



# HUMAN RIGHTS *for* KIDS

## Kansas 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>	6.5 out of 12
<b>TIER RATING:</b>	2

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

Partial Credit: .5/1

Pursuant to §38-2333, children less than 14 years of age must consult with their parent or attorney before a custodial interrogation. Because these protections do not apply to all children, Kansas receives partial credit.

**§38-2333. Juvenile less than 14, admission or confession from interrogation.**

(a) When the juvenile is less than 14 years of age, no admission or confession resulting from interrogation while in custody or under arrest may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile's parent or attorney as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make a reasonable effort to contact the parent immediately upon the juvenile's arrival unless the parent is the alleged victim or alleged codefendant of the crime under investigation.

(b) When a parent is the alleged victim or alleged codefendant of the crime under investigation and the juvenile is less than 14 years of age, no admission or confession may be admitted into evidence unless the confession or admission resulting from interrogation while in custody or under arrest was made following a consultation between the juvenile and an attorney, or a parent who is not involved in the investigation of the crime, as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make reasonable effort to contact a parent who is not involved in the investigation of the crime immediately upon such juvenile's arrival.

(c) After an attorney has been appointed for the juvenile in the case, the parent may not waive the juvenile's rights.

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

Full Credit: 1/1

Pursuant to §38-2302, only children 10 years of age or older may be adjudicated delinquent in the juvenile justice system.

**§38-2302. Definitions.**

(n) "Juvenile" means a person to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

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

Full Credit: 1/1

Pursuant to §38-2302, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

**§38-2302. Definitions.**

- (s) "Juvenile offender" means a person who commits an offense while 10 or more years of age but less than 18 years of age which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-5102, and amendments thereto, or who violates the provisions of K.S.A. 41-727, K.S.A. 74-8810(j), or K.S.A. 21-6301(a)(14), and amendments thereto, but does not include:
- (1) A person 14 or more years of age who commits a traffic offense, as defined in K.S.A. 8-2117(d), and amendments thereto;
  - (2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated, and amendments thereto;
  - (3) a person under 18 years of age who previously has been:
    - (A) Convicted as an adult under the Kansas criminal code;
    - (B) sentenced as an adult under the Kansas criminal code following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 2007 Supp. 38-2364, and amendments thereto; or
    - (C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 2015 Supp. 38-2347, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

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

Full Credit: 1/1

Pursuant to §38-2347, no child under 14 years of age may be prosecuted as an adult, and a child status hearing must take place for youth 14 to 17 years of age in juvenile court before proceedings in adult court.

**§38-2347. Prosecution as an adult; extended jurisdiction juvenile prosecution; burden of proof; authorization.**

- (a) (1) Except as otherwise provided in this section, at any time after commencement of proceedings under this code against a juvenile and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2019 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court authorize prosecution of the juvenile as an adult under the applicable criminal statute. The juvenile shall be presumed to be a juvenile, and the presumption must be rebutted by a preponderance of the evidence. No juvenile less than 14 years of age shall be prosecuted as an adult.
- (d) In determining whether or not prosecution as an adult should be authorized or designating the proceeding as an extended jurisdiction juvenile prosecution, the court shall consider each of the following factors:

- (1) The seriousness of the alleged offense and whether the protection of the community requires prosecution as an adult or designating the proceeding as an extended jurisdiction juvenile prosecution;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (3) whether the offense was against a person or against property. Greater weight shall be given to offenses against persons, especially if personal injury resulted;
- (4) the number of alleged offenses unadjudicated and pending against the juvenile;
- (5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender under this code or the Kansas juvenile justice code and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;
- (6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living or desire to be treated as an adult;
- (7) whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction under this code; and
- (8) whether the interests of the juvenile or of the community would be better served by criminal prosecution or extended jurisdiction juvenile prosecution.

The insufficiency of evidence pertaining to any one or more of the factors listed in this subsection, in and of itself, shall not be determinative of the issue. Subject to the provisions of K.S.A. 2019 Supp. 38-2354, and amendments thereto, written reports and other materials relating to the juvenile's mental, physical, educational and social history may be considered by the court.

(e) (1) The court may authorize prosecution as an adult upon completion of the hearing if the court finds from a preponderance of the evidence that the alleged juvenile offender should be prosecuted as an adult for the offense charged. In that case, the court shall direct the alleged juvenile offender be prosecuted under the applicable criminal statute and that the proceedings filed under this code be dismissed.

## **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 §21-5402, a child may be convicted under the felony murder rule.

**§21-5402. Murder in the first degree.**

(a) Murder in the first degree is the killing of a human being committed:

(1) Intentionally, and with premeditation; or

(2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.

(b) Murder in the first degree is an off-grid person felony.

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

Full Credit: 1/1

Pursuant to §21-6618, a child may not be sentenced to life without parole.

**§21-6618. Same; sentencing.**

Upon conviction of a defendant of capital murder and a finding that the defendant was less than 18 years of age at the time of the commission thereof, the court shall sentence the defendant as otherwise provided by law, and no sentence of death or life without the possibility of parole shall be imposed hereunder.

**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 §38-2332, children may be detained or confined in an adult jail or lockup. Additionally, there is no prohibition on incarcerating children in adult prisons.

**§38-2332. Prohibiting placement or detention of juvenile in jail; exceptions; review of records and determination of compliance by juvenile justice authority.**

- (a) No juvenile shall be detained or placed in any jail pursuant to the revised Kansas juvenile justice code except as provided by subsections (b), (c) and (d) and subject to K.S.A. 2015 Supp. 38-2330 and 38-2331, and amendments thereto.
- (b) Upon being taken into custody, a juvenile may be detained temporarily in a jail, in quarters with sight and sound separation from adult prisoners, for the purpose of identifying and processing the juvenile and transferring the juvenile to a juvenile detention facility. If a juvenile is detained in jail under this subsection, the juvenile shall be detained only for the minimum time necessary, not to exceed six hours, and in no case overnight.
- (c) The provisions of this section shall not apply to detention of a juvenile:
- (1)(A) Against whom a motion has been filed requesting prosecution as an adult pursuant to K.S.A. 2015 Supp. 38-2347(a)(2), and amendments thereto; and
- (B) who has received the benefit of a detention hearing pursuant to K.S.A. 2015 Supp. 38-2331, and amendments thereto;
- (2) whose prosecution as an adult or classification as an extended jurisdiction juvenile has been authorized pursuant to K.S.A. 2015 Supp. 38-2347, and amendments thereto; or
- (3) who has been convicted previously as an adult under the code of criminal procedure or the criminal laws of another state or foreign jurisdiction.
- (d) The provisions of this section shall not apply to the detention of any person 18 years of age or more who is taken into custody and is being prosecuted in accordance with the provisions of the revised Kansas juvenile justice code.
- (e) The Kansas department of corrections or the department's contractor shall have authority to review jail records to determine compliance with the provisions of this section.

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

Full Credit: 1/1

Pursuant to §22-3722, formerly incarcerated children may be discharged from parole at the discretion of the Prisoner Review Board.

### **§22-3722. Service on parole, conditional release and postrelease supervision; discharge; restoration of civil rights.**

The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in K.S.A. 75-5217, and amendments thereto, relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. The period served on postrelease supervision shall vest in and be subject to the provisions contained in K.S.A. 75-5217, and amendments thereto, relating to an inmate who is a fugitive from or has fled from justice. The total time served shall not exceed the postrelease supervision period established at sentencing.

When an inmate on parole or conditional release has performed the obligations of the release for such time as shall satisfy the prisoner review board that final release is not incompatible with the best interest of society and the welfare of the individual, the board may make a final order of discharge and issue a certificate of discharge to the inmate but no such order of discharge shall be made in any case within a period of less than one year after the date of release except where the sentence expires earlier thereto. When an inmate has reached the end of the postrelease supervision period, the board shall issue a certificate of discharge to the releasee. Such discharge, and the discharge of an inmate who has served the inmate's term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state. Nothing herein contained shall be held to impair the power of the governor to grant a pardon or commutation of sentence in any case.

## **12. Voting Rights Restoration**

Full Credit: 1/1

Pursuant to §21-6613 and §22-3722, formerly incarcerated children who have reached voting age and have been discharged from parole can have their voting rights restored.

### **§21-6613. Rights of imprisoned persons; restoration.**

- (a) A person who has been convicted in any state or federal court of a felony shall, by reason of such conviction, be ineligible to hold any public office under the laws of the state of Kansas, or to register as a voter or to vote in any election held under the laws of the state of Kansas or to serve as a juror in any civil or criminal case.
- (b) The ineligibilities imposed by this section shall attach upon conviction and shall continue until such person has completed the terms of the authorized sentence.
- (c) The ineligibilities imposed upon a convicted person by this section shall be in addition to such other penalties as may be provided by law.