

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 39
PROCEEDINGS IN MAGISTRATE'S DIVISION OF THE DISTRICT COURT

19-3901. COMPLAINT OR CITATION. All proceedings and actions before the magistrates division of the district court for a public offense of which such court has jurisdiction, must be commenced by complaint setting forth the offense charged, with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint. A complaint for a misdemeanor must be sworn to before a magistrate or judge. A complaint for an infraction may be an unsworn complaint signed by a law enforcement officer. Provided, however, as to any misdemeanor or infraction triable by a magistrate, a law enforcement officer may, in lieu of making a written complaint, issue to the defendant a uniform citation containing a complaint and a summons to appear in a form and in the manner prescribed by rule of the supreme court. The complaint in the uniform citation shall contain a certification by the law enforcement officer to the effect that he certifies that he has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. The citation shall be served upon the defendant by obtaining his written promise to appear in court at a time certain or by physically delivering the citation to the defendant. The citation shall be processed in the courts as prescribed by rule of the supreme court. If the defendant fails to appear on a misdemeanor citation at the time indicated in the summons, the defendant may be prosecuted for the misdemeanor offense of failure to appear under section [19-3901A](#), Idaho Code.

[(19-3901) Cr. Prac. 1864, sec. 595, p. 287; R.S., R.C., & C.L., sec. 8280; C.S., sec. 9227; I.C.A., sec. 19-4001; am. 1967, ch. 152, sec. 1, p. 342; am. 1971, ch. 117, sec. 1, p. 400; am. 1979, ch. 165, sec. 1, p. 509; am. 1982, ch. 353, sec. 9, p. 874; am. 1983, ch. 25, sec. 1, p. 67.]

19-3901A. FAILURE TO OBEY CITATION FOR MISDEMEANOR. (a) It shall be unlawful for any person to fail to appear in court at the time promised on a misdemeanor citation or to fail to appear at the time indicated on a misdemeanor citation served upon the defendant, regardless of the disposition of the charge upon which such citation was originally issued.

(b) The duty to appear in court at the time indicated in a misdemeanor citation may be complied with by an appearance by counsel in the manner prescribed by rule of the supreme court.

(c) Violation of the provisions of this section shall be a misdemeanor.

[19-3901A, added 1983, ch. 25, sec. 3, p. 68.]

19-3902. CORRECTION OF DEFECTIVE COMPLAINT. Whenever it shall appear to the prosecuting attorney of any county of this state that any criminal complaint filed in any justice or probate court is defective or void, the said prosecuting attorney shall have the right to substitute a new complaint, and the defendant or defendants shall not be considered to have been placed in jeopardy by any proceedings previous to the filing of the said new complaint: provided, that said prosecuting attorney shall file said complaint before the case for the prosecution has been closed.

[(19-3902) 1907, p. 110, sec. 1; reen. R.C. & C.L., sec. 8280a; C.S., sec. 9228; I.C.A., sec. 19-4002.]

19-3903. ISSUANCE AND FORM OF WARRANT. If the magistrate judge is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form: County of.....

The state of Idaho to any sheriff, constable, marshal or policeman, in this state:

Complaint, upon oath, having been this day made before me.... (magistrate judge), by C.D., that the offense of.... (designating it generally), has been committed, and accusing E.F. thereof; you are therefore commanded forthwith to arrest the above named E.F. and bring him before me forthwith at.... (naming place).

Witness my hand at....., this..... day of.....,..... A.B.

[(19-3903) Cr. Prac. 1864, sec. 597, p. 287; R.S., R.C., & C.L., sec. 8281; C.S., sec. 9229; I.C.A., sec. 19-4003; am. 2002, ch. 32, sec. 8, p. 49; am. 2012, ch. 20, sec. 12, p. 68.]

19-3904. DOCKET AND MINUTES. A docket must be kept by the magistrate judge, or by the clerk of the court, in which must be entered each action and the proceedings of the court therein.

[(19-3904) Cr. Prac. 1864, sec. 600, p. 288; R.S., R.C., & C.L., sec. 8282; C.S., sec. 9230; I.C.A., sec. 19-4004; am. 2012, ch. 20, sec. 13, p. 69.]

19-3905. PLEA -- EXAMINATION ON PLEA OF GUILTY. The defendant may make the same plea as upon an indictment. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury.

[(19-3905) 1874, p. 363, sec. 602; R.S., R.C., & C.L., sec. 8283; C.S., sec. 9231; I.C.A., sec. 19-4005.]

19-3906. PROCEEDINGS AFTER PLEA. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case.

[(19-3906) R.S., R.C., & C.L., sec. 8284; C.S., sec. 9232; I.C.A., sec. 19-4006.]

19-3909. POSTPONEMENT OF TRIAL. Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof.

[(19-3909) 1874, p. 363, sec. 602; R.S., R.C., & C.L., sec. 8287; C.S., sec. 9235; I.C.A., sec. 19-4009.]

19-3910. PRESENCE OF DEFENDANT. The defendant must be personally present before the trial can proceed.

[(19-3910) Cr. Prac. 1864, sec. 599, p. 288; R.S., R.C., & C.L., sec. 8288; C.S., sec. 9236; I.C.A., sec. 19-4010.]

19-3911. WAIVER OF TRIAL BY JURY. A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in chapter 1, of [title 2](#).

[(19-3911) R.S., R.C., & C.L., sec. 8289; C.S., sec. 9237; I.C.A., sec. 19-4011.]

19-3912. CHALLENGE TO JURORS. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, for cause, as on the trial of an indictment for a misdemeanor; but the challenges must in all cases be tried by the court; the defendant is entitled to four (4) peremptory challenges and the prosecution to four (4).

[(19-3912) 1874, p. 363, secs. 605, 607; R.S., R.C., & C.L., sec. 8290; C.S., sec. 9238; am. 1929, ch. 33, sec. 1, p. 36; I.C.A., sec. 19-4012.]

19-3913. OATH OF JURORS. The court must administer to the jury the following oath:

You do swear that you will well and truly try this issue between the state of Idaho and A.B., the defendant, and a true verdict render according to the evidence.

[(19-3913) Cr. Prac. 1864, sec. 603, p. 288; R.S., R.C., & C.L., sec. 8291; C.S., sec. 9239; I.C.A., sec. 19-4013.]

19-3914. CONDUCT OF JURY. After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant.

[(19-3914) Cr. Prac. 1864, sec. 604, p. 288; R.S., R.C., & C.L., sec. 8292; C.S., sec. 9240; I.C.A., sec. 19-4014.]

19-3915. COURT TO DECIDE QUESTIONS OF LAW. The court must decide all questions of law which may arise in the course of the trial.

[(19-3915) Cr. Prac. 1864, sec. 605, p. 288; R.S., R.C., & C.L., sec. 8293; C.S., sec. 9241; I.C.A., sec. 19-4015; am. 2014, ch. 22, sec. 1, p. 29.]

19-3916. RETIREMENT OF JURY. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect:

You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself unless by order of the court, or to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed or when ordered by the court.

[(19-3916) Cr. Prac. 1864, sec. 606, p. 288; R.S., R.C., & C.L., sec. 8294; C.S., sec. 9242; I.C.A., sec. 19-4016.]

19-3917. VERDICT. The verdict of the jury must in all cases be general. When the jury have agreed on their verdict they must deliver it publicly to the court, who must enter it or cause it to be entered, in the minutes.

[(19-3917) Cr. Prac. 1864, secs. 607, 608, p. 288; R.S., R.C., & C.L., sec. 8295; C.S., sec. 9243; I.C.A., sec. 19-4017.]

19-3918. VERDICT AGAINST JOINT DEFENDANTS. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

[(19-3918) Cr. Prac. 1864, sec. 609, p. 288; R.S., R.C., & C.L., sec. 8296; C.S., sec. 9244; I.C.A., sec. 19-4018.]

19-3919. DISCHARGE OF JURY. The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict unless, for good cause the court sooner discharges them.

[(19-3919) Cr. Prac. 1864, sec. 610, p. 289; R.S., R.C., & C.L., sec. 8297; C.S., sec. 9245; I.C.A., sec. 19-4019.]

19-3920. RETRIAL OF DEFENDANT. If the jury is discharged as provided in the last section, the court may proceed again to the trial in the same manner as upon the first trial, and so on until a verdict is rendered.

[(19-3920) Cr. Prac. 1864, sec. 611, p. 289; R.S., R.C. & C.L., sec. 8298; C.S., sec. 9246; I.C.A., sec. 19-4020.]

19-3921. PROCEEDINGS ON PLEA OF GUILTY. When the defendant pleads guilty, or is convicted either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be: provided, however, it appearing to the court that it is a proper case, the court may, in its discretion, suspend the execution of judgment, and at such time, or any time during the period of sentence in a county jail, may put the defendant on probation on such terms and for such time as it may prescribe. The period of probation ordered by the court under this section under a conviction or plea of guilty for a misdemeanor, indictable or otherwise, may be for a period of not more than two (2) years; provided that the court may extend the period of probation to include the period of time during which the defendant is a participant in a problem solving court program and for a period of up to one (1) year after a defendant's graduation or termination from a problem solving court program. The court may withhold judgment on such terms and conditions as it deems necessary or expedient.

[(19-3921) Cr. Prac. 1864, sec. 612, p. 289; R.S., R.C., & C.L., sec. 8299; C.S., sec. 9247; I.C.A., sec. 19-4021; am. 1937, ch. 60, sec. 1, p. 82; am. 1949, ch. 145, sec. 1, p. 300; am. 1973, ch. 292, sec. 2, p. 615; am. 2012, ch. 46, sec. 2, p. 141.]

19-3922. PAYMENT OF COURT ORDERED TESTS OF BREATH OR BODILY FLUID. Whenever a court orders testing of breath or bodily fluids as a condition of probation, such costs for the tests shall be paid for by the probationer in addition to any supervision fee authorized under section [31-3201D](#), Idaho Code, to the agency providing the testing, provided the court may waive this requirement upon a showing of cause.

[19-3922, added 2012, ch. 109, sec. 2, p. 299.]

19-3923. ACQUITTAL -- COSTS OF MALICIOUS PROSECUTION. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one (1) or more sureties, to pay the same within thirty (30) days after the trial.

[(19-3923) Cr. Prac. 1864, sec. 614, p. 289; R.S., R.C., & C.L., sec. 8301; C.S., sec. 9249; I.C.A., sec. 19-4023.]

19-3924. MALICIOUS PROSECUTION -- JUDGMENT AGAINST PROSECUTOR. If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects, in the same manner as a judgment rendered in a civil action.

[(19-3924) Cr. Prac. 1864, sec. 615, p. 289; R.S., R.C., & C.L., sec. 8302; C.S., sec. 9250; I.C.A., sec. 19-4024.]

19-3925. TIME FOR JUDGMENT. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two (2) days nor less than six (6) hours after the verdict is rendered, and must hold the defendant to bail to appear for judgment, and in default of bail he must be committed.

[(19-3925) Cr. Prac. 1864, sec. 617, p. 289; R.S., R.C., & C.L., sec. 8303; C.S., sec. 9251; I.C.A., sec. 19-4025.]

19-3926. MOTIONS PRIOR TO JUDGMENT. At any time before judgment defendant may move for a new trial or in arrest of judgment.

[(19-3926) Cr. Prac. 1864, sec. 618, p. 289; R.S., R.C., & C.L., sec. 8304; C.S., sec. 9252; I.C.A., sec. 19-4026.]

19-3927. GROUNDS FOR NEW TRIAL. A new trial may be granted in the following cases:

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had.
2. When the jury has received any evidence out of court.
3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case.
4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered, material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground the defendant must produce at the hearing the affidavits of the witnesses by whom such newly-discovered evidence is expected to be given.

[(19-3927) Cr. Prac. 1864, sec. 619, p. 289; R.S., R.C., & C.L., sec. 8305; C.S., sec. 9253; I.C.A., sec. 19-4027.]

19-3928. GROUNDS FOR ARREST OF JUDGMENT. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

[(19-3928) Cr. Prac. 1864, sec. 620, p. 289; R.S., R.C., & C.L., sec. 8306; C.S., sec. 9254; I.C.A., sec. 19-4028.]

19-3929. PRONOUNCEMENT AND ENTRY OF JUDGMENT. If the judgment is not arrested, or a new trial granted judgment must be pronounced at the time appointed and entered in the minutes of the court.

[(19-3929) Cr. Prac. 1864, sec. 621, p. 290; R.S., R.C., & C.L., sec. 8307; C.S., sec. 9255; I.C.A., sec. 19-4029.]

19-3930. DISCHARGE OF DEFENDANT. If judgment of acquittal is given, or judgment imposing a fine only without imprisonment for nonpayment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

[(19-3930) Cr. Prac. 1864, sec. 622, p. 290; R.S., R.C., & C.L., sec. 8308; C.S., sec. 9256; am. 1929, ch. 7, sec. 1, p. 9; I.C.A., sec. 19-4030.]

19-3931. WARRANT FOR EXECUTION OF JUDGMENT. When a judgment of imprisonment is entered a certified copy thereof must be delivered to the sheriff, marshal or other officer, which is a sufficient warrant for its execution.

[(19-3931) Cr. Prac. 1864, sec. 623, p. 290; R.S., R.C., & C.L., sec. 8309; C.S., sec. 9257; I.C.A., sec. 19-4031.]

19-3932. IMPRISONMENT PENDING PAYMENT OF FINE. When a judgment is entered imposing a fine, or costs, or both fine and costs, or ordering the defendant to be imprisoned until the fine, or costs, or fine and costs, be paid, he must be held in custody during the time specified in the judgment, unless the fine, or costs, or fine and costs, are sooner paid.

[(19-3932) Cr. Prac. 1864, sec. 624, p. 290; R.S., sec. 8310; am. 1899, p. 379, sec. 7; reen. R.C. & C.L., sec. 8310; C.S., sec. 9258; I.C.A., sec. 19-4032.]

19-3933. DISCHARGE UPON PAYMENT OF FINE. Upon payment of the fine, or costs, or fine and costs, the officer must discharge the defendant if he is not detained for any other legal cause.

[(19-3933) Cr. Prac. 1864, sec. 625, p. 290; R.S., sec. 8311; am. 1899, p. 379, sec. 8; reen. R.C. & C.L., sec. 8311; C.S., sec. 9259; I.C.A., sec. 19-4033.]

19-3934. ADMITTANCE TO BAIL. The defendant, at any time after his arrest, and before conviction, may be admitted to bail.

[(19-3934) R.S., R.C., & C.L., sec. 8312; C.S., sec. 9260; I.C.A., sec. 19-4034; am. 2003, ch. 117, sec. 1, p. 361.]

19-3935. SUBPOENAS FOR WITNESSES. The justice or judge of either of the courts mentioned in this chapter may issue subpoenas for witnesses and punish disobedience thereof, as provided in sections [19-3004](#), [19-3006](#)--[19-3012](#) [, Idaho Code,] inclusive.

[(19-3935) R.S., R.C., & C.L., sec. 8313; C.S., sec. 9261; I.C.A., sec. 19-4035.]

19-3936. ENTITLING AFFIDAVITS. The provisions in respect to entitling affidavits are applicable to proceedings in the courts mentioned in this chapter.

[(19-3936) R.S., R.C., & C.L., sec. 8314; C.S., sec. 9262; I.C.A., sec. 19-4036.]

19-3945. JURORS AND WITNESSES -- FEES AND MILEAGE -- APPLICATION FOR SUBPOENAS. Witnesses before a special inquiry judge and in criminal cases in the magistrate division of district court, and witnesses in a coroner's inquest, are entitled to the same fees and mileage as provided in section [19-3008](#), Idaho Code, for witnesses in criminal proceedings in the district court, which must be paid out of the county treasury; provided, however, that when the state or the defendant requires the attendance of more than three (3) witnesses in its or his behalf, before such witnesses shall be subpoenaed at the county expense, or their fees and mileages be a charge against the county, the county attorney or defendant must make affidavit setting forth that they are witnesses whose evidence is material for the state or the defense, and the facts showing such materiality, and that it or he cannot safely go to trial without them. In such case or cases, the court or judge thereof, at the time the application is made therefor, shall order a subpoena to issue to such of said witnesses as the court or judge thereof may deem material for the state or defendant, and the costs incurred by the process, and the fees and mileage of such witnesses, shall be paid in the same manner that the costs and fees of other witnesses are paid. Jurors in a coroner's inquest are entitled to the mileage and per diem payments as provided for jurors in section [2-215](#), Idaho Code.

[(19-3945) 1905, p. 173, sec. 1; reen. R.C. & C.L., sec. 8338; C.S., sec. 9271; I.C.A., sec. 19-4045; am. 1939, ch. 20, sec. 1, p. 51; am. 1961, ch. 6, sec. 1, p. 8; am. 2012, ch. 18, sec. 1, p. 37.]

19-3946. AFFIDAVIT AS TO MILES TRAVELED. Each juror and witness must state on oath to the judge, justice or coroner, the number of miles traveled for which he is entitled to pay; but no juror or witness shall receive mileage other than for the distance actually traveled, notwithstanding he may serve or testify in more than one case.

[(19-3946) 1905, p. 173, sec. 2; reen. R.C. & C.L., sec. 8339; C.S., sec. 9272; I.C.A., sec. 19-4046.]

19-3947. COUNTY MISDEMEANOR PROBATION OFFICE SERVICES. Misdemeanor probation office services shall be as provided in section [31-878](#), Idaho Code.

[19-3947, added 2008, ch. 88, sec. 2, p. 243.]