



# HUMAN RIGHTS *for* KIDS

## Maryland 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>	7.5 out of 12
<b>TIER RATING:</b>	2

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

Full Credit: 1/1

Pursuant to §3-8A-14.2, all children under 18 years of age must consult with legal counsel prior to waiving their Miranda rights.

#### § 3-8A-14.2. Custodial interrogation of children

(b) A law enforcement officer may not conduct a custodial interrogation of a child until:

(1) The child has consulted with an attorney who is:

- (i) Retained by the parent, guardian, or custodian of the child; or
- (ii) Provided by the Office of the Public Defender; and
- (2) The law enforcement officer has made an effort reasonably calculated to give actual notice to the parent, guardian, or custodian of the child that the child will be interrogated.
- (c) A consultation with an attorney under this section:
  - (1) Shall be: (i) Conducted in a manner consistent with the Maryland Rules of Professional Conduct; and (ii) Confidential; and
  - (2) May be: (i) In person; or (ii) By telephone or video conference.
- (d) To the extent practicable and consistent with the Maryland Rules of Professional Conduct, an attorney providing consultation under this section shall communicate and coordinate with the parent, guardian, or custodian of the child in custody.
- (e) The requirement of consultation with an attorney under this section:
  - (1) May not be waived; and
  - (2) Applies regardless of whether the child is proceeded against as a child under this subtitle or is charged as an adult.
- (f)(1) A law enforcement agency conducting an interrogation under this section shall maintain a record of the notification or attempted notification of a parent, guardian, or custodian under this section, including:
  - (i) A signed statement by a duly authorized law enforcement officer employed by the agency that an attempt to notify a parent, guardian, or custodian was made;
  - (ii) The name of the person sought to be notified; and
  - (iii) The method of attempted notification.
- (2)(i) A law enforcement agency conducting an interrogation under this section shall maintain a record of the name of the attorney contacted and the county or counties in which the attorney provided the consultation.
- (ii) An attorney contacted to provide legal consultation to a child under this subtitle shall provide to a law enforcement officer the information required for the record required to be maintained under subparagraph (i) of this paragraph.
- (g)(1) Notwithstanding the requirements of this section, a law enforcement officer may conduct an otherwise lawful custodial interrogation of a child if:
  - (i) The law enforcement officer reasonably believes that the information sought is necessary to protect against a threat to public safety; and
  - (ii) The questions posed to the child by the law enforcement officer are limited to those questions reasonably necessary to obtain the information necessary to protect against the threat to public safety.
- (2)(i) Unless it is impossible, impracticable, or unsafe to do so, an interrogation conducted under paragraph (1) of this subsection shall be recorded.
- (ii) In a jurisdiction that has adopted the use of body-worn digital recording devices by law enforcement officers, the interrogation of a child may be recorded using a body-worn digital recording device in a manner that is consistent with departmental policies regarding the use of body-worn digital recording devices.
- (iii) In a jurisdiction that has not adopted the use of body-worn digital recording devices, the interrogation of a child may be recorded using other video and audio

recording technology in a manner that is consistent with any policies of the law enforcement agency regarding the use of video and audio recording technology.

(iv) A child being interrogated under this subsection shall be informed if the interrogation is being recorded.

(h)(1) There is a rebuttable presumption that a statement made by a child during a custodial interrogation is inadmissible in a delinquency proceeding or a criminal prosecution against that child if a law enforcement officer willfully failed to comply with the requirements of this section.

(2) The State may overcome the presumption by showing, by clear and convincing evidence, that the statement was made knowingly, intelligently, and voluntarily.

(3) This subsection may not be construed to render a statement by that child inadmissible in a proceeding against another individual.

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

Full Credit: 1/1

Pursuant to § 3-8A-03, only children 10 years of age or older may be adjudicated delinquent in juvenile court.

### **§3-8A-03.**

(a) In addition to the jurisdiction specified in Subtitle 8 of this title, the court has exclusive original jurisdiction over:

(1) A child:

(i) Who is at least 13 years old alleged to be delinquent; or

(ii) Except as provided in subsection (d) of this section, who is at least 10 years old alleged to have committed an act:

1. That, if committed by an adult, would constitute a crime of violence, as defined in § 14-101 of the Criminal Law Article; or

2. Arising out of the same incident as an act listed in item 1 of this item;

(2) A child who is in need of supervision;

(3) A child who has received a citation for a violation;

(4) Except as provided in subsection (d)(6) of this section, a peace order proceeding in which the respondent is a child; and

(5) Proceedings arising under the Interstate Compact on Juveniles.

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

Full Credit: 1/1

Pursuant to § 3-8A-01, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

### **§ 3-8A-01 - Definitions**

(a) In this subtitle the following words have the meanings indicated, unless the context of their use indicates otherwise.

(d) "Child" means an individual under the age of 18 years.

(l) "Delinquent act" means an act which would be a crime if committed by an adult.

(m) "Delinquent child" is a child who has committed a delinquent act and requires guidance, treatment, or rehabilitation.

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

Partial Credit: .5/1

Pursuant to §3-8A-06, the state may seek to transfer a child less than 14 years of age to adult criminal court, and pursuant to §3-8A-03 a child 14 years of age or older who is accused of specified offenses must be tried in adult court.

### **§3-8A-03**

(d) The court does not have jurisdiction over:

(1) A child at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;

(2) A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;

(3) A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration;

(4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article:

(i) Abduction;

(ii) Kidnapping;

(iii) Second degree murder;

(iv) Manslaughter, except involuntary manslaughter;

(v) Second degree rape;

(vi) Robbery under § 3-403 of the Criminal Law Article;

(vii) Third degree sexual offense under § 3-307(a)(1) of the Criminal Law Article;

(viii) A crime in violation of § 5-133, § 5-134, § 5-138, or § 5-203 of the Public Safety Article;

- (ix) Using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5–621 of the Criminal Law Article;
- (x) Use of a firearm under § 5–622 of the Criminal Law Article;
- (xi) Carjacking or armed carjacking under § 3–405 of the Criminal Law Article;
- (xii) Assault in the first degree under § 3–202 of the Criminal Law Article;
- (xiii) Attempted murder in the second degree under § 2–206 of the Criminal Law Article;
- (xiv) Attempted rape in the second degree under § 3–310 of the Criminal Law Article;
- (xv) Attempted robbery under § 3–403 of the Criminal Law Article; or
- (xvi) A violation of § 4–203, § 4–204, § 4–404, or § 4–405 of the Criminal Law Article;
- (5) A child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult, unless an order removing the proceeding to the court has been filed under § 4–202 of the Criminal Procedure Article;
- (6) A peace order proceeding in which the victim, as defined in § 3–8A–01(cc)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4–501 of the Family Law Article; or
- (7) Except as provided in subsection (a)(1)(ii) of this section, a delinquency proceeding against a child who is under the age of 13 years.
- (e) If the child is charged with two or more violations of the Maryland Vehicle Law, another traffic law or ordinance, or the State Boat Act, allegedly arising out of the same incident and which would result in the child being brought before both the court and a court exercising criminal jurisdiction, the court has exclusive jurisdiction over all of the charges.
- (f) A child under the age of 13 years may not be charged with a crime.

**§3–8A–06.**

- (a) The court may waive the exclusive jurisdiction conferred by § 3–8A–03 of this subtitle with respect to a petition alleging delinquency by:
  - (1) A child who is 15 years old or older; or
  - (2) A child who has not reached his 15th birthday, but who is charged with committing an act that, if committed by an adult, would be punishable by life imprisonment.
- (b) The court may not waive its jurisdiction under this section until after it has conducted a waiver hearing, held prior to an adjudicatory hearing and after notice has been given to all parties as prescribed by the Maryland Rules. The waiver hearing is solely to determine whether the court should waive its jurisdiction.
- (c) (1) Notice of the waiver hearing shall be given to a victim as provided under § 11-104 of the Criminal Procedure Article.
- (2) (i) A victim may submit a victim impact statement to the court as provided in § 11-402 of the Criminal Procedure Article.

(ii) This paragraph does not preclude a victim who has not filed a notification request form under § 11-104 of the Criminal Procedure Article from submitting a victim impact statement to the court.

(iii) The court may consider a victim impact statement in determining whether to waive jurisdiction under this section.

(d) (1) The court may not waive its jurisdiction under this section unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures.

(2) For purposes of determining whether to waive its jurisdiction under this section, the court shall assume that the child committed the delinquent act alleged.

(e) In making its determination, the court shall consider the following criteria individually and in relation to each other on the record:

(1) Age of the child;

(2) Mental and physical condition of the child;

(3) The child's amenability to treatment in any institution, facility, or program available to delinquents;

(4) The nature of the offense and the child's alleged participation in it; and

(5) The public safety.

(f) If jurisdiction is waived under this section, the court shall order the child held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult. The petition alleging delinquency shall be considered a charging document for purposes of detaining the child pending a bail hearing.

(g) An order waiving jurisdiction is interlocutory.

(h) If the court has once waived its jurisdiction with respect to a child in accordance with this section, and that child is subsequently brought before the court on another charge of delinquency, the court may waive its jurisdiction in the subsequent proceeding after summary review.

## **5. Ban Mandatory Minimum Sentencing for Kids**

Full Credit: 1/1

Pursuant to §6-235, judges may depart from mandatory minimum sentences when sentencing a child in adult court.

### **§6-235. Sentencing a minor convicted as an adult.**

Notwithstanding any other provision of law, when sentencing a minor convicted as an adult, a court:

(1) May impose a sentence less than the minimum term required under law.

## **6. Ban Felony-Murder Rule for Kids**

No Credit: 0/1

Pursuant to §2-201, a child may be convicted under the felony murder rule.

### **§ 2-201 Murder in the first degree**

(a) A murder is in the first degree if it is:

- (1) a deliberate, premeditated, and willful killing;
- (2) committed by lying in wait;
- (3) committed by poison; or
- (4) committed in the perpetration of or an attempt to perpetrate:
  - (i) arson in the first degree;
  - (ii) burning a barn, stable, tobacco house, warehouse, or other outbuilding that:
    1. is not parcel to a dwelling; and
    2. contains cattle, goods, wares, merchandise, horses, grain, hay, or tobacco;
  - (iii) burglary in the first, second, or third degree;
  - (iv) carjacking or armed carjacking;
  - (v) escape in the first degree from a State correctional facility or a local correctional facility;
  - (vi) kidnapping under § 3-502 or § 3-503(a)(2) of this article;
  - (vii) mayhem;
  - (viii) rape;
  - (ix) robbery under § 3-402 or § 3-403 of this article;
  - (x) sexual offense in the first or second degree;
  - (xi) sodomy as that crime existed before October 1, 2020; or
  - (xii) a violation of § 4-503 of this article concerning destructive devices.
- (b) (1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:
  - (i) imprisonment for life without the possibility of parole; or
  - (ii) imprisonment for life.

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

Full Credit: 1/1

Pursuant to §6-235, a child may not be sentenced to life without parole.

### **§6-235. Sentencing a minor convicted as an adult.**

Notwithstanding any other provision of law, when sentencing a minor convicted as an adult, a court:

- (2) May not impose a sentence of life without the possibility of parole or release.

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

Full Credit: 1/1

Pursuant to §8-110, all children convicted as adults before October 1, 2021 who have served at least 20 years may file a motion for a reduction of their sentence.

### **§8-110. Motion to reduce duration of sentence filed by minor convicted as an adult**

(a) This section applies only to an individual who:

(1) was convicted as an adult for an offense committed when the individual was a minor;

(2) was sentenced for the offense before October 1, 2021; and

(3) has been imprisoned for at least 20 years for the offense.

(b) (1) An individual described in subsection (a) of this section may file a motion with the court to reduce the duration of the sentence.

(2) A court shall conduct a hearing on a motion to reduce the duration of a sentence.

(3) (i) The individual shall be present at the hearing, unless the individual waives the right to be present.

(ii) The requirement that the individual be present at the hearing is satisfied if the hearing is conducted by video conference.

(4) (i) The individual may introduce evidence in support of the motion at the hearing.

(ii) The State may introduce evidence in support of or in opposition to the motion at the hearing.

(5) Notice of the hearing under this subsection shall be given to the victim or the victim's representative as provided in §§ 11-104 and 11-503 of this article.

(c) Notwithstanding any other provision of law, after a hearing under subsection (b) of this section, the court may reduce the duration of a sentence imposed on an individual for an offense committed when the individual was a minor if (1) the individual is not a danger to the public; and

(2) the interests of justice will be better served by a reduced sentence (d) A court shall consider the following factors when determining whether to reduce the duration of a sentence under this section:

(1) the individual's age at the time of the offense;

(2) the nature of the offense and the history and characteristics of the individual;

(3) whether the individual has substantially complied with the rules of the institution in which the individual has been confined;

(4) whether the individual has completed an educational, vocational, or other program;

(5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction;

(6) any statement offered by a victim or a victim's representative;

(7) any report of a physical, mental, or behavioral examination of the individual conducted by a health professional;



- (8) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse , or involvement in the child welfare system;
  - (9) the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense;
  - (10) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences; and
  - (11) any other factor the court deems relevant.
- (e) (1) The court shall issue its decision to grant or deny a motion to reduce the duration of a sentence in writing.
- (2) The decision shall address the factors listed in subsection (d) of this section.
- (f) (1) If the court denies or grants, in part, a motion to reduce the duration of a sentence under this section, the individual may not file a second motion to reduce the duration of that sentence for at least 3 years.
- (2) If the court denies or grants, in part, a second motion to reduce the duration of a sentence, the individual may not file a third motion to reduce the duration of that sentence for at least 3 years.
- (3) With regard to any specific sentence, an individual may not file a fourth motion to reduce the duration of the sentence.

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

No Credit: 0/1

Pursuant to §9-614.1 a child may be placed in “restrictive housing” for punishment or protection upon a finding by “clear and convincing evidence” that such placement is necessary due to an immediate risk of physical harm or security of the facility. As a result, Maryland receives no credit.

### **§ 9-614.1 - Placing minor in restrictive housing**

- (a) In this section, "restrictive housing" has the meaning stated in § 9-614 of this subtitle.
- (b) This section applies to a facility operated by a correctional unit, as defined in § 2-401 of this article.
- (c) A minor may not be placed in restrictive housing unless the managing official of the facility finds by clear and convincing evidence that there is an immediate and substantial risk:
- (1) of physical harm to the minor, other inmates, or staff; or
  - (2) to the security of the facility.
- (d) A minor placed in restrictive housing shall be provided:
- (1) daily physical and mental health assessments to determine whether the minor may be released from restrictive housing;
  - (2) the same standard of access that is provided to inmates not in restrictive housing to:
    - (i) phone calls;

- (ii) visits;
  - (iii) mail;
  - (iv) food;
  - (v) water;
  - (vi) showers;
  - (vii) sanitary supplies;
  - (viii) property, including clothing and bedding; and
  - (ix) medical, mental, and dental health care; and
- (3) unless it would pose a risk of physical harm to the minor or another, maximized access to recreation, education, and programming.
- (e) If a privilege or condition described in subsection (d) of this section is not provided to the minor, the managing official or the managing official's designee shall record the reason in the minor's file.

**§ 9-614 - Restrictive housing reports.**

- (a) "Restrictive housing" defined. --
- (1) In this section, "restrictive housing" means a form of physical separation in which the inmate is placed in a locked room or cell for approximately 22 hours or more out of a 24-hour period.
- (2) "Restrictive housing" includes administrative segregation and disciplinary segregation.

**§2-401 – Definitions**

- (a) In this subtitle the following words have the meanings indicated.
- (b)(1) “Correctional unit” means a unit of Maryland State or local government that is directly responsible for the care, custody, and control of individuals committed to the custody of the unit for the commission or alleged commission of a crime or an act that would be a crime if committed by an adult.
- (2) “Correctional unit” includes:
- (i) the Department of Public Safety and Correctional Services;
  - (ii) the Department of Juvenile Services; and
  - (iii) the office of the sheriff of a county or other unit of government with responsibility for operating a local correctional facility or county detention center.

**10. Ban Incarcerating Kids with Adults**

No Credit: 0/1

Pursuant to §3-8A-16, children may be detained or confined in an adult jail or lockup. Additionally, there is no prohibition on incarcerating children in adult prisons.

**§ 3-8A-16 - Transfer to other facilities**

(a) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court or the intake officer immediately when a person, who is or appears to be under the age of 18 years, is received at the facility and shall deliver him to the court upon request or transfer him to the facility designated by the intake officer or the court, unless the court has waived its jurisdiction with respect to the person and he is being proceeded against as an adult.

(b) When a case is transferred to another court for criminal prosecution, the child shall promptly be transferred to the appropriate officer or adult detention facility in accordance with the law governing the detention of persons charged with crime.

(c) A child may not be transported together with adults who have been charged with or convicted of a crime unless the court has waived its jurisdiction and the child is being proceeded against as an adult.

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

No Credit: 0/1

Pursuant to §7-308, formerly incarcerated children serving lifetime or other lengthy parole terms remain in legal custody for the duration of their full sentence.

### **§ 7-308 - Parole order**

(a) Written order. - A parole shall be evidenced by a written order.

(b) Effect of order. - Parole entitles the recipient:

(1) to leave the correctional facility in which the recipient was confined; and

(2) if the recipient satisfactorily complies with all the terms and conditions provided in the parole order, to serve the remainder of the recipient's term of confinement outside the confines of the correctional facility.

(c) A parolee remains in legal custody until the expiration of the parolee's full, undiminished term.

### **§ 7-502. Legal custody.**

(a) In general. - An individual on mandatory supervision remains in legal custody until the expiration of the individual's full term.

(b) Applicability of laws, rules, regulations, and conditions relating to parolees. - An individual on mandatory supervision is subject to:

(1) all laws, rules, regulations, and conditions that apply to parolees; and

(2) any special conditions established by a commissioner.

(c) Application for diminution credits. - If an inmate is convicted and sentenced to imprisonment for a crime committed while on mandatory supervision and the mandatory supervision is revoked, diminution credits that were awarded before the inmate's release on mandatory supervision may not be applied toward the inmate's term of confinement on return to the Division.

## **12. Voting Rights Restoration**

Full Credit: 1/1

Pursuant to §3-102, formerly incarcerated children who have reached voting age can vote after they have been discharged from imprisonment.

### **§ 3-102 - Qualifications for voter registration**

(a) (1) Except as provided in subsection (b) of this section, an individual may become registered to vote if the individual:

- (i) is a citizen of the United States;
- (ii) is at least 16 years old;
- (iii) is a resident of the State as of the day the individual seeks to register; and
- (iv) registers pursuant to this title.

(2) Notwithstanding paragraph (1)(ii) of this subsection, an individual under the age of 18 years:

- (i) may vote in a primary election in which candidates are nominated for a general or special election that will occur when the individual is at least 18 years old; and
- (ii) may not vote in any other election.

(b) An individual is not qualified to be a registered voter if the individual:

- (1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction;
- (2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process; or
- (3) has been convicted of buying or selling votes.