

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 6
ARREST, BY WHOM AND HOW MADE

19-601. ARREST DEFINED. An arrest is taking a person into custody in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

[(19-601) Cr. Prac. 1864, secs. 121, 122, p. 228; R.S., R.C., & C.L., sec. 7538; C.S., sec. 8724; I.C.A., sec. 19-601.]

19-602. ARREST, HOW MADE. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

[(19-602) Cr. Prac. 1864, secs. 125, 126. pp. 228 and 229; R.S., R.C., & C.L., sec. 7539; C.S., sec. 8725; I.C.A., sec. 19-602.]

19-603. WHEN PEACE OFFICER MAY ARREST. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence.
2. When a person arrested has committed a felony, although not in his presence.
3. When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.
4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.
5. At night, when there is reasonable cause to believe that he has committed a felony.
6. When upon immediate response to a report of a commission of a crime there is probable cause to believe that the person has committed a violation of section [18-901](#) (assault), [18-903](#) (battery), [18-918](#) (domestic violence), [18-7905](#) (first-degree stalking), [18-7906](#) (second-degree stalking), [39-6312](#) (violation of a protection order), [18-920](#) (violation of a no contact order), or [18-3302I](#) (threatening violence upon school grounds -- firearms and other deadly or dangerous weapons), Idaho Code.
7. When there is reasonable cause to believe, based upon physical evidence observed by the officer or statements made in the presence of the officer upon immediate response to a report of a commission of a crime aboard an aircraft, that the person arrested has committed such a crime.

[(19-603) Cr. Prac. 1864, secs. 131, 133, p. 229; R.S., R.C., & C.L., sec. 7540; C.S., sec. 8726; I.C.A., sec. 19-603; am. 1979, ch. 307, sec. 1, p. 832; am. 1988, ch. 271, sec. 1, p. 902; am. 1994, ch. 318, sec. 1, p. 1020; am. 1997, ch. 89, sec. 1, p. 214; am. 1997, ch. 314, sec. 4, p. 930; am. 2004, ch. 337, sec. 5, p. 1010; am. 2019, ch. 207, sec. 1, p. 633.]

19-604. WHEN PRIVATE PERSON MAY ARREST. A private person may arrest another:

1. For a public offense committed or attempted in his presence.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

[(19-604) Cr. Prac. 1864, sec. 137, p. 229; R.S., R.C., & C.L., sec. 7541; C.S., sec. 8727; I.C.A., sec. 19-604.]

19-605. MAGISTRATE MAY ORDER ARREST. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

[(19-605) Cr. Prac. 1864, sec. 136, p. 229; R.S., R.C., & C.L., sec. 7542; C.S., sec. 8728; I.C.A., sec. 19-605.]

19-606. PERSON ARRESTING MAY SUMMON ASSISTANCE. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

[(19-606) Cr. Prac. 1864, sec. 123, p. 228; R.S., R.C., & C.L., sec. 7543; C.S., sec. 8729; I.C.A., sec. 19-606.]

19-607. WHEN ARREST MAY BE MADE UPON A WARRANT. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If the offense charged is a misdemeanor, the arrest shall not be made inside a person's residence between 8:00 p.m. and 8:00 a.m., unless upon the direction of the magistrate, as endorsed upon the warrant, or where consent was given to enter the residence by a person with real or apparent authority.

[(19-607) Cr. Prac. 1864, sec. 124, p. 228; R.S., R.C., & C.L., sec. 7544; C.S., sec. 8730; I.C.A., sec. 19-607; am. 2002, ch. 132, sec. 1, p. 364.]

19-608. INFORMATION TO PERSON ARRESTED. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit, an offense, or is pursued immediately after its commission, or after an escape.

[(19-608) Cr. Prac. 1864, sec. 134, p. 229; R.S., R.C., & C.L., sec. 7545; C.S., sec. 8731; I.C.A., sec. 19-608.]

19-609. WARRANT MUST BE SHOWN. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

[(19-609) Cr. Prac. 1864, sec. 127, p. 229; R.S., R.C., & C.L., sec. 7546; C.S., sec. 8732; I.C.A., sec. 19-609.]

19-610. WHAT FORCE MAY BE USED. When the arrest is being made by an officer under the authority of a warrant or when the arrest is being made without a warrant but is supported by probable cause to believe that the person has committed an offense, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all reasonable and necessary means to effect the arrest and will be

justified in using deadly force under conditions set out in section [18-4011](#), Idaho Code.

[(19-610) Cr. Prac. 1864, sec. 128, p. 229; R.S., R.C., & C.L., sec. 7547; C.S., sec. 8733; I.C.A., sec. 19-610; am. 1986, ch. 303, sec. 1, p. 754; am. 1987, ch. 117, sec. 1, p. 231.]

19-611. BREAKING DOORS AND WINDOWS. To make an arrest, if the offense is a felony, a private person, if any public offense, a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which there is reasonable ground for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

[(19-611) Cr. Prac. 1864, secs. 129, 132, 139, pp. 229 and 230; R.S., R.C., & C.L., sec. 7548; C.S., sec. 8734; I.C.A., sec. 19-611.]

19-612. FORCE FOR PURPOSE OF LIBERATION. Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

[(19-612) Cr. Prac. 1864, secs. 129, 132, 139, pp. 229 and 230; R.S., R.C., & C.L., sec. 7549; C.S., sec. 8735; I.C.A., sec. 19-612.]

19-613. WEAPONS MAY BE TAKEN. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

[(19-613) R.S., R.C., & C.L., sec. 7550; C.S., sec. 8736; I.C.A., sec. 19-613.]

19-614. DUTY OF PRIVATE PERSON MAKING ARREST. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer.

[(19-614) Cr. Prac. 1864, sec. 140, p. 230; R.S., R.C., & C.L., sec. 7551; C.S., sec. 8737; I.C.A., sec. 19-614.]

19-615. PROCEDURE UPON ARREST WITHOUT WARRANT. When an arrest is made without a warrant by a peace officer or private person the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate.

[(19-615) Cr. Prac. 1864, sec. 140, p. 230; R.S., R.C., & C.L., sec. 7552; C.S., sec. 8738; I.C.A., sec. 19-615.]

19-616. TELECOMMUNICATION OF WARRANT FOR SERVICE. A warrant of arrest may be sent by telecommunication process or facsimile process to one (1) or more peace officers and a copy of a warrant sent in such manner is as effec-

tual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant.

[(19-616) R.S., R.C., & C.L., sec. 7553; C.S., sec. 8739; I.C.A., sec. 19-616; am. 2012, ch. 78, sec. 1, p. 227.]

19-618. RECAPTURE AFTER ESCAPE. If a person arrested escape[s] or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the state.

[(19-618) Cr. Prac. 1864, sec. 141, p. 230; R.S., R.C., & C.L., sec. 7559; C.S., sec. 8741; I.C.A., sec. 19-618.]

19-619. BREAKING DOORS AND WINDOWS FOR RECAPTURE. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling-house, if, after notice of his intention, he is refused admittance.

[(19-619) Cr. Prac. 1864, sec. 142, p. 230; R.S., R.C., & C.L., sec. 7560; C.S., sec. 8742; I.C.A., sec. 19-619.]

19-620. DEFINITION. For the purpose of this act, a "temporary road block" means any structure, device or means used by duly authorized law enforcement officers of the state of Idaho and of its political subdivisions for the purpose of controlling all traffic through a point on a highway whereby all vehicles may be slowed or stopped.

[19-620, added 1957, ch. 31, sec. 1, p. 49.]

19-621. AUTHORITY TO ESTABLISH ROAD BLOCKS. The duly elected or appointed sheriffs, state policemen or policemen of cities of the first or second class of the state of Idaho are hereby authorized to establish, in their respective or adjacent jurisdictions, temporary road blocks upon the highways of this state or city streets for the purpose of apprehending persons reasonably believed by such officers to be wanted for violation of the laws of this state, of any other state, or of the United States, and using such highways or streets.

[19-621, added 1957, ch. 31, sec. 2, p. 49.]

19-622. MINIMUM REQUIREMENTS. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary road blocks, if time and circumstances allow, are:

1. The temporary road block must be established at a point on the highway or street clearly visible at a distance of not less than 100 yards in either direction.

2. At the point of the temporary road block, a sign shall be placed on the center line of the highway or street displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards, in both directions, either in daytime or darkness.

3. At the same point of the temporary road block, at least one (1) blue light, on and burning, must be placed at the side of the highway or street which shall be a flashing or intermittent beam of light, clearly visible to the oncoming traffic, at a distance of not less than 100 yards.

4. At a distance of not less than 200 yards from the point of the temporary road block, warning signs must be placed at the side of the highway or street, containing any wording of sufficient size and luminosity, to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare or reflector must be placed near such signs for the purpose of attracting the attention of the traffic to the sign.

[19-622, added 1957, ch. 31, sec. 3, p. 49; am. 1972, ch. 285, sec. 1, p. 717.]

19-623. PENALTY. Any person who shall proceed or travel through a road block without subjecting himself to the traffic control so established shall be guilty of a misdemeanor, and shall be punished by a fine of not more than \$300.00, or by imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment.

[19-623, added 1957, ch. 31, sec. 4, p. 49.]

19-624. ARREST WITH CERTIFIED COPY OF WARRANT. Any arrest that may be lawfully made with an original warrant, may be made with a copy thereof, certified by the issuing magistrate to be a true and correct copy of the original warrant that is in his possession.

[19-624, added 1967, ch. 114, sec. 1, p. 222.]

19-625. DETENTION FOR OBTAINING EVIDENCE OF IDENTIFYING PHYSICAL CHARACTERISTICS. (1) A peace officer who is engaged, within the scope of his authority, in the investigation of an alleged criminal offense which is a felony may make written application upon oath or affirmation to a judge of any district court, or magistrates division thereof, for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics, of an identified or particularly described individual residing in or found in the jurisdiction over which the judicial officer presides. The order shall require the presence of the identified or particularly described individual at such time and place as the court shall direct for obtaining the identifying physical characteristic evidence. Such order may be issued by the judicial officer upon a showing under oath of all the following:

(A) Probable cause for belief that a specifically described criminal offense which is a felony has been committed.

(B) Reasonable grounds exist, which may or may not amount to probable cause, to believe that the identified or particularly described individual committed the criminal offense.

(C) Procurement of evidence of identifying physical characteristics from the identified or particularly described individual may contribute to the identification of the individual who committed such offense.

(D) Such evidence cannot otherwise be obtained by the investigating officer.

(2) Any order issued pursuant to the provisions of this section shall specify the following:

(A) The alleged criminal offense which is the subject of the application.

(B) The specific type of identifying physical characteristic evidence which is sought.

(C) The relevance of such evidence to the particular investigation.

(D) The identity or description of the individual who may be detained for obtaining such evidence.

(E) The name and official status of the investigative officer authorized to effectuate such detention and obtain such evidence.

(F) The place at which the obtaining of such evidence shall be effectuated.

(G) The time that such evidence shall be taken except that no person may be detained for a period of more than three (3) hours for the purpose of taking such evidence.

(H) That the individual so identified or described shall have the right to legal counsel during the detention when such evidence is obtained and if he is unable to afford private counsel an attorney shall be provided at public expense as provided by section [19-852](#), Idaho Code.

(I) That the individual will be under no legal obligation to submit to any interrogation or to make any statement during the period of his appearance unless sound of voice identification is required.

(J) The period of time, not exceeding ten (10) days, during which the order shall continue in force and effect. If the order is not executed within ten (10) days, a new order may be issued, pursuant to the provisions of this section.

(3) The order issued pursuant to this section shall be returned to the court not later than fifteen (15) days after its date of issuance and shall be accompanied by a sworn statement indicating how and when the evidence was taken and the type of evidence taken. The court shall give to the person from whom such evidence was taken a copy of the order and a copy of the sworn statement indicating what type of evidence was taken, if any.

(4) For the purposes of this section, "identifying physical characteristics" shall mean the fingerprints, palm prints, footprints, measurements, handwriting, handprinting, sound of voice, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance, or photographs of an individual.

[I.C., sec. 19-625, as added by 1972, ch. 116, sec. 1, p. 230; am. 2001, ch. 142, sec. 3, p. 508.]