STATEWIDE GUIDELINES FOR THE UNIFORM ADMINISTRATION OF BAIL AND BAIL BONDS

IN ALL TRIAL COURTS OF THE STATE OF IDAHO

SECTION 1.
GENERAL BAIL INFORMATION

These guidelines are intended to provide information and guidance on the procedures to be followed with regard to bail. The guidelines are based upon best practices and upon the law as set forth in the Idaho Constitution, statutes, court rules, applicable rules or regulations, and case law. These guidelines are not intended to, nor do they, create, nullify, limit, or enlarge any legal rights or obligations of public officers or employees, defendants in criminal cases, persons posting bail, bail agents, bail bonds companies, surety insurance companies, or any other persons or entities.

A. Sources of law.

Article I, section 6 of the Idaho Constitution establishes the right to bail.

Idaho Criminal Rule 46 relates to bail for a defendant (hereinafter Idaho Criminal Rule = I.C.R.).

I.C.R. 46.1 relates to bail for a witness. See also I.C. §19-820, §19-821 and §19-3011.

With the exception of bail for specific misdemeanor offenses scheduled in M.C.R. 13 pending arraignment or trial, I.C.R. 4(d) and 5(c) relate to the requirement that there must be a finding of probable cause by a judge before a defendant can be required to post bail. I.C.R. 5(e) deals with setting bail.

I.C.R. 4(f) provides that if the judge finds no probable cause, the judge shall exonerate any bond posted.

I.C.R. 5(e) requires the clerk to transmit the warrant and posted bail to the court in which the defendant is required to appear.

Idaho Misdemeanor Criminal Rule 13 relates to a bail schedule in specific enumerated misdemeanor crimes. This can be varied up or down if the defendant appears before a judge or the defendant's case is reviewed by a judge. M.C.R. 13(a). M.C.R. 2(c) defines bail (hereinafter Misdemeanor Criminal Rule = M.C.R.).

Idaho Infraction Rule 7(c) provides bail shall never be required in an infraction.

Idaho Code §19-2901 through §19-2923, and §19-1507 through §19-1510, relate to many topics on bail.

I.C.R. 54.5 and I.C. §19-3941 deal with bail on appeal to the district court from a conviction in magistrate court on a misdemeanor.

I.A.R. 13(c)(7) and (8) deal with the powers of the District Court to stay execution of a judgment pending appeal to the Supreme Court (bail pending appeal) as well as the power to set bail, modify the amount forfeited, or issue arrest warrants (I.A.R. = Idaho Appellate Rule).

I.C.A.R. 11 relates to disposition of bail bond forfeitures in misdemeanor charges. Note that if forfeiture is under M.C.R. 14, the bond can be used to pay court costs, but if the forfeiture is for failure to appear or any other reason, the bond cannot be used to pay court costs (I.C.A.R. = Idaho Court Administrative Rule).

Note: The Idaho Rules of Evidence **do not** apply to proceedings with respect to release on bail or otherwise. I.R.E. 101(e)(3) (I.R.E.= Idaho Rules of Evidence).

Conflicts between rules and statutes. If a conflict exists on a procedural matter between the criminal rules of procedure adopted by the Idaho Supreme Court and the statutes adopted by the Legislature, then the rules of procedure prevail. *State v. Currington,* 108 Idaho 539, 700 P.2d 942 (1985). However, not all matters relating to bail are procedural; some are substantive. *Two Jinn, Inc. v. District Court of the Fourth Judicial District*, 150 Idaho 647, 249 P.3d 840 (2011).

B. Definitions.

Definitions provided by Idaho Code §19-2905:

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.

Additional Definitions not provided by I.C. § 19-2905:

Admission to bail. Admission to bail is the order of a competent court that the defendant be discharged from actual custody of the Sheriff upon posting bail. I.C. §19-2906.

O. R. release. O. R. release means the defendant is released from custody on his or her own recognizance and no bail is required for this release from custody, although the court can impose conditions of release. See I.C.R. 46(a).

Posting of bail. The posting of bail consists of filing sufficient sureties with the Court, as required by the Court, to ensure the defendant's appearance. I.C.§19-2907.

C. Sufficient sureties for posting bail shall consist of any one of the following:

Under I.C. §19-2907, I.C.R. 46(f) and M.C.R. 13(c), if bail is required in a criminal case (meaning in the event probable cause is found to exist and the defendant is not released upon the defendant's own recognizance), or the charge is one of the scheduled misdemeanors under M.C.R. 13, bail can only be posted in one of three ways:

1) A bail bond.
2) Property bail bond
3) A cash deposit, which may include a check or money order. See I.C.R. 46(f)

D. Cash deposit only cannot be required. Although bail may be posted in the form of a cash deposit, a defendant shall not be required to post bail only in the form of a cash deposit. I.C. §19-2907(c), I.C.R. 46(f).

E. Differing amounts of bail depending on form is prohibited. The court shall not require that bail be deposited only in cash nor shall the court specify differing amounts for bail depending upon whether it is posted in the form of cash deposit, property bond or bail bond. I.C.R. 46(f).

F. Posting bail on separate charges within the same case. In cases where the defendant's case has not been reviewed by a judge, a separate bail bond, property bond or cash deposit shall be posted on each charge. The presiding judge or judge who reviews a case involving multiple charges has discretion to set one bail amount for all the charges in the case or separate bail amounts on each charge.

G. Probable cause--judicial finding required.

1. Finding of probable cause required. I.C.R. 4(d). See also I.C.R. 5(c).
   "If a defendant is arrested without a warrant or appears before the court pursuant to a summons, the magistrate before whom the defendant first appears shall not order the defendant retained or ordered into custody nor require the defendant to post bond unless the magistrate shall determine there is such probable cause as defined in subsection (a) of this Rule at or before the time of the first appearance of the defendant. The defendant must be released upon the defendant's own recognizance unless and until such determination of probable cause has been made by a magistrate or unless immediate disposition of the complaint has been made; but the complaint shall not be dismissed pending such determination or disposition. If a defendant fails to appear in response to a summons, a warrant shall issue if probable cause has been shown."

2. Disposition on finding of no probable cause. I.C.R. 4(f).
   "If the magistrate finds there is no such probable cause, the magistrate shall refuse to issue a warrant, and shall exonerate any bond posted, and shall order the release of the defendant if the defendant is in custody. A finding of a lack of probable cause shall not require the dismissal of the complaint."

3. The exception to the probable cause finding before bail being posted are those misdemeanor crimes scheduled in M.C.R. 13(b).

H. Who sets bail – An Idaho Judge, or pre-set under M.C.R. 13

If defendant is brought before a judge in the county where charge is pending. If the defendant first appears in the county where the charge is pending, bail may be set by any judge in that jurisdiction after a finding of probable cause. I.C. §19-2904, I.C.R. 46 (d) and I.C.R. 4(d) and 5(e). Typically, the bail amount is set by the judge who is assigned to hear the case. If a bail amount has already been endorsed on a warrant of arrest, this amount should be honored unless the judge finds good cause to alter the amount of bail. I.C.R. 5(e). Bail amounts on some misdemeanor charges are set by M.C.R. 13 before arraignment.

If defendant is brought before a judge in a county other than where the charge is pending.

If the defendant is brought before a magistrate (or other judge) in another county for the purpose of giving bail, the judge must proceed on the bail issue as if the defendant had been brought before that judge on a warrant of arrest. I.C. §19-1509. Typically, however, the original warrant issued by the judge in the county where the charge is pending has already set the bail which is stated or endorsed on the warrant. The judge should honor the bail as set on the warrant unless the judge finds good cause to alter the amount of bail. I.C.R. 5(e).

Before the defendant is released on bail, the sheriff shall give written notice to the defendant of when and where to appear before the court. A copy of such notice and records relating to the posting of bail shall be forwarded to the court where the charge or charges are pending.

Bail on probation violation warrants. For the procedure on probation violation warrants, see Section 22 of these guidelines.

M.C.R. 13 Bail Schedule

Bail amounts for certain enumerated ordinances are preset by court rule. Additionally, bail for violation of municipal or county ordinances is governed by M.C.R. 13(d).

I. Amount of Bail

Factors to be considered in setting a bail amount are set forth in I.C.R. 46(c).

SECTION 2.

OUT-OF-STATE BAIL AMOUNTS AND WARRANTS

A person may be arrested on a warrant originating from a state other than Idaho (an out-of-state warrant) which warrant may or may not provide a bail amount. However, neither the sheriff nor the clerk may accept any cash deposit or bond of any kind on the out-of-state warrant. An Idaho judge may set bail to secure the defendant's appearance for the fugitive proceedings in Idaho. I.C. § 19-4516. If bail is set by the Idaho judge, a cash deposit or other bond may be posted in Idaho only based upon the bail set by an Idaho Judge.

After bail has been posted, any forfeiture or exoneration shall be processed as with any other bail.

SECTION 3.

POSTING BAIL BY A CASH DEPOSIT

A. Cash deposit means payment in the form of United States currency, money order, certified checks, cashier's check or such other form of payment (e.g., credit card) as provided by rules of the Supreme Court equal to the bail as set by the court, or bail schedule in M.C.R. 13. A cash deposit can be deposited by the defendant or posted by someone else on the defendant's behalf. M.C.R. 13(c)(1) and (2).

Before the defendant is released from custody following the posting of bail, written notice of the time and place to appear before the court shall be given to the defendant by the sheriff. A copy of such notice shall be forwarded to the court where the charge or charges are pending. I.C.R. 5(e). M.C.R. 13(c).

B. Entry of bail information on ISTARS. Promptly upon receipt of the cash deposit for bail, the clerk or deputy clerk receiving the bail shall make the appropriate entries into ISTARS for the case file at issue.

C. Recommended notice to person posting cash bail deposit. It is recommended that prior to the time of the deposit the person receiving the cash deposit inform the person posting the cash deposit, that if the cash remains on deposit at the time the defendant is sentenced, then the clerk must, under the direction of the court, apply the money on deposit to 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 action. After satisfying the fine, fees, costs and restitution the court will refund the surplus, if any, to the person who posted the cash deposit. If no fines, fees, costs or restitution are levied, the entire cash deposit is refunded to the posting party, I.C. §19-2908. This notice is not a legal requirement; it is only recommended so the party posting the cash understands the risks.

D. Denominations of currency for cash deposit. The cash bail must be in reasonable denominations of currency. Unreasonable amounts of coin will be refused. Examples are bail paid with pennies, or coins which are not in rolls, etc.

E. Cash deposit receipt must be in the name of the person who deposits the money. It is absolutely imperative that the name of the person posting the cash is placed on the receipt and in the ISTARS system.

F. Caution to clerks refunding cash deposits. The surplus, if any, must be refunded to the person whose name appears on the receipt as the posting party. The surplus must not be refunded to some other person or party who claims it was their money which was deposited. Such cases are a dispute which must be decided by and between those claiming an interest in the money, not by the Clerk's office.

G(1). Posting a cash deposit for bail by personal check payable to the Clerk of the Court. A cash deposit for bail may also be made by personal check payable to the Clerk of the Court only in those cases where the acceptance of the particular personal check has been approved by a Magistrate or District Judge. **I.C.R. 46(f).**

G(2) . Personal checks. In considering whether to approve the acceptance of a personal check as a cash deposit, the magistrate or district judge should consider all relevant factors, including:

1. whether the check is drawn on a commercial bank which is licensed to do business in Idaho, and which has one or more branches located within the state of Idaho.

2. whether the maker of the check is a resident of the state of Idaho.

3.whether the check is a two-party check.

The named payee on the check must be the Clerk of the District Court of the county where the bail is to be deposited. The check must be for the face amount of the cash deposit for bail set by the Judge or M.C.R. 13.

G(3). Procedures for processing check.

1. The receipt for the bail and the ISTARS entry for the person who posted the bail must be in the name of the maker of the check.

2. Within two (2) business days of receipt of the check by the clerk's office, the clerk must negotiate the check and deposit it for collection in the bank used by the clerk's office.

3. No refunds on the cash deposit will be made for at least fifteen (15) business days from the date of the deposit of the check in the bank for collection.

4. Once deposited for collection in the bank and the fifteen day waiting period has expired, the bail is treated the same as a cash bail unless the check is returned dishonored.

G(4). Procedures if check is dishonored.

1. Any check which is returned, or dishonored for any reason, shall be immediately turned over to the prosecuting attorney of the county, and the court may order a hearing on the insufficient surety pursuant to I.C. § 19-2520(1).

2. If the check is dishonored, no refund of the posted bail will be made until payment for the check is made, plus any costs of collection, and a judge orders the refund.

H. Money orders and cashier's checks for cash deposit.

1. The money order or cashier's check must be for the face amount of the bail required.

2. The named payee on the money order or cashier's check must be the Clerk of the District Court of the county where the bail is to be posted.

3. The receipt for the bail and the ISTARS entry must be in the name of the owner of the money order or cashier's check.

4. Within two (2) business days of receipt of the check by the clerk's office, the clerk must negotiate the money order or cashier's check and deposit it for collection in the bank used by the clerk's office.

5. No refunds on the bail will be made for at least fifteen (15) business days from the date of the

deposit of the money order or cashier's check in the bank for collection.

6. Once the bail has been deposited in the bank and the fifteen day waiting period has expired, the bail will be treated the same as a cash bail.

7. Any money order or cashier's check which is returned dishonored for any reason shall be immediately turned over to the prosecuting attorney of the county, and the court may order a hearing on the insufficient surety pursuant to I.C. § 19-2520(1).

8. If the money order or cashier's check is dishonored, no refund of the posted bail will be made until the money order or cashier's check is paid, plus costs of collection, and a judge orders the refund.

9. The clerk and/or the appropriate law enforcement agency may refuse to take a money order or cashier's check if they have a reasonable and legitimate belief that the money order or cashier's check may be dishonored.

I. Posting cash deposit for bail by credit card or debit card. A cash deposit for bail may also be made by credit card or debit card in those counties where procedures for the acceptance of such payment by these means is operational in the County Clerk's office where the bond is to be posted. Once the cash deposit is made by means of such a card, the amount so deposited becomes a cash deposit and is treated as such under these guidelines.

J. Cash deposits of more than $10,000. Federal statutes require state courts to report cash deposits of bail of more than $10,000 for any person charged with racketeering, money laundering, any offense involving a controlled substance. 26 U.S.C. § 6050I. The offenses to which this applies under Idaho law are violations of I.C. § 18-7804 (racketeering), I.C. § 18-8201 (money laundering), and any violation of the provisions of title 37, chapter 27 (controlled substances). Multiple cash deposits for the same defendant in the same case over a 12 month period totaling more than $10,000 also trigger this reporting requirement.

Reports of these cash deposits must be filed using IRS Form 8300. The original is sent to the Internal Revenue Service, and a copy must be sent to the U.S. Attorney for the District of Idaho. Refer to the Clerk's Manual for more detailed information on how to file these reports.

SECTION 4.

POSTING BAIL BY A PROPERTY BOND

A. Property bond defined. A 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. I.C. §19-2905(12). Acceptance of a property bond is in the discretion of the court. I.C. §19-2909.

B. Posting a property bond. Posting bail by a property bail bond is accomplished by depositing a property bond by the owners of the property as provided in I.C.R.19-2909 and I.C.R. 46(g). The qualifications for this type of bail are set forth in I.C. §19-2909 and I.C.R. 46(g). Before the defendant is released from custody following the posting of bail, written notice of the time and place to appear before the court shall be given to the defendant by the sheriff. A copy of such notice shall be forwarded to the court where the charge or charges are pending.

C. Judge must approve any property bail bond. Posting bail by a property bail bond may only be accomplished if a judge approves and accepts the property bond. I.C. §19-2909; I.C.R. 46(g)(3) and (5).

D. THE SERVICES OF A LAWYER MAY BE REQUIRED TO ASSIST IN MEETING COURT REQUIREMENTS RELATING TO A PROPERTY BOND.

E. Forms: The property bond and required promissory note shall be on forms approved by the Supreme Court. I.C.R 46(g)(6). Forms are included in the forms section of these Guidelines.

F. Recording of property bail bond: If the court accepts real property as security, the property bond shall be promptly recorded in the county in which the property is situated prior to the release of the defendant. Evidence of such recording shall be provided to the court. All recording fees and costs shall be paid by the person posting the bond. I.C.R. 46(g)(5).

G. Other considerations on property bail bonds.

1. The defendant's property may or may not be a sufficient surety, which decision is in the discretion of the judge. I.C. §19-2909.

2. The property must be located in the State of Idaho.

3. All fees associated with a property bail bond must be paid by the person posting the property bond. I.C.R. 46(g)(5). I.C. §19-2909.

4. A property bond posted and accepted by the court pursuant to I.C. §19-2909, and recorded, shall constitute a consensual lien on the property pursuant to I.C. §55-1005(3).

5. Before approving and accepting a property bail bond, the designated judge may hold an evidentiary hearing to determine the true "bail" worth of the property; specifically to determine the surety's actual ownership of the property (title), the current market value of the property, the encumbrances of record against the property, if any. An illustration is a home with a fair market value of $100,000 and a mortgage of $99,000 is useless as bail.

6. With real property, the court must also be certain that if the property is community

property or jointly owned property, all owners shall sign the property bond and the promissory note.

7. See the attached forms or the Idaho Supreme Court website for the approved forms of promissory notes and property bonds.

SECTION 5.

POSTING BAIL BY A BAIL BOND--
STACKING BAIL BONDS PROHIBITED
BAIL BOND AND POWER OF ATTORNEY FORMS

A. Name and address of person designated to receive all notices. The face sheet of all bail bonds submitted to the court or to the custodian of an arrested person must clearly state the name and mailing address of the person designated by the surety insurance company to receive all notices. I.C.R. 46(f).

1. This name and address must be typewritten, stamped in ink in typewritten form, or in pre-printed typed form. It shall not be considered compliance with this section to have the name and address included in handwritten form, an attached label or any other form.

2. This name and address shall be considered the last known address of the person posting the bail or the designated agent of that person for purposes of mailing and receiving notices of forfeiture and any other documents from the court. Any change in such address must be filed with the Department of Insurance.

3. The sheriff or any person within the State of Idaho having legal custody of any person shall have no authority to accept any bail bonds which do not comply with this section, and no bail agent shall attempt to submit a bail bond which does not comply with this section.

B. Accept only bail bonds from licensed agents. The clerk and law enforcement may only accept bail bonds from agents of surety insurance companies who are currently licensed to write bail bonds by the Idaho Department of Insurance. I.C. § 41-1039. The clerk or deputy clerk or appropriate law enforcement agency shall accept no bail bond unless that agent's name appears as an agent licensed to write bonds on the Department of Insurance's website. The bail agent shall provide a driver's license or other form of photographic identification for proof of identity prior to posting the bail bond.

C. Posting bail on separate counts in the same case. In those circumstances where the defendant's case has not been reviewed by a judge, a separate bail bond, property bond or cash deposit shall be posted on each separate charge. The presiding judge or judge who reviews a case involving multiple charges may set one bail amount for all the charges in the case or separate bail amounts on each charge.

D. Power of Attorney; Stacking bail bonds--prohibited.

Only one Power of Attorney shall be submitted for each bail bond and the face value of the power shall be equal to or greater than the amount of bail set by the judge in the case for which the bail bond and power are being submitted. A bail agent shall not attempt to "stack" bail bonds or powers by submitting more than one Power of Attorney for any single bail bond admission or requirement.

E. Bail Bond and power of attorney forms.

(1) Powers of attorney must be on forms provided by the surety insurance company.
(2) Powers of attorney cannot be altered in any way.
(3) The bail bond and the power of attorney must bear the original signature of the person posting the bail bond, but the signature of the attorney in fact may be an electronic signature.
(4) The bail bond must bear the typed or pre-printed current name, address, and telephone number of the person designated to receive all notices. This information must match the information that is on record with the Department of Insurance.
(5) The bail bond must bear the current name, address, and telephone number of the person posting the bail bond.
(6) The power of attorney and the bail bond must be accurately and completely filled out.
(7) The power of attorney and the bail bond may not be submitted after the expiration date, if any, on the face of the power of attorney.
(8) No power of attorney shall be used more than once.
(9) No photocopies of the power of attorney or bail bond may be submitted as the original.

The sheriff or any person within the Judicial District having legal custody of any person shall have no authority to accept any bail bond that does not comply with this Section, and no bail agent shall attempt to submit a bail bond which does not comply with this Section.

SECTION 6.

CONDITIONS OF RELEASE

A. Terms, conditions and prohibitions. If a defendant is admitted to bail or released upon the defendant's own recognizance, the court making such determination may impose such reasonable terms, conditions and prohibitions as the court finds necessary in the exercise of its discretion.

B. No contact orders. Whenever no contact is ordered pursuant to Idaho Code § 18-920, a no contact order shall be issued in accord with the standards set out in Criminal Rule 46.2.

C. Electronic monitoring. If one of the conditions of bail or release upon the defendant's own recognizance is an area of restriction monitored by electronic or global positioning system tracking, then the court shall notify the defendant in writing at the time of the setting of bail or release that intentionally leaving the area of restriction, except for the purpose of obtaining emergency medical care, may be prosecuted as the crime of escape and subject the defendant to the penalties set forth in I.C. § 18-2505 or I.C. § 18-2506.

D. Agreement to conditions. The court may, as a condition of release, require an agreement to comply with other terms and conditions of release. I.C.R. 46(e).

SECTION 7.

RIGHTS OF VICTIMS

Each victim of a criminal offense has the right to be:

(1) permitted to be present at all criminal justice proceedings including probation proceedings;

(2) given prior notification of trial court, appellate and probation proceedings and, upon request to information about the sentence, incarceration, placing on probation or release of the defendant;

(3) heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result; and

(4) notified whenever the defendant is released from custody. When release is ordered prior to final conviction, notice to the victim shall be given by the law enforcement authority from whose custody the defendant was released. Idaho Constitution, article I, section 22; Idaho Code § 19-5306(b), (d), (e) and (j).

SECTION 8.

MILITARY SERVICE

Forfeiture of bail cannot be enforced when military service prevents the defendant's attendance. 50 App. U.S.C. § 513(c) states: "**Bail bond not to be enforced during period of military service**. A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal."

"Court" is defined in 50 App. U.S.C. § 511(5) as including state courts.

"Military service" is defined in 50 App. U.S.C. § 511(2) as:

> (A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard--
> (i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and
> (ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;
> (B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and
> (C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

The surety must show that it was the defendant's military service that prevented the surety from obtaining the defendant's attendance. If this showing is made, the court cannot forfeit the bail or enforce a forfeiture. The court would have discretion in these cases to exonerate the bail.

SECTION 9.

SUBSTITUTION OF TYPE OF POSTED BAIL BEFORE FORFEITURE

A. Substitution of type of posted bail before forfeiture. At any time before an order of forfeiture, the Court may allow the defendant to substitute the type of bail previously posted. I.C. §19-2910.

Once the new bail is posted, the previously posted bail shall be exonerated.

B. Steps to follow in ISTARS

To enter a substitution of one type of bail for another, the procedure described in the Clerk's Manual should be followed.

SECTION 10.

INCREASING OR REDUCING BAIL

A. Sources of law. The sources of law regarding increasing or reducing bail are M.C.R. 13(a), I.C.R. 46(l), I.C. §19-1510, I.C. §19-2912.

B. Required court action. 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. I.C. §19-2912; I.C.R. 46(l).

C. Increasing or reducing the amounts stated in M.C.R. 13 bail schedule. For the bail amounts set in M.C.R. 13(b), if the defendant appears before a judge, the scheduled amounts are advisory only. The judge may follow, raise, lower, or eliminate the amount stated. M.C.R. 13(a).

D. Increasing bail.

1. When bail may be increased.
After admission to bail, the court before which a case is pending may increase the amount of bail. I.C. §19-2912 and I.C.R. 46(l). The court can increase the bail on its own motion or upon a verified petition seeking an increase.

2. Notice and hearing required.
Prior to increasing bail, the court shall order the defendant to appear for the hearing and shall notify the person posting the bail of the date and time of the hearing. Notice must also be given to defense counsel if the defendant is represented by counsel.

3. Reasons for increasing. Bail may be increased upon good cause shown, and is a question of discretion. I.C. §19-2912, I.C.R. 46(l).

4. If the defendant fails to appear for the hearing on increase. If the defendant fails to appear at the hearing after being properly notified of the date and time of said hearing seeking to increase the bail, the Court shall, absent evidence of a sufficient excuse for the absence, immediately forfeit the posted bail and shall issue a warrant for the arrest of the defendant. I.C.R. 46(l)(1).

5. **If the Court increases the amount of bail.** If the Court orders the increase in bail, the Court shall order the defendant to be committed to the actual custody of the Sheriff until bail is posted in the increased amount, AND any previous bail posted in the case shall be exonerated by the Court. I.C. §19-2912.

E. Reducing bail.

1. When bail may be reduced. After admission to bail, and upon application of the defendant, the court before which a case is pending may reduce the amount of bail previously set. I.C. §19-2912 and I.C.R. 46(l)(2).

2. Notice of reduction hearing required. Prior to taking action on the defendant's application, notice must be given to the prosecuting attorney and to the person who has posted any bail. I.C. §19-2912, I.C.R. 46(l)(2).

3. Reasons for reducing. Bail may be reduced upon good cause shown, and is a question of discretion. I.C. §19-2912, I.C.R. 46(l)(2).

4. Notice of reduction required. If the Court finds good cause to reduce the bail of the defendant, the Court may enter such an order and may continue the defendant on the original bail, with the court record properly reflecting the reduced amount of the bail obligation. The court shall give 5 business days' notice of such order reducing bail to the person posting the bail. I.C.R. 46(l)(2).

5. Objection to reduced amount of bail. Presumably, if the person posting will not consent, the court can only reduce bail by requiring the defendant to surrender to the custody of the sheriff and the court exonerates the original bail. The defendant will then have to acquire new bail in the reduced amount.

SECTION 11.

SURRENDER OF DEFENDANT PRIOR TO BAIL BEING FORFEITED BY COURT ORDER

A. Definition of Surrender. "Surrender" means the voluntary surrender or delivery of the defendant into the custody of the sheriff of the county where the action is pending. I.C. § 19-2905(18).

B. Surrender of defendant anytime prior to a court order of forfeiture of bail. At any time prior to a court order of forfeiture of bail, a surety insurance company or its bail agent, or the person posting a property bond or a cash deposit, has the legal right to surrender the defendant to the sheriff of the county where the action is pending. I.C. § 19-2913. The defendant may even turn himself in. Once the defendant is turned in and placed in custody, and the statutory procedures hereafter stated are followed, then the posted bail is exonerated and returned to the person who posted it. I.C. §19-2913(3).

C. Sheriff is required to accept the defendant. Upon the surrender of the defendant, the Sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the Court. I.C. §19-2913(1), (4).

D. Statutory procedure for surrender of defendant by the person posting bail prior to forfeiture and exoneration of bail. I.C. §19-2913. [I.C.R. 46 does not cover this topic].

1. The defendant must be physically turned over to the county sheriff of the county where the action is pending.

2. Upon the surrender of the defendant, the Sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

3. A certificate of surrender form must be delivered by the surety insurance company or its bail agent or person posting a property bond or cash deposit, to the sheriff who must also attach thereto his signature, the month, day, year and time of day as evidence of surrender and detain the defendant in his custody thereon as upon a commitment. 4. The person posting bail 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 county prosecuting attorney. I.C. §19-2913(3). The court shall thereupon order that the bail be exonerated.

E. Certificate of surrender. Before a defendant will be considered by the court to be "surrendered", there shall be filed with the court a properly executed "Certificate of Surrender". I.C. §19-2913(2). For the Certificate of Surrender form, see Appendix B of the Idaho Criminal Rules or the Idaho Supreme Court website at www.isc.idaho.gov/rulesfrm.htm.

1. Definition of Certificate of Surrender: "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. I.C. §19-2905(6).

2. All "Certificates of Surrender" submitted by a party posting bail pursuant to a bail bond revocation shall indicate that the purpose of surrendering custody of the defendant is to revoke

the bail bond prior to a notice of forfeiture.

3. In addition to the "Certificate of Surrender", the party posting bail shall file with the court, a "Motion" and "Order" for "Exoneration of Bail Prior to Forfeiture" The bail bond is not exonerated until the "Order for Exoneration of Bail Prior to Forfeiture" is signed by the court. Therefore, no refunds of bail will be made until each of the above is accomplished.

F. Photocopy of Register of Actions from State Repository. A photocopy of the ROA (register of actions) from the Idaho State ISTARS Repository, showing that the defendant is in custody in the case in which the bail is posted, does not meet the statutory requirement of a Certificate of Surrender.

SECTION 12.

FORFEITURE OF BAIL
I.C. §19-2915

A. Forfeiture defined. Forfeiture means an order of the Court reciting that the defendant failed to appear as ordered and stating that bail is forfeited. I.C. §19-2905(9). Forfeiture is available only for a failure to appear. Forfeiture is not available for a violation of conditions of release.

B. Forfeiture of bail pursuant to I.C. §19-2915.

(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 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.

(3) 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. I.C. §19-2915.

C. Steps to be followed to effectuate a forfeiture for defendant's failure to appear. Best practices for creating an enforceable forfeiture include the following:

1. Judge determines that the defendant is not present as required.

2. Make sure the defendant had been ordered or given a notice to appear on the date and time in question.

3. Make sure the defendant had received the notice or order to be present. This can be by notice to the lawyer for the defendant.

4. Determine that no sufficient excuse is stated. I.C. §19-2915.

5. The judge orders forfeiture of the bail.

6. The judge orders the issuance of a bench warrant for the arrest of the defendant.

7. The court clerk shall enter the defendant's failure to appear in the minutes.

8. The court clerk shall mail written notice of the forfeiture within five (5) business days of the forfeiture order for failure to appear to the last known address of the person posting the bail or that person's designated agent. This is five (5) business days from the date the judge orders the forfeiture. I.C. §19-2915 and I.C.R. 46.

D. One notice only. The Notice of Forfeiture will be the only notice sent to the surety or the surety's designated agent or to the person posting cash bail or a property bond. No subsequent billings or notices will be sent out.

E. CAUTION: FAILURE OF THE CLERK OF THE COURT TO GIVE NOTICE OF THE FORFEITURE WITHIN FIVE (5) BUSINESS DAYS TO THE PERSON POSTING THE BAIL OR THAT PERSON'S DESIGNATED AGENT SHALL EXONERATE THE BAIL , I.E., THE COURT LOSES THE POSTED BAIL. I.C. §19-2915(2) and I.C. §19-2922(2).

SECTION 13.

SETTING ASIDE ORDER OF FORFEITURE AND REINSTATING BAIL I.C. §19-2916

Upon Defendant's appearance with a satisfactory excuse.

(1) 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 the bail previously posted. I.C. §19-2916.

(2) Before reinstatement of the bail previously posted, the Court shall quash any bench warrant and shall set aside any order of forfeiture of the bail. See also I.C. §19-2915(3).

(3) The Court shall provide written notice of the reinstatement of bail to the person posting the bail or to the person's designated agent within five (5) business days of the order reinstating bail. I.C. §19-2916. See also I.C. §19-2915(3).

(4) CAUTION: PURSUANT TO I.C. §19-2922(3), FAILURE OF THE CLERK OF THE COURT TO GIVE WRITTEN NOTICE OF THE COURT'S ORDER TO SET ASIDE THE ORDER OF FORFEITURE AND REINSTATING BAIL WITHIN FIVE (5) BUSINESS DAYS TO THE PERSON POSTING THE BAIL OR ITS DESIGNATED AGENT SHALL EXONERATE THE BAIL, I.E., THE COURT LOSES THE POSTED BAIL.

SECTION 14.

MOTION TO SET ASIDE FORFEITURE PURSUANT TO IDAHO CODE § 19-2917

A. Motion to set aside forfeiture filed within 180 days of order of forfeiture. Within one hundred-eighty (180) days after an order of forfeiture for the defendant's failure to appear, a motion may be filed seeking a court order that the prior order of forfeiture be set aside, in whole or in part, upon such conditions as the court may impose, if it appears that justice does not require enforcement of forfeiture. I.C. §19-2917, I.C.R. 46(h).

(1) Consult I.C.R. 46(h) for the factors to be considered in deciding whether to set aside a forfeiture in whole or in part.
(2) If the Court does set aside the order of forfeiture, in whole or in part, then the court may:
   (a) Reinstate the bail.
   (b) Exonerate the bail
   (c) Recommit the defendant to the custody of the Sheriff and set new bail.
   (d) Release the defendant on his own recognizance. I.C.R. 46(h)(2), I.C. §19-2917.

B. Notice Required. The Court shall, within five (5) business days, give written notice to the person posting the bail, or if the bail consists of a bail bond, to the surety or its designated agent, of the action taken. I.C.R. 46(h)(2).

C. CAUTION: PURSUANT TO I.C. § 19-2922(3) FAILURE OF THE CLERK OF THE COURT TO GIVE WRITTEN NOTICE OF THE COURT'S ORDER TO SET ASIDE THE FORFEITURE WITHIN FIVE (5) BUSINESS DAYS TO THE PERSON POSTING THE BAIL OR ITS DESIGNATED AGENT SHALL EXONERATE THE BAIL, I.E., THE COURT LOSES THE POSTED BAIL.

D. Extensions of time on forfeiture. The one hundred eighty day forfeiture period may not be extended. The only relief provided may be a timely filed motion under I.C. § 19-2917 and I.C.R. 46(h) to set aside the forfeiture in whole or in part.

SECTION 15.

REMITTANCE OF FORFEITURE-PAYMENT OF BAIL
I.C. §19-2918 and I.C.R. 46(h)(3)

A. REMITTANCE OF FORFEITURE -- PAYMENT OF BAIL.

(1) The person posting bail shall pay to the Clerk of 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.

(2) 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.

(3) If cash is deposited in lieu of bail, the clerk of the court shall pay the cash deposit to the county treasurer.

(4) Payments made on the remittance of a forfeiture of a bail bond or property bond shall be forwarded 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 and any lien on property created by the property bond remains in effect until paid in full.

SECTION 16.

FAILURE TO REMIT FORFEITURE

1. Bail Bonds.

A. If notice of the order of forfeiture was properly given under I.C. §19-2915, and a surety insurance company fails to pay the amount of any bail forfeited within the time required under I.C. §19-2918(1), 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. I.C. §19-2918(3).

B. An Administrative District Judge in another district may also order the sheriffs and clerks of all courts in his district to not accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid. I.C. §19-2918(3).

C. The order of forfeiture shall become a judgment against the person posting the bail bond. I.C. §19-2918(2). The clerk shall forward the order of forfeiture and notice of the failure to make payment within the time required under I.C. § 19-2918(1) to the prosecuting attorney and the trial court administrator.

2. Property Bonds.

A. If notice of the order of forfeiture was properly given under I.C. §19-2915, and the person posting the property bond fails to pay the amount of bail forfeited within the time required under I.C.§19-2918(1), then the order of forfeiture shall become a judgment against the person posting the property bond. I.C. §19-2918(2). The order of forfeiture should be recorded with the county recorder.

B. The clerk shall forward the order of forfeiture and notice of the failure to make payment within the time required under I.C. § 19-2918(1) to the prosecuting attorney and the trial court administrator.

SECTION 17.

REVOCATION OF BAIL, RECOMMITMENT, AND RE-ADMITTANCE TO BAIL

A. Revocation of bail defined. Revocation of bail means an order by the Court revoking the defendant's release on bail. I.C. §19-2905(16). This is different from forfeiture for failure to appear.

B. Recommitment defined. Recommitment means the return of the defendant to the custody of the Sheriff following revocation or forfeiture of bail. I.C. § 19-2905(14).

C. Re-admittance to bail defined.

Re-admittance to bail means an order of the court allowing the defendant to post new bail following an order of revocation of bail which recommitted the defendant to the custody of the sheriff where the action is pending to be detained until legally released. I.C.R. 46(j).

D. Revocation on bail for a violation of condition of release.

1. The Court may revoke the bail of a defendant if the Court finds the defendant willfully violated a condition of release. I.C. §19-2919(1). I.C.R. 46(i).
2. The Court may issue a bench warrant to require the defendant to appear for a hearing.
3. If the defendant fails to appear for the revocation hearing, the Court shall issue a bench warrant for the arrest of the defendant.
4. The Court may set a new bail amount and/or terms and conditions. I.C. §19-2919.
5. The court shall exonerate any bail that has been posted.

E. Revocation of bail-insufficient surety.

1. The bail posted on behalf of a defendant may be revoked because the surety has become insufficient. I.C. §19-2920.
2. The Court may order a hearing to determine if the surety is insufficient
3. If the Court finds the surety to be insufficient, it may revoke the bail and recommit the defendant.
4. In such cases, the Court shall set bail in the same or a new amount and impose any appropriate conditions of release. I.C. § 19-2920(3).

F. Denial of re-admittance to bail.

The Court may deny re-admittance 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 or more violations of the condition of release and such violation or violations constituted a threat to the integrity of the judicial system. I.C. §19-2919(3).

If the offense is bailable, the court shall fix bail in a new amount and impose appropriate conditions of release. I.C. §19-2921.

SECTION 18.

EXONERATION OF BAIL
I.C. §19-2922

A. Definition of Exoneration. 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. I.C. §19-2905(8).

B. Grounds for Exoneration. I.C. § 19-2922 and I.C.R. 46(k), provide the grounds for exoneration of bail. Summarily stated, they are as follows:

a. The defendant has made all required court appearances and all charges have been resolved.
b. Written notice of the Court's order of forfeiture was not provided to the person posting bail by mailing the notice to the last known address of the person posting bail or that person's designated agent within five (5) business days of the order of forfeiture.
c. Written notice of the Court's order setting aside forfeiture and reinstating bail was not mailed to the person posting the bail within five (5) business days of the order.
d. Before any order of forfeiture, the defendant has surrendered or been surrendered to the sheriff where the action is pending and a certificate of surrender has been filed with the Court as required by I.C. §19-2913.
e. The defendant has appeared before the court where the action is pending within 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 I.C. §19-2916.
f. The Court has revoked bail and has ordered the defendant be recommitted.

C. Exoneration may be conditioned on payment of costs. Pursuant to I.C. §19-2922(5), 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 exoneration of bail and the setting aside of the forfeiture upon payment by the person posting bail of any costs incurred to transport the defendant to the jail where the action is pending. Such costs shall not exceed the amount of bail posted.

D. Cash deposit applied to payment of fines, fees, costs and restitution. When bail has been posted by cash deposit and remains on deposit at the time of the 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 action**, and after satisfying the fines, fees, costs and restitution, shall refund the surplus, if any, to the person posting the cash deposit. I.C. §19-2908.

Cash deposits cannot be applied to fines, fees, or costs in infraction cases. I.I.R. 7(c).

SECTION 19.

DEATH OF A DEFENDANT

If a defendant for whom bail has been posted dies prior to forfeiture or within the 180-day period following forfeiture, the person posting the bail may file with the court a motion to exonerate bail because of the death of the defendant. The motion shall be accompanied by substantial evidence of the defendant's death, which may include a certified copy of the death certificate or a motion to dismiss filed by the state. The motion for exoneration on the basis of the defendant's death shall be processed in the same manner as other motions for exoneration.

SECTION 20.

RIGHT TO BAIL AFTER PLEA OF GUILTY OR VERDICT OF GUILTY PENDING (BEFORE) SENTENCING

A. Sources of law. Bail between the time the defendant pleads guilty or there is a verdict of guilty, and the time the defendant is sentenced, is governed by I.C.R. 46(a), I.C. §19-2903(1).

B. Judge's discretion to revoke bail and incarcerate the defendant after a finding of guilt. I.C.R. 46(a) and I.C. §19-2903(1) clearly provide that the determination to revoke a defendant's bail and incarcerate the defendant after a plea of guilty or a verdict of guilty is one of discretion resting with the judge, taking into account all factors in Rule 46(c), including the risk of flight and whether the seriousness of the crime will require some incarceration.

SECTION 21.

RIGHT TO BAIL PENDING APPEAL AFTER SENTENCING

A. Sources of law. For felony cases on appeal, bail is governed by I.A.R. 13(c)(7) & (8), I.C.R. 46, I.C. §19-2903(a). For misdemeanors, bail on appeal is governed by I.C.R. 46(d), 54.5, I. C. §19-3941, and I.C. §19-3944.

B. Felony cases.

1. Bail on appeal. The court has discretion to decide whether a defendant will be admitted to bail on appeal. If not released on his or her own recognizance, a defendant may be admitted to bail by the court in which the defendant was convicted (sentencing court) pending an appeal unless it appears that the appeal is frivolous or taken for delay. I.C. R. 46(a) and (c).

2. Jurisdiction. The District Court retains certain jurisdiction regarding bail issues while a case is on appeal. See I.A.R. 13(c)(7) and (8). These include whether to allow bail, the amount of bail, modify the amount of bail, forfeiture and arrest.

3. Factors in allowing and/or setting the amount of bail on appeal. I.C.R. 46(d) states that the judge is to take into account the factors set forth in I.C.R. 46(c) in deciding whether to admit the defendant to bail on appeal, unless it appears the appeal is frivolous or taken for delay.

4. Appellate Court setting bail. An appellate court may set bail pending an appeal if the sentencing court has refused to allow bail. I.C.R. 46(d). Presumably, the appellate court can review and alter any bail ordered or posted.

5. Caution. Make sure the bail bond covers an appellate bail bond situation. See *State v. Rupp,* 123 Idaho 1, 843 P.2d 151 (1992).

C. Misdemeanor cases.

1. The right. I.C. §19-3941 provides that the defendant is entitled to be released from custody or obtain a stay in the proceedings if a cash or property bail bond is posted in an amount not exceeding $1,000, to be set by the judge. I.C.R. 54.5(a) provides the I.C. §19-3941 method can be followed, or bail may be ordered by the magistrate or the district court in accordance with I.C.R. 46(d) and 54.5(b)(7).

2. Factors in allowing and/or setting the amount of bail on appeal. Subject to the statutory language quoted immediately above, I.C.R. 46(d) states that the sentencing judge is to take into account the factors set forth in I.C.R. 46(c) in deciding whether to admit a defendant to bail on appeal, unless it appears the appeal is frivolous or taken for delay.

3. Person posting bail bond loses bail if defendant loses appeal. I.C. §19-3944 provides that if the defendant loses the appeal and costs and fines remain unpaid, the bail goes to pay those costs and fines.

4. Do not accept an appellate surety bail bond if the defendant was only ordered to pay a fine and/or costs. I.C. §19-3944.

a. Fine Only. Do not accept surety bail bonds on an appeal from a criminal conviction when only a fine is imposed. I.C. §19-3944. This is because the surety (whoever is posting the bail and in whatever form) must agree to pay the fine, or such portions thereof, as the appellate court directs. Obviously, a regular surety bail bond will not cover this.

b. Imprisonment. It is proper to accept an appellate surety bail bond if there is an appeal from a sentence imposing imprisonment. I.C. §19-2907(1)(a) and §19-2903(2). This is because the surety bail bond is liable if the defendant doesn't appear as requested. The form of the appellate surety bail bond is apparently different from the regular surety bail bond form. The judge needs to make sure the bond is an appellate surety bail bond.

SECTION 22.

BAIL ON PROBATION VIOLATION AND AGENTS' WARRANTS

A. Bail on an arrest warrant for a probation violation. The court must first find probable cause to issue the arrest warrant. I.C.R. Rule 5.3(a). The defendant has no absolute right to bail on a probation violation. Bail may be allowed on a probation violation in the discretion of the judge. *See also,* I.C. §19-2903(3); I.C.R. 33(e); I.C.R. 5.3(d). Any direction of the sentencing court endorsed upon the warrant shall be followed as to the denial of bail or the setting of bail in a certain amount. If no amount of bail is endorsed on the warrant issued by the sentencing court, then the court before which the defendant appears following arrest may set bail and, if set, bail only altered upon motion pursuant to I.C.R. 46(l). I.C.R. 5(d).

B. Bail on an agent's warrant. In the event the defendant is arrested pursuant to an agent's warrant, the court conducting the initial appearance shall not hold the probationer in custody nor require bail without first making a finding of probable cause. I.C.R. 5.3(b). Bail may be set in accordance with I.C.R. 5.3(d). The court, in its discretion, may set bail, which may only be altered upon motion pursuant to I.C.R. 46(l).

SECTION 23.

TAKING CUSTODY OF INDIVIDUALS IN THE COURTHOUSE

Taking custody of individuals in the courthouse. Any bail agent or any person acting on behalf of a bail agent must obtain the approval and assistance of the court marshal or security officer or deputy sheriff before attempting to take custody of any individual and/or attempting to remove any individual from within any state court facility in Idaho.

SECTION 24.

SOLICITING BAIL BUSINESS IN COURTHOUSES

Soliciting bail business in courthouses. It is not appropriate for bail agents to solicit clients within any courthouse or court facility, including offices, courtrooms, lobbies, hallways or corridors in any courthouse. Unless otherwise prohibited by ordinance, each administrative judge should ensure that appropriate administrative orders are entered to prohibit such practices. Placement of literature in designated areas shall be left to the rules of local county commissioners and/or the district court.

SECTION 25.

BAIL AGENTS

A. License required to be a bail agent. Every bail agent must be licensed by the Idaho Department of Insurance. I.C. §41-1037(3), I.C. §41-1039. Any sheriff or clerk of the district court shall accept bail bonds only from a licensed bail agent. I.C. §41-1039(2).

B. Authority of bail agent. A licensed bail agent is authorized to execute bail bonds in each of the judicial districts of the state. I.C. § 41-1039(2).

C. Suspension of license of bail agent. The Director of the Department of Insurance may suspend the license of a bail agent. I.C. §41-1039(4) and (5).

D. Notice of license suspension of bail agent. In the event the Director of the Department of Insurance revokes or suspends a bail agent's license, or lifts such revocation or suspension, the Director shall immediately notify all judicial trial court administrators of the effective date of such action. I.C. §41-1039A.

E. Administrative District Judge may order no bail bonds accepted by a bail agent. 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(4)(a) and (b), Idaho Code, the administrative district judge 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, if the basis for a suspension occurred after the issuance or renewal of the bail agent's current license, 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(4), Idaho Code. The director shall immediately notify all judicial district trial court administrators of such decision. I.C. §19-2918(4).

SECTION 26.

REPORT OF VIOLATIONS

Violation of these guidelines—Clerk's duty to report violations. The clerks of the district court or their appointed deputies, or court clerks designated under Idaho Misdemeanor Criminal Rule 12, shall be responsible for promptly reporting any and all violations of these Guidelines, or the statutes and rules pertaining to bail, to the Trial Court Administrator or his/her delegate. The Trial Court Administrator or his/her delegate shall report these allegations to the Administrative District Judge.