



State Ratings Report

The Roadmap to Change



HUMAN RIGHTS
for KIDS

Acknowledgments

We would like to thank our partners and generous funders without whom this report would not have been possible.

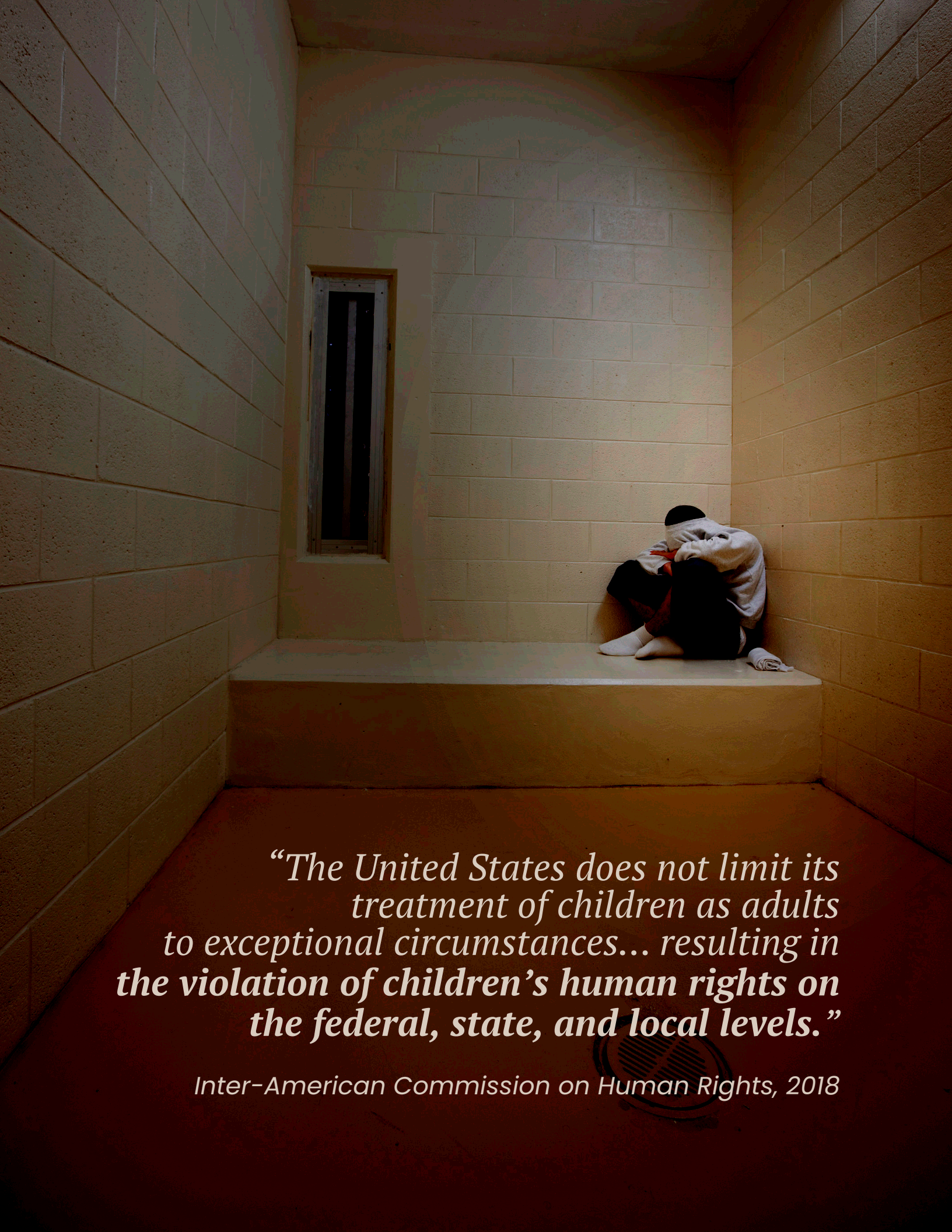
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Coalition for Public Safety & Arnold Ventures
The Stoneleigh Foundation
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We also want to thank all of the advocates and policymakers who work alongside us – in a bipartisan fashion – to end human rights violations against children in the juvenile and criminal justice systems. We want to especially thank Richard Ross and his team at Juvenile In-Justice who provided the images and stories profiled in this report. We also want to thank Tony Torain, II, and his team at the Polsinelli Law Firm, who provided financial as well as legal support in the creation of this report.

Photography by Richard Ross from juvenile-in-justice.com

Designed by Sandra Yeh

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“The United States does not limit its treatment of children as adults to exceptional circumstances... resulting in the violation of children’s human rights on the federal, state, and local levels.”

Inter-American Commission on Human Rights, 2018

Human Rights for Kids estimates that there are more than 35,000 people currently incarcerated in U.S. prisons for crimes they committed as children.

This atrocity continues today because of laws that disregard child status, fail to account for childhood trauma, and ignore human rights law.

This report is dedicated to all of the people who continue to suffer human rights violations in juvenile detention facilities and adult jails, lock-ups, and prisons across the country.



The Roadmap to Change



Two years ago Human Rights for Kids released the first ever *National State Ratings Report on Human Rights Protections for Children in the U.S. Criminal Justice System*. The report rated every state on 12 categories of law that are vital to establishing a basic legal framework to protect the human rights of criminal justice system-involved youth. These categories covered four main areas: (1) entrance into the juvenile and criminal justice systems, (2) the treatment of children as adults, (3) conditions of confinement, and (4) release and social reintegration of child offenders. Through this process, it was our intention to hold a mirror up to the nation to show the progress, or lack thereof, we had made on protecting and upholding universally accepted human rights norms for children who come into conflict with the law.

Our first report revealed a disconcerting truth – 43 states – had made minimal to no efforts to protect the human rights of children in the justice system. Over the last two years more than 100 bills were introduced in legislatures across the country in an attempt to address some of the failings our report unearthed.

In April of 2021, a bipartisan coalition consisting of Representatives Tony Cárdenas (D-CA), Bruce Westerman (R-AR), and Karen Bass (D-CA) introduced a package of reforms, based on our report, to protect the human rights of children in the federal criminal justice system. Some of these reforms also made their way into related legislation, including the Trafficking Victims Protection Reauthorization Act and the First Step Implementation Act in the U.S. Senate. Most importantly, the introduction of these reforms in Congress helped to lay the groundwork for the successful advocacy efforts that HRFK and our partners were able to bring about at the state level.

In 2020 we labeled Maryland among the “worst human rights offenders” in the country and challenged it to be better. In the intervening years, Maryland took that challenge to heart. In 2021 the state passed laws ending mandatory minimums, life without parole, and de facto life without parole sentences for youth. Earlier this year it passed additional reforms, including one of the most comprehensive due process protection laws in the country, as well as the establishment of a minimum age of at least 10 before a child can be subject to criminal liability. Senator Will Smith, Jr., who Chairs the Maryland Judicial Proceedings Committee, even referenced the state’s poor rating in his end of session report to underscore the importance of why Maryland had to act. These valiant efforts earned Maryland the distinction of being named the “Most Improved State” in our ratings this



year. Furthermore, Maryland has now cemented itself among the best in the nation when it comes to safeguarding the human rights of children in the criminal justice system.


While Maryland worked its way off of our worst offenders list, unfortunately, Alabama, Georgia, Mississippi, Tennessee, and Wyoming did not. Maryland, however, has shown that just like our children, states also have the capacity for growth, change, and positive development. The roadmap to change is more clear now than ever, which is why we remain hopeful that the better angels of our nature will win out in state legislatures across the country. Between 2020 and 2022, 8 states passed laws earning them additional credit in our state ratings report. These reforms elevated the tiered ranking for Maryland and Ohio. They also moved Connecticut, Hawaii, Illinois, Louisiana, Utah, and Washington closer to a bump in their tiered rating.

We believe that over the next decade individual states and the federal government can live up to our promise and potential as a beacon of human rights around the world by passing reforms in line with this report to ensure that all children, regardless of what they've done, are treated in an age-appropriate and trauma-informed way which centers universally accepted human rights norms. Republican and Democratic legislators, at both the state and federal-level, continue to demonstrate that these reforms are possible and that we can get there by working together for our most vulnerable and traumatized children.

With hope and love,

James Dold

CEO & Founder, Human Rights for Kids

A person is seen from the back, looking out a window. The window is very bright, almost white, suggesting a very sunny day or overexposure. The person's silhouette is dark against the light. The window frame is visible, and there's a small red object on the sill. The overall mood is contemplative or perhaps overwhelming due to the brightness.

"Our failure to ratify the Convention on the Rights of the Child, coupled with the lack of statutory protections at the state level, have resulted in one of the largest government-sanctioned human rights abuses against children in the world today."

Jenny Egan and James Dold, Baltimore Sun 2021

Categories



DUE PROCESS

States receive credit for this category if they have a statutory provision requiring children to consult with their parents or legal counsel before waiving their Miranda Rights or being subject to a custodial police interrogation. States will not receive credit if such protections are limited to children subject to delinquency proceedings. States may receive partial credit if they apply these protections to some children under a certain age (i.e. under 16), but not all children under 18.



MINIMUM COURT AGE

States receive credit for this category if they statutorily prohibit *all* children less than 10 years of age from being adjudicated delinquent in the juvenile court system, regardless of the charged offense. Children this young who come into conflict with the law should be provided treatment and services in the child welfare system in compliance with human rights standards. No exceptions can be permitted to receive credit for this category.



MAXIMUM COURT AGE

States receive credit for this category if they statutorily permit children less than 18 years of age to be adjudicated in the juvenile justice system and have not excluded teenagers under the age of majority. No exceptions can be permitted to receive credit for this category.



LIFE WITHOUT PAROLE

States receive credit for this category if they statutorily ban life without parole sentences from being imposed on all children under 18 years of age. No exceptions can be permitted to receive credit for this category. States that permit judges to review and modify a child's sentence, including life without parole, after a term of years will receive full credit for this category.



ADULT COURTS

(A) States receive credit under this subsection if they statutorily prohibit the transfer of children under 14 years of age into the adult criminal justice system. No exceptions can be permitted to receive credit for this subsection, which includes exclusions based on the type of crime committed. For example, if a child under 14 may be transferred to the adult system on a charge of homicide, the state does not receive credit for this category.

(B) States receive credit under this subsection if they require a mandatory child status hearing in all cases involving children less than 18 years of age before allowing transfer to adult criminal court. States that allow children to be subject to direct file in adult court or statutorily exclude certain children from the jurisdiction of the juvenile court, may receive full credit only if they require an immediate child status or reverse waiver hearing in adult criminal court. No exceptions can be permitted to receive credit for this subsection.

States may receive partial credit for this category if they meet the requirements of either subsections (A) or (B).



MANDATORY MINIMUM SENTENCES

States receive credit for this category if judges, masters, magistrates, or others with sentencing authority are authorized to depart from *all* mandatory minimum sentences when sentencing children in adult criminal court. States will only be awarded credit if they allow discretion at the time that a sentence is being imposed and not if they "theoretically" allow a judge to later suspend the sentence. Nor will states receive credit for allowing greater judicial discretion under 'youthful offender' laws. States may receive partial credit if they authorize sentencing authorities to depart, up to a certain percentage, from any mandatory minimum sentence for any offense in adult criminal court.



FELONY-MURDER RULE

States receive credit for this category if they statutorily eliminate the application of the felony murder rule to children less than 18 years of age. In cases where a child does not kill or intend to kill another person during the commission of a felony, they should receive a sentence based on their overall culpability, which takes into account the child's trauma history and potential for rehabilitation. States will receive credit for this category if they do not have the felony murder rule, have banned the felony murder rule for children, or have created an affirmative defense for persons who do not kill or intend to kill during the commission of the felony. States may receive partial credit if they place strict limits on the applicability of the affirmative defense or allow children who did not kill or intend to kill to still be prosecuted pursuant to the rule under other circumstances.



INCARCERATION

States receive credit for this category if they statutorily prohibit the housing of children under 18 years of age in adult correctional facilities, including local jails and state prisons. A child who has committed serious crimes or who may be subject to prosecution in the adult criminal justice system must continue to be housed in juvenile correctional facilities until they reach 18 years of age.



SOLITARY CONFINEMENT

States receive credit for this category if they statutorily prohibit the use of solitary confinement or administrative segregation on children for punitive and safety-related reasons. States are allowed to have individual confinement for children as a "cooling off" period, but such removal should be used only in extreme cases, and only for as long as reasonably necessary for the child to be reintegrated with the rest of the children in the facility. States may receive partial credit for this category if they ban the use of solitary/room confinement, isolation, or administrative segregation for children in juvenile detention facilities. However, in order to receive full credit, states must have protections in place for kids in both juvenile and adult correctional facilities.



POST-RELEASE SUPERVISION

States receive credit for this category if they statutorily authorize formerly incarcerated children serving lengthy terms of post-release supervision to be discharged from supervision at the discretion of the paroling authority or judge. States will receive credit if they have statutory provisions that apply to all formerly incarcerated individuals, including children. States may receive partial credit if they allow most formerly incarcerated children to be eligible for early discharge from supervision.



RELEASE SAFETY VALVE

States receive credit for this category if they allow either the parole board or judges to review all sentences previously imposed on child offenders after no more than 30 calendar years (end de facto life without parole). States may receive partial credit for this category if they have statutes permitting sentencing review for nearly all offenses committed by children. However, to receive full credit states must allow children serving multiple sentences of any duration and for any offenses to be eligible for review.



VOTING RIGHTS

States that have eliminated voting rights for persons convicted of serious offenses will receive credit for this category if they statutorily require or permit the restoration of voting rights for formerly incarcerated children who have been released from prison. States will not receive credit if they require Gubernatorial action before voting rights can be restored. If a state allows for the reinstatement of voting rights upon completion of the person's sentence, which includes parole or supervision, the state must allow formerly incarcerated children to seek discharge from parole or supervision at a reasonable point after they have been released in order to receive credit for this category. A state may receive partial credit if the vast majority of formerly incarcerated children can have their voting rights restored without executive action. However, a state will not receive any credit if it permanently disenfranchises formerly incarcerated children convicted of certain offenses.

State Ratings Chart

Total Score

- Tier 1 (10+ points)
- Tier 2 (7-9 points)
- Tier 3 (4-6 points)
- Tier 4 (1-3 points)

Credit

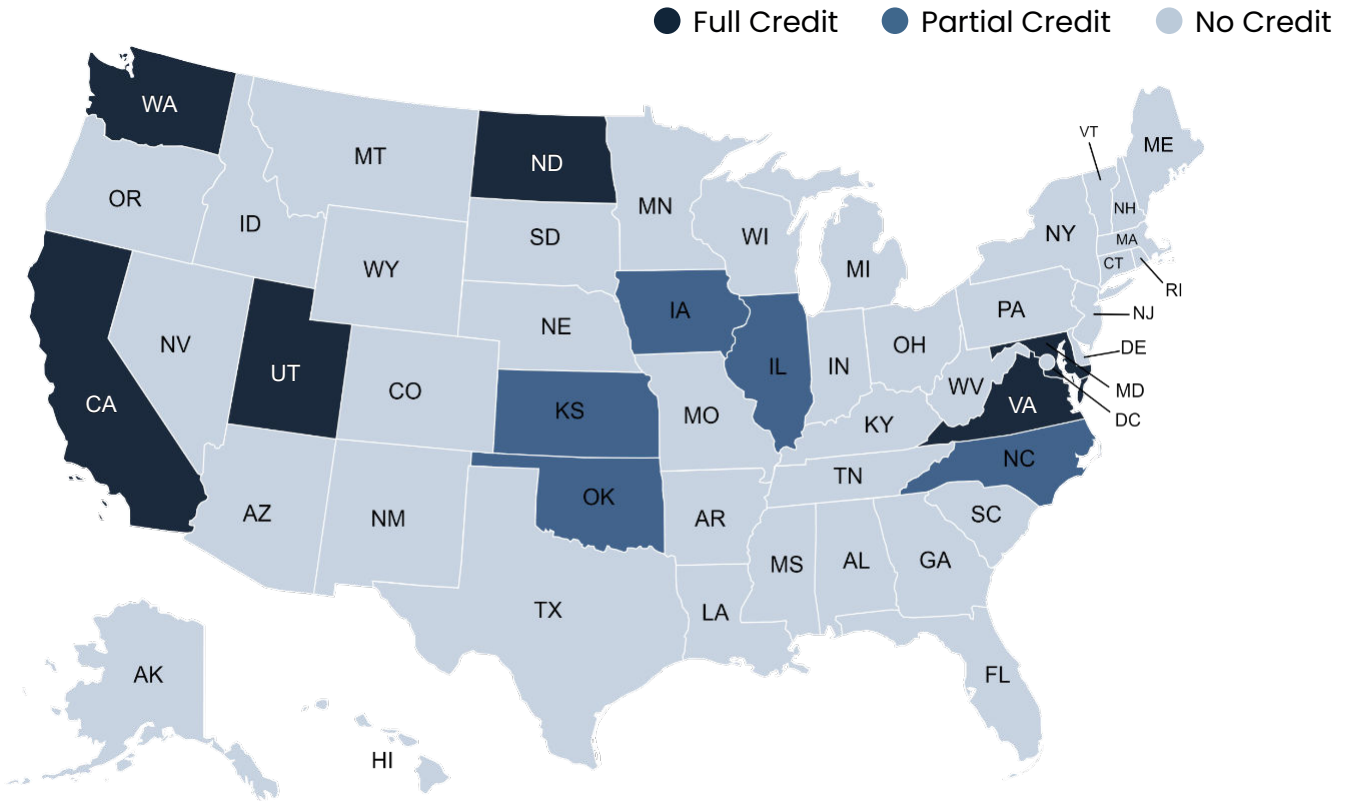
- Full Credit
- Partial Credit
- No Credit

Alabama	2												
Alaska	4												
Arizona	2.5												
Arkansas	7.5												
California	9.5												
Colorado	6.5												
Connecticut	8												
Delaware	3.5												
District of Columbia	7												
Florida	3												
Georgia	2												
Hawaii	6												
Idaho	3												
Illinois	4												
Indiana	3												
Iowa	2.5												
Kansas	6.5												
Kentucky	3.5												
Louisiana	4												
Maine	4												
Maryland	7.5												
Massachusetts	6												
Michigan	3												
Minnesota	4.5												
Mississippi	2												
Missouri	3												

Montana	4.5												
Nebraska	5												
Nevada	5.5												
New Hampshire	3												
New Jersey	6												
New Mexico	4.5												
New York	3.5												
North Carolina	3.5												
North Dakota	8												
Ohio	5												
Oklahoma	3.5												
Oregon	7												
Pennsylvania	3												
Rhode Island	4												
South Carolina	3.5												
South Dakota	5												
Tennessee	2												
Texas	4												
Utah	5.5												
Vermont	4												
Virginia	6.5												
Washington	6												
West Virginia	7												
Wisconsin	3												
Wyoming	2												



Due Process



"Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance . . ."

- *Article 37 of the U.N. Convention on the Rights of the Child*

"Every child alleged as or accused of having infringed the penal law has at least the following guarantees . . . Not to be compelled to give testimony or to confess guilt."

- *Article 40 of the U.N. Convention on the Rights of the Child*

The U.N. Committee on the Rights of the Child (CRC) has affirmed that the assistance available to children involved in the justice system under the Convention on the Rights of the Child should be provided throughout the entire process, "beginning with the interviewing (interrogation) of the child by the police . . ." In the United States, such legal protections are absolutely essential to safeguarding children's constitutional rights under *Miranda v. Arizona*. In 2020 only 3 states received full credit for this category. That number has now doubled, as we've seen Utah, Maryland, and Washington State all pass laws to protect children's constitutional and human rights post-arrest. Another 12 states and D.C. had similar legislation that was introduced, but that did not advance the past two years. States without such protections, including those that received only partial credit, should look to Maryland as a model for how best to protect children at the point of entry into the justice system.

“The system put a mark on us.
You’re not the same as everyone else.
And nobody ever asked who we were.
As Black and Brown people,
it’s as if we were born guilty.”

Yusef Salaam



No Way to Treat Kids

Nearly 40% of children who are convicted and later exonerated falsely confessed to the crime.¹ The lack of due process protection is one of the key reasons why the children in the Central Park 5 and Harlem Park 3 cases were wrongly convicted and incarcerated for decades.

Harlem Park 3/Credit: Baltimore Sun

File Legislation To Fix This

Consultation with Legal Counsel for Children Under 18

(a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a child under 18 years of age shall:

- (1) consult with legal counsel in person, by telephone, or by video conference; and
- (2) have contact with a parent or legal guardian in person, by telephone, or by video conference.

(b) After the consultation with legal counsel and contact with a parent or legal guardian, the child may waive his or her rights and be subject to a custodial interrogation.

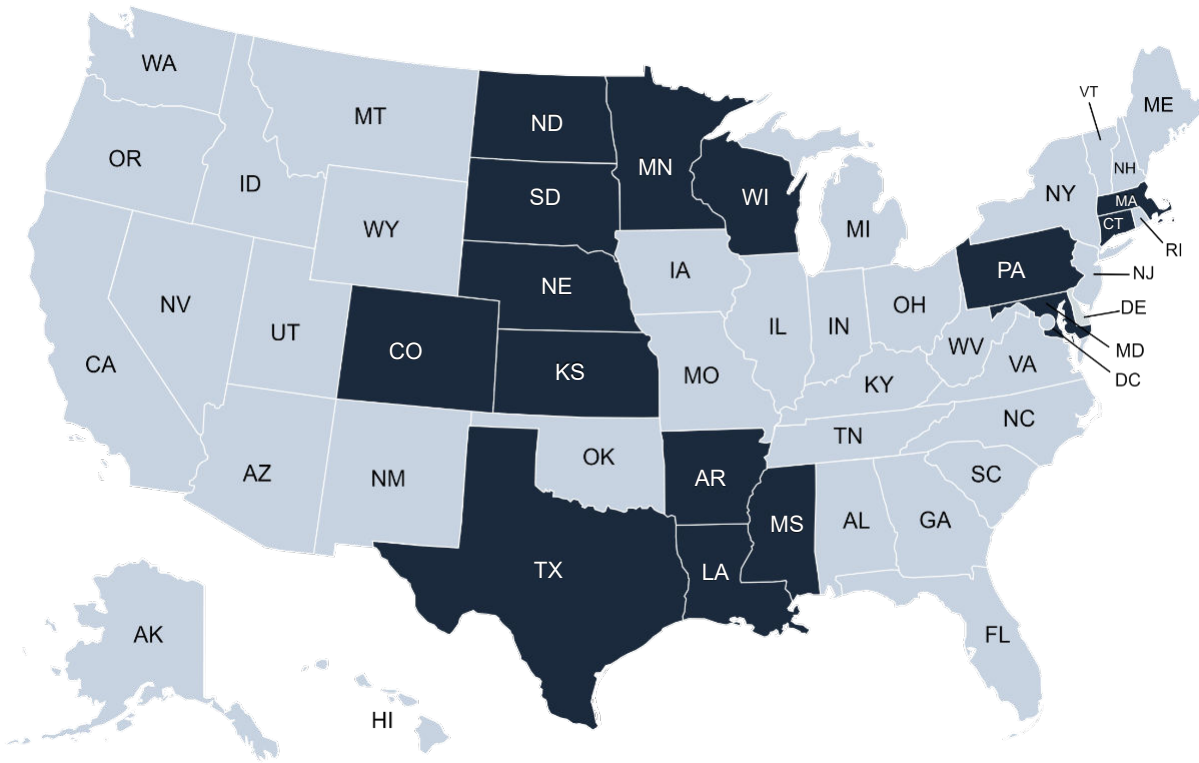
(c) The court shall treat, except as allowed under subsection (d), any statements of a child 17 years of age or younger made during or after a custodial interrogation that does not comply with subsection (a) as inadmissible.

(d) This section does not apply to the admissibility of statements of a child 17 years of age or younger if both of the following criteria are met:

- (1) The officer who questioned the youth reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat; and
- (2) The officer’s questions were limited to those questions that were reasonably necessary to obtain that information.

10+ Minimum Court Age

● Full Credit ● Partial Credit ● No Credit

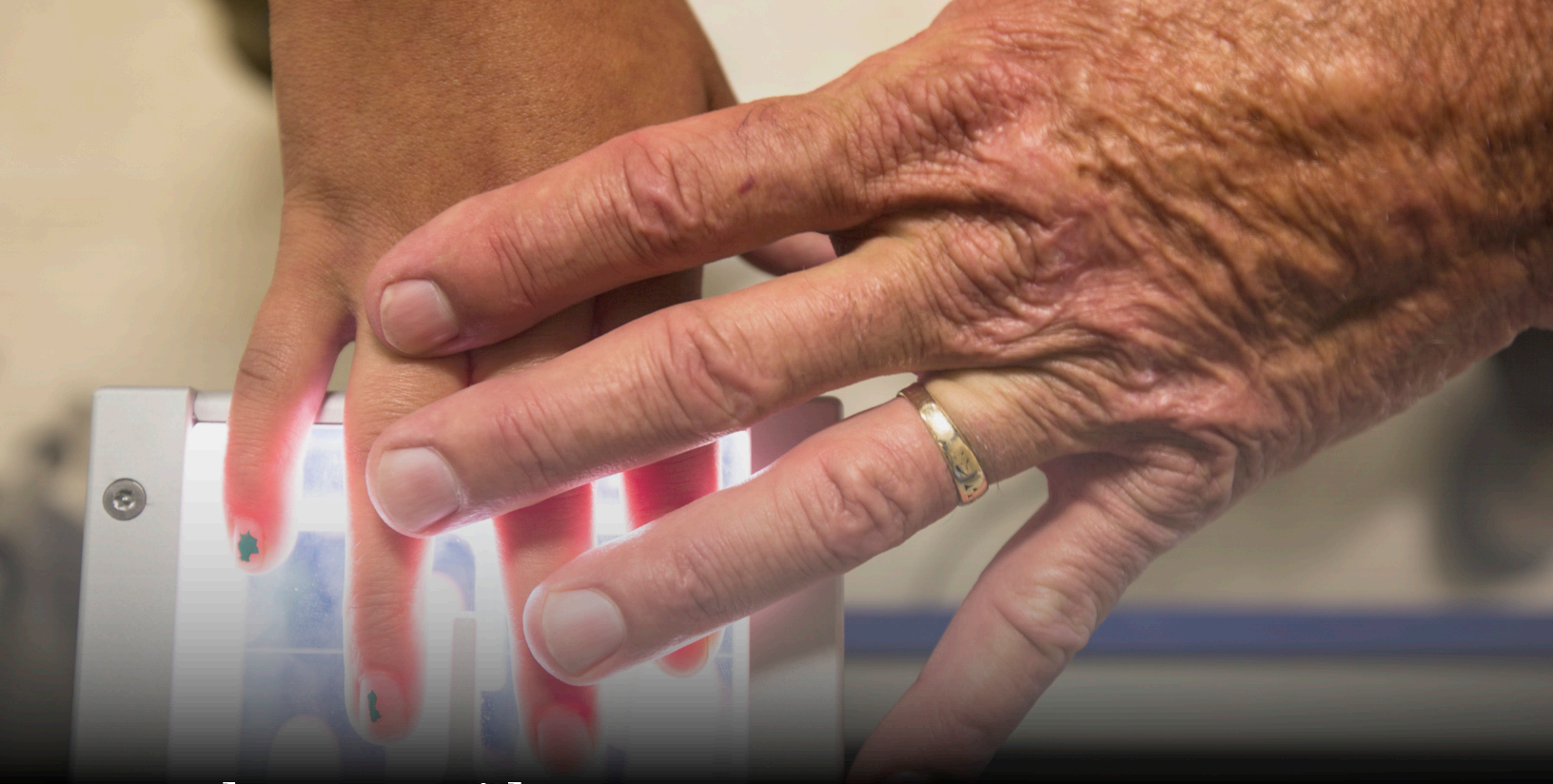


"States Parties shall seek . . . the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law."

- Article 40 of the U.N. Convention on the Rights of the Child

One of the central pillars of human rights for children in the justice system is the establishment of a minimum age of criminal culpability. While the CRC has encouraged states to set the age at 14, our review of state laws around the United States revealed that only a minority of states set a minimum age of at least 10, with Massachusetts being the only state to set a minimum age of 12 with no exceptions. Since our last report, two additional states - Connecticut and Maryland - passed qualifying minimum age laws which received credit. Other states, including Florida, Delaware, New Hampshire, North Carolina, and New York passed laws that did not receive credit either because the minimum age was below 10 or exceptions were made for specific crimes. At least five other states had minimum age legislation that was introduced but did not become law.

While states are encouraged to follow the example of Massachusetts in this category, they can also look to policies adopted in Louisiana and Texas which set the minimum age of responsibility at 10. Maryland also offers a workable alternative with a minimum age set between 10 and 13 depending on the offense. Minimum age laws are a basic human rights protection and are essential to ending the school to prison pipeline. Unfortunately, 35 states and the District of Columbia fail to meet this standard.



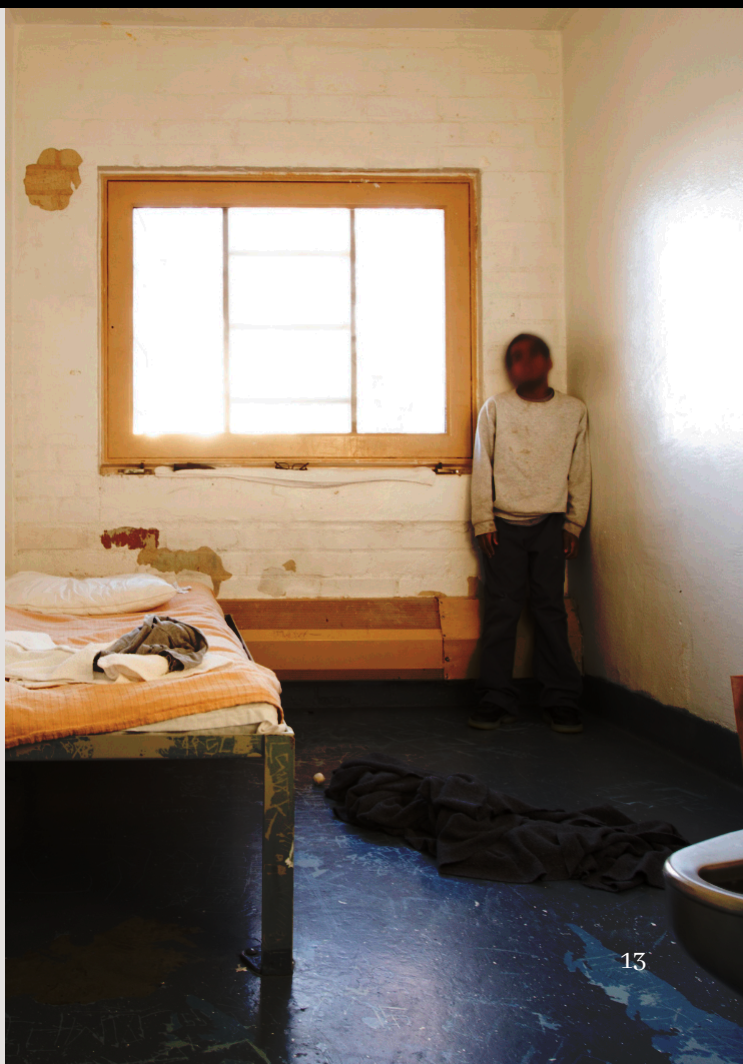
No Place For Kids

The lack of having a minimum age law is why we see 5 and 6-year-old elementary-school children arrested for throwing temper tantrums. Between 2013 and 2018, more than 30,000 children under the age of 10 were arrested and faced delinquency proceedings in the U.S.²

File Legislation To Fix This

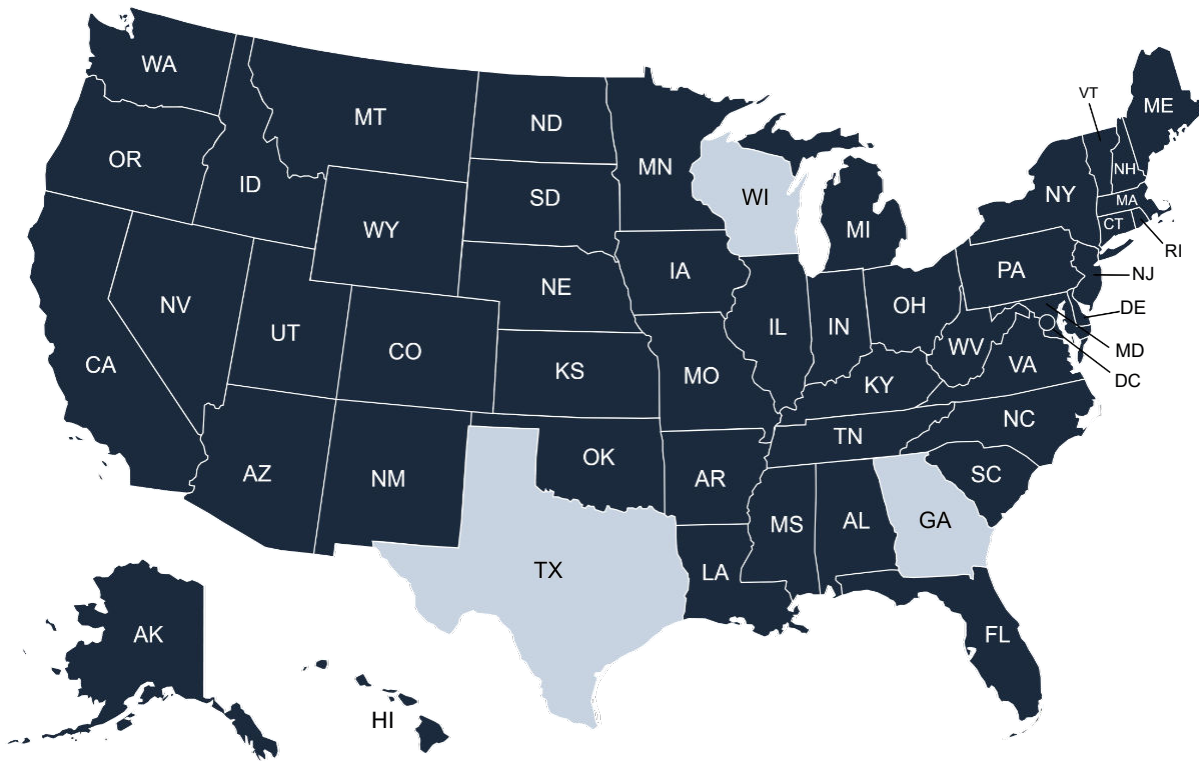
Juvenile Court Jurisdiction; Minimum Age

(a) The juvenile court shall have jurisdiction of any child who has committed an act which would constitute a misdemeanor or felony offense or other violation of law in this state and who was at least [twelve] years of age or older at the time the act was committed. All cases involving children less than [twelve] years of age shall be referred to family court or the proper child welfare agency for treatment and services in accordance with [cite state's child in need of supervision statute].



Maximum Court Age

● Full Credit ● Partial Credit ● No Credit



"Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

- *Article 10 of the International Covenant on Civil and Political Rights*

"States . . . shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law . . ."

- *Article 40 of the U.N. Convention on the Rights of the Child*

In accordance with human rights law, the CRC has affirmed that "every person under the age of 18 years at the time of the alleged commission of an offense has the right to be treated in accordance with the rules of juvenile justice, in a specific and specialized system, different from the criminal one applicable to adults." This category is best viewed as the second pillar of human rights protections for children, complementing the second category which requires the establishment of a minimum age of criminal culpability. Unfortunately, since our last report, Georgia, Wisconsin, and Texas have not passed legislation to bring them in line with the rest of the United States. Once again, these states should take immediate action to allow all children under the age of 18 to be adjudicated in the juvenile justice system.



Treat Kids Like Kids

Excluding children from the jurisdiction of the juvenile court means that every child, regardless of their offense or victim status, will be prosecuted as an adult. It is the most basic violation of children's human rights in the criminal justice system.

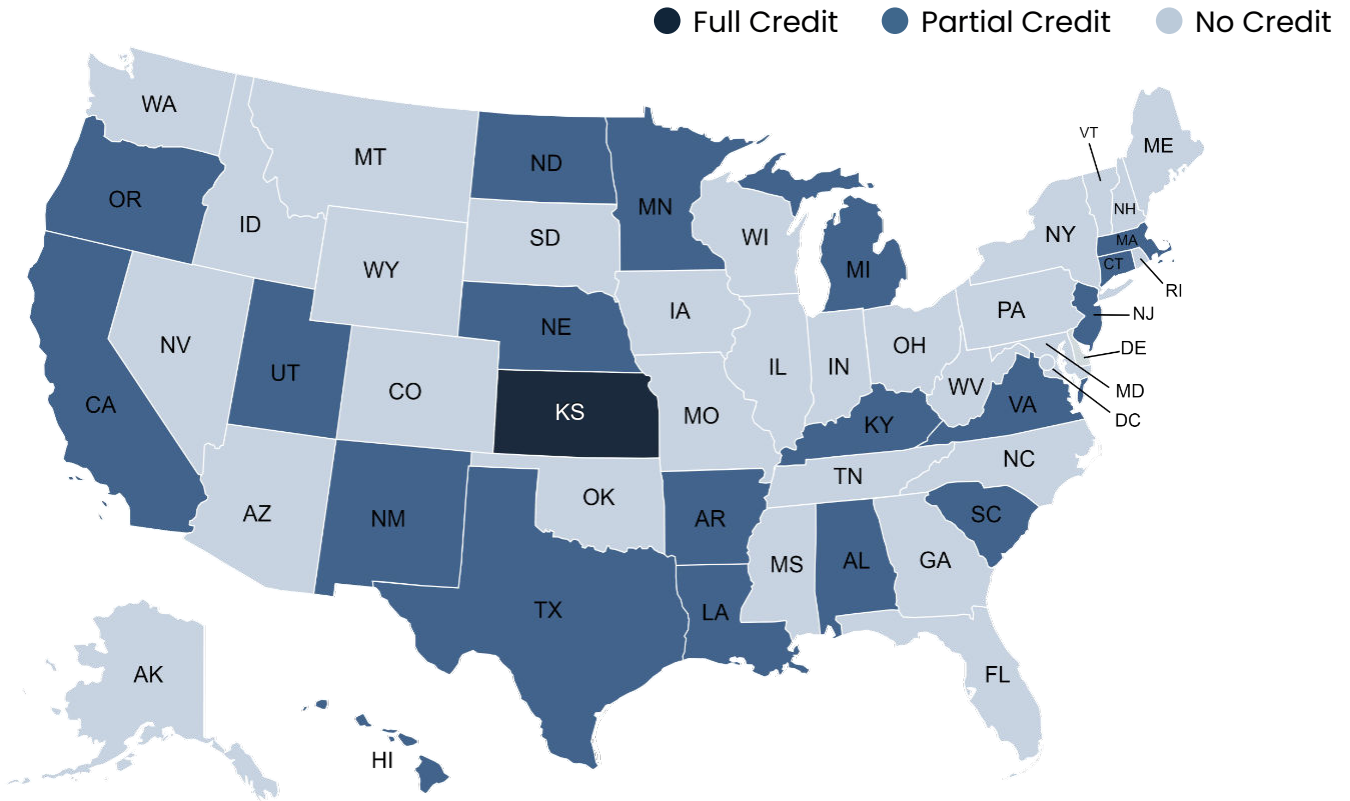
File Legislation To Fix This

Juvenile Court Jurisdiction; Maximum Age

(a) The juvenile court shall have jurisdiction of any child who has committed an act which would constitute a misdemeanor or felony offense or other violation of law in this state until he or she reaches [eighteen or twenty-one] years of age.



Adult Courts



"Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status . . . the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."

- *Articles 10 and 14 of the International Covenant on Civil and Political Rights*

Every state and the District of Columbia has created exceptions in their juvenile justice statutes that permit children to be prosecuted in the adult criminal justice system under certain circumstances. These exceptions are in violation of the CRC and the United States' treaty obligations under the ICCPR. It is also the primary reason for why so many people are currently incarcerated in U.S. prisons for crimes they committed as children. To begin to respond to this human rights crisis, it is critical for the U.S. to establish a minimum age below which children cannot be prosecuted as adults. To accomplish this aim and to be as consistent with human rights norms as possible, we set a minimum age for allowing children to be tried as adults at 14 – the same age the CRC has recommended for criminal responsibility in the juvenile justice system. To earn full credit, however, states must also require a child status hearing for all children before proceeding in adult court. Only one state received full credit – Kansas – which requires a transfer hearing in juvenile court for all children between 14 and 17 years of age. Nineteen other states received partial credit for prohibiting children under 14 from being prosecuted as adults. Over the last two years several states, including CA, DE, NC, and NV did pass new laws on transfer, but they did not meet the criteria to receive credit.



Violating International Human Rights Law

53,000 children are prosecuted as adults every year and face punishment that is often disproportionate in light of their young age.³ Children as young as 10 years old have been charged as adults where they faced the exact same punishment and treatment as a 25- or 30-year-old adult. Our research indicates that there are more than 35,000 people who are currently incarcerated in U.S. prisons for crimes they committed as children.⁴

File Legislation To Fix This

Prohibition on Adult Transfer for Children Under Fourteen; Required Transfer Hearing

(a) The state shall not file a motion in juvenile court to transfer a case to adult criminal court or file charges in adult criminal court where the case involves a child who was less than [fourteen] years of age at the time of the offense. The juvenile court shall have exclusive jurisdiction over cases involving children less than [fourteen] years of age.

(b) Before a juvenile court waives jurisdiction of a child or an adult criminal court permits adult criminal proceedings of a child who was [fourteen] years of age or older at the time of the offense, the court shall hold a full investigation and child status hearing where the court finds that: (1) There is no evidence the child is committable to an institution for individuals with intellectual disabilities or the mentally ill; (2) The child is not treatable in any available institution or facility within the State designed for the care and treatment of children; or (3) The safety of the community requires that the child be subject to state custody for a period extending beyond the child's eighteenth birthday.

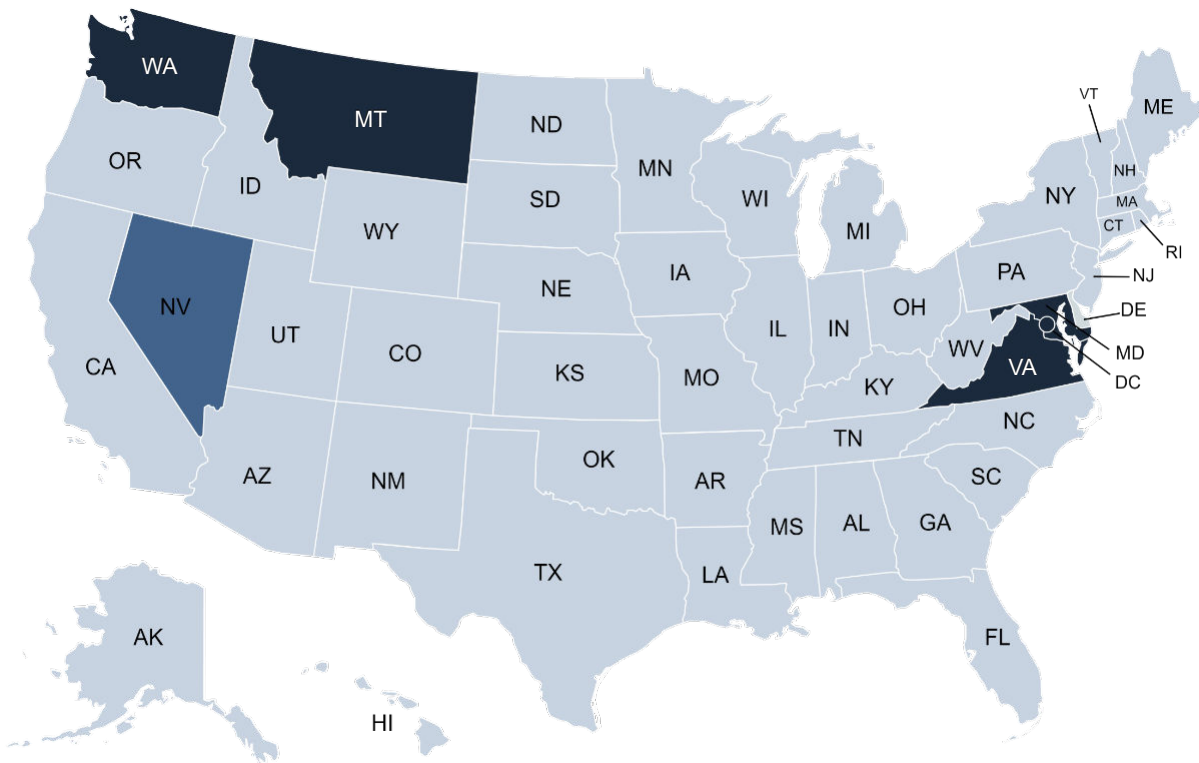
(c) The court may waive jurisdiction or permit proceedings in adult criminal court involving a child described in subsection (b) to move forward if, after a full investigation and hearing, the court finds that: (1) The child is alleged to have committed an act that would constitute a felony if committed by an adult and either: (A) The act resulted in serious bodily injury or death to a victim; or (B) The act would constitute a [class A felony] if committed by an adult; and (2) The child cannot be successfully treated and rehabilitated before his or her eighteenth birthday and the safety of the community requires proceedings to continue against the child in adult criminal court.

(d) The factors to be considered in deciding whether criminal proceedings against a child should proceed under subsection (b) or (c) include: (1) The seriousness of the alleged offense; (2) Whether and to what extent an adult was involved in the offense; (3) The age and maturity of the child as determined by consideration of the child's home, environmental situation, history of trauma and adverse childhood experiences, emotional attitude, and pattern of living; (4) The record and previous history of the minor, including previous contacts with the family court, law enforcement agencies, courts in other jurisdictions, or prior commitments to juvenile institutions; (5) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the minor (if the minor is found to have committed the alleged offense) by the use of procedures, services, and facilities in the juvenile court system; (6) Whether the best interests of the child are better served in the juvenile court system relative to the adult system; and (7) All other relevant factors.



Mandatory Minimum Sentences

● Full Credit ● Partial Credit ● No Credit



"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age."

- *Article 37 of the U.N. Convention on the Rights of the Child*

"Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status . . . the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."

- *Articles 10 and 14 of the International Covenant on Civil and Political Rights*

Since children may be prosecuted under the laws of every state in the adult criminal justice system it is vital for states to adopt policies that allow judges or juries to sentence children differently than they would adult offenders. In light of children's diminished culpability relative to adults and increased prospects for treatment and rehabilitation, states must allow sentencers to depart from any mandatory minimum sentence after a child has been convicted in adult court. Since our last report, Maryland has joined Virginia, Montana, Washington, and the District of Columbia – in receiving full credit for this category. Unfortunately, most of the country has not enacted policies giving greater flexibility to judges who are sentencing children. Such practices violate human rights standards. States should continue to look to the Commonwealth of Virginia for model provisions on how children should be sentenced if they are convicted in adult court.



“I grew up differently than you.
I grew up in a world of violence.”
-C.S.

“I was 6 or 7 when I found out
that my dad was in prison.”
-A.H.

A National Epidemic of Childhood Trauma

The vast majority of children in our justice system contend with early childhood trauma and unmitigated Adverse Childhood Experiences (ACEs), which can include everything from physical, emotional, and sexual abuse to neglect or living with a family member who suffers from substance abuse or mental health issues. According to one OJJDP study, roughly 90 percent of children in the juvenile justice system have experienced at least 2 ACEs, with more than 50 percent reporting 4 or more ACEs.⁵ The more serious the crime, the more severe the child's previous exposure to trauma. But the criminal legal system rarely, if ever, takes this trauma into consideration at sentencing.

File Legislation To Fix This

Sentencing Children Convicted in Adult Criminal Court

(a) If a child is convicted as an adult for an offense that the child committed when he or she was less than 18 years of age, in addition to any other factors that the court is required to consider before imposing a sentence, the court shall consider:

- (1) the child's exposure to adverse childhood experiences, early childhood trauma, and involvement in the child welfare system; and
- (2) the differences between child and adult offenders, including, without limitation, the diminished culpability of children as compared to that of adults and the typical characteristics of youth.

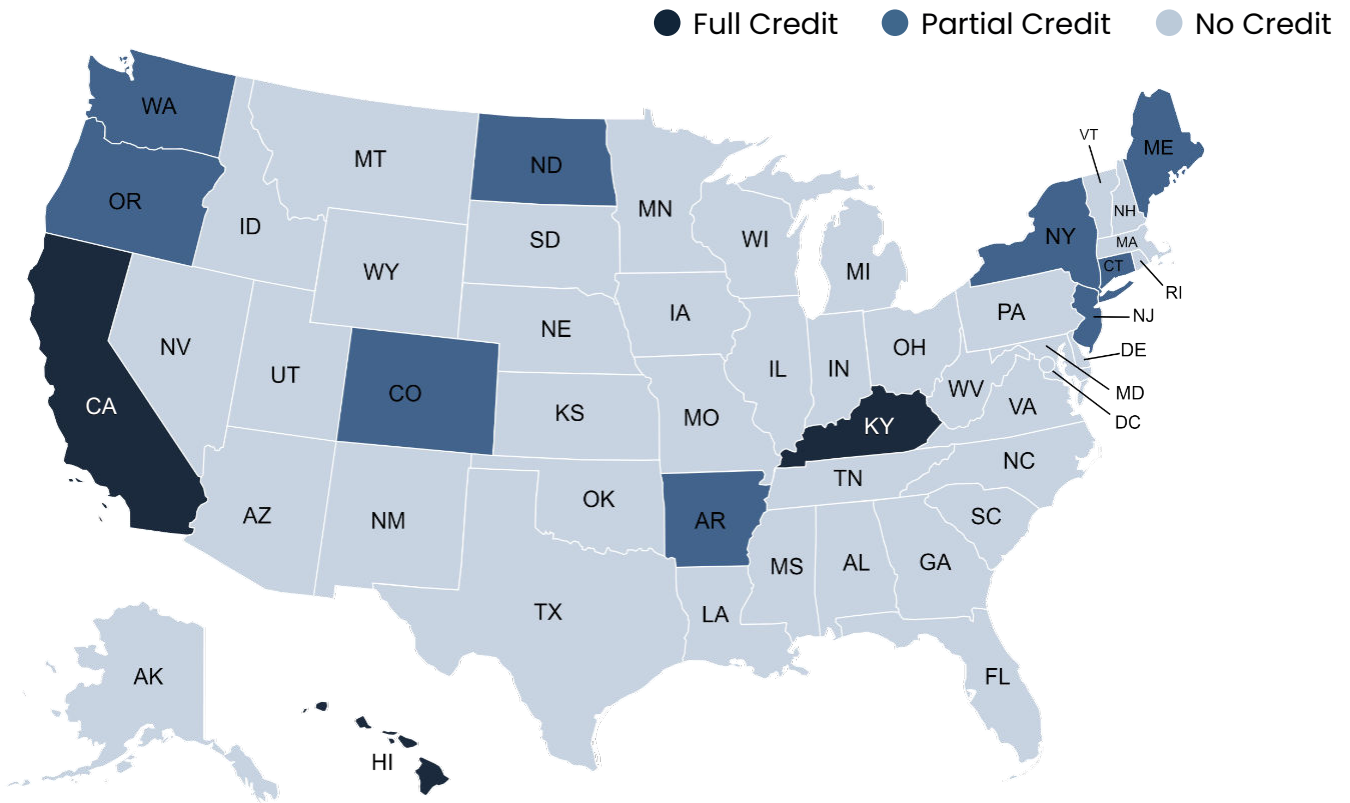
(b) Notwithstanding any other provision of law, after considering the factors set forth in subsection (a), the court may, in its discretion, reduce any mandatory minimum or maximum period of incarceration, or both, that the child is required to serve if the court determines that such a reduction is warranted given the child's age, mitigating circumstances, and the child's prospects for rehabilitation.

(c) Prior to the imposition of any sentence on a child who was less than 18 years of age at the time of the offense, the court may, after consideration of the factors in subsection (a), depart from any mandatory sentencing enhancement that the court would otherwise be required to impose.

(d) This section shall be construed as prioritizing the successful treatment, rehabilitation, and eventual reintegration of children who commit serious offenses and are prosecuted in the adult criminal justice system over incapacitation or retribution.



Felony-Murder Rule



"In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."

- Article 14 of the International Covenant on Civil and Political Rights

Children often fail to appreciate the unintended consequences of their actions. Nowhere is this more apparent than in felony murder cases where children can be criminally convicted of murder even though they did not kill or intend to kill anyone during the commission of a felony offense. To be consistent with human rights standards in treating children differently than adults and promoting their rehabilitation, states must ban the application of the felony murder doctrine to children who do not have the actual intent to kill another person. California, Hawaii, and Kentucky are the only states that received full credit for banning the application of the felony murder doctrine to children. While some states received partial credit for creating an affirmative defense to felony murder, they did not receive full credit because their statutes had exceptions that could still lead to criminal liability for a child who did not kill or intend to kill during the course of a felony offense. No new states received credit for this category in 2022; however, at least 3 states have considered removing the felony murder rule for youth since our last report.



Kids Are Different

Approximately 25% of all of the children sentenced to die in prison were convicted under the felony murder rule.⁶ Rooted in the concept of reasonable foreseeability, felony murder doctrine entirely fails to account for youth impetuosity and inability to appreciate the consequences of one's actions. It also violates the human rights protection that youth must be sentenced and held accountable by different standards than we use for adults.

File Legislation To Fix This

Eliminating the Felony-Murder Rule for Children

(a) A participant who was under the age of 18 at the time of the perpetration or attempted perpetration of a crime listed in [cite state felony murder statute] in which a death occurs is liable for murder only if one of the following is proven:

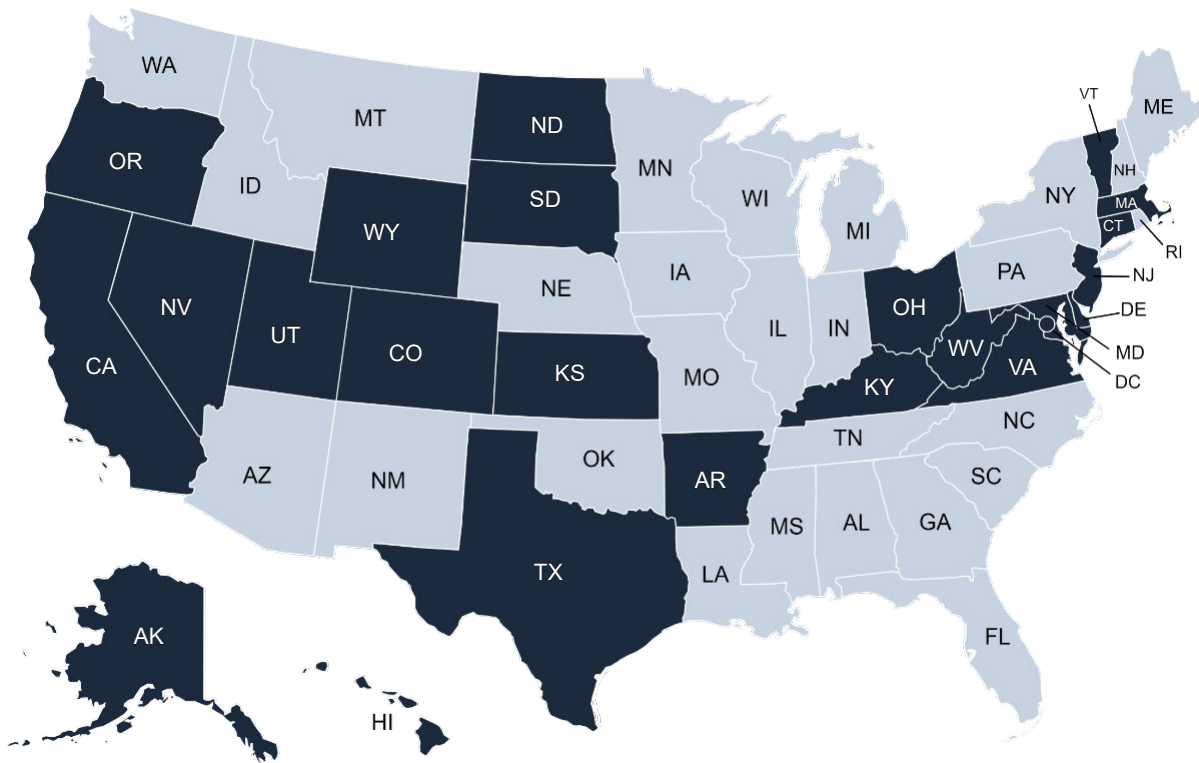
- (1) The minor child was the actual killer; or
- (2) The minor child was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of the unlawful killing of another human being.

(b) A minor who is not liable for murder under subsection (a) shall be sentenced in accordance with the crime he or she committed or attempted to commit.



Life Without Parole

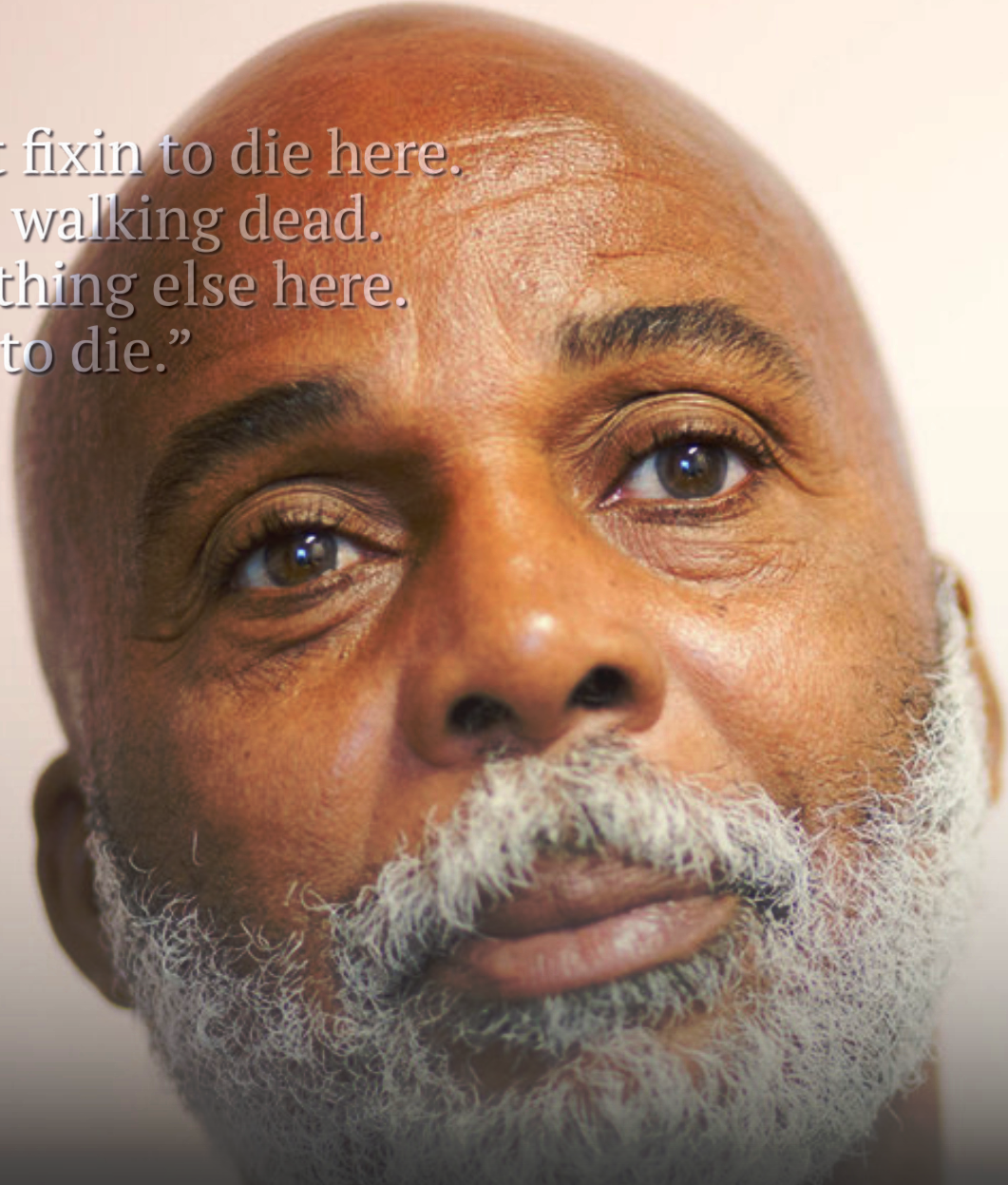
● Full Credit ● Partial Credit ● No Credit



"States Parties shall ensure that . . . Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

- Article 37 of the U.N. Convention on the Rights of the Child

The use of life without parole sentences on children is perhaps the worst human rights violation profiled in our report, having been deemed cruel, degrading, and inhumane punishment the world over. Such sentences cast an irrevocable judgment on a child that deem him or her unworthy of living in free society ever again – no matter how much he or she changes over time. Such punishment is categorically prohibited by the Convention on the Rights of the Child; however, the United States remains the only nation that hasn't ratified this treaty. States must ban life without parole altogether – with no exceptions – in order to receive full credit. Today, 23 states and the District of Columbia have enacted statutes banning the practice of sentencing children to die in prison. States that have active parole systems should look to Utah or Nevada for model language on banning juvenile life without parole. States without parole systems can look to North Dakota or the District of Columbia for model language. Ohio and Maryland are the newest states to join the growing national trend away from death-in-prison sentences for youth. In 2021 and 2022, an additional 12 states considered similar legislation.



“We’re just fixin to die here.
We are the walking dead.
There’s nothing else here.
Just fixing to die.”
- L.B.

No Child Is Born Bad

At the time *Miller v. Alabama* was decided by the U.S. Supreme Court in 2012, more than 2,500 people were serving life without parole sentences for crimes they committed as children. More than 50% of these children were victims of child abuse. For girls in particular, the trauma was especially acute with 80% having been victims of both physical and sexual abuse prior to committing their offense.⁷

File Legislation To Fix This

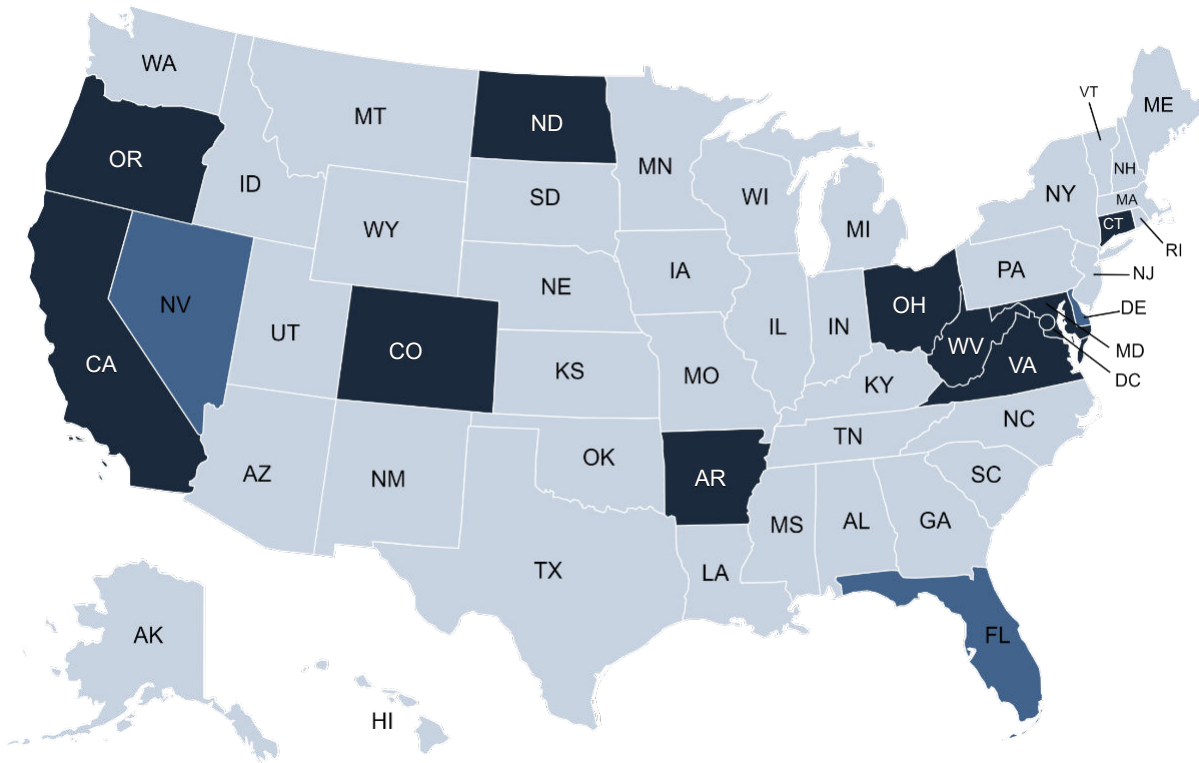
Prohibit Death and Life Without the Possibility of Parole for Child Offenders

A sentence of death or life imprisonment without the possibility of release or parole shall not be imposed on any person who at the time of the commission of the crime was less than 18 years of age. As to such a person, the maximum punishment that may be imposed is life imprisonment with the possibility of release or parole.



Release Safety Valve

● Full Credit ● Partial Credit ● No Credit



"States Parties shall ensure that . . . Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age . . . States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment . . . to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement."

- Articles 25 and 37 of the U.N. Convention on the Rights of the Child

Banning the use of life without parole sentences on children can be an empty promise if states can circumvent such statutes through the use of stacked or consecutive sentences and/or sentencing enhancements. To come into full compliance with Articles 25 and 37 of the Convention on the Rights of the Child, therefore, states must enact policies that end de facto life without parole by requiring periodic sentencing review for all child offenders given lengthy prison sentences. Referred to as a "release safety valve," 13 states and the District of Columbia receive full or partial credit for this category. Since 2020, Maryland and Ohio have enacted laws to bring them in line with this human rights protection. Legislation was introduced in nine other states between 2021 and 2022. West Virginia and the District of Columbia continue to have what we consider to be "model" laws utilizing parole and judicial review, respectively, which other states should look to when considering reforms under this category.



The Child Death Penalty By Another Name

There are more than 10,000 people serving life or de facto life sentences (40+ years) for crimes they committed as children in the United States.⁸ Without an appropriate safety valve to ensure they receive a “meaningful opportunity to be released based on demonstrated maturity and rehabilitation” they will die in prison. While they are not technically life without parole sentences, life or de facto life terms are the child death penalty by another name.

File Legislation To Fix This

Child Sentencing Review

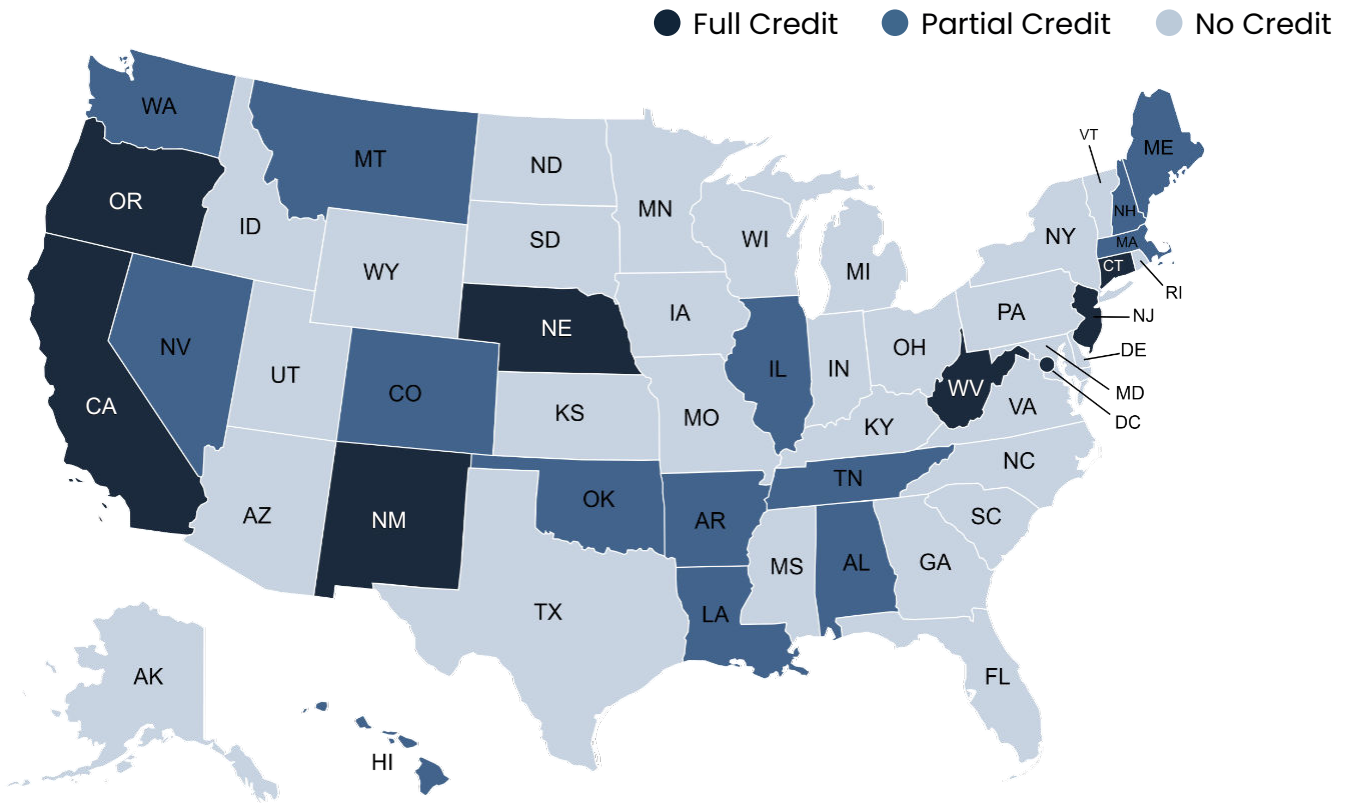
(a) Unless subject to earlier parole eligibility, a prisoner who was a child at the time of the offense or multiple offenses and was tried and sentenced as an adult, is eligible for parole no later than his or her [fifteenth year] of incarceration. The Parole Board shall ensure that the hearing to consider parole under this subsection provides a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

(b) During a parole hearing involving a prisoner who was convicted and sentenced as a child, the Parole Board shall take into consideration the diminished culpability of children as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner during incarceration. The board shall also consider the following:

- (1) A review of educational and court documents;
- (2) Participation in available rehabilitative and educational programs while in prison;
- (3) Age at the time of the offense;
- (4) Immaturity at the time of the offense;
- (5) Home and community environment at the time of the offense;
- (6) Efforts made toward rehabilitation;
- (7) Evidence of remorse; and
- (8) Any other factors or circumstances the board considers relevant.



Solitary Confinement



"States Parties shall ensure that . . . No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

- Article 37 of the U.N. Convention on the Rights of the Child

The use of solitary confinement on children is strictly prohibited as a form of cruel and inhumane treatment under international human rights standards. Sadly, only 8 states and the District of Columbia received full credit for banning solitary confinement for children. While some states did receive partial credit for their statutes protecting children in the juvenile justice system, children in adult prisons remain vulnerable to this human rights abuse. Indeed, children held in adult prisons are often at greater risk for being subject to solitary confinement as they tend to fall through the cracks of administrative regulations aimed at protecting children in the juvenile justice system. States that only received partial credit should enact legislation expanding such protections to children held in adult prisons, or, better yet, ban children from being incarcerated in adult prisons altogether. California and West Virginia have the best laws in the country as they ban solitary confinement for children in juvenile facilities and prohibit kids from being incarcerated in adult prisons. Since 2020, Colorado, Hawaii, Illinois, and Louisiana have all passed laws to protect children from being placed in solitary confinement; however, these states did not receive full credit because the protections did not extend to all adult correctional facilities. While Colorado and Hawaii's laws prohibit solitary confinement for children in adult jails, children in adult prisons remain unprotected.



“At 15 they placed me in confinement.
I was there for months, 24 hours a day.”
- J.L.S.

Cruel and Inhumane

The use of solitary confinement on children has been deemed cruel, degrading, and inhumane treatment under international human rights law. The prolonged use of isolation has been shown to cause severe psychological and emotional damage in children.

File Legislation To Fix This

Prohibition on Solitary Confinement for Children

(a) The use of solitary or room confinement on children for discipline, punishment, retaliation, or any reason other than as a temporary response to a child's behavior that poses a serious and immediate risk of physical harm to any individual, including the child, is prohibited.

(b) Before a staff member of a facility places a child in solitary or room confinement, the staff member shall attempt to use less restrictive techniques, including:

- (1) talking with the child in an attempt to de-escalate the situation; and
- (2) permitting a qualified mental health professional to talk to the child.

(c) If, after attempting to use less restrictive techniques as required under subsection (b), a staff member of a facility decides to place a child in temporary room confinement, the staff member shall: (1) explain to the child the reasons for the room confinement; and (2) inform the child that release from room confinement will occur immediately when the child regains self-control or not later than after the expiration of the time period described in subsection (d).

(d) If a child is placed in temporary room confinement because the child poses a serious and immediate risk of physical harm to himself or herself, or to others, the child shall be released:

- (1) immediately when the child has sufficiently gained control so as to no longer engage in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others; or
- (2) if a child does not sufficiently gain control as described in subsection (d) (1), not later than 3 hours after being placed in room confinement, in the case of a child who poses a serious and immediate risk of physical harm to others; or 30 minutes after being placed in room confinement, in the case of a child who poses a serious and immediate risk of physical harm only to himself or herself.

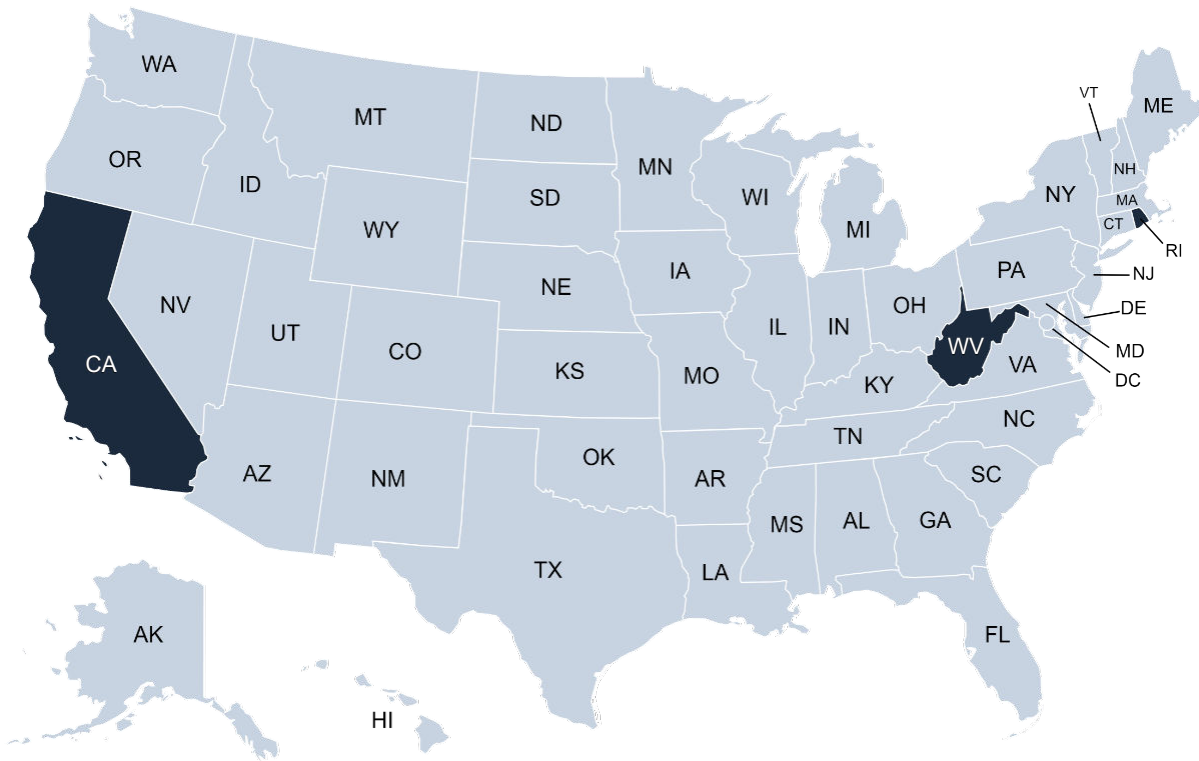
(e) If, after the applicable maximum period of confinement has expired, a child continues to pose a serious and immediate risk of physical harm the child shall be transferred to another juvenile facility or internal location where services can be provided to the child without relying on room confinement.

(f) During a period of room confinement staff shall periodically check on the child at least once every 15 minutes.



Incarceration

● Full Credit ● Partial Credit ● No Credit



"States Parties shall ensure that...every child deprived of liberty shall be separated from adults."

- *Article 37 of the U.N. Convention on the Rights of the Child*

"Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication . . . Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

-*Article 10 of the International Covenant on Civil and Political Rights*

Detaining or incarcerating children in adult jails, lock-ups, or prisons is a very clear violation of human rights standards under both the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Such treatment of children increases their risk of physical and sexual violence and limits the education and rehabilitative programming that would otherwise be available to them. Additionally, children held in adult facilities are often subject to conditions of solitary confinement or room seclusion which is also a violation of human rights standards. This category was the greatest national human rights failure of any we tracked. While many states sought to strictly regulate sight and sound restrictions between children and adults in detention facilities, only 3 states prohibited detaining or incarcerating children under any circumstances in adult facilities. California, Rhode Island, and West Virginia are the only states in compliance with this category. Between 2021 and 2022 there were at least nine new states that enacted laws that more closely regulated the placement of children in adult jails and/or prisons. Unfortunately, none of these changes prohibit the placement of children in adult correctional facilities. Several other states considered reforms which did not pass.



“At 15 I was put in an adult facility.
I was raped and sodomized.”
- L.B.

Turning Kids Into Prey

Approximately 3,500 children under the age of 18 are housed in our adult jails and prisons on any given night, where they are at increased risk of physical and sexual violence by older prisoners.⁹

File Legislation To Fix This

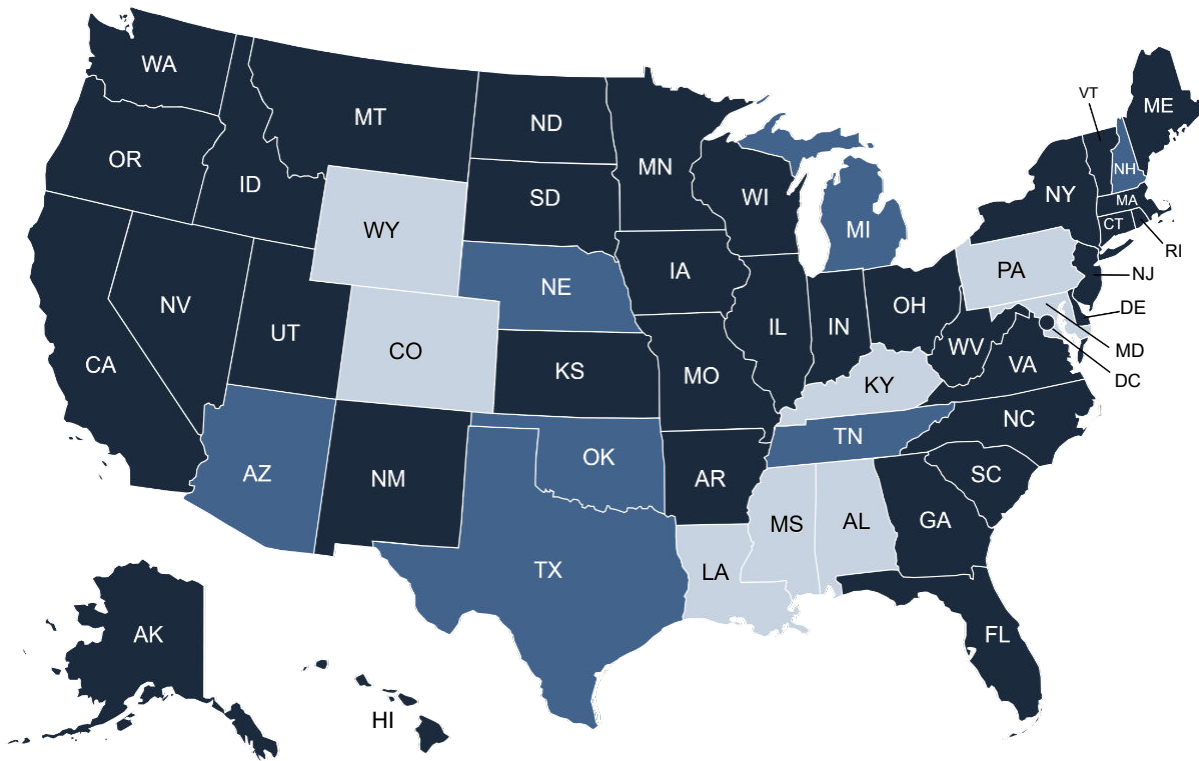
Prohibition on Children Being Incarcerated in Adult Correctional Facilities

No child under eighteen (18) years of age shall be detained, placed, or incarcerated in any jail, prison, or other place of detention where adults are detained, placed, or incarcerated. This section applies to all children in the custody of the Department of Corrections, including children who are subject to the jurisdiction of adult criminal court.



Post-Release Supervision

● Full Credit ● Partial Credit ● No Credit



"States Parties recognize the right of every child . . . having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

- Article 40 of the U.N. Convention on the Rights of the Child

Promoting reintegration and the assumption of a constructive role in society for formerly incarcerated children necessarily includes the ability to discharge their full sentence, including any period of post-release supervision. In General Comment 24, the CRC stated that promoting reintegration requires a child in conflict with the law to be "protected from actions or attitudes that hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity." In many states, post-release supervision is considered a part of an offender's sentence. For formerly incarcerated children serving lengthy prison sentences this could mean lifetime supervision that hinders their ability to move on with their lives, exercise their full rights of citizenship, or assume a constructive role in society. Therefore, states should enact laws that allow the supervising authority to discharge a formerly incarcerated youth from supervision at a reasonable point after release. All but 9 states received full or partial credit for this category, with Alaska having one of the best laws in the nation. No new states received credit for this category since 2020.



For the Rest of Their Lives

Moving past the mistakes of their youth often proves impossible for many formerly incarcerated children as lengthy post-release supervision hinders their ability to become fully functioning members of society. This can brand these individuals as permanent second class citizens where they are forced to pay monthly fees, subject themselves to random screenings and meetings with parole officers, disenfranchise them, and eliminate any semblance of normalcy in adulthood.

File Legislation To Fix This

Discharge from Parole or State Supervision

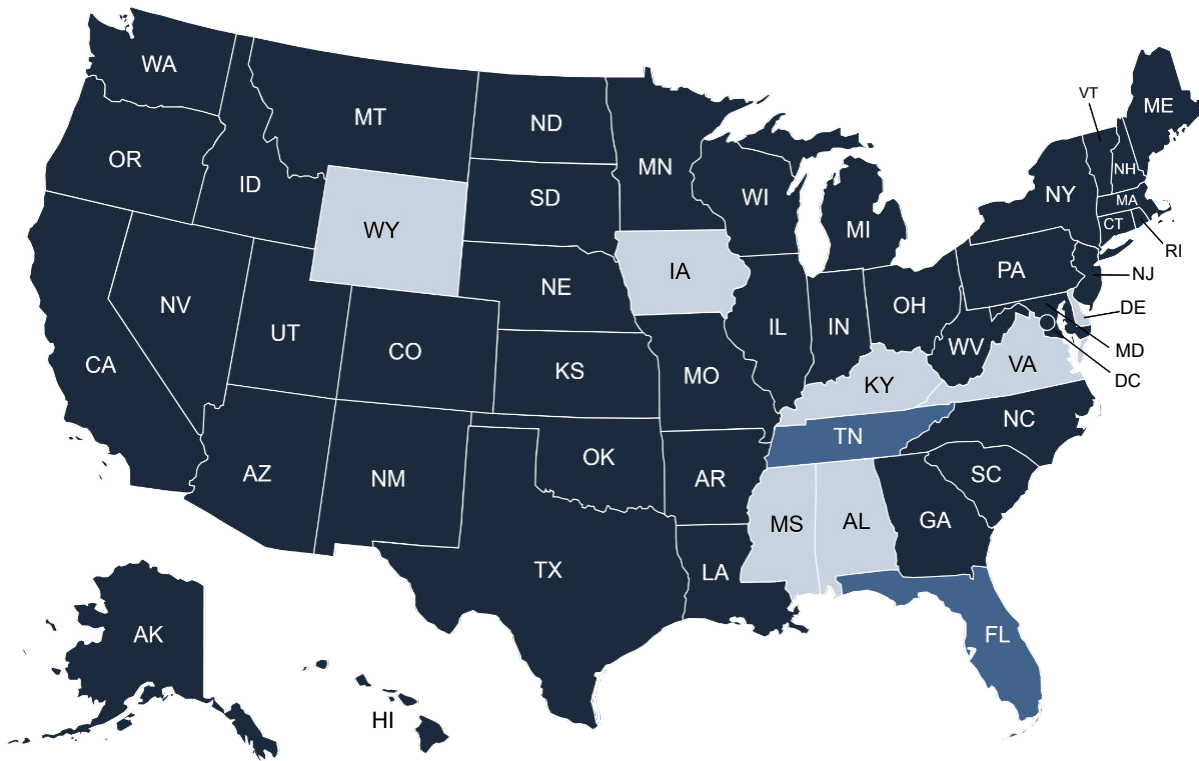
The Parole Board may discharge a person from parole if the person:

- (1) Was released on parole for having committed an offense as a minor; and
- (2) Has served five (5) years on parole without a violation.



Voting Rights

● Full Credit ● Partial Credit ● No Credit



"States Parties recognize the right of every child . . . having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

- Article 40 of the U.N. Convention on the Rights of the Child

The successful treatment and full social reintegration of children who come into conflict with the law is the chief human rights principle behind many of the protections found in the Convention on the Rights of the Child. However, a child cannot achieve full social reintegration if they are denied the rights and privileges afforded to their fellow citizens. No right is more important to active citizenship than the right of suffrage. Therefore, states must create a pathway for formerly incarcerated children – who have reached the age of majority – to have their voting rights restored upon release. States that require the completion of the entire sentence – including post-release supervision – before the restoration of voting rights is permitted, must also create a mechanism that allows formerly incarcerated children to be discharged from state supervision in order to earn credit for this category. The overwhelming majority of states – 41 and the District of Columbia – have statutes in place creating a pathway for all formerly incarcerated children to register to vote. While Tennessee and Florida received partial credit, Virginia, Kentucky, Delaware, Iowa, Wyoming, Mississippi, and Alabama received no credit. These states can look to Vermont where voting rights are never taken away or Nevada where formerly incarcerated youth are permitted to vote once they've been released from prison, for model language to receive credit for this category.



No Second Class Citizens

While many state laws theoretically make voting rights restoration possible, in practice they often maintain the disenfranchisement of thousands of formerly incarcerated youth across the country. If you can't vote, then you're not a full citizen. We must end second class citizenship for all formerly incarcerated youth.

File Legislation To Fix This

Restoration of Voting Rights

A person who was a child at the time of the commission of an offense shall have his or her constitutional right to vote and other rights to civic participation restored after he or she has been released from prison.



A Time for Action

Changing the way our juvenile and criminal justice systems treat children is the single most important human rights issue of our time. International human rights law is clear on this issue. So too is the fact that most of these children were victims of severe forms of abuse and neglect.

As this second iteration of our state ratings report demonstrates, state policymakers can transform their systems from one that tolerates and sanctions the abuse of children's human rights, to one that protects and upholds them.

These efforts are not partisan in nature. Indeed, they may be among the last important issues that Republicans and Democrats alike have rallied behind. Why? Because this issue is fundamentally about our children and what kind of country we want to leave behind for them.

If we are to be the beacon of human rights that the world looks to for moral authority, then we have to face the reality that we have fallen far short of our own expectations when it comes to our children. The first step with any problem is acknowledging you have one. The second is developing the solution for addressing it. HRFK's National State Ratings Report & Model Law have done that. We have developed a roadmap for change which will bring us in line with other nations around the world who protect the human rights of children in their justice system.

We have a long way to go. This is not a campaign that will be completed in one year, five years, or even ten years. This is a campaign that will carry on through most of our lifetimes. And while that may be disheartening in many ways, we must take solace in the fact that year-after-year, as we move closer to our goal, we are changing the life trajectory of thousands of children who otherwise would have lost their lives to the system. We are also helping the thousands of individuals who have been incarcerated since childhood get a second chance at life through the passage of 'safety valve' or 'second look' laws. These are not small things, especially to those who have been waiting a lifetime for someone to come along and make a second chance possible for them. If you're reading this, you can be that someone. We all can. The roadmap to change has never been more clear. Now is the time for action.

Words from Congress



“This is a human rights issue and frankly it is a stain on our country what we do to children.”

- Congresswoman Karen Bass (D-CA)



“Reforming the juvenile sentencing process is overdue in the U.S. For too long, we’ve thrown young people into the justice system with an inadequate understanding of why crimes occur and what can be done to appropriately address them.”

- Congressman Bruce Westerman (R-AR)



“As this report demonstrates far too many kids are being subject to human rights violations in the U.S. Criminal Justice System.”

- Congressman Tony Cardenas (D-CA)

Sources

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3. See “Youth younger than 18 prosecuted in criminal court: National estimate, 2019 cases” by Charles Puzzanchera, Melissa Sickmund, and Hunter Hurst, © National Center for Juvenile Justice, Pittsburgh, Pennsylvania: <https://www.ojp.gov/sites/g/files/xyckuh176/files/media/document/youth-prosecuted-criminal-court-2019-cases.pdf>
4. Source: Human Rights for Kids Internal Database
5. See Michael T. Baglivio, et al., The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders, OJJDP Journal of Juvenile Justice, Volume 3, Issue 2, Spring 2014: <https://www.ojp.gov/pdffiles/246951.pdf>
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If we care about **vulnerable children**
who have been **victims of abuse and neglect**,
we have to care about and change the way we treat
children in our criminal justice system.
They are the same children.



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