I.C.R. 46. Bail or Release on Own Recognizance.

Idaho Criminal Rule 46. Bail or Release on Own Recognizance.

(a) Bail or release in non-capital cases. A defendant who is charged with a crime that is not punishable by death shall be admitted to bail or released on the defendant's own recognizance at any time before a guilty plea or verdict of guilt. In the discretion of the court, bail or release on the defendant's own recognizance may be allowed in the following cases:

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

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

(3) Upon a charge of a violation of the terms of probation.

(4) Upon a finding of a violation of the conditions of release, subject to the provisions of Idaho Code § 19-2919.

(b) Bail where offense is punishable by death. A person arrested for an offense punishable by death may be admitted to bail in the exercise of discretion by any magistrate or district court authorized by law to set bail in accordance with the standard set forth in article I, section 6 of the Idaho Constitution.

(c) Factors to be considered. The determination of whether a defendant should be released upon the defendant's own recognizance or admitted to bail, and the determination of the amount and conditions of bail, if any, can be made after considering any of the following factors:

(1) Defendant's employment status and history, and financial condition.

(2) The nature and extent of defendant's family relationships.

(3) Defendant's past and present residences.

(4) Defendant's character and reputation.

(5) The persons who agree to assist the defendant in attending court at the proper time.

(6) The nature of the current charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty.

(7) Defendant's prior criminal record, if any, and, if defendant has previously been released pending a trial or hearing, whether defendant appeared as required.

(8) Any facts indicating the possibility of violations of law if defendant is released without restrictions.

(9) Any other facts tending to indicate that defendant has strong ties to the community and is not likely to flee the jurisdiction.

(10) What reasonable restrictions, conditions and prohibitions should be placed upon defendant's activities, movements, associations and residences.Upon its own motion or upon a verified petition the court may from time to time re-evaluate the above factors and add to or modify the conditions of bail or revoke the defendant's admission to bail.

(d) Right to bail or release pending appeal. A defendant may be admitted to bail or released upon the defendant's own recognizance by the court in which the defendant was convicted pending an appeal upon considerationof the factors set forth in subsection (c) of this rule unless it appears that the appeal is frivolous or taken for delay. Application for admittance to bail or release upon the defendant's own recognizance may be made by the defendant to the appellate court upon a showing in the application that the court in which the defendant was convicted has refused to admit the defendant to bail or release the defendant on the defendant's own recognizance.

(e) Terms and prohibitions of bail or release.

(1) 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.

(2) 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.

(3) If one of the conditions of bail or release upon the defendant'sown 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.

(4) The court may, as a condition of release, require an agreement to comply with other terms and conditions of release.

(f) Bail, form, conditions and place of deposit.

(1) Bail may be posted in the form of cash deposit, property bond, or a bail bond issued by a surety insurance company qualified by law to do business in the state of Idaho. The surety shall clearly identify on the bond the name and mailing address of the person designated to receive all notices. The court shall not require that bail be posted only in cash, nor shall the court specify differing amounts for bail depending upon whether it is posted in the form of cash deposit, a property bond, or a bail bond. A cash deposit shall consist of payment in the form of United States currency, money order, certified check or cashier's check. Cash deposit may also be made by personal check payable to the clerk of the court where the acceptance of the personal check has been approved by a magistrate judge or district judge, or by credit card or debit card in those counties where procedures for the acceptance of such payment have been approved by the administrative district judge.

(2) When issuing a warrant of attachment for contempt regarding the nonpayment of any sum ordered by the court, the court may endorse upon the warrant that upon payment of a specified sum of money, not exceeding the amount owing, the contempt will be purged, the defendant shall be released, and the defendant need not appear in court in the contempt proceeding.

(g) Property bonds.

(1) The title owner(s) of the property shall execute and deliver a promissory note payable to the county in the amount of the bail. The promissory note shall require the promissor pay to the county the amount of bail, should the defendant fail to appear as required by the court and all attorney fees and costs over and above the amount of bail should the property be sold to satisfy the bail.

(2) The person pledging the property shall provide the tax assessed value and any other documentation required by the court and must disclose, under oath, all liens and encumbrances.

(3) The court, in its discretion, shall determine if the amount of equity in the property is adequate to cover the amount of bail and any other costs associated with liquidating the property to satisfy the

obligation to the court.

(4) For real property to qualify as adequate security it must be located within the State of Idaho and must have an equity value, after deducting the outstanding balance of any existing lien or encumbrance, in an amount not less than the principal amount of the bail set.

(5) If the court accepts the 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.

(6) The property bond and promissory note shall be on forms approved by the Supreme Court.

(h) Forfeiture and enforcement of bail bond.

(1) The court which has forfeited bail, upon a motion filed within one hundred eighty (180) days after an order of forfeiture, may direct that the 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 the enforcement of the forfeiture. In ruling upon such a motion, the court shall consider all relevant factors, which may include but not be limited to the following:

(A) the willfulness of the defendant's violation of the obligation to appear;

(B) the participation of the person posting bail in locating and apprehending the defendant;

(C) the costs, inconvenience, and prejudice suffered by the state as a result of the defendant's violation of the obligation to appear;

(D) any intangible costs;

(E) the public's interest in insuring a defendant's appearance;

(F) any mitigating factors;

(G) whether the state exhibited any actual interest in regaining custody of the defendant through

prompt efforts to extradite him;

(H) whether the bonding company has attempted to assist or persuade the defendant to expedite his return to Idaho by exercising his rights under the Interstate Agreement on Detainers, Idaho Code § 19-5001 et seq.; and

(I) the need to deter the defendant and others from future violations.

(2) If the court sets aside the forfeiture, in whole or in part, it may reinstate the bail, or the court may exonerate the bail, or the court may recommit the defendant to the custody of the sheriff and set new bail or may release the defendant on his or her own recognizance. The court shall, within five (5) business days, give written notice to the person posting the bail. If the bail consists of a surety bond, such notice shall be sent to the surety, or to the agent designated by the surety to receive such notice as reflected in the records of the Department of Insurance, and shall constitute notice to both the surety and the person posting the bond, if they are different persons.

(3) After the court enters the order forfeiting bail, the clerk must, within five (5) business days, mail a written notice of forfeiture to the last known address of the person posting. If the bail consists of a surety bond, such notice shall be sent to the surety, or to the agent designated by the surety to receive such notice as reflected in the records of the Department of Insurance, and shall constitute notice to both the surety and the person posting the bond, if they are different persons. If the defendant does not appear or is not brought before the court within one hundred eighty (180) days after the entry of the order forfeiting bail, the clerk, upon receiving payment of the forfeited bail, shall remit such forfeiture to the county auditor for distribution and apportionment as provided by I. C. § 19-4705.

(i) Revocation of bail.

(1) Upon a verified application alleging that the defendant has willfully violated conditions of the defendant's release on bail, other than failure to appear, the court may issue a warrant directing that the defendant be arrested and brought before the court for hearing, or the court may order the defendant to appear before the court at a time certain.

(2) Upon a bail revocation hearing, at which the defendant shall appear if the defendant can be found, if the court finds that there has been a willful breach of conditions of bail, and if the defendant is present before the court, it may revoke the bail and remand the bailed person to the custody of the sheriff, and may at any time thereafter reconsider the issue of bail and may set new bail and impose other or additional conditions of release.

(j) Re-admittance to bail. After the order of recommitment of a defendant the court may again determine the amount of bail and order that the defendant be admitted to bail in the sum determined and released upon such conditions and prohibitions as the court determines in its

discretion.

(k) Exoneration of bail.

(1) If the defendant appears before the court where the charge is pending, within one hundred eighty (180) days after the order forfeiting bail, upon motion of the person posting bond, if the court has not set aside the forfeiture, the court shall rescind the order of forfeiture and shall exonerate the bond; provided, that in those cases where the defendant was not returned by the person posting bail to the sheriff of the county where the action is pending, the court may condition the exoneration of bail and the setting aside of the forfeiture on payment by the person posting bail of the actual and reasonable costs incurred by state or local authorities arising from the transport of the defendant to the jail facility of the county where the charges are pending. Such costs shall be determined by the court following filing within fourteen (14) days of the defendant's return, by either the prosecuting attorney or a representative of the state or local law enforcement entity, of documentation of the costs actually incurred. The request for costs and supporting documentation shall also be served upon the person posting bail, who may file an objection to the request within fourteen (14) days of the filing of the request for costs. Any amounts ordered under this rule shall be paid directly to the appropriate law enforcement agency or agencies.

(2) A defendant appears before the court when the defendant physically appears in the court where the charge is pending, or, while in the custody of the sheriff of the county in which the charge is pending, appears in such court by video or audio, or by other appearance authorized by the court.

(3) Where a property bond has been posted the order exonerating the bond shall release the lien.

(l) Increasing or reducing bail.

(1) The court before which a case is pending may, after a defendant has been admitted to bail, increase or reduce the amount of bail. Upon its own motion, or upon a verified petition for an increase in bail, the court shall order the defendant to appear for a hearing on the application. The court shall also notify the person posting the undertaking of the date and time of the hearing. If the defendant fails to appear at the hearing after being properly notified of the date and the time of said hearing, the court shall, absent evidence of sufficient excuse for his absence, immediately forfeit the bail and shall issue a warrant for arrest of the defendant.

(2) Upon application of the defendant, and timely notice to the prosecuting attorney and the person posting bail of said application, the court may reduce the existing bail, in its discretion. 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 notice of such reduction to the person posting bail within five (5) business days of the entry of the order reducing bail.

(Adopted December 27, 1979, effective July 1, 1980; amended March 21, 1991, effective July 1,

1991; amended March 30, 1994, effective July 1, 1994; amended April 19, 1995, effective July 1, 1995; amended April 3, 1996, effective July 1, 1996; amended March 22, 2002, effective July 1, 2002; amended November 7, 2002, effective December 1, 2002 amended April 26, 2007, effective July 1, 2007; repealed & amended March 19, 2009, effective July 1, 2009; amended April 2, 2014; effective July 1, 2014.)

Source URL: http://www.isc.idaho.gov/icr46