

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 8
EXAMINATION OF CASE AND DISCHARGE OR COMMITMENT OF ACCUSED

19-801. ACCUSED TO BE INFORMED OF CHARGE -- RIGHT TO COUNSEL. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

[(19-801) Cr. Prac. 1864, sec. 143, p. 230; R.S., R.C., & C.L., sec. 7565; C.S., sec. 8743; I.C.A., sec. 19-701.]

19-802. SENDING FOR COUNSEL. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must upon the request of the defendant, require a peace officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty.

[(19-802) Cr. Prac. 1864, sec. 144, p. 230; R.S., R.C., & C.L., sec. 7566; C.S., sec. 8744; I.C.A., sec. 19-702.]

19-804. PRELIMINARY EXAMINATION. The magistrate shall conduct a preliminary examination unless the same is waived by the defendant. At such preliminary examination, the magistrate shall first read the complaint to the defendant unless the defendant waives such reading, and it shall be the duty of the magistrate at such examination to determine whether or not a public offense has been committed and whether or not there is probable or sufficient cause to believe that the defendant committed such public offense. Once commenced, the examination must be completed at one (1) session unless the magistrate for good cause shown by court order postpones it, or unless the parties stipulate in writing or upon the court record to a continuance to a date certain. If the defendant is incarcerated, the postponement or continuance cannot be for more than six (6) days or, if the defendant is not incarcerated, for more than twenty (20) days, unless on motion by or with the consent of the defendant the court orders a longer continuance or postponement.

[(19-804) Cr. Prac. 1864, sec. 146, p. 230; R.S., R.C., & C.L., sec. 7568; C.S., sec. 8746; I.C.A., sec. 19-704; am. 1969, ch. 467, sec. 1, p. 1339; am. 1976, ch. 282, sec. 1, p. 967.]

19-805. COMMITMENT OR BAIL ON POSTPONEMENT. If a postponement is had the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is postponed.

[(19-805) Cr. Prac. 1864, sec. 147, p. 230; R.S., R.C., & C.L., sec. 7569; C.S., sec. 8747; I.C.A., sec. 19-705.]

19-806. FORM OF COMMITMENT. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect:

"The within named A.B. having been brought before me under this warrant, is committed for examination to the sheriff of"

If the sheriff is not present, the defendant may be committed to the custody of a peace officer.

[(19-806) Cr. Prac. 1864, sec. 148, p. 231; R.S., R.C., & C.L., sec. 7570; C.S., sec. 8748; I.C.A., sec. 19-706.]

19-807. ISSUANCE OF SUBPOENAS FOR WITNESSES. The magistrate shall, prior to the preliminary examination, issue subpoenas, subscribed by him, for witnesses required by the prosecution who are in the state, and for witnesses required by the defendant who are in the state.

[(19-807) Cr. Prac. 1864, sec. 149, p. 231; R.S., R.C., & C.L., sec. 7571; C.S., sec. 8749; I.C.A., sec. 19-707; am. 1969, ch. 467, sec. 2, p. 1339.]

19-808. EXAMINATION OF WITNESSES FOR STATE. The witnesses for the prosecution must be examined under oath in the presence of the defendant, and may be cross-examined in his behalf.

[(19-808) Cr. Prac. 1864, sec. 150, p. 231; R.S., R.C., & C.L., sec. 7572; C.S., sec. 8750; I.C.A., sec. 19-708; am. 1969, ch. 467, sec. 3, p. 1339.]

19-809. EXAMINATION OF WITNESSES FOR DEFENDANT. When the examination of witnesses on the part of the people is closed, the defendant may produce any material witnesses, which witnesses must be sworn, examined and cross-examined in the presence of the defendant.

[(19-809) R.S., R.C., & C.L., sec. 7573; C.S., sec. 8751; I.C.A., sec. 19-709; am. 1969, ch. 467, sec. 4, p. 1339.]

19-809A. CHILD'S OUT OF COURT STATEMENTS ADMISSIBLE IN PRELIMINARY EXAMINATIONS. Notwithstanding the provisions of sections [19-808](#) and [19-809](#), Idaho Code, and any rules promulgated by the Idaho supreme court, in any preliminary examination, the magistrate shall receive into evidence any out-of-court statement of a child under the age of ten (10) years provided the magistrate finds the source of the evidence credible.

[19-809A, added 1986, ch. 195, sec. 1, p. 493.]

19-810. EXCLUSION OF WITNESSES. While a witness is under examination the magistrate must, upon motion of either of the parties, exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until all witnesses have been examined.

[(19-810) Cr. Prac. 1864, sec. 157, p. 232; R.S., R.C., & C.L., sec. 7574; C.S., sec. 8752; I.C.A., sec. 19-710; am. 1969, ch. 467, sec. 5, p. 1339.]

19-811. EXCLUSION OF OTHER PERSONS. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney general, the prosecuting attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

[(19-811) Cr. Prac. 1864, sec. 158, p. 232; R.S., R.C., & C.L., sec. 7575; C.S., sec. 8753; I.C.A., sec. 19-711.]

19-812. TRANSCRIPT OF PRELIMINARY EXAMINATION. In all cases which must afterward be investigated by the grand jury, or prosecuted by information, the preliminary examination must be taken and as ordered by the district court duly transcribed, unless the person charged with the offense shall waive his right to such examination, and the same can not be unreasonably delayed by either party.

A verbatim record of the proceedings and evidence at the preliminary examination before a magistrate shall be maintained either by electrical devices or by stenographic means as the magistrate may direct, but if any party to the action requests stenographic reporting of the proceedings, the reporting shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings.

The opening statements and closing argument of counsel for the parties need not be transcribed and made a part of the transcript unless the transcription of the same is requested in advance by either of such parties.

The transcript of the proceedings and evidence at the preliminary examination shall be certified to as true and correct by the stenographer or by the person designated to transcribe the proceedings from the electrical devices.

[(19-812) R.S., sec. 7576; am. 1905, p. 376; reen. R.C., sec. 7576; compiled and reen. C.L., sec. 7576; C.S., sec. 8754; I.C.A., sec. 19-712; am. 1969, ch. 467, sec. 6, p. 1339; am. 1971, ch. 73, sec. 1, p. 167; am. 1979, ch. 206, sec. 1, p. 589.]

19-813. CUSTODY OF TRANSCRIPT OF PRELIMINARY EXAMINATION. The magistrate must keep the depositions of witnesses or transcript of preliminary examination taken at such preliminary examination until the same is returned to the proper court; and such magistrate must not permit the same to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney-general, prosecuting attorney, or other prosecuting attorney, and the defendant and his counsel.

[(19-813) R.S., R.C., & C.L., sec. 7577; C.S., sec. 8755; I.C.A., sec. 19-713; am. 1969, ch. 467, sec. 7, p. 1339.]

19-814. DISCHARGE OF DEFENDANT. If, after hearing the evidence adduced at the preliminary examination, the magistrate finds either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must dismiss the complaint and order the defendant to be discharged.

[(19-814) Cr. Prac. 1864, sec. 159, p. 232; R.S., R.C., & C.L., sec. 7578; C.S., sec. 8756; I.C.A., sec. 19-714; am. 1969, ch. 467, sec. 8, p. 1339.]

19-815. HOLDING DEFENDANT TO ANSWER. If, after hearing the evidence adduced at the preliminary examination, the magistrate finds that a public offense has been committed, and that there is probable or sufficient cause to believe the defendant guilty thereof, the magistrate shall enter an order holding the defendant to answer to said public offense, which order shall be substantially as follows: "It appearing to me that the offense set forth in the complaint (or any offense, according to the evidence presented at the preliminary examination, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A.B. guilty thereof, I order that he be held to answer the same."

[(19-815) Cr. Prac. 1864, sec. 160; R.S., R.C., & C.L., sec. 7579; C.S., sec. 8757; I.C.A., sec. 19-715; am. 1969, ch. 467, sec. 9, p. 1339.]

19-815A. CHALLENGING SUFFICIENCY OF EVIDENCE OF PRELIMINARY EXAMINATION. A defendant once held to answer to a criminal charge under this chapter may challenge the sufficiency of evidence educed at the preliminary examination by a motion to dismiss the commitment, signed by the magistrate, or the information filed by the prosecuting attorney. Such motion to dismiss shall be heard by a district judge.

If the district judge finds that the magistrate has held the defendant to answer without reasonable or probable cause to believe that the defendant has committed the crime for which he was held to answer, or finds that no public offense has been committed, he shall dismiss the complaint, commitment or information and order the defendant discharged.

[I.C., sec. 19-815A, as added by S.L. 1971, ch. 250, sec. 1, p. 1005.]

19-816. OFFENSES NOT BAILABLE -- ENDORSEMENT ON COMMITMENT. If the offense is not bailable the following words must be added to the commitment required by section [19-818](#): "and he is hereby committed to the sheriff of the county of"

[(19-816) Cr. Prac. 1864, sec. 161, p. 232; R.S., R.C., & C.L., sec. 7580; C.S., sec. 8758; I.C.A., sec. 19-716; am. 1969, ch. 467, sec. 10, p. 1339.]

19-817. BAILABLE OFFENSES -- ORDER ADMITTING TO BAIL. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to commitment required by section [19-818](#): "And that he is admitted to bail in the sum of dollars, and is committed to the sheriff of the county of until he gives such bail."

[(19-817) Cr. Prac. 1864, sec. 163, p. 232; R.S., R.C., & C.L., sec. 7581; C.S., sec. 8759; I.C.A., sec. 19-717; am. 1969, ch. 467, sec. 11, p. 1339.]

19-818. ORDER OF COMMITMENT. If the magistrate order the defendant to be committed he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is com-

mited, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

[(19-818) Cr. Prac. 1864, sec. 164, p. 233; R.S., R.C., & C.L., sec. 7582; C.S., sec. 8760; I.C.A., sec. 19-718.]

19-819. FORM OF COMMITMENT. The commitment must be to the following effect:

County of (as the case may be). The state of Idaho to the sheriff of the county of:

An order having been this day made by me, that A.B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this day of,

[(19-819) Cr. Prac. 1864, sec. 165, p. 233; R.S., R.C., & C.L., sec. 7583; C.S., sec. 8761; I.C.A., sec. 19-719; am. 2007, ch. 90, sec. 9, p. 250.]

19-820. UNDERTAKING OF WITNESSES TO APPEAR. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of \$500.00.

[(19-820) Cr. Prac. 1864, sec. 166, p. 233; R.S., R.C., & C.L., sec. 7584; C.S., sec. 8762; I.C.A., sec. 19-720.]

19-821. SECURITY FOR APPEARANCE. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

[(19-821) Cr. Prac. 1864, sec. 167, p. 233; R.S., R.C., & C.L., sec. 7585; C.S., sec. 8763; I.C.A., sec. 19-721.]

19-822. SECURITY FOR APPEARANCE -- INFANTS AND MARRIED WOMEN. Infants and married women who are material witnesses against the defendant may be required to procure sureties for their appearance, as provided in the last section.

[(19-822) Cr. Prac. 1864, sec. 168, p. 233; R.S., R.C., & C.L., sec. 7586; C.S., sec. 8764; I.C.A., sec. 19-722.]

19-823. COMMITMENT FOR FAILURE TO GIVE SECURITY. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

[(19-823) Cr. Prac. 1864, sec. 169, p. 233; R.S., R.C., & C.L., sec. 7587; C.S., sec. 8765; I.C.A., sec. 19-723.]

19-824. CONDITIONAL EXAMINATION. When, however, it satisfactorily appears by examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this chapter to be conducted, and the witness thereupon be discharged; but this section does not apply to an accomplice in the commission of the offense charged.

[(19-824) Cr. Prac. 1864, sec. 170, p. 233; R.S., R.C., & C.L., sec. 7588; C.S., sec. 8766; I.C.A., sec. 19-724.]

19-825. RETURN OF PAPERS TO DISTRICT COURT. When a magistrate has held a defendant to answer for the commission of a public offense, he must, without unnecessary delay and after the transcript of preliminary examination has been transcribed or the depositions of witnesses have been reduced to writing in compliance with section [19-812](#), Idaho Code, return to the clerk of the district court to which the defendant has been held to answer, the complaint, the warrant, if any, the transcript of preliminary examination or depositions of witnesses testifying at the preliminary examination, a certified copy of the transcript of his docket, the order holding defendant to answer, all undertakings of bail or for the appearance of witnesses taken by him, together with any other written documents on file which the magistrate is required by law to transmit to said district court.

[(19-825) Cr. Prac. 1864, sec. 172, p. 234; R.S., R.C., & C.L., sec. 7589; C.S., sec. 8767; I.C.A., sec. 19-725; am. 1969, ch. 467, sec. 12, p. 1339.]

19-858. REIMBURSEMENT TO COUNTY -- WHEN AUTHORIZED. [EFFECTIVE UNTIL OCTOBER 1, 2024, THEN REDESIGNATED AS SECTION [19-6015](#)] (1) The prosecuting attorney of each county may, on behalf of the county, recover payment or reimbursement, as the case may be, from each person who has received legal assistance or another benefit under this act:

- (a) To which he was not entitled;
- (b) With respect to which he was not an indigent person when he received it; or
- (c) With respect to which he has failed to make the certification required under section [19-854](#), Idaho Code, and for which he refuses to pay or reimburse. Suit must be brought within five (5) years after the date on which the aid was received.

(2) The prosecuting attorney of each county may, on behalf of the county, recover payment or reimbursement, as the case may be, from each person other than a person covered under subsection (1) of this section who has received legal assistance under this act and who, on the date on which suit is brought, is financially able to pay or reimburse the county for it without manifest hardship according to the standards of ability to pay applicable under sections [19-851](#), [19-852](#) and [19-854](#), Idaho Code, but refuses to do so. Suit must be brought within three (3) years after the date on which the benefit was received.

(3) Amounts recovered under this section shall be paid into the county general fund.

[19-858, added 1967, ch. 181, sec. 8, p. 599; am. 2013, ch. 220, sec. 8, p. 518; am. 2022, ch. 318, sec. 56, p. 1029.]