

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 2001

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In the Matter of the Adoption )  
of Amendments to the Wyoming )  
Rules of Criminal Procedure )

IN THE SUPREME COURT  
STATE OF WYOMING  
FILED

MAY - 8 2001

**ORDER ADOPTING AMENDMENTS TO THE  
WYOMING RULES OF CRIMINAL PROCEDURE**

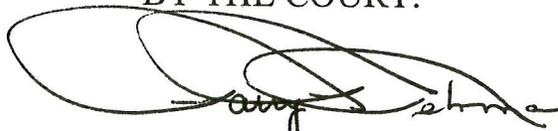
  
JUDY PACHECO, CLERK

The Board of Judicial Policy and Administration, upon the recommendation of the Permanent Rules Advisory Committee, Criminal Division, has determined that amendments to the Wyoming Rules of Criminal Procedure are necessary. It is therefore

ORDERED that the amendments to the Wyoming Rules of Criminal Procedure, a copy of which is attached hereto, are adopted and that those amendments be published in the advance sheets of the Pacific Reporter and in the Wyoming Reporter. The amendments shall be effective September 1, 2001, and thereafter shall be spread at length upon the journal of this Court.

DATED this 8 day of May 2001.

BY THE COURT:



LARRY L. LEHMAN  
Chief Justice  
Chairman, Board of Judicial  
Policy and Administration

### Rule 3. Indictment, information or citation.

(a) In general. Prosecution of all offenses shall be by indictment, information or by citation when a citation is authorized by law and shall be carried on in the name and by the authority of the State of Wyoming, and all indictments, informations and citations shall conclude "against the peace and dignity of the State of Wyoming".

(b) Nature and contents.

(1) Indictment. Prosecution by indictment shall be carried on in the name and by the authority of the State of Wyoming, and shall conclude "against the peace and dignity of the State of Wyoming". The indictment shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and it shall be signed by the attorney for the state. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown, or that the defendant committed it by one or more specified means. The indictment shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

~~(1)~~ (2) Information. The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the state. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The information shall state:

(A) The name of the court where it was filed;

(B) The names of the state and the defendant if the defendant is known, and, if not, then any names or description by which the defendant can be identified with reasonable certainty; and

(C) For each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

~~(2)~~ (3) Citation. Except as provided in W.S. 14-6-203(d) and (f), a citation may be issued as a charging document for any misdemeanor for which the issuing officer has probable cause to believe was committed by the person to whom the citation was issued. A citation may be issued by any peace officer authorized to do so by statute or ordinance. The citation shall be signed by the issuing officer but need not be under oath. The citation must state:

(A) The name of the court where it is to be filed;

(B) The names of the state or municipality and the defendant;

(C) For each count, a reference to the statute, ordinance, rule, regulation or other provision of law which the defendant is alleged to have violated;

(D) The date and time the defendant must appear in court; and

(E) Whether a court appearance may be avoided by paying a fine and costs or forfeiture of bail. The citation must contain a place for the

defendant to sign a promise to appear in court on a date and at a time certain.

(c) Harmless error. Error in the citation of a statute or its omission, or any other defect or imperfection, shall not be grounds for dismissal of the indictment, information or citation or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(d) Surplusage. The court on motion of the defendant may strike surplusage from the indictment, information or citation.

(e) Amendment of information or citation. Without leave of the court, the attorney for the state may amend an information or citation until five days before a preliminary examination in a case required to be tried in district court or until five days before trial for a case not required to be tried in district court. The court may permit an information or citation to be amended:

(1) With the defendant's consent, at any time before sentencing.

(2) Whether or not the defendant consents:

(A) At any time before trial if substantial rights of the defendant are not prejudiced.

(B) At any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Bill of particulars. The court may direct the filing of a bill of particulars. A motion for bill of particulars may be made before arraignment, within 10 days after arraignment, or at such later time as the court may permit. The bill of particulars may be amended at any time subject to such conditions as justice requires.

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#### **Rule 7. Indictment.**

~~(a) Nature and contents. Prosecution by indictment shall be carried on in the name and by the authority of the State of Wyoming, and shall conclude "against the peace and dignity of the State of Wyoming". The indictment shall be a plain, concise and definite, written statement of the essential facts constituting the offense charged and it shall be signed by the attorney for the state. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown, or that the defendant committed it by one or more specified means. The indictment shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or omission, or any other defect or imperfection, which does not tend to prejudice any substantial right of the defendant upon the merits, or to mislead the defendant to the defendant's prejudice shall not be grounds for dismissal of the indictment or for reversal of a conviction.~~

~~(b) Surplusage. The court on motion of the defendant may strike surplusage from the indictment.~~

~~(c) Bill of particulars. The court may direct the filing of a bill of particulars. A motion for bill of particulars may be made before arraignment, within 10 days after arraignment, or at such later time as the court may permit. The bill of particulars may be amended at any time subject to such conditions as justice requires.~~

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### **Rule 39. Revocation or modification of probation.**

(a) Revocation. Proceedings for revocation of probation shall be initiated by a petition for revocation filed by the attorney for the state, setting forth the conditions of probation which are alleged to have been violated by the probationer and the facts establishing the violation.

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(5) Hearing. At the hearing upon the petition for revocation of probation, the state must establish the violation of the conditions of probation alleged in the petition by a preponderance of the evidence.

(A) The probationer shall have the right to appear in person and by counsel, and to confront and examine adverse witnesses.

(B) The Wyoming Rules of Evidence shall apply to the adjudicative phase of probation revocation hearings; however, hearsay that is probative, trustworthy and credible may be received into evidence. The Wyoming Rules of Evidence do not apply, but not to the dispositional stage.

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### **Rule 44. Right to assignment of counsel.**

(a) When right attaches.

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(2) Any adult probationer, including an or-adjudged delinquent juvenile, who is alleged to have violated the terms of a probation order, for which violation incarceration is provided by law—a practicable possibility, and who is financially unable to obtain adequate representation is entitled to appointed counsel if, after being informed of the right, requests that counsel be appointed to represent him/her. to appointed counsel, the probationer makes a request based upon a timely and colorable claim that the probationer did not violate probation terms or that, if the violation is a matter of public record or admitted, there are substantial reasons which justified or mitigated the violation, making revocation inappropriate and the reasons are complex or difficult to develop or present. In deciding whether to appoint counsel, the judicial officer should consider the probationer's ability to think clearly and speak effectively. If appointment of counsel is denied, the grounds for refusal must be succinctly stated in the record.

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#### **Rule 46.4 Sanctions for failure to appear or for violation of release order.**

(a) ~~Failure to Appear Contempt.~~ Whoever having been released under Rules 46 through 46.4 knowingly fails to appear before a court as required by the conditions of release, ~~or~~ fails to surrender for service of sentence pursuant to a court order, or fails to comply with any condition set by the court pursuant to Rule 46.1(c), may be punished for contempt. It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing, ~~or~~ surrendering, or complying and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear, ~~or~~ surrender, or comply and that the person appeared, ~~or~~ surrendered or complied as soon as such circumstances ceased to exist.

(b) Declaration of forfeiture. If a person fails to appear before a court as required, or fails to comply with any condition set by the court pursuant to Rule 46.1(c) and the person executed an appearance bond, the judicial officer may, regardless of whether the person has been charged with an offense under this rule, declare any property designated pursuant to Rule 46.1 to be forfeited to the State of Wyoming.

(c) Violation of release condition. A person who has been released under Rule 46.1, 46.2, or Rule 46.3 and who has violated a condition of that release, is subject to a revocation of release and a prosecution for contempt of court.

(1) Revocation of Release. The attorney for the state may initiate a proceeding for forfeiture of bond or revocation of an order of release by filing a motion with the court. A warrant may issue for the arrest of a person charged with violating a condition of release, and the person shall be brought before the court for a hearing. An order of revocation shall issue if, after a hearing, a judicial officer finds that there is:

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#### **Rule 48. Dismissal; speedy trial.**

(a) By attorney for the state. The attorney for the state may, by leave of court, file a dismissal of an indictment, information or citation, and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) Speedy trial.

(1) It is the responsibility of the court, counsel and the defendant to insure that the defendant is timely tried.

(2) A criminal charge shall be brought to trial within 120-180 days following arraignment unless continued as provided in this rule.

(3) The following periods shall be excluded in computing the time for trial:

(A) All proceedings related to the mental illness or deficiency of the defendant;

(B) Proceedings on another charge;

~~(C) Delay granted by the court pursuant to paragraph (4) or (5);~~

~~(D)~~ (C) The time between the dismissal and the refile of the same charge; and

~~(E)~~ (D) Delay occasioned by defendant's change of counsel or application therefor.

(4) Continuances ~~not to exceed six months~~ 180 days from the date of arraignment may be granted by the trial court as follows:

(A) On motion of defendant supported by affidavit; or

(B) On motion of the attorney for the state or the court if:

(i) The defendant expressly consents;

(ii) The state's evidence is unavailable and the prosecution has exercised due diligence; or

(iii) Required in the due administration of justice and the defendant will not be substantially prejudiced; and

(C) If a continuance is proposed by the state or the court, the defendant shall be notified. If the defendant objects, the defendant must show in writing how the delay may prejudice the defense.

~~(5) Any request to continue a trial to a date more than six months from the date of arraignment must be directed to the court to which appeals from the trial would be taken and may be granted by that court in accordance with paragraph (4).~~

~~(6)~~ (5) Any criminal case not tried or continued as provided in this rule shall be dismissed ~~120~~ 180 days after arraignment.

~~(7)~~ (6) If the defendant is unavailable for any proceeding at which the defendant's presence is required, the case may be continued for a reasonable time by the trial court but for no more than ~~120~~ 180 days after the defendant is available or the case further continued as provided in this rule.

~~(8)~~ (7) A dismissal for lack of a speedy trial under this rule shall not bar the state from again prosecuting the defendant for the same offense unless the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay.