



# HUMAN RIGHTS *for* KIDS

## Illinois 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.

<b>TOTAL POINTS:</b>	5.5 out of 12
<b>TIER RATING:</b>	3

### 1. Due Process Protections at Point of Entry for Kids

Partial Credit: .5/1

Pursuant to §5-170, children less than 15 years of age must be represented by counsel during a custodial interrogation. Because these protections do not apply to all children, Illinois receives partial credit.

#### **§5-170. Representation by counsel.**

(a) In a proceeding under this Article, a minor who was under 15 years of age at the time of the commission of an act that if committed by an adult would be a violation

of Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012 must be represented by counsel throughout the entire custodial interrogation of the minor.

(b) In a judicial proceeding under this Article, a minor may not waive the right to the assistance of counsel in his or her defense.

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

No Credit: 0/1

Pursuant to 705 ILCS §405/5-120, there is no minimum age for when a child may be adjudicated delinquent in juvenile court. See Category 3 below for details.

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

Full Credit: 1/1

Pursuant to 705 ILCS §405/5-120, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

### **705 ILCS §405/5-120. Exclusive jurisdiction.**

Proceedings may be instituted under the provisions of this Article concerning any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance. Except as provided in Sections 5-125, 5-130, 5-805, and 5-810 of this Article, no minor who was under 18 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State.

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

No Credit: 0/1

Pursuant to 705 ILCS §405/5-805, children less than 14 years of age can be prosecuted in adult court, and pursuant to §405/5-130, children 16 years of age or older who are charged with certain offenses are automatically prosecuted as adults.

### **705 ILCS §405/5-130. Excluded jurisdiction.**

(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor

personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.

### **705 ILCS §405/5-805. Transfer of jurisdiction.**

#### **(3) Discretionary transfer.**

(a) If a petition alleges commission by a minor 13 years of age or over of an act that constitutes a crime under the laws of this State and, on motion of the State's Attorney to permit prosecution of the minor under the criminal laws, a Juvenile Judge assigned by the Chief Judge of the Circuit to hear and determine those motions, after hearing but before commencement of the trial, finds that there is probable cause to believe that the allegations in the motion are true and that it is not in the best interests of the public to proceed under this Act, the court may enter an order permitting prosecution under the criminal laws.

### **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**

No Credit: 0/1

Pursuant to 720 ILCS §9-1, a child may be convicted under the felony murder rule.

#### **720 ILCS §9-1. First degree murder; death penalties; exceptions; separate hearings; proof; findings; appellate procedures; reversals.**

(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or

(2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or

(3) he or she, acting alone or with one or more participants, commits or attempts to commit a forcible felony other than second degree murder, and in the course of or in furtherance of such crime or flight therefrom, he or she or another participant causes the death of a person

## **7. Ban Life Without Parole Sentences for Kids**

Full Credit: 1/1

Pursuant to 730 ILCS §5/5-4.5-115, as amended by Public Act 102-1128 § 5 (2023), children are eligible for parole after serving 10, 20 or 40 years of their sentence.

### **Section 730 ILCS 5/5-4.5-115 - [Effective 1/1/2024] Parole review of persons under the age of 21 at the time of the commission of an offense**

b) A person under 21 years of age at the time of the commission of an offense or offenses, other than first degree murder, and who is not serving a sentence for first degree murder and who is sentenced on or after June 1, 2019 (the effective date of Public Act 100-1182) shall be eligible for parole review by the Prisoner Review Board after serving 10 years or more of his or her sentence or sentences, except for those serving a sentence or sentences for: (1) aggravated criminal sexual assault who shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences or (2) predatory criminal sexual assault of a child who shall not be eligible for parole review by the Prisoner Review Board under this Section. A person under 21 years of age at the time of the commission of first degree murder who is sentenced on or after June 1, 2019 (the effective date of Public Act 100-1182) shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences, except for those subject to a term of natural life imprisonment under Section 5-8-1 of this Code or any person subject to sentencing under subsection (c) of Section 5-4.5-105 of this Code, who shall be eligible for parole review by the Prisoner Review Board after serving 40 years or more of his or her sentence or sentences.

## **8. Release Safety Valve for Kids Serving Lengthy Prison Sentences**

Partial Credit: .5/1

Pursuant to 730 ILCS §5/5-4.5-115, Amended by Public Act 102-1128 § 5 (2023), children are eligible for parole after serving 10, 20 or 40 years of their sentence depending on the offenses committed.

See above for statute.

## **9. Ban Solitary Confinement for Kids**

Partial Credit: .5/1

Pursuant to 730 ILCS §3-10-8, solitary confinement is not authorized for disciplinary reasons against children in the custody of DJJ.

Additionally, Section 730 ILCS 215/10 [Effective 1/1/2024], as amended by Public Act 103-178 (2023), prohibits the use of solitary confinement for any “covered juvenile.” However, there is no prohibition against the practice for children in adult prisons. Therefore, Illinois gets partial credit.

**Section 730 ILCS 215/10 - [Effective 1/1/2024] Covered juvenile confinement**

"Covered juvenile" means any person under 21 years of age incarcerated in a Department of Juvenile Justice facility or any person under 18 years of age detained in a county facility under the authority of the local circuit court.

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

**730 ILCS §3-10-8. Discipline.**

(a) (3) No person committed to the Department of Juvenile Justice may be isolated for disciplinary reasons.

**10. Ban Incarcerating Kids with Adults**

No Credit: 0/1

Pursuant to §5-410, children may be detained or confined in an adult jail or lockup. Additionally, there is no prohibition on incarcerating children in adult prisons.

**§5-410. Non-secure custody or detention.**

(c) Except as otherwise provided in paragraph (a), (d), or (e), no minor shall be detained in a county jail or municipal lockup for more than 12 hours, unless the offense is a crime of violence in which case the minor may be detained up to 24 hours. For the purpose of this paragraph, "crime of violence" has the meaning ascribed to it in Section 1-10 of the Alcoholism and Other Drug Abuse and Dependency Act.

(d) (i) If a minor 12 years of age or older is confined in a county jail in a county with a population below 3,000,000 inhabitants, then the minor's confinement shall be implemented in such a manner that there will be no contact by sight, sound, or otherwise between the minor and adult prisoners. Minors 12 years of age or older must be kept separate from confined adults and may not at any time be kept in the same cell, room, or yard with confined adults. This paragraph (d)(i) shall only apply to confinement pending an adjudicatory hearing and shall not exceed 40 hours, excluding Saturdays, Sundays, and court-designated holidays. To accept or hold

minors during this time period, county jails shall comply with all monitoring standards adopted by the Department of Corrections and training standards approved by the Illinois Law Enforcement Training Standards Board.

(ii) To accept or hold minors, 12 years of age or older, after the time period prescribed in paragraph (d)(i) of this subsection (2) of this Section but not exceeding 7 days including Saturdays, Sundays, and holidays pending an adjudicatory hearing, county jails shall comply with all temporary detention standards adopted by the Department of Corrections and training standards approved by the Illinois Law Enforcement Training Standards Board.

(iii) To accept or hold minors 12 years of age or older, after the time period prescribed in paragraphs (d)(i) and (d)(ii) of this subsection (2) of this Section, county jails shall comply with all county juvenile detention standards adopted by the Department of Juvenile Justice.

(e) When a minor who is at least 15 years of age is prosecuted under the criminal laws of this State, the court may enter an order directing that the juvenile be confined in the county jail. However, any juvenile confined in the county jail under this provision shall be separated from adults who are confined in the county jail in such a manner that there will be no contact by sight, sound or otherwise between the juvenile and adult prisoners.

## **11. Ban Mandatory Post-Release Lifetime Supervision**

Full Credit: 1/1

Pursuant to 730 ILCS §3-3-8, formerly incarcerated children may be discharged from parole at the discretion of the Prisoner Review Board.

### **730 ILCS §3-3-8. Length of parole and mandatory supervised release; discharge.**

(a) The length of parole for a person sentenced under the law in effect prior to the effective date of this amendatory Act of 1977 and the length of mandatory supervised release for those sentenced under the law in effect on and after such effective date shall be as set out in Section 5-8-1 unless sooner terminated under paragraph (b) of this Section.

(b) The Prisoner Review Board may enter an order releasing and discharging one from parole or mandatory supervised release, and his or her commitment to the Department, when it determines that he or she is likely to remain at liberty without committing another offense.

### **730 ILCS §5-8-1. Natural life imprisonment; enhancements for use of a firearm; mandatory supervised release terms.**

(d) Subject to earlier termination under Section 3-3-8, the parole or mandatory supervised release term shall be written as part of the sentencing order and shall be as follows:

- (1) for first degree murder or a Class X felony except for the offenses of predatory criminal sexual assault of a child, aggravated criminal sexual assault, and criminal sexual assault if committed on or after the effective date of this amendatory Act of the 94th General Assembly and except for the offense of aggravated child pornography under Section 11-20.1B, 11-20.3, or 11-20.1 with sentencing under subsection (c-5) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012, if committed on or after January 1, 2009, 3 years;
- (2) for a Class 1 felony or a Class 2 felony except for the offense of criminal sexual assault if committed on or after the effective date of this amendatory Act of the 94th General Assembly and except for the offenses of manufacture and dissemination of child pornography under clauses (a)(1) and (a)(2) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012, if committed on or after January 1, 2009, 2 years;
- (3) for a Class 3 felony or a Class 4 felony, 1 year;
- (4) for defendants who commit the offense of predatory criminal sexual assault of a child, aggravated criminal sexual assault, or criminal sexual assault, on or after the effective date of this amendatory Act of the 94th General Assembly, or who commit the offense of aggravated child pornography under Section 11-20.1B, 11-20.3, or 11-20.1 with sentencing under subsection (c-5) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012, manufacture of child pornography, or dissemination of child pornography after January 1, 2009, the term of mandatory supervised release shall range from a minimum of 3 years to a maximum of the natural life of the defendant;
- (5) if the victim is under 18 years of age, for a second or subsequent offense of aggravated criminal sexual abuse or felony criminal sexual abuse, 4 years, at least the first 2 years of which the defendant shall serve in an electronic monitoring or home detention program under Article 8A of Chapter V of this Code;
- (6) for a felony domestic battery, aggravated domestic battery, stalking, aggravated stalking, and a felony violation of an order of protection, 4 years.

## **12. Voting Rights Restoration**

Full Credit: 1/1

Pursuant to §5-5-5, formerly incarcerated children who have reached voting age can vote after they have been discharged from imprisonment.

### **§5-5-5. Loss and restoration of rights.**

(c) A person sentenced to imprisonment shall lose his right to vote until released from imprisonment.