

**Office of the
Attorney General**

**Information for Crime
Victims and Witnesses**



MARCH 2009

LAWRENCE WASDEN
Attorney General

Criminal Law Division
Special Prosecutions Unit
Telephone: (208) 332-3096
Fax: (208) 854-8074

www.ag.idaho.gov



**State of Idaho
Office of Attorney General
Lawrence Wasden**

INTRODUCTION

Our criminal justice system can be complex and confusing for many people. In addition to the emotional and physical trauma many crime victims suffer, being thrust into the system can be overwhelming.

This pamphlet is intended to give you a brief overview of your rights as a crime victim and to let you know what to expect as your case moves forward.

The staff of the Criminal Law Division shares my commitment to firm and fair prosecution and to respect for crime victims and their rights.

More detailed information is available in the [Idaho Manual on the Rights of Victims of Crime](#), which is also published by my office. The deputy attorney general assigned to your case will be happy to provide a copy at your request. You may also read it on my office's Internet site at www.ag.idaho.gov.

I hope you find this information helpful. If you have questions about your rights or the status of your case, please contact the deputy attorney general assigned to your case.

LAWRENCE G. WASDEN
Attorney General

Table of Contents

THE RIGHTS OF VICTIMS OF CRIME	1
ADDRESS CONFIDENTIALITY PROGRAM.....	3
CRIME VICTIMS COMPENSATION	4
RESTITUTION.....	4
WITNESS REIMBURSEMENT	5
INTERVIEW AND TESTIMONY GUIDE.....	5
COURT PROCEDURE.....	7
MISDEMEANOR CASES	7
FELONY CASES	9
COMPLAINT PROCEDURE:	9
GRAND JURY PROCEDURE:.....	10
DISTRICT COURT PROCEDURE.....	10
LEGAL TERMS	12

THE RIGHTS OF VICTIMS OF CRIME

The Idaho Constitution and Idaho law guarantee certain rights to victims of crime.

Each victim of a criminal or juvenile offense shall be:

- Treated with fairness, respect, dignity and privacy throughout the criminal justice process.
- Permitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings.
- Entitled to a timely disposition of the case.
- Given prior notification of trial court, appellate, probation and parole proceedings and, upon request, given information about the sentence, incarceration, placing on probation or release of the defendant.
- Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result.
- Afforded the opportunity to communicate with the prosecution in criminal or juvenile offenses, and be advised of any proposed plea agreement by the prosecuting attorney prior to entering into a plea agreement in criminal or juvenile offenses involving crimes of violence, sex crimes or crimes against children.
- Allowed to refuse an interview, contact without the prosecutor present or other request by the defendant or any other person acting on behalf of the defendant, unless such request is authorized by law.
- Consulted by the presentence investigator during the preparation of the presentence report and have included in that report a statement of the impact

which the defendant's criminal conduct had upon the victim and shall be allowed to read, prior to the sentencing hearing, the presentence report relating to the crime. The victim shall maintain the confidentiality of the presentence report and shall not disclose its contents to any person. However, the victim may discuss the contents of the presentence report with the prosecuting attorney and the court.

- Assured the expeditious return of any stolen or other personal property by law enforcement agencies when no longer needed as evidence.
- Notified whenever the defendant or suspect is released or escapes from custody. When release is ordered prior to final conviction, notice to the victim shall be given by the law enforcement authority from whose custody the defendant was released. When the release is granted subsequent to a final conviction, notice shall be given to the victim by the law enforcement authority from whose custody the defendant was released, unless release is granted by the Commission of Pardons and Parole, in which case the commission shall notify the victim. When a release on probation is being considered following a period of retained jurisdiction, notice of the hearing shall be given to the victim by the prosecuting attorney.

If you would like more detailed information about the rights of victims of crimes, please ask the deputy attorney general handling your case for a copy of The Idaho Manual on the Rights of Victims of Crime, a free publication of the Attorney General's Office.

ADDRESS CONFIDENTIALITY PROGRAM

If you move to a new location to escape domestic violence, sexual abuse or stalking, the Address Confidentiality Program (ACP) can help keep your new address confidential.

Upon approval of your ACP application, your first-class mail is sent to the secure ACP substitute address and then forwarded to your new home. You can also use the substitute address for a variety of state and local government requirements, such as:

- Applying for and receiving child support
- Getting an Idaho driver's license
- Enrolling your children in public schools
- Applying for a marriage license

The ACP can help protect you and your loved ones by keeping your physical address private, where it would appear in public records.

The ACP is free and it is easy to apply.

Contact the Idaho Secretary of State's Office at:

PO Box 83720
Boise, ID 83720-0080
phone: (208) 334-2852
fax: (208) 334-2282
email: sosinfo@sos.idaho.gov

CRIME VICTIMS COMPENSATION

The Idaho Crime Victims Compensation Act pays benefits to victims who are injured or killed as the direct result of a crime. The Idaho Industrial Commission administers the program. Benefits include medical, counseling, wage loss, death benefits, and funeral expenses. This program does not pay for property loss or damage. Claim forms may be obtained from the deputy attorney general handling your case, the Idaho Industrial Commission Internet site at www.iic.idaho.gov or by writing to:

Victims Compensation Program
Idaho State Industrial Commission
PO Box 83720
Boise ID 83720-0041

All claim forms must be submitted to the above address. If you have questions about the Crime Victims Compensation Program or need additional information, please call (208) 334-6000 or Idaho toll free 1-800-950-2110 during regular business hours.

RESTITUTION

Restitution is reimbursement to victims for losses. The perpetrator of the crime pays restitution when the court issues a restitution order. According to state law, the victim is entitled to a restitution order unless the judge believes that repayment is inappropriate. In that case, the judge must issue an order stating the reasons for denial. You will receive a restitution statement in the Victim's Rights Notification Package. As soon as you can make accurate estimates, you should complete the restitution statement and return it to our Special Prosecutions Unit.

Victims usually receive restitution in monthly payments that

are based on the defendant's ability to pay. The judge or the probation officer may set the payment amounts. The court distributes restitution payments in the priority established by court order or by statute. In the absence of an applicable order or statute restitution is distributed to victims in the following priority: individuals, businesses, insurance companies and government agencies.

If the defendant is sent to prison, the parole board will decide if restitution is appropriate when the defendant is released.

WITNESS REIMBURSEMENT

You are entitled to an \$8.00 witness reimbursement each day you are subpoenaed and appear to testify on behalf of the Attorney General's Office. The deputy attorney general assigned to your case should have the original subpoena and will initial it after you have finished testifying. If the deputy attorney general does not have the original subpoena, he or she will make other processing arrangements. Take the original subpoena to the clerk's office in the county where the case is filed. Court clerks will not honor the subpoena copy that you received when you were served. You will be asked to fill out a witness claim form. You can also claim mileage reimbursement at the current mileage rate on the same form. You will receive your witness reimbursement fee usually within six to eight weeks. The same process applies when you appear for hearings that are then continued or waived.

INTERVIEW AND TESTIMONY GUIDE

1. Report to the courtroom where the case will be heard at the time indicated on your subpoena, unless the deputy attorney general handling the case instructs you differently.

2. Be serious in and around the courthouse. The judge, jury and courthouse staff expect criminal proceedings to be taken seriously.
3. Do not talk to jurors or talk about the case or your testimony with other witnesses.
4. Be truthful. Don't exaggerate your testimony. Just tell the facts simply and concisely.
5. Listen carefully to the questions. If you do not understand a question, ask that it be repeated or explained.
6. Do not guess. If you do not know the answer, say so.
7. Do not give your opinion or your conclusions unless they are specifically requested.
8. If an attorney objects to a question, do not answer until the judge instructs you to do so.
9. Be polite when answering questions. Do not lose your temper with the attorney questioning you.
10. If you realize you have given incorrect information, immediately advise the judge so you may be allowed to correct the error. If you have already left the witness stand, tell the deputy attorney general at the next break.
11. Always answer out loud so that the court reporter can make an accurate record. Do not shake or nod your head.
12. Be aware of questions involving distances and time. If you make an estimate, make sure that everyone understands that you are estimating.

13. If asked whether you have talked to an attorney or an investigator, admit freely if you have done so.

COURT PROCEDURE

The course a case takes through an Idaho court is determined by whether the crime is a misdemeanor or a felony. The magistrate division hears misdemeanor cases. Most felony cases begin in the magistrate division, but a district judge conducts the trial. Sometimes a felony prosecution begins with a grand jury.

MISDEMEANOR CASES

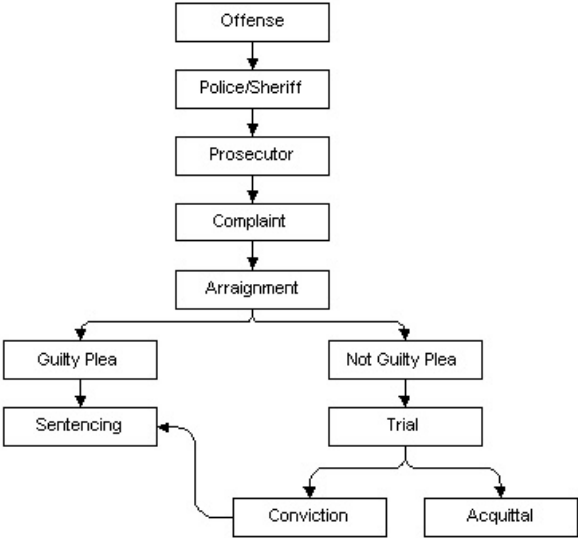
The prosecuting attorney starts a **misdemeanor** prosecution by filing a **complaint**. The complaint describes the formal charge and includes the section(s) of **Idaho Code** that the **defendant** is accused of violating. The magistrate judge may issue a **summons** or an **arrest warrant** for the defendant. A summons is a court order requiring the defendant to appear in court at a certain date and time. An arrest warrant orders the county sheriff or local police department to take the defendant into custody.

The **arraignment** is the defendant's first court appearance in a misdemeanor case. At the arraignment, the court informs the defendant of the charge, considers whether to set bond and sets the amount of bond. The defendant enters a plea of "**guilty**" or "not guilty." If the defendant pleads guilty, he or she may be sentenced at that time or at a later date. If the defendant pleads not guilty, the case is set for a **court trial** or **jury trial** at a later date.

At the time of **trial**, the case is heard by the judge (court trial) or by a six-member jury (jury trial). If the defendant is found not guilty (**acquitted**), the individual cannot be

charged with that incident again. If the defendant is found guilty (**convicted**), he or she is sentenced by the judge.

Procedural Flow Chart for Misdemeanor Cases



FELONY CASES

Felony cases are handled by the District Courts.

The prosecuting attorney begins a felony prosecution by filing a **complaint** or by presenting the evidence to a **grand jury**. The complaint procedure is more common in Idaho.

Complaint procedure:

When a felony charge is filed by complaint, the initial steps occur in the magistrate division.

The complaint describes the formal charge and includes the section(s) of **Idaho Code** that the **defendant** is accused of violating. A magistrate judge may issue a **summons** or an **arrest warrant** for the defendant. A summons is a court order requiring the defendant to appear in court at a certain date and time. An arrest warrant orders the county sheriff or local police department to take the defendant into custody.

The next step in a felony that was charged by complaint is the **initial appearance**. It is held in the magistrate division. The magistrate judge informs the defendant of the charge, considers whether to set bond, sets the amount of bond and schedules a **preliminary hearing**.

The purpose of the preliminary hearing is to determine whether there is **probable cause** to believe that a crime was committed and that the defendant committed that crime. The deputy attorney general will present evidence and witnesses during the preliminary hearing. The defense may also question the witnesses. If the judge finds that probable cause has not been shown, the charge(s) may be dismissed or reduced to a less serious charge. If the judge finds that there is probable cause, the defendant will be **bound over** to district court. The prosecuting attorney will then file an

information with the district court. The next step is **arraignment** before a district judge.

Grand Jury Procedure:

Sometimes the prosecuting attorney will ask a grand jury to decide whether a defendant should be charged. The prosecuting attorney will present the evidence to the grand jury and call witnesses to give testimony. If the grand jury finds that there is probable cause to believe that a crime was committed and that the defendant committed that crime, the grand jury will return a formal charging document called an **indictment**.

IMPORTANT: By law, grand jury proceedings are secret. If you are called to give testimony to a grand jury, do not discuss your appearance or testimony with anyone other than the deputy attorney general handling the case.

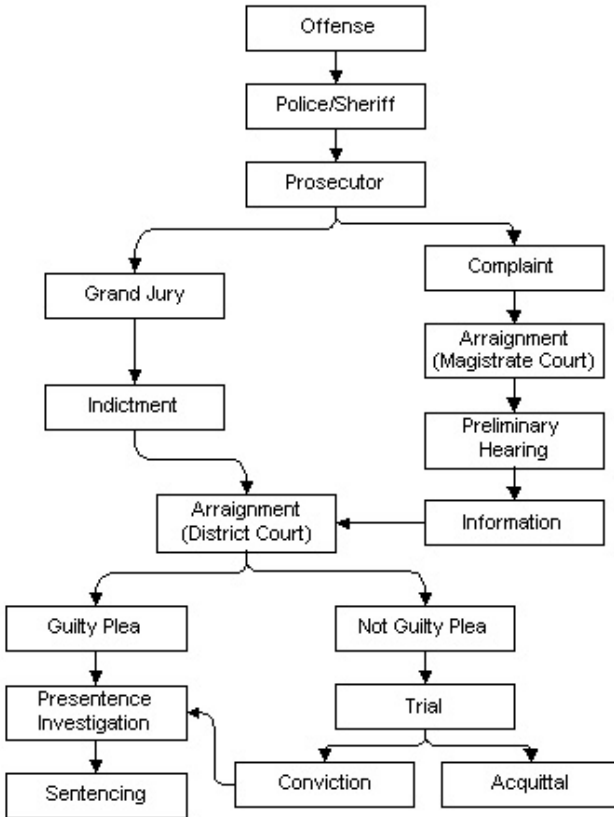
DISTRICT COURT PROCEDURE

After a defendant is “bound over” by the magistrate judge or indicted by the grand jury, the next step is arraignment in district court. At the arraignment, the defendant enters a plea of “**guilty**” or “not guilty.” If the defendant pleads “guilty,” the judge will set a **sentencing** hearing and order a **presentence investigation**. If the defendant pleads “not guilty,” the judge will set a date for **trial**.

At the time of trial, the case is heard by the judge (**court trial**) or by a twelve-member jury (**jury trial**). If the defendant is found not guilty (**acquitted**), then he or she cannot be charged with that incident again. If the defendant is found guilty (**convicted**), the judge will order a presentence investigation and set a date for a sentencing hearing.

At the sentencing hearing, all parties will have been provided with a confidential presentence investigation report. Both parties may present testimony and argument at the hearing. At the conclusion of testimony and argument, the judge pronounces the sentence on the defendant.

Procedural Flow Chart for Felony Cases



LEGAL TERMS

ACQUITTED – When the defendant is absolved of any guilt or charge or wrongdoing.

ARRAIGNMENT – The defendant is formally notified of his or her rights, notified of the charges and bond is argued.

ARREST WARRANT – A document signed by a judge allowing law enforcement officers to take the defendant into custody.

BOUND OVER – The transfer of a felony case from magistrate court to district court for arraignment and trial. A defendant is bound over when the magistrate judge makes a finding of “probable cause.”

CAPITAL CRIME – A crime for which a person convicted may be sentenced to death.

COMPLAINT – The initial document accusing a defendant of a crime. It is filed by the prosecuting attorney and describes the basic facts of the crime and the sections of Idaho Code that were violated.

CONVICTED – When the defendant is found guilty of a crime.

COURT TRIAL – A trial held without a jury after the defendant has waived his or her right to a jury trial. In a court trial, the judge decides whether the defendant is guilty or not guilty. This is sometimes called a “bench trial.”

DEFENDANT – The person accused of a crime.

DEFENSE ATTORNEY – An attorney who represents the defendant.

DISTRICT COURT ARRAIGNMENT – The hearing at which a defendant charged with a felony enters a plea and the judge sets a trial date.

FELONY – A crime of a more serious nature than a misdemeanor; the punishments range from six months to life in prison or, for capital crimes, death.

GRAND JURY – A jury whose duty is to receive complaints and accusations in criminal cases, hear the prosecuting attorney’s evidence, and decide whether that evidence is sufficient to issue an indictment. There are 16 people on a grand jury, 12 of whom must agree on an indictment.

GUILTY PLEA – Admission of guilt by a defendant in court.

IDAHO CODE – The laws of the State of Idaho created by the legislature. Also referred to as “statutes.”

INDICTMENT – The grand jury’s written accusation that a crime has been committed and that the defendant committed it.

INFORMATION – The formal charging document filed with the district court in most felony cases. The prosecuting attorney files the information after the magistrate judge has made a finding of probable cause.

INITIAL APPEARANCE – The first court proceeding in felony cases, the initial appearance occurs in the magistrate division. The defendant is informed of the charges, his or her rights, bond is argued and a preliminary hearing may be waived or scheduled.

JUDGMENT – The final decision of the court resolving legal questions, including the guilt or innocence of the defendant and the sentence to be imposed.

JURY TRIAL – A trial at which a jury decides whether the defendant is guilty or not guilty of the crime(s) charged. There are six people on the jury for a misdemeanor trial. There are 12 people on the jury for a felony trial.

MISDEMEANOR – A crime less serious than a felony; punishment for a misdemeanor ranges from a \$300 to \$2,000 fine, and up to a year in the county jail.

PRELIMINARY HEARING – A hearing held in Magistrate Court in felony cases after the Initial Appearance of the defendant. At the hearing, the prosecuting attorney must produce evidence that there is probable cause that a crime has been committed and that the defendant committed it.

PRESENTENCE INVESTIGATION REPORT – A report on the defendant prepared by a presentence investigator before sentencing. The report contains a variety of detailed information on the defendant’s background. The report may contain a victim impact statement.

PROBABLE CAUSE – Following a preliminary hearing, a magistrate judge must decide whether there is substantial evidence that would cause a reasonable person to believe that a crime has been committed and that the defendant committed it. If the magistrate judge finds that sufficient cause exists, the defendant is bound over to District Court for arraignment and trial.

PROSECUTOR – The county prosecuting attorney, deputy prosecuting attorney or deputy attorney general designated to appear for the prosecution of a given case.

RESTITUTION – A condition in a sentence imposed by a court that requires the defendant to pay for damaged or stolen property or the cost of medical treatment.

SENTENCING – The judgment of the court concerning the defendant’s punishment, ranging from death, imprisonment or fine to probation, restitution and community service.

SUMMONS – A written order of the court commanding the defendant to appear in court on a specific date and time to answer the charge(s) against the defendant.

SUBPOENA – A written command to appear at a certain date and time to give testimony about a crime or other matter. A person can be held in contempt of court if her or she does not obey a subpoena.

TRIAL – The court proceeding to determine whether the defendant is guilty or not guilty of the crime(s) charged.

YOUR CASE INFORMATION

Case Number:

Investigator(s):

Prosecutor:

Contact Person:

Defendant(s):

Date of Arraignment:

Date of Preliminary Hearing/Grand Jury:

Date of District Court Arraignment:

Date of Trial:

Date of Sentencing Hearing:

IMPORTANT:

Please contact the Attorney General's Special Prosecutions Unit prior to each court date to verify the date, time and status of the matter.

Immediately contact the Attorney General's Special Prosecutions Unit if you've changed your address and/or phone number.

Our phone number is (208) 332-3096.