



HUMAN RIGHTS *for* KIDS

Alaska 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

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 AK Stat § 47.12.020, there is no minimum age for when a child may be adjudicated delinquent in juvenile court.

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

Full Credit: 1/1

Pursuant to § 47.12.020, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

§ 47.12.020. Jurisdiction.

(a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor is alleged to be or may be determined by a court to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state.

(b) Except as otherwise provided in this chapter, proceedings relating to a person who is 18 years of age or over are governed by this chapter if the person is alleged to have committed a violation of the criminal law of the state or a municipality of the state, the violation occurred when the person was under 18 years of age, and the period of limitation under AS 12.10 has not expired.

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

Credit: 0/1

Pursuant to §47.12.100, the state may seek to transfer a child less than 14 years of age to adult criminal court, and pursuant to §47.12.030 the state must charge a child 16 years of age or older who is accused of specified offenses in adult court.

§ 47.12.100. Waiver of jurisdiction.

(a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as an adult.

(b) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the department for treating the minor.

(c) For purposes of making a determination under this section,

(1) the standard of proof is by a preponderance of the evidence; and

(2) the burden of proof that a minor is not amenable to treatment under this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking to have the court declare a minor a delinquent is based on the minor's alleged commission of an offense that is an unclassified felony or class A felony and that is a crime against a person, the minor

(A) is rebuttably presumed not to be amenable to treatment under this chapter; and
(B) has the burden of proof of showing that the minor is amenable to treatment under this chapter.

§47.12.030. Provisions Inapplicable.

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120 (b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person;

(2) of arson in the first degree;

(3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900 (b); or

(4) that is misconduct involving weapons in the first degree under

(A) AS 11.61.190 (a)(1); or

(B) AS 11.61.190 (a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person.

(b) When a minor is accused of violating a statute specified in this subsection, other than a statute the violation of which is a felony, this chapter and the Alaska Delinquency Rules do not apply and the minor accused of the offense shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult; if a minor is charged, prosecuted, and sentenced for an offense under this

subsection, the minor's parent, guardian, or legal custodian shall be present at all proceedings; the provisions of this subsection apply when a minor is accused of violating

- (1) a traffic statute or regulation, or a traffic ordinance or regulation of a municipality;
 - (2) AS 11.76.105 , relating to the possession of tobacco by a person under 19 years of age;
 - (3) a fish and game statute or regulation under AS 16;
 - (4) a parks and recreational facilities statute or regulation under AS 41.21;
 - (5) AS 04.16.050 , relating to possession, control, or consumption of alcohol, except for conduct constituting habitual minor consuming or in possession or control under AS 04.16.050 (d); and
 - (6) a municipal curfew ordinance, whether adopted under AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its ordinance under AS 29.25.070 (b) by the municipality; in place of any fine imposed for the violation of a municipal curfew ordinance, the court shall allow a defendant the option of performing community work; the value of the community work, which may not be lower than the amount of the fine, shall be determined under AS 12.55.055 (c); in this paragraph, "community work" includes the work described in AS 12.55.055(b) or work that, on the recommendation of the municipal or borough assembly, city council, or traditional village council of the defendant's place of residence, would benefit persons within the municipality or village who are elderly or disabled.
- (c) The provisions of AS 47.12.010 - 47.12.260 and the Alaska Delinquency Rules do not apply to driver's license proceedings under AS 28.15.185; the court shall impose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings.

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 AS §11.41.110, children may be convicted under the felony murder rule.

§11.41.110. Murder in the Second Degree.

- (a) A person commits the crime of murder in the second degree if

(3) under circumstances not amounting to murder in the first degree under AS 11.41.100 (a)(3), while acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, sexual abuse of a minor in the second degree, burglary in the first degree, escape in the first or second degree, robbery in any degree, or misconduct involving a controlled substance under AS 11.71.010 (a), 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants;

7. Ban Life Without Parole Sentences for Kids

Credit: 1/1

There are no statutory provisions authorizing life without parole sentences for children, therefore, Alaska receives credit for this category.

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 §47.12.240 and §47.12.105, children may be incarcerated with adults in adult jails or lockups and adult prisons.

§ 47.12.240. Detention of minors.

(c) Notwithstanding (a) of this section, a minor may be detained in an adult correctional facility, an adult jail, or a temporary secure juvenile holding area if the minor is arrested for criminal charges under AS 47.12.030(a), if the minor is the subject of a petition filed with the court under this chapter seeking adjudication of

the minor as a delinquent minor, or if the minor is in official detention pending the filing of that petition; however, detention in an adult correctional facility, an adult jail, or a temporary secure juvenile holding area under this subsection may not exceed the lesser of

(1) six hours, except under the criteria listed in (e) of this section; or
(2) the time necessary to arrange the minor's transportation to a juvenile detention home or comparable facility for the detention of minors.

(d) When a minor is detained under (c) of this section, the minor shall be

(1) assigned to quarters in a correctional facility or an adult jail that are separate from quarters used to house adult prisoners so that the minor cannot communicate with or view adults who are in official detention;

(2) provided admission, health care, hygiene, and food services and recreation and visitation opportunities separate from services and opportunities provided to adults who are in official detention.

(e) Notwithstanding the limitation on detention set out in (c) of this section, a minor whose detention is authorized by (c) of this section may be detained in a correctional facility for up to 24 hours when the authority having jurisdiction over the minor under this chapter is outside a metropolitan statistical area under the current designation of the United States Bureau of the Census and the authority has no existing acceptable alternative placement available for the minor. The minor may be held in secure custody beyond the 24-hour period if the criteria set out in this subsection are met and if the correctional facility is located where conditions of
(1) distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, in which case the minor may be held for up to an additional 48 hours at the correctional facility;
or

(2) lack of safety exist, such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel, in which case the time for an appearance may be delayed until 24 hours after the time that the conditions become safe.

(f) A detention authorized by (e) of this section may not exceed the time necessary to satisfy the requirement of (c)(2) of this section.

(g) [Repealed, § 42 ch 12 SLA 2006.]

(h) In this section,

(1) “correctional facility” has the meaning given in AS 33.30.901 whether the facility is operated by the state, a municipality, a village, or another entity;

(2) “official detention” has the meaning given in AS 11.81.900.

§47.12.105. Detention of minors waived into adult court

(a) Except as provided in AS 47.12.240, the department, by agreement with the Department of Corrections, shall detain and care for waived minors. The department shall transfer a waived minor to a facility operated by the Department of Corrections when the waived minor reaches 18 years of age.

(b) Except as provided in (c) of this section, a waived minor held in an adult correctional facility for more than four hours to attend court proceedings must be separated by sight and sound from adult offenders.

(c) If there is not an available juvenile detention facility in a community where a trial is being held or if a juvenile facility is inappropriate for a waived minor, the department may request that the court order, in the interest of justice, that a waived minor be held in an adult correctional facility with or without sight and sound separation from adult offenders. In making this decision, the court shall consider

- (1) the age of the waived minor;
- (2) the physical and mental maturity of the waived minor;
- (3) the present mental state of the waived minor, including whether the waived minor presents an imminent risk of harm to self;
- (4) the nature and circumstances of the alleged offense;
- (5) the waived minor's history of prior delinquent acts;
- (6) the relative ability of an available adult or juvenile detention facility to meet the specific needs of the waived minor and protect the safety of the public and other detained minors; and
- (7) other relevant factors.

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to §33.20.040 and §33.16.210, the parole board may discharge a formerly incarcerated child from parole before the expiration of his or her term.

§33.20.040. Released Prisoner.

(a) Except as provided in (c) of this section, a prisoner released under AS 33.20.030 shall be released on mandatory parole to the custody and jurisdiction of the parole board under AS 33.16, until the expiration of the maximum term to which the prisoner was sentenced, if the term or terms of imprisonment are two years or more. However, a prisoner released on mandatory parole may be discharged under AS 33.16.210 before the expiration of the term. A prisoner who was sentenced to a term or terms of imprisonment of less than two years shall be unconditionally discharged from mandatory parole.

(b) This section does not prevent delivery of a prisoner to the authorities of a state or the United States entitled to the custody of the prisoner.

(c) If a prisoner's sentence includes a residual period of probation, the probationary period shall run concurrently with a period of mandatory parole for that sentence and the prisoner shall be under the concurrent jurisdiction of the court and the parole board. Nothing in this section precludes both the court and the parole board from revoking the prisoner's probation and mandatory parole for the same conduct. A period of imprisonment resulting from the revocation of probation or mandatory

parole may be imposed consecutively in the discretion of the court or the parole board.

§33.16.210. Discharge of Parolee.

(a) The board may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed two years of parole. A discretionary parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation.

(b) Notwithstanding (a) of this section, the board may unconditionally discharge a mandatory parolee before the parolee has completed two years of parole if the parolee is serving a concurrent period of residual probation under AS 33.20.040 (c), and the period of residual probation and the period of suspended imprisonment each equal or exceed the period of mandatory parole.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to § 33.16.210, the parole board may discharge a parolee from parole allowing him or her to register to vote pursuant to § 15.05.030.

§15.05.030. Loss and Restoration of Voting Rights.

(a) A person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law may not vote in a state, federal, or municipal election from the date of the conviction through the date of the unconditional discharge of the person. Upon the unconditional discharge, the person may register under AS 15.07.

(b) The commissioner of corrections shall establish procedures by which a person unconditionally discharged is advised of the voter registration requirements and procedures.