

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 35
DISMISSAL OF ACTION

19-3501. WHEN ACTION MAY BE DISMISSED. The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

(1) When a person has been held to answer for a public offense, if an indictment or information is not found against him and filed with the court within six (6) months from the date of his arrest.

(2) If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the information is filed with the court.

(3) If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant was arraigned before the court in which the indictment is found.

(4) If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

(5) If a defendant, charged with both a felony or multiple felonies and a misdemeanor or multiple misdemeanors together in the same action or charging document, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the information is filed with the court.

(6) If a defendant, charged with both a felony or multiple felonies and a misdemeanor or multiple misdemeanors together in the same action or charging document, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant was arraigned before the court in which the indictment is found.

[(19-3501) Cr. Prac. 1864, secs. 580, 581, p. 284; R.S., R.C., & C.L., sec. 8212; C.S., sec. 9176; I.C.A., sec. 19-3401; am. 1980, ch. 102, sec. 1, p. 226; am. 1984, ch. 51, sec. 1, p. 92; am. 2001, ch. 23, sec. 1, p. 29; am. 2004, ch. 305, sec. 1, p. 855.]

19-3502. CONTINUANCE FOR CAUSE. If the defendant is not indicted or tried, as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued to a date subsequent, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

[(19-3502) Cr. Prac. 1864, sec. 582, p. 285; R.S., R.C., & C.L., sec. 8213; C.S., sec. 9177; I.C.A., sec. 19-3402; am. 1994, ch. 270, sec. 1, p. 833.]

19-3503. DEFENDANT TO BE DISCHARGED. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

[(19-3503) Cr. Prac. 1864, sec. 583, p. 285; R.S., R.C., & C.L., sec. 8214; C.S., sec. 9178; I.C.A., sec. 19-3403.]

19-3504. DISMISSAL ON MOTION OF COURT OR PROSECUTING ATTORNEY. The court may, either of its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

[(19-3504) Cr. Prac. 1864, sec. 584, p. 285; R.S., R.C., & C.L., sec. 8215; C.S., sec. 9179; I.C.A., sec. 19-3404.]

19-3505. NOLLE PROSEQUI ABOLISHED. The entry of a nolle prosequi is abolished, and neither the attorney-general nor the prosecuting attorney can discontinue or abandon a prosecution for a public offense except as provided in the last section.

[(19-3505) Cr. Prac. 1864, sec. 585, p. 285; R.S., R.C., & C.L., sec. 8216; C.S., sec. 9180; I.C.A., sec. 19-3405.]

19-3506. EFFECT OF DISMISSAL AS BAR -- DISMISSAL FOR DIVERSION PARTICIPANT. (1) An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor, except as provided in subsection (2) of this section; but it is not a bar if the offense is a felony.

(2) A prosecuting attorney may move for dismissal of a misdemeanor action, and the court may order such dismissal, if the defendant agrees to participate in a diversion program pursuant to section [19-3509](#), Idaho Code. The action may be refiled for failure to complete the diversion program, and speedy trial shall be calculated from the date of refiling.

[(19-3506) Cr. Prac. 1864, sec. 586, p. 285; R.S., R.C., & C.L., sec. 8217; C.S., sec. 9181; I.C.A., sec. 19-3406; am. 2019, ch. 305, sec. 6, p. 912.]

19-3507. DIVERSION PROGRAMS -- LEGISLATIVE INTENT. (1) For purposes of this section and sections [19-3508](#) and [19-3509](#), Idaho Code, "diversion program" means the use of local community resources, churches, substance abuse counseling, informal probation, community service work, voluntary restitution, or other available services or programs as an alternative to adjudication of a criminal case in court.

(2) It is the intent of the legislature and the policy of the state of Idaho that a diversion program created pursuant to sections [19-3508](#) and [19-3509](#), Idaho Code, should:

(a) Provide an opportunity to incorporate statistics and empirical research into decision-making in the criminal justice system in a way that enhances public safety and reduces recidivism, while also saving taxpayer dollars;

(b) Provide individuals with the opportunity to rectify criminal conduct through early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter future criminal behavior by such individuals; and

(c) Provide an alternative to the imposition of criminal sanctions when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct.

[19-3507, added 2019, ch. 305, sec. 7, p. 912.]

19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. A person is eligible to participate in a diversion program if:

- (1) The person has been charged with driving under the influence pursuant to section [18-8004](#) or [18-8004A](#), Idaho Code;
- (2) At the time of the conduct underlying such charge, the person:
 - (a) Did not hold a commercial driver's license or commercial learner's permit; or
 - (b) Was not operating a commercial vehicle;
- (3) No other person is alleged to have been physically injured as a result of the conduct underlying such charge; and
- (4) The person charged has not been convicted of driving under the influence or a substantially conforming foreign criminal violation within the past ten (10) years and has not previously participated in a diversion program pursuant to section [19-3509](#), Idaho Code.

[19-3508, added 2019, ch. 305, sec. 8, p. 912; am. 2020, ch. 212, sec. 1, p. 620.]

19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) A prosecuting attorney may, at the prosecuting attorney's discretion, establish a diversion program and may refer a defendant eligible to participate in a diversion program pursuant to section [19-3508](#), Idaho Code, to such program within thirty (30) calendar days of a citation being issued or charges being filed against the defendant. Before entering an agreement to participate in the diversion program, a defendant may obtain advice from a defense attorney on the requirements and consequences of participating in the diversion program and must undergo a drug or alcohol evaluation, or both, if requested by the prosecuting attorney. The terms and conditions of the diversion program shall be set forth in a written agreement signed by the prosecuting attorney and the defendant as well as the defendant's attorney, if the defendant is represented by an attorney. If the defendant agrees to participate in the diversion program, then the prosecuting attorney shall move for dismissal of the action against the defendant pursuant to section [19-3506](#), Idaho Code.

(a) A diversion program may be administered by the prosecuting attorney or by the prosecuting attorney's designee. The diversion agreement shall specify the person administering the program and shall set out the requirements for successful completion of the program and the duration of the diversion agreement. The duration of the period a person is required to participate in a diversion program under this section shall be no shorter than twelve (12) months. All persons participating in a diversion program shall be required to install and maintain, at the participant's expense, an ignition interlock system in each vehicle such person operates for the duration of the program, as further provided in subsection (5) of this section. A person participating in a diversion program for a charge unrelated to alcohol shall, in addition to installing and maintaining an ignition interlock system, be required to undergo drug testing at the person's expense for at least twelve (12) months. If the person is indigent, the prosecuting attorney may order

the use of moneys from the court interlock device and electronic monitoring device fund created by section [18-8010](#), Idaho Code, to assist the person in procuring an ignition interlock device. The participant in a diversion program must also complete at least thirty-two (32) hours of sheriff inmate labor detail or approved community service and at least twenty-four (24) hours of drug and alcohol counseling, therapy, or education from an approved provider.

(b) At the end of the diversion period, the prosecuting attorney shall determine whether the participant complied with the requirements of the diversion agreement. If the prosecuting attorney finds that the participant failed to comply with the requirements of the diversion agreement, then the prosecuting attorney may refile the case pursuant to section [19-3506](#), Idaho Code.

(2) A prosecuting attorney may require, as a condition of entering a diversion program, that a person execute a sworn affidavit stating the facts that gave rise to the charge of driving under the influence. Such affidavit may be used as evidence of guilt during an adjudicative proceeding in a refiled case. No other statement made by the person in diversion activities or proceedings, such as in a counseling or therapy session, is admissible as evidence of guilt during an adjudicative proceeding in a refiled case.

(3) The requirements for successful completion of a diversion program may include, but are not limited to:

- (a) Informal supervision with the probation department;
- (b) Community service work;
- (c) Inmate labor detail work;
- (d) A community-based diversion program;
- (e) Restitution to a victim;
- (f) Alcohol monitoring and testing;
- (g) Individual therapy and counseling;
- (h) Group therapy and counseling; and
- (i) Drug monitoring and testing.

(4) The administrator of a diversion program may require payment of restitution and fees to cover the costs of the diversion program. Any moneys collected shall be reasonably related to program costs. The administrator shall assess a diversion fee of one hundred fifty-seven dollars and fifty cents (\$157.50) to each diversion participant. If the participant is indigent, the diversion fee may be waived. The diversion fee shall be paid to the clerk of the district court and distributed as follows:

- (a) Seventeen dollars and fifty cents (\$17.50) to be distributed as provided in section [31-3201A](#)(2), Idaho Code;
- (b) Ten dollars (\$10.00) to be distributed as provided in section [31-3201](#)(3), Idaho Code;
- (c) Ten dollars (\$10.00) to be distributed as provided in section [31-3201](#)(5), Idaho Code;
- (d) Fifteen dollars (\$15.00) to be distributed as provided in section [31-3201B](#), Idaho Code;
- (e) Fifty dollars (\$50.00) to be distributed as provided in section [31-3201H](#), Idaho Code;
- (f) Fifteen dollars (\$15.00) to be distributed as provided in section [31-3204](#), Idaho Code;
- (g) Thirty-seven dollars (\$37.00) to be distributed as provided in section [72-1025](#), Idaho Code; and

(h) Three dollars (\$3.00) to be distributed as provided in section [72-1105](#), Idaho Code.

(5) A participant in a diversion program whose driving privileges have been suspended may be granted driving privileges by the administrator of the diversion program, in which case the participant shall be issued a restricted driving permit by the Idaho transportation department. Prior to being granted restricted driving privileges, the participant must show to the administrator proof of financial responsibility as defined and in the amounts specified in section [49-117](#), Idaho Code. If a person is participating in a diversion program under this section, then the participant must have an ignition interlock system as defined in section [18-8008](#), Idaho Code, installed in each vehicle operated by the participant and must pay an ignition interlock fee of fifteen dollars (\$15.00) to be deposited in the court interlock device and electronic monitoring device fund created by section [18-8010](#), Idaho Code. The ignition interlock system shall be removed once the participant successfully completes diversion, provided that such removal shall not occur, and the program shall not be considered successfully completed, until the administrator of the diversion program receives a declaration from the participant's ignition interlock vendor, on a form provided or approved by the administrator, certifying that none of the following incidents occurred while the system was installed in the vehicle:

- (a) An attempt to start the vehicle with an alcohol concentration of 0.04 or more;
- (b) Failure to take any random test;
- (c) Failure to pass any random retest with an alcohol concentration of 0.025 or lower; or
- (d) Failure of the participant to appear at the ignition interlock system vendor's place of business when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the system.

[19-3509, added 2019, ch. 305, sec. 9, p. 913.]