



HUMAN RIGHTS *for* KIDS

Massachusetts 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:	6 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

Full Credit: 1/1

Pursuant to Section 119:52, only children 12 years of age or older may be adjudicated delinquent in the juvenile justice system.

119 §52 - Definitions

The following words as used in the following sections shall, except as otherwise specifically provided, have the following meanings:

"Court", a division of the juvenile court department.

"Delinquent child", a child between 12 and 18 years of age who commits any offense against a law of the commonwealth; provided, however, that such offense shall not include a civil infraction, a violation of any municipal ordinance or town by-law or a first offense of a misdemeanor for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment.

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

Full Credit: 1/1

Pursuant to Section 119:74, the jurisdiction of the juvenile court for delinquent acts extends to anyone under 18 except for children older than 14 but not yet 18 who are charged with first or second degree murder.

Section 119:74: Limitations on criminal proceedings against children

Except as hereinafter provided and as provided in sections fifty-two to eighty-four, inclusive, no criminal proceeding shall be begun against any person who prior to his eighteenth birthday commits an offense against the laws of the commonwealth or who violates any city ordinance or town by-law, provided, however, that a criminal complaint alleging violation of any city ordinance or town by-law regulating the operation of motor vehicles, which is not capable of being judicially heard and determined as a civil motor vehicle infraction pursuant to the provisions of chapter ninety C may issue against a child between sixteen and 18 years of age without first proceeding against him as a delinquent child.

The juvenile court shall not have jurisdiction over a person who had at the time of the offense attained the age of fourteen but not yet attained the age of 18 who is charged with committing murder in the first or second degree. Complaints and indictments brought against persons for such offenses, and for other criminal offenses properly joined under Massachusetts Rules of Criminal Procedure 9 (a) (1), shall be brought in accordance with the usual course and manner of criminal proceedings.

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 (a)

Pursuant to Section 119:74, children 14 years of age or older who are alleged to have committed murder are automatically prosecuted as adults. Because child status is not always considered prior to proceeding in adult court, Massachusetts receives partial credit.

Section 119:74: Limitations on criminal proceedings against children

Except as hereinafter provided and as provided in sections fifty-two to eighty-four, inclusive, no criminal proceeding shall be begun against any person who prior to his eighteenth birthday commits an offense against the laws of the commonwealth or who violates any city ordinance or town by-law, provided, however, that a criminal complaint alleging violation of any city ordinance or town by-law regulating the operation of motor vehicles, which is not capable of being judicially heard and determined as a civil motor vehicle infraction pursuant to the provisions of chapter ninety C may issue against a child between sixteen and 18 years of age without first proceeding against him as a delinquent child.

The juvenile court shall not have jurisdiction over a person who had at the time of the offense attained the age of fourteen but not yet attained the age of 18 who is charged with committing murder in the first or second degree. Complaints and indictments brought against persons for such offenses, and for other criminal offenses properly joined under Massachusetts Rules of Criminal Procedure 9 (a) (1), shall be brought in accordance with the usual course and manner of criminal 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 Section 265:1, a child may be convicted under the felony murder rule.

Section 265:1 - Murder defined

Murder committed with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a

crime punishable with death or imprisonment for life, is murder in the first degree. Murder which does not appear to be in the first degree is murder in the second degree. Petit treason shall be prosecuted and punished as murder. The degree of murder shall be found by the jury.

7. Ban Life Without Parole Sentences for Kids

Full Credit: 1/1

Pursuant to Section 265:2, a child may not be sentenced to life without parole.

Section 265:2 Punishment for murder; parole; executive clemency

(a) Except as provided in subsection (b), any person who is found guilty of murder in the first degree shall be punished by imprisonment in the state prison for life and shall not be eligible for parole pursuant to section 133A of chapter 127.

(b) Any person who is found guilty of murder in the first degree who committed the offense on or after the person's fourteenth birthday and before the person's eighteenth birthday shall be punished by imprisonment in the state prison for life and shall be eligible for parole after the term of years fixed by the court pursuant to section 24 of chapter 279.

(c) Any person who is found guilty of murder in the second degree shall be punished by imprisonment in the state prison for life and shall be eligible for parole after the term of years fixed by the court pursuant to section 24 of chapter 279.

(d) Any person whose sentence for murder is commuted by the governor and council pursuant to section 152 of chapter 127 shall thereafter be subject to the laws governing parole.

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 Section 10B, solitary confinement is prohibited for children in juvenile detention facilities, but such protections are not in place for children in adult facilities. Therefore, Massachusetts receives partial credit.

Section 120:10B - Involuntary room confinement prohibited

A person detained by and committed to the department of youth services shall not be placed in involuntary room confinement as a punishment, harassment or consequence for noncompliance or in retaliation for any conduct.

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to Section 72B and Section 87, children may be held in adult correctional facilities.

Section 119:72B - Persons between the ages of fourteen and eighteen convicted of murder; penalties

A person who is found guilty of murder and is sentenced to a state prison but who has not yet reached his eighteenth birthday shall be held in a youthful offender unit separate from the general population of adult prisoners; provided, however, that such person shall be classified at a facility other than the reception and diagnostic center at the Massachusetts Correctional Institution, Concord, and shall not be held at the Massachusetts Correctional Institution, Cedar Junction, prior to his eighteenth birthday.

The department of correction shall not limit access to programming and treatment including, but not limited to, education, substance abuse, anger management and vocational training for youthful offenders, as defined in section 52, solely because of their crimes or the duration of their incarcerations. If the youthful offender qualifies for placement in a minimum security correctional facility based on objective measures determined by the department, the placement shall not be categorically barred based on a life sentence.

Section 119:87 - Placement of juvenile in secure detention facility or secure correctional facility or in any institution in which juvenile has contact with adult inmates

(a) The department of youth services and the department of correction shall not place in a secure detention facility or secure correctional facility any juvenile who has: (1) been charged with or who has committed an offense that would not be criminal if committed by an adult, except juveniles who are held in accordance with the interstate compact on juveniles, as enacted by the commonwealth; (2) not been charged with any offense; or (3) been alleged to be dependent on the court, neglected or abused.

(b) The department of youth services and the department of correction shall not detain or confine any juvenile identified subsection (a) or any juvenile alleged to be or found to be delinquent in any institution in which they have contact with adult inmates; and shall require that individuals employed by the department of youth services or the department of corrections who work with both juveniles and adult

inmates be trained and certified to work with juveniles by the department of youth services.

The department of youth services and the department of correction shall promulgate regulations and policies for the implementation, administration and enforcement of this section and maintain adequate records to ensure compliance with this section.

Section 119:66 - Detention of child in police station; commitment to jail, house of correction or state farm

Except as otherwise provided in section sixty-seven and in section twelve of chapter one hundred and twenty, no child under 18 years of age shall be detained by the police in a lockup, police station or house of detention pending arraignment, examination or trial by the court. No child under 18 years of age shall be committed by the court to a jail or house of correction or to the state farm, pending further examination or trial by the court or pending any continuance of his case or, except as otherwise provided in sections fifty-two through eighty-four upon adjudication as a youthful offender.

Section 119:67 - Notice of arrest of child; release upon promise of child's appearance in court; detention

(a) Whenever a child between 12 and 18 years of age is arrested with or without a warrant, as provided by law, and the court or courts having jurisdiction over the offense are not in session, the officer in charge shall immediately notify at least 1 of the child's parents, or, if there is no parent, the guardian or custodian with whom the child resides or if the child is in the custody and care of the department, the department of children and families. Pending such notice, such child shall be detained pursuant to subsection (c).

(b) Upon the acceptance by the officer in charge of the police station or town lockup of the written promise of the parent, guardian, custodian or representative of the department of children and families to be responsible for the presence of the child in court at the time and place when the child is ordered to appear, the child shall be released to the person giving such promise; provided, however, that if the arresting officer requests in writing that a child between 14 and 18 years of age be detained, and if the court issuing a warrant for the arrest of a child between 14 and 18 years of age directs in the warrant that the child shall be held in safekeeping pending the child's appearance in court, the child shall be detained in a police station, town lockup, a place of temporary custody commonly referred to as a detention home of the department of youth services or any other home approved by the department of youth services pending the child's appearance in court; provided further, that in the event any child is so detained, the officer in charge of the police station or town lockup shall notify the parents, guardian, custodian or representative of the department of children and families of the detention of the child. Nothing contained in this section shall prevent the admitting of such child to bail in accordance with law.

(c) No child between 14 and 18 years of age shall be detained in a police station or town lockup pursuant to subsection (a) or (b) unless the detention facilities for children at the police station or town lockup have received the approval in writing of the commissioner of youth services. The department of youth services shall make inspection at least annually of police stations and town lockups where children are detained. If no approved detention facility exists in a city or town, the city or town may contract with an adjacent city or town for the use of approved detention facilities to prevent children who are detained from coming in contact with adult prisoners. A separate and distinct place shall be provided in police stations, town lockups or places of detention for such children. Nothing in this section shall permit a child between 14 and 18 years of age to be detained in a jail or house of correction.

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to Section 5, formerly incarcerated children may be discharged from parole through good time deductions or if their parole term is terminated at the discretion of the Parole Board.

Section 27:5 - Parole board; powers and duties

The parole board shall (a) within its jurisdiction, as defined in section one hundred and twenty-eight of chapter one hundred and twenty-seven, determine which prisoners in the correctional institutions of the commonwealth or in jails or houses of correction may be released on parole, and when and under what conditions, and the power within such jurisdiction to grant a parole permit to any prisoner, and to revoke, revise, alter or amend the same, and the terms and conditions on which it was granted shall remain in the parole board until the expiration of the maximum term of the sentence or sentences for the service of which such prisoner was committed, or until the date which has been determined by deductions from the maximum term of his sentence or sentences for good conduct, or unless otherwise terminated; (b) supervise all prisoners released on parole permits granted by it, make such investigations as may be necessary in connection therewith, determine whether violation of parole terms and conditions exist in specific cases, decide the action to be taken with reference thereto, and aid paroled prisoners to secure employment; (c) be the advisory board of pardons with the power and duties in relation thereto set forth in section one hundred and fifty-four of chapter one hundred and twenty-seven; (d) supervise all prisoners pardoned on parole conditions, and report to the governor violations by any such prisoner of the parole conditions applicable to his pardon; (e) make rules relative to the performance of its duties, the calling and conduct of meetings and for the conduct of its employees in the performance of their duties; (f) print its rules and the statutes relating to its powers and duties, in convenient form, from time to time, and annually during the month of January mail or deliver one copy thereof to each justice of the superior and

district courts, each sheriff and to the master, keeper or principal officer of each penal institution in the commonwealth, and two hundred copies thereof to the board of probation; (g) make an annual report to the commissioner; (h) employ subject to appropriation and the requirements of chapter thirty and chapter thirty-one an executive secretary and such hearing officers, clerks, attorneys, and other employees and consultants as the work of the parole board may require.

Any three members of the board may be appointed by the chairman to act as the parole board for the purpose of granting or revocation of paroles; provided, however, that for the purpose of considering hearing officer recommendations to the board under paragraph (b) of section one hundred and thirty-four of chapter one hundred and twenty-seven, any single member of the board may be so appointed. The chairman may also designate any member to act in his absence as the executive and administrative head of the board.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to Section 1, formerly incarcerated children who have reached voting age can vote after they have been discharged from imprisonment.

Section 51:1 - Qualifications of voters

Every citizen eighteen years of age or older, not being a person under guardianship or incarcerated in a correctional facility due to a felony conviction, and not being temporarily or permanently disqualified by law because of corrupt practices in respect to elections, who is a resident in the city or town where he claims the right to vote at the time he registers, and who has complied with the requirements of this chapter, may have his name entered on the list of voters in such city or town, and may vote therein in any such election, or except insofar as restricted in any town in which a representative town meeting form of government has been established, in any meeting held for the transaction of town affairs. Notwithstanding any special law to the contrary, every such citizen who resides within the boundaries of any district, as defined in section one A of chapter forty-one, may vote for district officers and in any district meeting thereof, and no other person may so vote. A person otherwise qualified to vote for national or state officers shall not, by reason of a change of residence within the commonwealth, be disqualified from voting for such national or state officers in the city or town from which he has removed his residence until the expiration of 6 months from such removal.