



HUMAN RIGHTS *for* KIDS

Hawaii State Ratings Report

Human Rights for Kids (HRFK) annual state ratings process tracks the presence or absence of 12 categories of state statutes that are critical to protecting the human rights of children in the criminal justice system. It is important to note that these 12 categories are not exhaustive of all the important legislation needed to safeguard children's human rights. Furthermore, the ratings do not assess the effectiveness or implementation of these laws in the state. The purpose of the annual state ratings process is to document policies enacted by state legislatures, motivate legislators and policy advocates, and bring attention to the need to prioritize children in criminal justice reform and human rights advocacy. For each category, we track whether a state has a statute consistent with the described policy.

TOTAL POINTS:	7.5 out of 12
TIER RATING:	2

1. Due Process Protections at Point of Entry for Kids

Full Credit: 1/1

Pursuant to Haw. Rev. Stat. § 571, as amended by Act 180 in 2023, all children under 18 years of age must consult with legal counsel prior to waiving their Miranda rights.

Act 180

Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

Contact with counsel; parent, guardian, or legal custodian; consultation.

(a) Before the waiver of any right against self-incrimination by and before a custodial interrogation of a child under eighteen years of age, the child shall have contact with legal counsel in person, by telephone, or by video conference, and shall also, to the extent practicable, have contact with a parent, guardian, or legal custodian in person, by telephone, or by video conference. The contact may not be waived.

(b) The court, in determining the admissibility of statements of a child under eighteen years of age made during or after the waiver of any right against self-incrimination or during or after a custodial interrogation, shall consider the effect of any failure of the officer who had custody of the child to take steps to comply with subsection (a).

(c) Any officer who has arrested a child under eighteen years of age shall notify the child's parent, guardian, or legal custodian that the child has been arrested and shall provide the location of the child's detention.

2. Set a Minimum Age of at Least 10 for Juvenile Court

No Credit: 0/1

Pursuant to §571-2, there is no minimum age for when a child may be adjudicated delinquent in juvenile court.

§571-2 Definitions.

When used in this chapter, unless the context otherwise requires: "Child" or "minor" means a person less than eighteen years of age.

3. Set a Maximum Age of at Least 17 for Juvenile Court

Full Credit: 1/1

Pursuant to §571-2 and §571-11, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

§571-11 Jurisdiction; children. Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

(1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age that would constitute a violation or attempted violation of any federal, state, or local law or county ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred.

4. Ban Prosecuting Kids Under 14 as Adults AND Require a Child Status Hearings for All Kids 14+ Before Proceedings in Adult Court

Partial Credit: .5/1

Pursuant to §571-22, children less than 14 years of age cannot be transferred to adult court; however, once the juvenile court has waived jurisdiction over a child, any proceedings for subsequent offenses committed by that child are in adult court. Because child status is not always considered prior to proceeding in the adult criminal justice system, Hawaii receives partial credit.

§571-22 Waiver of jurisdiction; transfer to other courts. (a) The court may waive jurisdiction and order a minor or adult held for criminal proceedings after full investigation and hearing where the person during the person's minority, but on or after the person's sixteenth birthday, is alleged to have committed an act that would constitute a felony if committed by an adult, and the court finds that:

- (1) There is no evidence the person is committable to an institution for individuals with intellectual disabilities or the mentally ill;
- (2) The person 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 person be subject to judicial restraint for a period extending beyond the person's minority.

(b) The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, after a full investigation and hearing, the court finds that:

(1) The person during the person's minority, but on or after the person's fourteenth birthday, 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 to a victim;
- (B) The act would constitute a class A felony if committed by an adult; or
- (C) The person has more than one prior adjudication for acts that would constitute felonies if committed by an adult; and

(2) There is no evidence the person is committable to an institution for individuals with intellectual disabilities or the mentally ill.

(c) The factors to be considered in deciding whether jurisdiction should be waived under subsection (a) or (b) are as follows:

- (1) The seriousness of the alleged offense;
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or wilful manner;
- (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;
- (4) The desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime;

- (5) The sophistication and maturity of the minor as determined by consideration of the minor's home, environmental situation, emotional attitude, and pattern of living;
- (6) The record and previous history of the minor, including previous contacts with the family court, other law enforcement agencies, courts in other jurisdictions, prior periods of probation to the family court, or prior commitments to juvenile institutions;
- (7) 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 currently available to the family court; and
- (8) All other relevant matters.
- (d) The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, after a full investigation and hearing, the court finds that:
- (1) The person during the person's minority is alleged to have committed an act that would constitute murder in the first degree or second degree or attempted murder in the first degree or second degree if committed by an adult; and
- (2) There is no evidence the person is committable to an institution for individuals with intellectual disabilities or the mentally ill.
- (e) Transfer of a minor for criminal proceedings terminates the jurisdiction of the court over the minor with respect to any subsequent acts that would otherwise be within the court's jurisdiction under section 571-11(1) and thereby confers jurisdiction over the minor to a court of competent criminal jurisdiction.
- (f) If criminal proceedings instituted under subsection (a), (b), or (d) result in an acquittal or other discharge of the minor involved, no petition shall be filed thereafter in any family court based on the same facts as were alleged in the criminal proceeding.
- (g) A minor shall not be subject to criminal prosecution based on the facts giving rise to a petition filed under this chapter, except as otherwise provided in this chapter.
- (h) Where the petition has been filed in a circuit other than the minor's residence, the judge, in the judge's discretion, may transfer the case to the family court of the circuit of the minor's residence.
- (i) When a petition is filed bringing a minor before the court under section 571-11(1) and (2), and the minor resides outside of the circuit, but within the State, the court, after a finding as to the allegations in the petition, may certify the case for disposition to the family court having jurisdiction where the minor resides. Thereupon, the court shall accept the case and may dispose of the case as if the petition was originally filed in that court. Whenever a case is so certified, the certifying court shall forward to the receiving court certified copies of all pertinent legal and social records.
- (j) If the court waives jurisdiction pursuant to subsection (b) or (d), the court also may waive its jurisdiction with respect to any other felony charges arising from the same episode to the charge for which the minor was waived.

5. Ban Mandatory Minimum Sentencing for Kids

No Credit: 0/1

There is no statutory provision allowing judges to depart from any mandatory minimum sentence once a child has been convicted in adult criminal court.

6. Ban Felony-Murder Rule for Kids

Full Credit: 1/1

Hawaii does not have a felony murder statute; therefore, it receives full credit.

7. Ban Life Without Parole Sentences for Kids

Full Credit: 1/1

Pursuant to §706-656, children may not be sentenced to life imprisonment without parole for first degree murder.

§706-656 Terms of imprisonment for first and second degree murder and attempted first and second degree murder.

Persons under the age of eighteen years at the time of the offense who are convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment with the possibility of parole.

8. Release Safety Valve for Kids Serving Lengthy Prison Sentences

No Credit: 0/1

There is no statutory provision allowing judges or the parole board to review the sentences of every child convicted in criminal court after a reasonable period of incarceration.

9. Ban Solitary Confinement for Kids

Full Credit: 1/1

Pursuant to §571-32, solitary confinement is prohibited for minors held in both juvenile and adult facilities.

§571-32 Detention; shelter; release; notice.

(h) A minor may be placed in room confinement in a juvenile detention or adult jail facility only under the following conditions:

(1) Room confinement may only be used as a temporary response to a minor's behavior, and only if:

(A) The behavior poses an immediate and substantial risk of danger to the minor's self or another individual, or a serious and immediate threat to the safety and orderly operation of the facility; provided that any decision to hold a minor in room confinement due to a mental health emergency shall be made by a mental health professional and based upon the mental health professional's examination of the minor; or

(B) The minor is an imminent escape risk;

(2) Because of the potential impact on a minor's mental or physical health, room confinement may only be used for the minimum time necessary for the minor to regain self-control, and only after less restrictive options or techniques, including de-escalation, conflict and behavioral management techniques, and intervention by a mental health professional, have been attempted, exhausted, and failed;

(3) If a minor is placed in room confinement, the reasons for the room confinement shall be explained to the minor. The minor shall also be informed that release from room confinement will occur immediately when the minor exhibits self-control and is no longer deemed a threat to the minor's safety or the safety of others;

(4) If a minor is placed in room confinement, the following individuals shall be notified on the next business day and provided the reasons for the room confinement as well as the location and duration of the confinement:

(A) The senior judge of the family court;

(B) The presiding judge who ordered the minor to be held at the facility;

(C) The deputy chief court administrator; and

(D) The social services manager of the juvenile client services branch for the circuit court of the first circuit;

(5) Room confinement shall not be used for purposes of punishment or disciplinary sanction, coercion, convenience, or retaliation, or to address staffing shortages at the facility;

(6) A minor may be held in room confinement for no more than three hours unless the minor is a danger to themselves or another, or the on-call judge grants an extension of no more than three additional hours of confinement. Thereafter, the minor shall be returned to the general population; provided that if a minor is held in room confinement for more than three hours, a hearing shall be held before the family court on the next business day, at which time the minor shall be provided legal representation;

(7) A minor shall not be returned to room confinement immediately after returning to the general population from room confinement for the purposes of evading the reporting requirements and room confinement restrictions pursuant to this section;

(8) If the minor is not returned to the general population following a hearing pursuant to paragraph (6), the minor shall be transferred to a location where services may be provided to the minor without the need for room confinement;

provided that if a mental health professional determines that the level of crisis service needed is not presently available at the location, the superintendent or deputy superintendent of the facility shall initiate a referral to a facility that can meet the needs of the minor;

(9) All rooms used for room confinement shall have adequate and operational lighting, ventilation for the comfort of the minor, and shall be clean and resistant to suicide and self-harm;

(10) The minor shall have access to drinking water, toilet facilities, hygiene supplies, and reading materials approved by a mental health professional;

(11) The minor shall have the same access as provided to minors in the general population of the facility to meals, contact with parents or legal guardians, legal assistance, educational programs, and medical and mental health services;

(12) The minor shall be continuously monitored by facility staff; and

(13) The judiciary shall post quarterly on the judiciary's website a report of its detention center detailing their compliance with this section. Each report shall include:

(A) The number of incidents of room confinement every year;

(B) The number of minors impacted;

(C) The age, gender identity, and race of minors impacted;

(D) Any alternative strategies employed before the use of room confinement, the reasons those alternative strategies failed, and why room confinement was necessary; and

(E) The incidence of mental illness.

For the purposes of this subsection:

"Mental health professional" means a qualified mental health professional or mental health professional supervised by a qualified mental health professional.

"Room confinement" means the placement of a minor in a room, cell, or area with minimal or no contact with persons other than court staff and attorneys. "Room confinement" does not include confinement of a minor in a single-person room or cell for brief periods of locked room time as necessary for required institutional operations and does not include confinement during sleep hours.

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to §571-32, children may be held in adult jails or prisons when a court finds that it is in the interest of justice.

§571-32 Detention; shelter; release; notice.

(d) No minor shall be held in a detention facility for juveniles or shelter longer than twenty-four hours, excluding weekends and holidays, unless a petition or motion for revocation of probation, or motion for revocation of protective supervision has been

filed, or unless the judge orders otherwise after a court hearing. No ex parte motions shall be considered. For the purposes of this section:

(1) Unless a court finds, after a hearing and in writing, that it is in the interest of justice as provided for in subsection (g)(2), a minor believed to come within section 571-11(1), or a minor awaiting trial or another legal process, who is treated as an adult for purposes of prosecution in criminal court and housed in a secure facility shall not:

(A) Have sight or sound contact with adult inmates; or

(B) Be held in any jail or lockup for adults, except as provided in subsection (g)(3); and

(2) Detention in a jail or lockup for adults may be permitted for:

(A) A minor accused of a non-status offense who is held for a period not to exceed six hours; provided that the minor is being held:

(i) For processing or release;

(ii) While awaiting transfer to a juvenile facility; or

(iii) For a court appearance that occurs within the period of detention; or

(B) A minor accused of a non-status offense who is awaiting an initial court appearance that will occur within forty-eight hours of the minor being taken into custody, excluding weekends and holidays, and where the jail or lockup for adults is in a location:

(i) Outside a metropolitan statistical area, as defined by the Office of Management and Budget, and no acceptable alternative placement is available;

(ii) Where the distance to be traveled or the lack of highway, road, or transportation does not allow for court appearances within forty-eight hours, excluding weekends and holidays, such that a brief delay of no more than an additional forty-eight hours is excusable; or

(iii) Where safety concerns exist, such as severe and life-threatening weather conditions that do not allow for reasonably safe travel, in which case the time for an appearance may be delayed until twenty-four hours after the time that conditions allow for reasonably safe travel; provided that the minor shall not have sight or sound contact with adult inmates; provided further that the State shall have a policy in effect that requires individuals who work with both minor and adult inmates in collocated facilities to be trained and certified to work with juveniles.

(e) No minor may be held after the filing of a petition or motion, as specified in subsection (d), unless an order for continued detention or shelter has been made by a judge after a court hearing. If there is probable cause to believe that the minor comes within section 571-11(1), the minor may be securely detained, following a court hearing, in a detention facility for juveniles or may be held in a shelter. If there is probable cause to believe that the minor comes within section 281-101.5 or 571-11(2), the minor may be held, following a court hearing, in a shelter but shall not be securely detained in a detention facility for juveniles for longer than twenty-four hours, excluding weekends and holidays, unless the minor is subject to the provisions of chapter 582, Interstate Compact on Juveniles, or chapter 582D, Interstate Compact for Juveniles, or is allegedly in or has already been adjudicated

for a violation of a valid court order, as provided under the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

(f) No minor shall be released from detention except in accordance with this chapter.

(g) When a minor is ordered to be held or detained by the court:

(1) Where a minor transferred for criminal proceedings pursuant to a waiver of family court jurisdiction is detained, the minor shall not:

(A) Have sight or sound contact with adult inmates; or

(B) Be held in any jail or lockup for adults, unless a court finds, after a hearing and in writing, that it is in the interest of justice;

(2) In determining whether it is in the interest of justice to permit a minor to be held in any jail or lockup for adults, or to have sight or sound contact with adult inmates, a court shall consider:

(A) The age of the minor;

(B) The physical and mental maturity of the minor;

(C) The present mental state of the minor, including whether the minor presents an imminent risk of self-harm;

(D) The nature and circumstances of the alleged offense;

(E) The minor's history of prior delinquent acts;

(F) The relative ability of the available adult and juvenile detention facilities to meet the specific needs of the minor and protect the safety of the public as well as other detained minors; and

(G) Any other relevant factor; and

(3) If a court determines that it is in the interest of justice to permit a minor to be held in any jail or lockup for adults, or to have sight or sound contact with adult inmates:

(A) The court shall hold a hearing no less frequently than once every thirty days, or in the case of a rural jurisdiction, no less frequently than once every forty-five days, to review whether it remains in the interest of justice to permit the minor to be held in a jail or lockup for adults or to have sight or sound contact with adult inmates; and

(B) The minor shall not be held in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than one hundred eighty days, unless the court, in writing, determines there is good cause for an extension, or the minor expressly waives this limitation.

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to §353-70, formerly incarcerated children may be discharged from parole at the discretion of the paroling authority.

§353-70 Final discharge. Whenever, in its opinion, any paroled prisoner has given such evidence as is deemed reliable and trustworthy that the paroled prisoner will

remain at liberty without violating the law and that the paroled prisoner's final release is not incompatible with the welfare of society, the Hawaii paroling authority may grant the prisoner a written discharge from further liability under the prisoner's sentence.

Any paroled prisoner who has been on parole for at least five years shall be brought before the paroling authority for purposes of consideration for final discharge and complete pardon. In the event the prisoner is not granted a final discharge and full pardon, the paroled prisoner shall be brought before the paroling authority for the aforementioned purposes annually thereafter.

Any person, who, while on parole, enters the military service of the United States, may, upon the person's honorable discharge therefrom, petition the paroling authority for a final discharge, and the paroling authority may consider the honorable discharge as grounds for granting a final discharge from parole and recommending to the governor a full pardon.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to §831-2, formerly incarcerated children who have reached voting age can vote after they have been discharged from imprisonment.

§831-2 Rights lost. (a) A person sentenced for a felony, from the time of the person's sentence until the person's final discharge, may not:

- (1) Vote in an election, but if the defendant is placed on probation or the defendant is paroled after commitment to imprisonment, the defendant may vote during the period of the probation or parole; or
- (2) Become a candidate for or hold public office.