behalf of the defendant. For real property to qualify as sufficient surety, it must be located in the state of Idaho and must have an equity value, after deducting the outstanding balance of any existing liens and encumbrances, in the amount of the bail set by the court plus anticipated collection costs. Acceptance of a property bond is in the discretion of the court. A property bond posted with and accepted by the court pursuant to this section, and recorded, shall constitute a consensual lien on the property pursuant to section [55-1005](#)(3), Idaho Code. All fees shall be paid by the person posting the property bond. An order of the court exonerating the property bond shall extinguish the lien and cancel the promissory

note. The property bond and the promissory note shall be in a form approved by the supreme court.

[19-2909, added 2009, ch. 90, sec. 2, p. 262.]

19-2910. SUBSTITUTION OF SUFFICIENT SURETIES. At any time before an order of forfeiture, the court may allow the defendant to substitute any type of surety identified in section [19-2907](#), Idaho Code, for the previously posted surety. Upon substitution, the previously posted surety shall be exonerated.

[19-2910, added 2009, ch. 90, sec. 2, p. 262.]

19-2911. RELEASE OF DEFENDANT ON POSTING BAIL. Upon the posting of bail in the amount set by the court, the defendant shall be released from the actual custody of the sheriff.

[19-2911, added 2009, ch. 90, sec. 2, p. 262.]

19-2912. INCREASING OR REDUCING BAIL. After a defendant has been admitted to bail, the court in which the charge is pending may, upon good cause shown, increase or reduce the amount of bail. If the amount is increased, the court shall order the defendant to be committed to the actual custody of the sheriff until bail is posted in the increased amount. Any previous bail posted in the case shall be exonerated by the court. If the defendant applies for a reduction of the amount of bail, notice of the application shall be served upon the attorney for the state and the person posting bail within five (5) business days.

[19-2912, added 2009, ch. 90, sec. 2, p. 262.]

19-2913. SURRENDER OF DEFENDANT. (1) At any time before forfeiture of bail, a surety insurance company or its bail agent or person posting a property bond or cash deposit may surrender the defendant to the sheriff of the county where the action is pending. Upon the surrender of the defendant, the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

(2) At the time of surrender of the defendant to the sheriff, the surety insurance company or its bail agent or person posting a property bond or cash deposit shall provide the sheriff with a certificate of surrender.

(3) The surety insurance company or its bail agent or person posting a property bond or cash deposit shall, within five (5) business days of the surrender of the defendant, file with the court in which the action or appeal is pending the certificate of surrender and shall deliver a copy of the same to the attorney for the state. The court shall thereupon order the bail exonerated.

(4) At any time before forfeiture of bail, a defendant may surrender himself to the sheriff of the county where the action is pending. Upon surrender by the defendant, the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

[19-2913, added 2009, ch. 90, sec. 2, p. 262.]

19-2914. ARREST OF DEFENDANT FOR SURRENDER. At any time before the exoneration of bail, the surety insurance company or its bail agent or the person posting a property bond or cash deposit may empower a bail enforcement agent to arrest the defendant at any place within the state by signing an affidavit extending such authority.

[19-2914, added 2009, ch. 90, sec. 2, p. 262; am. 2019, ch. 266, sec. 1, p. 778; am. 2020, ch. 126, sec. 1, p. 394.]

19-2914A. BAIL ENFORCEMENT AGENTS. (1) As used in this section, "bail enforcement agent" or "agent" means a person who:

(a) Is empowered to arrest or surrender a defendant at any time before the exoneration of bail; and

(b) Meets the requirements of this section.

(2) Requirements. An agent must:

(a) Be eighteen (18) years of age or older;

(b) Be a citizen or legal resident of the United States;

(c) Not have been adjudicated as having suffered from any of the following conditions, based on substantial evidence:

(i) Lacking mental capacity as defined in section [18-210](#), Idaho Code;

(ii) Mentally ill as defined in section [66-317](#), Idaho Code;

(iii) Gravely disabled as defined in section [66-317](#), Idaho Code;

or

(iv) An incapacitated person as defined in section [15-5-101](#), Idaho Code; and

(d) Not be a fugitive from justice.

(3) Required items and information. During an arrest pursuant to section [19-2914](#), Idaho Code, a bail enforcement agent must possess:

(a) An affidavit extending the authority to arrest the defendant;

(b) The name, last known address, and photograph of the defendant;

(c) The name and principal address of the surety insurance company, its bail agent, or the person posting a property bond or cash deposit that is empowering the bail enforcement agent to arrest the defendant; and

(d) A valid driver's license or other photographic identifying document or information.

(4) Identification. A badge shall be worn by bail enforcement agents that is designed exclusively for bail enforcement agents. The badge must clearly delineate the title of "bail enforcement agent" directly on and below the badge.

(5) Notification to the sheriff. Prior to making a planned apprehension, an agent must first provide notice to the county sheriff of the county within which the planned apprehension is to occur.

(6) Prohibitions. Upon appointment, until either revocation of appointment or the exoneration of bail, an agent may not:

(a) Represent himself as a peace officer or an employee of any department of a federal, state, or local law enforcement agency;

(b) Wear any uniform that would represent the agent as a peace officer or an employee of any department of a federal, state, or local government;

(c) Use a fictitious name that would represent the agent as a peace officer or an employee of a department of a federal, state, or local government; or

(d) Carry a weapon, unless in compliance with all state and federal laws.

(7) Penalty. Any person who violates the provisions of subsection (2), (3), (4), or (5) of this section for the first offense shall be liable for a misdemeanor penalty of a fine not to exceed one thousand dollars (\$1,000). For any second or subsequent offense, the person shall be subject to a misdemeanor penalty not to exceed six (6) months in jail and a fine not to exceed one thousand dollars (\$1,000). Any person who fails to obtain authority from a surety insurance company or its bail agent, or the person posting a property bond or cash deposit in accordance with section [19-2914](#), Idaho Code, or a similar law of another state, or who attempts to arrest or surrender a defendant without meeting the requirements of subsection (2) of this section, or who violates the provisions of subsection (6) of this section, is guilty of a misdemeanor.

(8) Requirements for prosecution. Venue for prosecution for a violation under the provisions of this section shall be in the county where the violation occurred, and such prosecution will be handled by the prosecuting attorney of such county. A prosecution for a violation of this section must be commenced within the time limitations set forth in section [19-403](#), Idaho Code.

(9) A bail agent who appoints a bail enforcement agent is required to keep a copy of the bail enforcement agent's appointment and may rely thereon that the bail enforcement agent has met the requirements of this section.

[19-2914A, added 2019, ch. 266, sec. 2, p. 779; am. 2020, ch. 126, sec. 2, p. 394.]

19-2915. FORFEITURE OF BAIL. (1) If without sufficient excuse the defendant fails to appear before the court as ordered, the court shall immediately:

- (a) Enter the defendant's failure to appear in the minutes;
- (b) Order forfeiture of the bail; and
- (c) Issue a bench warrant for the arrest of the defendant.

(2) The court, in its discretion, may:

- (a) Set the amount of bail in the bench warrant;
- (b) Set the amount of bail in the bench warrant but require that the defendant appear before the court where the charge or charges are pending before being released on bail; or
- (c) Set no bail on the bench warrant and require that the defendant not be released until appearing before the court where the charges are pending, at which time the court shall set bail or release the defendant on the defendant's own recognizance, and shall set any conditions of release.

(3) The clerk shall provide the person posting bail written notice of the order of forfeiture by mailing notice within five (5) business days of the order of forfeiture to the last known address of the person posting bail or that person's designated agent.

(4) If the court quashes the bench warrant within one hundred eighty (180) days after the order of forfeiture, the forfeiture of bail shall be set aside and the court shall notify the person posting bail of the setting aside of the forfeiture within five (5) business days of the date of the order quashing the bench warrant and reinstating the bail.

[19-2915, added 2009, ch. 90, sec. 2, p. 263; am. 2015, ch. 182, sec. 2, p. 587.]

19-2916. SETTING ASIDE ORDER OF FORFEITURE AND REINSTATING BAIL. If the defendant appears in court after the entry of the defendant's failure to appear and satisfactorily explains his failure to appear, the court may set aside the order of forfeiture and reinstate bail. Before reinstatement of bail, the court shall quash any bench warrant and set aside any order of forfeiture of the bail. The court shall provide written notice of reinstatement of bail to the person posting bail or to that person's designated agent within five (5) business days of the order reinstating bail.

[19-2916, added 2009, ch. 90, sec. 2, p. 263.]

19-2917. MOTION TO SET ASIDE FORFEITURE. Pursuant to a motion filed within one hundred eighty (180) days after an order of forfeiture as provided in section [19-2915](#), Idaho Code, the court that ordered forfeiture may direct that the order of forfeiture be set aside, in whole or in part, upon such conditions as the court may impose, as provided by rules adopted by the supreme court, if it appears that justice so requires. If the court sets aside the order of forfeiture, then it may:

- (1) Reinstate the bail;
- (2) Exonerate the bail;
- (3) Recommit the defendant to the custody of the sheriff and set new bail; or
- (4) Release the defendant on his own recognizance.

[19-2917, added 2009, ch. 90, sec. 2, p. 263.]

19-2918. REMITTANCE OF FORFEITURE -- PAYMENT OF BAIL. (1) The person posting bail shall pay to the clerk of the court the amount of bail ordered within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture of bail unless:

- (a) The order of forfeiture has been set aside by the court;
- (b) The bail has been exonerated by the court; or
- (c) A motion to set aside the order of forfeiture or a motion to exonerate bail has been timely filed, together with a request for hearing, and has not been decided by the court. If the motion is decided and denied by the court more than one hundred eighty (180) days after the order of forfeiture, then the person posting bail shall pay the amount of bail to the clerk of the court within five (5) business days after the entry of the court's order denying the motion. A timely filed notice of appeal and motion to stay the forfeiture stays the obligation to remit payment until five (5) business days after the entry of the court's order denying the motion to stay or, in the event such motion is granted, five (5) business days following the final determination of the appeal.

(2) If cash is deposited in lieu of bail, the clerk of the court shall pay the cash deposit to the county treasurer. If the person posting a bail bond or property bond that has been forfeited does not pay the amount of bail within the time provided in this section, then the order of forfeiture shall become a judgment against the person posting the bail bond or property bond.

(3) After the notice required by section [19-2915](#), Idaho Code, in the event that a surety insurance company fails to pay the amount of any bail forfeited within the time required by this section, the administrative district

judge may order the sheriffs and clerks of all counties in the judicial district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid. An administrative district judge in another district may also order the sheriffs and clerks of all counties in his district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid.

(4) If the administrative district judge has reasonable cause to believe that a bail agent has committed any of the actions that could form the basis for a suspension of the bail agent's license pursuant to section [41-1039](#)(3), Idaho Code, the court shall immediately refer the matter to the director of the department of insurance for appropriate disciplinary action pursuant to sections [41-1016](#) and [41-1039](#), Idaho Code, and may enter an order that the sheriffs and clerks of all counties in the judicial district shall not accept bail bonds submitted by that bail agent until the director has rendered a decision as to whether to suspend the bail agent's license pursuant to section [41-1039](#)(3), Idaho Code. The director shall immediately notify all judicial district trial court administrators of such decision.

[19-2918, added 2009, ch. 90, sec. 2, p. 263; am. 2010, ch. 86, sec. 6, p. 167; am. 2013, ch. 36, sec. 2, p. 78.]

19-2919. REVOCATION OF BAIL -- VIOLATION OF CONDITIONS OF RELEASE. (1) Upon its own motion or upon a verified petition alleging that the defendant willfully violated a condition of release, the court may issue a bench warrant directing that the defendant be arrested and brought before the court for a bail revocation hearing, or the court may order the defendant to appear before the court at a time certain. At the bail revocation hearing, if the court finds that the defendant willfully violated a condition of release and the defendant is present before the court, the court may revoke the bail and remand the defendant to the custody of the sheriff. At any time thereafter, the court may reset bail in the same or a new amount and impose conditions of release. If the defendant fails to appear at the bail revocation hearing, the court shall issue a bench warrant for the defendant's arrest.

(2) In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court may reset bail in the same or a new amount and impose any appropriate conditions of release.

(3) The court may deny readmittance to bail if the court finds that the defendant has intimidated or harassed a victim, potential witness, juror or judicial officer or has committed one (1) or more violations of the conditions of release and such violation or violations constituted a threat to the integrity of the judicial system.

[19-2919, added 2009, ch. 90, sec. 2, p. 264.]

19-2920. REVOCATION OF BAIL -- INSUFFICIENT SURETY. (1) Private surety. Upon the filing of a verified petition alleging that the bail posted by a cash deposit or property bond has become insufficient by reason of bankruptcy, death or any other reason, the court may order the defendant and the private surety to appear before the court at a time certain for a bail revocation hearing. At the bail revocation hearing, if the court finds that the private surety is insufficient, the court may revoke the bail and recommit the defendant to the custody of the sheriff. If the defendant fails

to appear for the bail revocation hearing, the court shall immediately issue a bench warrant for the defendant's arrest.

(2) Surety insurance company. Upon the filing of a verified petition alleging bail posted by a surety insurance company has become insufficient by reason of bankruptcy, receivership, suspension or revocation of authority to conduct business in the state of Idaho or any other reason, the court may order the defendant and the commercial surety or its agent to appear before the court at a time certain for a bail revocation hearing. At the bail revocation hearing, if the court finds that the commercial surety is insufficient, it may revoke the bail and recommit the defendant to the custody of the sheriff. If the defendant fails to appear for the bail revocation hearing, the court shall immediately issue a bench warrant for the defendant's arrest.

(3) In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court shall set bail in the same or a new amount and impose any appropriate conditions of release.

[19-2920, added 2009, ch. 90, sec. 2, p. 264.]

19-2921. ORDER OF RECOMMITMENT -- READMITTANCE TO BAIL. In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. If the offense is bailable, the court shall fix bail in a new amount and impose any appropriate conditions of release.

[19-2921, added 2009, ch. 90, sec. 2, p. 264.]

19-2922. EXONERATION OF BAIL. The court shall order the bail exonerated in the following circumstances:

(1) The defendant has appeared for all court proceedings as ordered and all charges for which the bail has been posted have been resolved by acquittal, dismissal or sentencing;

(2) Written notice of the court's order of forfeiture was not mailed to the person posting bail or his designated agent within five (5) business days of the order of forfeiture;

(3) Written notice of the court's order to set aside the order of forfeiture and reinstating bail was not mailed to the person posting bail or his designated agent within five (5) business days of the order;

(4) Before any order of forfeiture, the defendant has been surrendered or has surrendered himself to the sheriff of the county where the action is pending and the certificate of surrender has been filed with the court as required in section [19-2913](#), Idaho Code;

(5) The defendant has appeared before the court within one hundred eighty (180) days of the court's order of forfeiture, unless the court has set aside the order of forfeiture and has reinstated bail pursuant to section [19-2916](#), Idaho Code; provided, that in those cases where the defendant was not returned by the person posting bail to the sheriff of the county where the action is pending, the court may condition the exoneration of bail and the setting aside of the forfeiture on payment by the person posting bail of any costs incurred by state or local authorities arising from the transport

of the defendant to the jail facility of the county where the charges are pending. Such costs shall not exceed the amount of the bail posted;

(6) The court has revoked bail and has ordered that the defendant be recommitted.

[19-2922, added 2009, ch. 90, sec. 2, p. 264.]

19-2923. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

[19-2923, added 2009, ch. 90, sec. 2, p. 265.]