I.C.R. 5.3. Initial Appearance on Probation Violations.

Idaho Criminal Rule 5.3. Initial Appearance on Probation Violations.

(a) Time and Place for Initial Appearance. A probation violator may be arrested on an arrest warrant issued by the sentencing court after a finding of probable cause to believe the probationer has violated a condition of probation, or on an agentís warrant pursuant to I.C. ß 20-227. In either case, the probationer shall be taken before a magistrate or district judge in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays, and holidays. Provided, the court may delay the initial appearance if the probationer is hospitalized or otherwise in a condition which prevents the probationer being taken before the court. The court may immediately, in such instances, appoint counsel for the probationer.

(b) Determination of Probable Cause ñ Agentís Warrant. In the event the probationer is arrested pursuant to an agentís warrant, the court before whom the probationer first appears shall not hold the probationer in custody nor require bail without first making a determination as to whether there is probable cause to believe that a probation violation has been committed and that the probationer committed it. The court shall determine probable cause in a manner consistent with I.C.R. 4(e). The agentís warrant shall contain the underlying offense for which the probationer was placed on probation, the name of the sentencing judge, the date the probationer was placed on probation and the length of probation, the term of probation that was violated and a brief description of how it was violated and the date the probationer was taken into custody.

(c) Initial Appearance. At the arraignment on the alleged probation violation, the court shall:

(1) Advise the probationer that he or she is not required to make a statement and that any statement made may be used against the probationer;

(2) Advise as to the nature of the probation violation(s) filed against the probationer and ensure the probationer receives written notice of the alleged violation(s);

(3) Advise that the probationer has a right to counsel as provided by law, and if requested and appropriate, appoint counsel

(4) Advise that the probationer has a right to communicate with counsel and immediate family, and that reasonable means will be provided for the probationer to do so;

(5) Determine what form of release, if any, is appropriate;

(6) If the probationer is arrested in the county where placed on probation, set a time certain for the probationer to appear before the sentencing court.

(7) If the probationer is arrested outside the county where placed on probation, advise that:

(a) If the probationer remains in custody, he or she will be transported and arraigned in the sentencing county within a reasonable time not to exceed fourteen (14) days. This time period may only be extended upon a showing of good cause.

(b) If the probationer posts bond, he or she will be given a date to appear before a magistrate for arraignment in the county of sentencing. At the arraignment in the sentencing county, counsel will be appointed if requested and appropriate, and the probationer will be given a time to appear before the sentencing court.

(d) Setting Bail. Upon advising the probationer of the above rights, the court may set bail for the probationer.

(1) In the event the arrest is pursuant to a warrant issued by the sentencing court 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. In the event the probationer posts bail, that fact shall be certified upon the warrant, the probationer discharged and the warrant and undertaking of bail transmitted to the court in which the probationer is required to appear. Bail set at the initial appearance may only be altered upon motion pursuant to I.C.R. 46(l).

(2) In the event the arrest is pursuant to an agentís warrant, or no amount of bail is endorsed on the warrant issued by the sentencing court, then the court may se bail and, if set, bail may only be altered upon motion pursuant to I.C.R. 46(l). In the event the probationer posts bail, that fact shall be certified upon the warrant, the probationer discharged, and the warrant and undertaking of bail shall be transmitted to the court in which the probationer is required to appear.

(Adopted March 19, 2009, effective July 1, 2009.)

Source URL: http://www.isc.idaho.gov/icr5-3