

Idaho Bail Laws

1. Applicable Statutes.

- A. IDAHO CODE TITLE 19. CRIMINAL PROCEDURE CHAPTER 29. BAIL.
- B. Idaho Criminal Rules (I.C.R.), Rule 46 MICHIE'S IDAHO COURT RULES IDAHO CRIMINAL RULES Rules 46.

2. Licensing Requirements for Agents.

Idaho's statutes currently do not contain regulations for regarding the licensing of bail bond recovery or bail enforcement agents. The closest equivalent in the ID statutes to these positions is "bail."

- A. IDAHO CODE TITLE 8. PROVISIONAL REMEDIES IN CIVIL ACTIONS CHAPTER 1. ARREST AND BAIL 8-117 Qualifications of bail.

- The qualifications of bail are as follows:
 - 1. Each of them must be resident and householder or freeholder within the state.
 - 2. Each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his liabilities, exclusive of property exempt from execution; but the judge, on justification, may allow more than two (2) sureties to justify severally in amounts less than expressed in the order, if the whole justification be equivalent to that of two (2) sufficient bail.

3. Notice of Forfeiture.

- A. IDAHO CODE TITLE 19. CRIMINAL PROCEDURE CHAPTER 29. BAIL 19-2927 Forfeiture of bail.
- If, without sufficient excuse, the defendant neglects to appear before the court upon any occasion when this presence has been ordered the court must immediately direct the fact to be entered upon its minutes, order the forfeiture of the undertaking of bail or the money deposited instead of bail, as the case may be, and order the issuance of a bench warrant for the arrest of the defendant.
- The clerk shall mail written notice within five (5) days of the forfeiture for failure to appear to the last known address of the person posting the undertaking of bail. A failure to give timely notice shall exonerate the bail or undertaking.
- The court which has forfeited the undertaking of bail, or the money deposited instead of bail, may, before remittance of the forfeiture, and with the written consent of the person posting the same, set aside the forfeiture and reinstate the undertaking of bail or money deposited instead of bail.
- B. Idaho Criminal Rules (I.C.R.), Rule 46 MICHIE'S IDAHO COURT RULES IDAHO CRIMINAL RULES. Rules 46. Bail or release on own recognizance.

- After the court enters the order forfeiting bail, the clerk must, within five (5) days, mail a written notice of forfeiture to the last known address of the person posting the undertaking of bail.

C. Court decisions

- State v. Rocha, 131 Idaho 113, 952 P. 2d 1249 (Ct App. 1998).
 - Once proper notice is given and a surety fails to remit the forfeited bail bond, the prosecuting attorney may proceed under this section for enforcement of the forfeited bond.
 - There is no provision in the state code or criminal rules authorizing the enforcement of a bail bond forfeiture without the necessity of an independent action.

4. Allotted Time between Forfeiture Declaration and Payment Due Date.

A. IDAHO CODE TITLE 19. CRIMINAL PROCEDURE CHAPTER 29. BAIL 19-2927 Forfeiture of bail.

- If at any time within ninety (90) days after entry of forfeiture, the defendant appears and satisfactorily excuses his neglect, the court shall direct the forfeiture of the undertaking or the deposit to be exonerated.
- If within ninety (90) days of the date of forfeiture, a person, other than the defendant, who has provided bail for the defendant, surrenders the defendant to any Idaho peace officer, the undertaking of bail or deposits are thereby exonerated.
- The court which has forfeited the undertaking of bail, or the money deposited instead of bail, may, before remittance of the forfeiture, and with the written consent of the person posting the same, set aside the forfeiture and reinstate the undertaking of bail or money deposited instead of bail.

B. Idaho Criminal Rules (I.C.R.), Rule 46 MICHIE'S IDAHO COURT RULES IDAHO CRIMINAL RULES Rules 46. Bail or release on own recognizance.

- If the defendant does not appear or is not brought before the court within ninety (90) 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.

C. IDAHO CODE TITLE 19. CRIMINAL PROCEDURE CHAPTER 29. BAIL 19-2928 Enforcement of forfeiture.

- If the forfeiture is not discharged, as provided in the last section, the prosecuting attorney may, at any time after ninety (90) days from the entry upon the minutes, as provided in the last section, proceed by action in the name of the county, against the bail upon their undertaking.

5. Forfeiture Defenses.

- A. IDAHO CODE TITLE 19. CRIMINAL PROCEDURE CHAPTER 29. BAIL 19-2927 Forfeiture of bail.
- The clerk shall mail written notice within five (5) days of the forfeiture of failure to appear to the last known address of the person posting the undertaking of bail. A failure to give timely notice shall exonerate the bail or undertaking.
- B. IDAHO CODE TITLE 19. CRIMINAL PROCEDURE CHAPTER 29. BAIL 19-2927 Surrender of defendant by bail.
- At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer in whose custody he was committed at the time of giving bail, or to the county sheriff where the action is pending, in the following manner:
 1. A certificate of surrender, executed by the bail, must be delivered to the officer, 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. The certificate of surrender shall contain the legal caption of the action in which the undertaking was given, including the name of the defendant, case number, name and address of the bail, and shall clearly state that the bond is being revoked by the bail.
 2. The receiving officer shall, the next judicial day, 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. The court shall thereupon order the bail be exonerated.
- C. Idaho Criminal Rules (I.C.R.), Rule 46 MICHIE'S IDAHO COURT RULES IDAHO CRIMINAL RULES Rule 46. Bail or release on own recognizance.
- The court which has forfeited bail before remittance of the forfeiture may direct that the forfeiture be set aside upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.
 - Exoneration of bail. When the conditions of bail have been satisfied, or if the clerk fails to mail a written notice to the person posting the undertaking of the bail within five (5) days of the order of forfeiture, the court shall then discharge the bail, exonerate sureties, and release any cash bonds or property deposited with the court.
 - If the defendant appears or is brought before the court within ninety (90) days after the order forfeiting bail, the court shall rescind the order of forfeiture and shall exonerate the bond.
- 6. Remission.**
- (No specific provisions exist in the ID statutes at this time in regard to "remission").
- 7. Bail Agent's Arrest Authority.**
- A. IDAHO CODE TITLE 19. CRIMINAL PROCEDURE CHAPTER 29. BAIL 19-2924 Surrender of defendant by bail.

- At any time before the forfeiture of their undertaking, the bail may surrender the defendant.
- B. IDAHO CODE TITLE 19. CRIMINAL PROCEDURE CHAPTER 29. BAIL 19-2906 Nature of bail.
- If the offense is bailable, the defendant may be admitted to bail before conviction; or after indictment, upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be transferred for trial.

8. Other Noteworthy Provisions.

- A. IDAHO CODE TITLE 18. CRIMES AND PUNISHMENTS CHAPTER 30. FALSE PERSONATION – FRAUDULENT MARRIAGES 18-3001 False personation.
- Every person who falsely personates another, and in such assumed character, either:
 - Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or
 - Is punished by imprisonment in the county jail not exceeding two (2) years, or by a fine not exceeding \$5,000.

B. Court decisions

- State v. Rupp, 123 Idaho 1, 843 P.2d 151 (1992).

--Bondsman's Liability.

The terms of an appellate bail bond read into the record extended bondsman's liability on the bond until defendant appears before the trial court on remand.

9. Noteworthy State Appellate Decisions.

State v. Abracadabra Bail Bonds

131 Idaho 113, 952 P.2d 1249

Idaho App.

Jan. 07, 1998

- Bonding company appealed from orders of the District Court, Canyon County, Sergio A. Gutierrez, J., which denied motion for exoneration of bail bond, held company in contempt for failure to pay forfeited bond and revoked its privilege to business in district, and sanctioned its attorney for filing repetitive motions. The Court of Appeals, Perry, J., held that: (1) magistrate did not abuse his discretion in failing to forfeit bond on defendant's first nonappearance when presented with sufficient excuse for nonappearance; (2) five-day period for giving notice to surety did not begin to run until bond was subsequently forfeited when defendant failed to appear for arraignment on superseding indictment; (3) district court was without authority to enforce payment of bond forfeiture under penalty of contempt; (4) bonding company's contractual liability to pay forfeited bond was enforceable only through separate civil proceeding;

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and (5) bonding company was not aggrieved party entitled to appeal sanctions imposed upon its attorney. Affirmed in part; reversed in part.

State v. Rocha

131 Idaho 113, 952 P. 2d 1249

(Ct. App. 1998)

- Bail bondsman contractual obligation to pay forfeited bond was a civil liability enforceable by the prosecuting attorney in a separate civil action, and district court was without authority to enforce payment of the bond forfeiture under the penalty of contempt.

State v. Rupp

123 Idaho 1, 843 P.2d 151

(1992)

- The trial court did not abuse its discretion in ruling that defendant's alleged fraud in obtaining an appellate bail bond was not a ground for setting aside the forfeiture of the bond and denying bondsman's motion to exonerate the bond under subdivision (e)(4) of this rule.

State v. Fry

128 Idaho 50, 910 P.2d 164

(Ct. App. 1994)

- While it has long been held in Idaho that matters such as the fixing of bail and the release from custody are within the discretion of the court, the forfeiture of a bond or the setting aside of such a forfeiture are also discretionary decisions within the realm of the district court.
- In deciding how much, if any, of the bond to forfeit, when defendant fails to appear before the court, the court should also consider: (1) the willfulness of the defendant's violation of bail conditions; (2) the surety's participation in locating and apprehending the defendant; (3) the costs, inconvenience, and prejudice suffered by the state as a result of the violation; (4) any intangible costs; (5) the public's interest in ensuring a defendant's appearance; and (6) any mitigating factors.
- The incarceration of a defendant in another jurisdiction, which prevented him from appearing before the court, is only one fact to be considered by the district court in making its discretionary decision whether to forfeit the bond; the court should also consider whether the incarceration arises from a new crime committed while the defendant was free on bond or from an offense that preceded his arrest.

10. Bounty Hunter Provisions.

- At this time, there appear to be no specific regulations for "Bounty Hunters" in the Idaho statutes.

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