

In the Supreme Court of the State of Idaho

IN RE: IDAHO
CRIMINAL RULE 53

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ORDER

The Court has reviewed a recommendation from the Juvenile Justice Advisory Committee (JJAC) to adopt the following Idaho Criminal Rule, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that Idaho Criminal Rule 53 is hereby adopted, as follows:

Idaho Criminal Rule 53. Juvenile Charged as an Adult.

- (a) **Initial Appearance.** Once a juvenile has been charged as an adult, waived for criminal prosecution as an adult pursuant to section 20-508, Idaho Code, or formally charged or indicted of the crimes listed in section 20-509, Idaho Code, the court shall hold an initial appearance on the criminal complaint pursuant to I.C.R. 5.
- (b) **Presentence Custody Determination.** Before sentencing, a juvenile under the age of eighteen (18) may not be held in an adult jail or lockup, or have sight or sound contact with adult inmates, unless a hearing is held and the court finds, in writing, that it is in the interest of justice. In determining whether it is in the interest of justice, a court shall consider:
 - (1) the age of the juvenile;
 - (2) the physical and mental maturity of the juvenile;
 - (3) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
 - (4) the nature and circumstances of the alleged offense;
 - (5) the juvenile's history of prior delinquent acts;
 - (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
 - (7) any other relevant factor.
- (c) **Presentence Custody Review Hearings.** Before sentencing, if a court determines that it is in the interest of justice to permit a juvenile under the age of eighteen (18) to be held in any adult jail or lockup, or have sight or sound contact with adult inmates:

(1) the court shall, not less frequently than once every twenty-eight (28) days, hold a hearing and determine, in writing, if it is still in the interest of justice to permit the juvenile to be so held or have such sight or sound contact; and

(2) the juvenile shall not be so held, or have such sight or sound contact, for more than one-hundred eighty (180) days, unless the court holds a hearing and determines, in writing, there is good cause for an extension, or the juvenile expressly waives this limitation on the record and in writing.

(d) **Sentencing.** Upon a plea or verdict of guilt the court may:

(1) **Sentence as an Adult.** Sentence the convicted juvenile in accordance with Idaho Criminal Rule 33;

(2) **Sentence as a Juvenile.** Sentence the convicted juvenile in accordance with the juvenile sentencing options set forth in the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code; or

(3) **Blended Sentence.** Sentence the convicted juvenile to the county jail or to the custody of the state board of correction, but suspend the sentence and retain jurisdiction in accordance with Idaho Code § 19-2601A and order:

(A) the convicted juvenile to dual custody with the state board of correction and the department of juvenile corrections;

(B) the department of juvenile corrections to assume physical custody and financial responsibility until the order is relinquished by the court or the juvenile reaches twenty-one (21) years of age, whichever comes first; and

(C) the state board of correction to be a participating member of the juvenile's treatment team and provide supervision of the juvenile.

(e) **Proceedings after Imposition of a Blended Sentence.** During the period of dual custody and retained jurisdiction under subsection (d)(3) of this rule, the court may receive a petition or request for the following hearings, including but not limited to:

(1) **Community Placement.** Approval by the sentencing court is required before the department of juvenile corrections may place a convicted juvenile in a community residential setting.

(2) **Failure to Comply with Program Requirements.** If either the department of juvenile corrections or the state board of correction reasonably believes that the juvenile is failing to comply with all reasonable program requirements, the department of juvenile corrections or the state board of correction may petition the sentencing court to terminate custody of the department of juvenile corrections.

(3) **Completion of Program.** If the juvenile has successfully completed the program or is sixty (60) days or less from turning twenty-one (21) years of age, the department of juvenile corrections shall return the convicted juvenile to the court for further disposition.

(f) **Release or Termination of Custody by the Department of Juvenile Corrections.** Upon the release or termination of the convicted juvenile by the department of juvenile corrections under subsection (d)(3), the court may impose another period of retained jurisdiction, relinquish jurisdiction and execute the remainder of the sentence with the state board of correction, or place the convicted juvenile on adult probation.

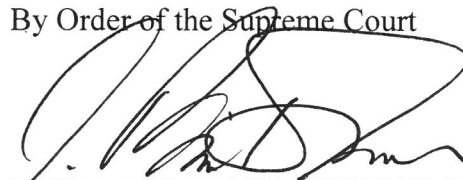
The convicted juvenile shall be given credit for all time served. In no event may the total of the actual time spent by the convicted juvenile in the custody of the department of juvenile corrections, plus any adult sentence imposed by the court, exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.

IT IS FURTHER ORDERED that this order and this rule shall be effective July 1, 2022.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

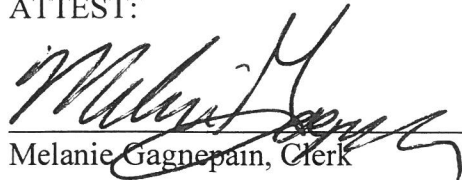
DATED this 25th day of April, 2022.

By Order of the Supreme Court

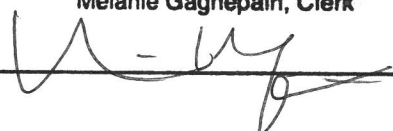


G. Richard Bevan
Chief Justice, Idaho Supreme Court

ATTEST:


Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
Order entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court 4-25-22
Melanie Gagnepain, Clerk

By  Deputy