



HUMAN RIGHTS *for* KIDS

Indiana 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:	3 out of 12
TIER RATING:	4

1. Due Process Protections at Point of Entry for Kids

No Credit: 0/1

There are no statutory protections in place requiring children to consult with their parents, legal guardians, or legal counsel prior to waiving their Miranda Rights or being subject to a custodial interrogation for proceedings in either juvenile or adult court.

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

No Credit: 0/1

Pursuant to §31-37-1-1, there is no minimum age for when a child may be adjudicated delinquent in juvenile court.

§ 31-37-1-1 Delinquent child defined

Sec. 1. A child is a delinquent child if, before becoming eighteen (18) years of age, the child commits a delinquent act described in this chapter.

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

Full Credit: 1/1

Pursuant to §31-37-1-2, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

§ 31-37-1-2 Delinquent act

Sec. 2. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits an act that would be an offense if committed by an adult, except an act committed by a person over which the juvenile court lacks jurisdiction under IC 31-30-1.

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

§ 31-30-3-4 Act that would be murder

Sec. 4. Upon motion of the prosecuting attorney and after full investigation and hearing, the juvenile court shall waive jurisdiction if it finds that:

- (1) the child is charged with an act that would be murder if committed by an adult;
- (2) there is probable cause to believe that the child has committed the act; and
- (3) the child was at least twelve (12) years of age when the act charged was allegedly committed;

unless it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system.

§ 31-30-3-6 Act that would be felony and prior felony or nontraffic misdemeanor conviction

Sec. 6 . Upon motion by the prosecuting attorney, the juvenile court shall waive jurisdiction if it finds that:

- (1) the child is charged with an act which would be a felony if committed by an adult; and
- (2) the child has previously been convicted of a felony or a nontraffic misdemeanor.

§ 31-30-3-2 Heinous or aggravated act, or act as part of repetitive pattern of delinquent acts

Sec. 2. Upon motion of the prosecuting attorney and after full investigation and hearing, the juvenile court may waive jurisdiction if it finds that: (1) the child is charged with an act that is a felony: (A) that is heinous or aggravated, with greater weight given to acts against the person than to acts against property; or (B) that is a part of a repetitive pattern of delinquent acts, even though less serious; (2) the child was at least fourteen (14) years of age when the act charged was allegedly committed; (3) there is probable cause to believe that the child committed the act; (4) the child is beyond rehabilitation under the juvenile justice system; and (5) it is in the best interests of the safety and welfare of the community that the child stand trial as an adult.

§ 31-30-1-4 Juvenile court lacks jurisdiction over individuals at least 16 years of age committing certain felonies; retention and transfer of jurisdiction by court having adult criminal jurisdiction

(a) The juvenile court does not have jurisdiction over an individual for an alleged violation of:

- (1) IC 35-41-5-1(a) (attempted murder);
- (2) IC 35-42-1-1 (murder);
- (3) IC 35-42-3-2 (kidnapping);
- (4) IC 35-42-4-1 (rape) ;
- (5) IC 35-42-4-2 (criminal deviate conduct) (before its repeal);
- (6) IC 35-42-5-1 (robbery) if:
 - (A) the robbery was committed while armed with a deadly weapon; or
 - (B) the robbery results in bodily injury or serious bodily injury;
- (7) IC 35-42-5-2 (carjacking) (before its repeal);
- (8) IC 35-47-2-1 (carrying a handgun without a license), if charged as a felony;
- (9) IC 35-47-10 (children and firearms), if charged as a felony; or
- (10) any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in this subsection;

if the individual was at least sixteen (16) years of age but less than eighteen (18) years of age at the time of the alleged violation.

(b) Once an individual described in subsection (a) has been charged with any offense listed in subsection (a), the court having adult criminal jurisdiction shall retain jurisdiction over the case if the individual pleads guilty to or is convicted of any offense listed in subsection (a)(1) through (a)(9).

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.

§ 31-30-4-2 Offenders less than 18 years of age; sentencing options

(b) If a court elects to impose a sentence upon conviction of an offender under subsection (a) and, before the offender is sentenced, the department of correction determines that there is space available for the offender in a juvenile facility of the division of youth services of the department, the sentencing court may:

- (1) impose an appropriate criminal sentence on the offender under IC 35-50-2;
- (2) suspend the criminal sentence imposed, notwithstanding IC 35-50-2-2 (before its repeal), IC 35-50-2-2.1 , and IC 35-50-2-2.2;
- (3) order the offender to be placed into the custody of the department of correction to be placed in the juvenile facility of the division of youth services; and
- (4) provide that the successful completion of the placement of the offender in the juvenile facility is a condition of the suspended criminal sentence.

6. Ban Felony-Murder Rule for Kids

No Credit: 0/1

Pursuant to §35-42-1-1, a child may be convicted under the felony murder rule.

§35-42-1-1 Murder

Sec. 1. A person who:

- (1) knowingly or intentionally kills another human being;
- (2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct (under IC 35-42-4-2 before its repeal), kidnapping, rape, robbery, human trafficking, promotion of human trafficking, sexual trafficking of a minor, or carjacking commits murder, a felony.

7. Ban Life Without Parole Sentences for Kids

No Credit: 0/1

Pursuant to §35-50-2-3, a child may be sentenced to life without parole.

§ 35-50-2-3 Murder

(b) Notwithstanding subsection (a), a person who was:

(1) at least eighteen (18) years of age at the time the murder was committed may be sentenced to:

(A) death; or

(B) life imprisonment without parole; and

(2) at least sixteen (16) years of age but less than eighteen (18) years of age at the time the murder was committed may be sentenced to life imprisonment without parole;

under section 9 of this chapter unless a court determines under IC 35-36-9 that the person is an individual with an intellectual disability.

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

No Credit: 0/1

There are no statutory provisions banning the use of solitary confinement.

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to § 31-31-8-2 and §31-30-4-4, children may be incarcerated in adult correctional facilities. Pursuant to §31-30-3-12, children who are charged as adults may be held in adult facilities while awaiting trial, if a court finds it is in the best interests of justice.

§ 31-31-8-2 Juvenile detention facility; criteria

A juvenile detention facility is a secure facility that:

(1) is only used for the lawful custody and treatment of juveniles and meets state standards and licensing requirements as provided in department of correction rule 210 IAC 6; or

(2) is located on the same grounds or in the same building as an adult jail or lockup and meets the following four (4) criteria:

(A) Total separation between juvenile and adult facility spatial areas so that there could be no haphazard or accidental contact among juvenile and adult residents in the respective facilities. If space is used for both juveniles and adults, time-phasing of the use is acceptable if the arrangement precludes haphazard or accidental

contact among juvenile and adult residents at all times. Sleeping or other living areas may not be shared under any circumstances.

(B) Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities. Program activities may not be shared by juvenile and adult residents. However, program space, equipment, and other resources may be used by both juvenile and adult residents subject to clause (A).

(C) The administration and security functions of the juvenile detention program must be vested in separate staff who, if the staff serve both populations, are trained to serve a juvenile population. Security and other direct care staff may not be used to serve the adult jail at the same time or during the same tour of duty that security and other direct care staff serve in the juvenile detention facility. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contact occurs under conditions of separation of juveniles and adults, can serve both juvenile and adult residents.

(D) The facility meets state standards and licensing requirements as provided in department of correction rule 210 IAC 6. The architectural and operational configuration of the juvenile facility must assure total separation.

§31-30-4-4 Reclassification of offender in a juvenile facility; transfer to adult facility

(a) The department of correction may reclassify an offender placed in a juvenile facility under section 2(b) of this chapter and transfer the offender to an appropriate adult facility if the department determines that placement of the offender in any juvenile facility of the division of youth services is no longer appropriate.

(b) If the department of correction reclassifies and transfers an offender under this section:

(1) the department shall notify the sentencing court of the circumstances of the reclassification and transfer; and

(2) the sentencing court:

(A) shall hold a review hearing concerning the reclassification and transfer of the offender; and

(B) after the hearing is conducted under clause (A), may order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction.

§31-30-3-12 Secure facility; adult inmates

(a) The following definitions apply throughout this section:

(1) "Juvenile arrestee" means a child who:

(A) is less than eighteen (18) years of age;

(B) has been charged as an adult; and

(C) is awaiting trial, sentencing, or other legal process.

(2) "Sight or sound contact with adult inmates" means any:

- (A) physical;
 - (B) clear visual; or
 - (C) verbal; contact between a juvenile arrestee and an adult inmate that is not brief and inadvertent.
- (b) A juvenile arrestee who is housed in a secure facility may not be held in:
- (1) an adult facility, except as provided in IC 31-37-7-2; or
 - (2) a facility that permits sight or sound contact with adult inmates; unless a court finds, after a hearing, that it is in the best interests of justice for the juvenile arrestee to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates. If a court orders a juvenile arrestee to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates, the court shall issue its decision in writing.
- (c) In making a determination under subsection (b), the court shall consider:
- (1) the age of the juvenile arrestee;
 - (2) the physical and mental maturity of the juvenile arrestee;
 - (3) the present mental state of the juvenile arrestee, including whether the juvenile arrestee presents an imminent risk of harm to the arrestee or others;
 - (4) the nature and circumstances of the alleged offense;
 - (5) any prior history of delinquent or criminal acts of the juvenile arrestee;
 - (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as the safety of other detained youth; and
 - (7) any other relevant factors.
- (d) If a court determines it is in the best interests of justice for the juvenile arrestee to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates, the court may order that the juvenile arrestee be held in an adult facility or a facility permitting sight or sound contact with adult inmates for not more than one hundred eighty (180) days.
- (e) The court may extend the one hundred eighty (180) day period described in subsection (d) for one (1) or more additional sixty (60) day periods, if the court finds, in writing, that there is good cause to extend the juvenile arrestee's placement in an adult facility or a facility permitting sight or sound contact with adult inmates. However, the juvenile arrestee may waive the good cause requirement if the juvenile arrestee prefers to keep the same placement.
- (f) If the court orders a juvenile arrestee to be held under subsection (d) or (e), the court shall hold a hearing at least one (1) time every thirty (30) days to review whether it is still in the interests of justice to house the arrestee in the adult facility or the facility permitting sight or sound contact with adult inmates.

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to §11-13-3-5, formerly incarcerated children may be discharged from parole at the discretion of the parole board.

§11-13-3-5 Period of parole; discharge

(a) The period of parole for offenders sentenced for offenses under laws other than IC 35-50 is as follows:

(1) A person released on parole from an indeterminate term of imprisonment remains on parole until the expiration date of the term of imprisonment, except that the parole board may discharge the person from that term any time after the person's release on parole.

(2) A person released on parole from a determinate term of imprisonment remains on parole until the determinate term expires, except that the parole board may discharge the person from that term any time after the person's release on parole.

(3) A person released on parole from a term of life imprisonment remains on parole for life, except that the parole board may discharge the person at any time after the person's release on parole.

(b) When parole is terminated by discharge, the parole board shall enter an order discharging the person from parole and term of imprisonment. A copy of the order shall be given to the discharged person.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to §3-7-13-6, formerly incarcerated children who have reached voting age can vote after they have been discharged from imprisonment.

§3-7-13-6. Disfranchisement of prisoners; exceptions

(a) This section applies to a person who is:

(1) otherwise qualified to register under this article; and

(2) not imprisoned or subject to lawful detention.

(b) A person described in subsection (a) who is:

(1) on probation;

(2) on parole;

(3) subject to home detention under IC 35-38-2.5; or

(4) placed in a community corrections program under IC 35-38-2.6;

is eligible to register and to vote.