



HUMAN RIGHTS *for* KIDS

Maine 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:	4 out of 12
TIER RATING:	3

1. Due Process Protections at Point of Entry for Kids

No Credit: 0/1

Pursuant to 15 §3203-A, a parent or guardian has to be notified of their child's arrest. However, there is not a requirement that a child consult with their parent before being interrogated or that their parent be present during questioning. Therefore, Maine receives no credit.

15 §3203-A. Arrested juveniles; release; detention; notification

2-A. Questioning. When a juvenile is arrested, no law enforcement officer may question that juvenile until:

A. A legal custodian of the juvenile is notified of the arrest and is present during the questioning;

B. A legal custodian of the juvenile is notified of the arrest and gives consent for the questioning to proceed without the custodian's presence; or

C. The law enforcement officer has made a reasonable effort to contact the legal custodian of the juvenile, cannot contact the custodian and seeks to question the juvenile about continuing or imminent criminal activity.

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

No Credit: 0/1

Pursuant to 15 §3003, there is no minimum age for when a child may be adjudicated delinquent in juvenile court. See Category 3 below for statutory provisions.

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

Full Credit: 1/1

Pursuant to 15 §3003, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

15 §3003. Definitions

As used in this Part, unless the context otherwise indicates, the following words and phrases shall have the following meanings.

14. Juvenile. "Juvenile" means any person who has not attained the age of 18 years.

15 §3101. Jurisdiction

1. District Court as Juvenile Court. The District Court shall exercise the jurisdiction conferred by this Part and, when exercising such jurisdiction, shall be known and referred to as the Juvenile Court.

2. Juvenile Court jurisdiction.

A. The Juvenile Court shall have exclusive original jurisdiction, subject to waiver of jurisdiction as provided in subsection 4, of proceedings in which a juvenile is alleged to have committed a juvenile crime, as defined in section 3103.

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 §3101, the court may transfer a case to adult court when it is alleged that a child less than 14 years of age has committed specified offenses; the court must waive jurisdiction and transfer a child previously convicted in adult court.

15 §3101. Jurisdiction

1. District Court as Juvenile Court. The District Court shall exercise the jurisdiction conferred by this Part and, when exercising such jurisdiction, shall be known and referred to as the Juvenile Court.

2. Juvenile Court jurisdiction.

A. The Juvenile Court shall have exclusive original jurisdiction, subject to waiver of jurisdiction as provided in subsection 4, of proceedings in which a juvenile is alleged to have committed a juvenile crime, as defined in section 3103.

C. Juvenile Courts have jurisdiction over all petitions brought under Title 34-A, chapter 9, subchapter 7 pertaining to juveniles who have been adjudicated as having committed juvenile crimes in other states, but who are found within the territorial jurisdiction of the State.

D. Juvenile Courts have exclusive original jurisdiction over proceedings in which an adult is alleged to have committed a juvenile crime before attaining 18 years of age. For purposes of a proceeding under this paragraph, the adult is considered a juvenile.

E. Juvenile Courts shall have jurisdiction concurrent with the District Courts over petitions for emancipation brought under section 3506-A.

3. Juveniles mistakenly tried as adults.

A. If, during the pendency of any prosecution for a violation of law, in any court in the State against any person charged as an adult, it is ascertained that the person is a juvenile, or was a juvenile at the time the crime was committed, the court shall forthwith dismiss the case.

B. When a dismissal is ordered pursuant to paragraph A, a petition under chapter 507, alleging the same violation of law for which the juvenile was charged as an adult may be filed in Juvenile Court.

4. Bind-over.

A. When a petition alleges that a juvenile has committed an act that would be murder or a Class A, B or C crime if committed by an adult, the court shall, upon request of the prosecuting attorney, continue the case for further investigation and for a bind-over hearing to determine whether the jurisdiction of the Juvenile Court over the juvenile should be waived. If a continuance is granted under this paragraph, the court shall advise the juvenile and the juvenile's parent or parents, guardian or legal custodian of the possible consequences of a bind-over hearing, the right to be represented by counsel, and other relevant constitutional and legal rights.

B. Every bind-over hearing shall precede and shall be conducted separately from any adjudicatory hearing.

The Maine Rules of Evidence shall apply only to the probable cause portion of the bind-over hearing.

For the purpose of making the findings required by paragraph E, subparagraph (2), written reports and other material may be received by the court along with other evidence, but the court, if so requested by the juvenile, the juvenile's parent or guardian or other party, shall require that the person or persons who wrote the report or prepared the material appear as witness and be subject to examination, and the court may require that the persons whose statements appear in the report appear as witnesses and be subject to examination.

C. A verbatim record shall be kept in all bind-over proceedings.

C-1. With respect to the finding of probable cause required by paragraph E, subparagraph (1), the State has the burden of proof.

C-2. With respect to the finding of appropriateness required by paragraph E, subparagraph (2), the State has the burden of proof, except that in a case involving a juvenile who is charged with one or more juvenile crimes that, if the juvenile were an adult, would constitute murder, aggravated attempted murder, attempted murder, felony murder, Class A manslaughter other than the reckless or criminally negligent operation of a motor vehicle, elevated aggravated assault on a pregnant person, elevated aggravated assault, arson that recklessly endangers any person, causing a catastrophe, Class A robbery or Class A gross sexual assault in which the victim submits as a result of compulsion, the juvenile has the burden of proof.

D. The Juvenile Court shall consider the following factors in deciding whether to bind a juvenile over for prosecution as an adult:

(1) Seriousness of the crime: the nature and seriousness of the offense with greater weight being given to offenses against the person than against property; whether the offense was committed in an aggressive, violent, premeditated or intentional manner;

(2) Characteristics of the juvenile: the record and previous history of the juvenile; the age of the juvenile; the juvenile's emotional attitude and pattern of living;

(3) Public safety: whether the protection of the community requires commitment of the juvenile for a period longer than the greatest commitment authorized; whether the protection of the community requires commitment of the juvenile to a facility that is more secure than any dispositional alternative under section 3314; and

(4) Dispositional alternatives: whether future criminal conduct by the juvenile will be deterred by the dispositional alternatives available; whether the dispositional alternatives would diminish the gravity of the offense.

E. The Juvenile Court shall bind a juvenile over for prosecution as an adult if it finds:

(1) That there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it; and

(2) After a consideration of the seriousness of the crime, the characteristics of the juvenile, the public safety and the dispositional alternatives in paragraph D, that:

(a) If the State has the burden of proof, the State has established by a preponderance of the evidence that it is appropriate to prosecute the juvenile as if the juvenile were an adult; or

(b) If the juvenile has the burden of proof, the juvenile has failed to establish by a preponderance of the evidence that it is not appropriate to prosecute the juvenile as if the juvenile were an adult.

E-2. If the Juvenile Court binds a juvenile over for prosecution as an adult and has directed the detention of the juvenile, if the juvenile attains 18 years of age and is being detained, the juvenile must be detained in an adult section of a jail. [PL 2015, c. 409, §3 (AMD).]

F. The Juvenile Court shall bind over a child by entering an order finding probable cause, waiving jurisdiction and certifying the case for proceedings before the grand jury. The Juvenile Court shall enter written findings supporting its order finding probable cause and waiving jurisdiction. Proceedings concerning a juvenile who has been bound over for prosecution as an adult must be conducted in the same manner and with the same powers and duties as if the juvenile were an adult.

G. In all prosecutions for subsequent crimes, any person bound over and convicted as an adult must be proceeded against as if the juvenile were an adult.

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

Partial Credit: .5/1

Pursuant to §202, children may claim an affirmative defense to a charge of first degree murder predicated on the felony murder rule. Because there are several exceptions to claiming the defense, Maine receives partial credit.

17-A §202. Felony murder

1. A person is guilty of felony murder if acting alone or with one or more other persons in the commission of, or an attempt to commit, or immediate flight after committing or attempting to commit, murder, robbery, burglary, kidnapping, arson, gross sexual assault, or escape, the person or another participant in fact causes the death of a human being, and the death is a reasonably foreseeable consequence of such commission, attempt or flight.

2. It is an affirmative defense to prosecution under this section that the defendant:

A. Did not commit the homicidal act or in any way solicit, command, induce, procure or aid the commission thereof;

B. Was not armed with a dangerous weapon, or other weapon which under circumstances indicated a readiness to inflict serious bodily injury;

C. Reasonably believed that no other participant was armed with such a weapon; and

D. Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

3. Felony murder is a Class A crime.

7. Ban Life Without Parole Sentences for Kids

No Credit: 0/1

Pursuant to §1603, a child may be sentenced to life without parole.

17-A §1603. Imprisonment for crime of murder

1. Sentence. A person convicted of the crime of murder must be sentenced to imprisonment for life or for any term of years that is not less than 25. The sentence of the court must specify the length of the sentence to be served and must commit the person to the Department of Corrections.

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

Partial Credit: .5/1

Pursuant to §3032, segregation or solitary confinement is not authorized for children in juvenile correctional facilities, but this protection is not in place for children in adult correctional facilities. Therefore, Maine receives partial credit.

34-A §3032. Disciplinary action

The commissioner shall adopt rules describing disciplinary offenses and punishments in facilities under the general administrative supervision of the department and establishing a fair and orderly procedure for processing disciplinary complaints. The rules must conform to the following requirements.

3. **Segregation.** The imposition of segregation at all correctional facilities, except juvenile correctional facilities, is subject to the following conditions.

A. All punishments involving segregation shall be first approved by the chief administrative officer of the correctional facility.

B. The prisoner shall be provided with a sufficient quantity of wholesome and nutritious food.

C. Adequate sanitary and other conditions required for the health of the prisoner shall be maintained.

D. When segregation exceeds 24 hours, the chief administrative officer of the correctional facility shall cause the facility's physician or a member of the facility's medical staff to visit the person immediately and, at least once in each succeeding 24-hour period of confinement, to examine the person's state of health. When no physician or medical staff member is available within the facility to visit as required by this paragraph, a staff person who has received in-service training appropriate for the duties required by this section from a licensed health professional shall visit in lieu of the visit by the physician or medical staff member the person in confinement. The staff person making the visit shall immediately contact the physician or medical staff member on call if there is reasonable cause to believe the action is necessary.

(1) The chief administrative officer shall give full consideration to recommendations of the physician or medical staff member as to the person's dietary needs and the conditions of the person's confinement required to maintain that person's health.

(2) If the recommendations of the physician or medical staff member regarding a person's dietary or other health needs while in segregation are not carried out, the chief administrative officer shall immediately convey the reasons and circumstances for this decision to the commissioner for review and final disposition.

E. If a person is held in segregation or solitary confinement for more than 5 days, the chief administrative officer shall send a report of the confinement to the commissioner, giving the reasons for the confinement.

4. Withdrawal of deductions. All punishments involving deductions subject to being withdrawn must be first approved by the chief administrative officer.

5. Specific facilities. Punishment at specific correctional facilities is governed as follows.

A. Punishment at all correctional facilities, except juvenile correctional facilities, may consist of warnings, loss of privileges, restitution, monetary sanctions, labor at any lawful work, confinement to a cell, segregation or a combination of these.

B. Punishment at juvenile correctional facilities and any detention facility may consist of warnings, restitution, labor at any lawful work and loss of privileges.

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to §3203-A and §3205, children may be detained or confined in an adult jail or lockup. Additionally, there is no prohibition on incarcerating children in adult prisons.

15 §3205. Juvenile in adult-serving jail

1. Generally. A juvenile may not be committed to or detained or confined in a jail or other secure detention facility intended or primarily used for the detention of adults, except when bound over as an adult and as provided in section 3101, subsection 4, paragraph E-2, or as provided in section 3203-A, subsection 1, paragraph B-1 or section 3203-A, subsection 7. A juvenile who is detained in a jail or other secure detention facility intended or primarily used for the detention of adults may be detained only in a section of a facility that meets the requirements of section 3203-A, subsection 7, paragraph A, unless bound over as an adult and held in an adult section of a facility pursuant to section 3101, subsection 4, paragraph E-2.

15 §3203-A. Arrested juveniles; release; detention; notification

1. Notification of a juvenile community corrections officer. A juvenile community corrections officer receives notification under the following circumstances.

A. When, in the judgment of a law enforcement officer, Juvenile Court proceedings should be commenced against a juvenile, but detention is not necessary, the law enforcement officer shall notify a juvenile community corrections officer as soon as possible after such a determination is made; but if the juvenile has been arrested, the law enforcement officer shall notify the juvenile community corrections officer within 12 hours following the arrest.

A-1. If the law enforcement officer determines that detention is not necessary but the officer is unable to immediately return the juvenile to the custody of the juvenile's legal custodian or another suitable person, the officer, with the juvenile's consent, may deliver the juvenile to any public or private agency that provides nonsecure services to juveniles, including an agency that provides attendant care.

B. When, in the judgment of a law enforcement officer, a juvenile should be detained prior to the juvenile's initial appearance in juvenile court, the law enforcement officer shall immediately notify a juvenile community corrections officer.

(1) Detention under this section must be requested by the law enforcement officer within 2 hours after the juvenile's arrest or the juvenile must be released.

(2) After the law enforcement officer notifies the juvenile community corrections officer and requests detention, the juvenile community corrections officer shall order the conditional or unconditional release or shall effect a detention placement within 12 hours following the juvenile's arrest.

B-1. If, in the judgment of a law enforcement officer, immediate secure detention is required to prevent a juvenile from imminently inflicting bodily harm on others or the juvenile, the officer may refer the juvenile for temporary, emergency detention in a jail or other secure facility intended or primarily used for the detention of adults approved pursuant to subsection 7, paragraph A or a facility approved pursuant to subsection 7, paragraph B, prior to notifying a juvenile community corrections officer. Such a facility may detain the juvenile for up to 2 hours on an emergency basis, as long as the law enforcement officer immediately notifies the

juvenile community corrections officer and requests authorization to detain the juvenile beyond the term of the temporary, emergency detention pursuant to paragraph B. The juvenile community corrections officer may, if continued emergency detention is required to prevent the juvenile from imminently inflicting bodily harm on others or the juvenile, authorize temporary emergency detention in that facility for an additional 4 hours. Following any temporary emergency detention, the juvenile community corrections officer shall order the conditional or unconditional release of a juvenile or shall effect a detention placement. Except as otherwise provided by law, any detention beyond 6 hours must be in a placement other than a facility intended or primarily used for the detention of adults and must be authorized by a juvenile community corrections officer. It is the responsibility of the law enforcement officer to remain at the facility until the juvenile community corrections officer has released the juvenile or has authorized detention.

C. In cases under Title 5, section 200-A, the law enforcement officer shall immediately notify the juvenile community corrections officer and the Department of the Attorney General. In all other cases the law enforcement officer shall immediately notify the juvenile community corrections officer if the law enforcement officer believes that immediate secure detention is required. If the juvenile community corrections officer determines not to order the detention or continued detention of the juvenile, the community corrections officer shall inform the law enforcement officer and the attorney for the State prior to the juvenile's release. The attorney for the State, with or without a request from a law enforcement officer, shall consider the facts of the case, consult with the juvenile community corrections officer who made the initial determination, consider standards for detention under subsection 4, paragraph C and subsection 4, paragraph D, subparagraphs (1) to (6) and may order detention or continued detention of the juvenile under the same or any authorized conditions pending the juvenile's initial appearance before the court. If detention or continued detention is ordered, the detention placement must be made by the juvenile community corrections officer within 12 hours following the juvenile's arrest.

7. Restriction on place of detention.

The following restrictions are placed on the facilities in which a juvenile may be detained.

A. A juvenile may be detained in a jail or other secure detention facility intended for use or primarily used for the detention of adults only when the serving facility:

- (1) Contains an area where juveniles are under direct staff observation at all times, in a separate section for juveniles that complies with mandatory sight and sound separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208;
- (2) Provides for no regular contact between the juveniles with the adult detainees or inmates; and
- (3) Has an adequate staff to provide direct observation and supervise the juvenile's activities at all times during emergency detention.

Juveniles detained in adult-serving facilities may be placed only in the separate juvenile sections that comply with mandatory separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208, unless the juvenile is held in an adult section of a facility under section 3205, subsection 2 or is bound over as an adult and held in an adult section of a facility pursuant to section 3101, subsection 4, paragraph E-2. [PL 2013, c. 28, §3 (AMD).]

B. A juvenile may be held in custody or detention in any detention facility approved or operated by the Department of Corrections exclusively for juveniles or a temporary holding resource that provides secure supervision approved by the Department of Corrections, pending the juvenile's release or hearing in the Juvenile Court.

B-4. The State is responsible for all physically restrictive juvenile detention statewide, except that the detention for up to 6 hours provided under subsection 1 remains the responsibility of the counties. At the discretion of the sheriff, if the requirements of paragraph B-5 are met, a county may assume responsibility for the detention of a juvenile for up to 48 hours, excluding Saturdays, Sundays and legal holidays. Upon mutual agreement of the Commissioner of Corrections and the sheriff and upon terms mutually agreeable to them, a juvenile may be detained by a county for a longer period of time in an approved detention facility or temporary holding resource complying with paragraph B. Any detention of a juvenile by a county must be in a section of a jail or other secure detention facility in compliance with paragraph A or in an approved detention facility or temporary holding resource in compliance with paragraph B. This paragraph does not apply to a juvenile who is held in an adult section of a jail pursuant to section 3101, subsection 4, paragraph E-2 or section 3205, subsection 2.

B-5. If the juvenile community corrections officer who ordered the detention or the attorney for the State who ordered the detention determines there is no reasonable alternative, a juvenile may be detained in a jail or other secure detention facility intended or primarily used for the detention of adults for up to 48 hours, excluding Saturday, Sunday and legal holidays, if:

- (1) The facility meets the requirements of paragraph A;
- (2) The facility is not located in a standard metropolitan statistical area and meets the statutory criteria contained in the federal Juvenile Justice and Delinquency Prevention Act of 1974, 42 United States Code, Section 5601; and
- (3) The juvenile is detained only to await a detention hearing pursuant to subsection 5 or section 3314, subsection 2.

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to §1881, formerly incarcerated children may be discharged from supervision at the discretion of the court.

17-A §1881. Inclusion of period of supervised release after imprisonment

1. Mandatory imposition of supervised release. If a person is convicted of gross sexual assault with a person who has not yet attained 12 years of age, in violation of section 253, subsection 1, paragraph C, the court, in addition to imposing as part of the sentence a definite term of imprisonment in accordance with section 253-A, subsection 2, shall impose as part of the sentence a period of supervised release of up to life to immediately follow that imprisonment. The period of supervised release commences on the date the person is released from confinement pursuant to section 2314 and must include the best available monitoring technology for the full period of supervised release.

2. Discretionary imposition of supervised release. If a person is convicted of gross sexual assault in violation of any provision of section 253 other than section 253, subsection 1, paragraph C, the court, if it imposes as part of the sentence a definite term of imprisonment that does not include a period of probation, also may impose as part of the sentence a period of supervised release to immediately follow that imprisonment. The period of supervised release commences on the date the person is released from confinement pursuant to section 2314.

If a person has been convicted of violating any provision of section 253 other than section 253, subsection 1, paragraph C, the authorized period of supervised release is:

A. Any period of years for a person sentenced as a repeat sexual assault offender pursuant to section 253-A, subsection 1; and [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. For a person not sentenced under section 253-A, subsection 1 or 2, a period not to exceed 10 years for a Class A violation of section 253 and a period not to exceed 6 years for a Class B or Class C violation of section 253.

5. Termination by court. On application of the person on supervised release or the person's probation officer, or on the court's own motion, and if warranted by the conduct of the person, the court may terminate a period of supervised release and discharge the person at any time earlier than that provided in the sentence made pursuant to subsections 1 and 2. A termination and discharge may not be ordered unless notice of the motion is given to the probation officer and the attorney for the State. A termination and discharge relieves the person on supervised release of any obligations imposed by the sentence of supervised release.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to §111, children convicted in adult court can vote once they have reached voting age.

21-A §111. General qualifications

A person who meets the following requirements may vote in any election in a municipality, including a biennial municipal caucus held pursuant to section 311.

1. Citizenship. The person must be a citizen of the United States.
2. Age. The person must be at least 18 years of age, except that, to vote in a political party's primary election or municipal caucus, the person must be at least 18 years of age as of the date of the next general election.
3. Residence. The person must have established and maintain a voting residence in that municipality.
4. Registration. The person must be registered to vote in that municipality.
5. Enrollment. The person must be enrolled in a party in that municipality to vote at that party's caucus, convention or primary election, unless otherwise permitted by the party pursuant to section 340.