



HUMAN RIGHTS *for* KIDS

New Hampshire 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:	3 out of 12
TIER RATING:	4

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 SB 96 which was enacted in 2021, children under 13 cannot be prosecuted for non-violent offenses. However, there is no minimum age requirement for children who commit violent offenses.

§169-B:2 Definitions. –

IV. "Delinquent" means a person who has committed an offense before reaching the age of 18 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, or which is a violation of RSA 318-B:2-c, II or III, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof. No person under 13 years of age shall be subject to proceedings under this chapter unless such person has committed a violent crime as defined in RSA 169-B:35-a, I(c). This provision shall not be construed to limit the filing of a petition for any minor child under RSA 169-D.

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

Full Credit: 1/1

Pursuant to §169-B:2, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

§169-B:2 Definitions. –

In this chapter:

IV. "Delinquent" means a person who has committed an offense before reaching the age of 18 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, or which is a violation of RSA 318-B:2-c, II or III, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof.

VI. "Minor" means a person under the age of 18.

§169-B:3 Jurisdiction. – The court shall have exclusive original jurisdiction over all proceedings alleging delinquency.

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 §169-B:24, the prosecution may seek to transfer a child less than 14 years of age to adult criminal court. Additionally, for a child over the age of 15

charged with specified offenses there is a presumption that all factors of a hearing have been met to support transfer. Further, pursuant to §169-B:27, a case involving a child that has previously been convicted as an adult must proceed in adult criminal court. Therefore, New Hampshire receives no credit.

§169-B:24 Transfer to Superior Court. –

I. All cases before the court in which the offense complained of constitutes a felony or would amount to a felony in the case of an adult may be transferred to the superior court prior to hearing under RSA 169-B:16 as provided in this section. The court shall conduct a hearing on the question of transfer and shall consider, but not be limited to, the following criteria in determining whether a case should be transferred:

- (a) The seriousness of the alleged offense to the community and whether the protection of the community requires transfer.
- (b) The aggressive, violent, premeditated, or willful nature of the alleged offense.
- (c) Whether the alleged offense was committed against persons or property.
- (d) The prospective merit of the complaint.
- (e) The desirability of trial and disposition of the entire offense in one court if the minor's associates in the alleged offense were adults who will be charged with a crime.
- (f) The sophistication and maturity of the minor.
- (g) The minor's prior record and prior contacts with law enforcement agencies.
- (h) The prospects of adequate protection of the public, and the likelihood of reasonable rehabilitation of the minor through the juvenile court system.

II. The minor shall be entitled to the assistance of counsel. Both the prosecutor and counsel for the minor shall have access to the court records, probation reports, or other agency reports. If the court orders transfer to superior court, it shall provide a written statement of findings and reasons for such transfer to the minor. When persons so certified are accepted by the superior court, the superior court may dispose of all criminal charges arising out of the incident which led to the transfer petition according to the relevant laws of this state without any limitations as to sentence or orders required by this chapter. All original papers in transferred cases shall remain in the court from which transferred and certified copies of the papers shall be filed with and shall constitute the records of the court to which transfer is made. Pending disposition by the superior court, a juvenile who is transferred and accepted by the superior court may be placed under the supervision of the department of corrections or required to recognize with sufficient sureties, or in default of such sureties, be detained at a county correctional facility or the youth development center to await disposition of the case in the superior court.

III. Upon the filing of a petition for transfer to the superior court, the court shall conduct a scheduling hearing and establish a scheduling order for all future hearings necessary to the transfer petition, notwithstanding the provisions of RSA 169-B:14, II.

IV. When the felony offense charged is first degree murder, second degree murder,

attempted murder, manslaughter, first degree assault, second degree assault (except when the allegation is a violation of RSA 631:2, I(d)), aggravated felonious sexual assault, kidnapping, criminal restraint, robbery punishable as a class A felony, a violation of RSA 318-B:26, I(a) or (b), or negligent homicide under RSA 630:3, II, or when the minor is charged with any felony and, prior to the filing of the felony petition, the minor has been petitioned to the court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses, and the minor commits the act after the minor's fifteenth birthday, there shall be a presumption that the factors listed in RSA 169-B:24, I support transfer to the superior court.

§169-B:27 Treatment of Juvenile as Adult. – Any minor who has been tried and convicted as an adult shall henceforth be treated as an adult for all purposes in connection with any criminal offense with which said minor may be charged.

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.

§169-B:27 Treatment of Juvenile as Adult. – Any minor who has been tried and convicted as an adult shall henceforth be treated as an adult for all purposes in connection with any criminal offense with which said minor may be charged.

6. Ban Felony-Murder Rule for Kids

No Credit: 0/1

Pursuant to AS §630:1-a, children may be convicted under the felony murder rule.

§630:1-a First Degree Murder. –

I. A person is guilty of murder in the first degree if he:

(a) Purposely causes the death of another; or

(b) Knowingly causes the death of:

(1) Another before, after, while engaged in the commission of, or while attempting to commit felonious sexual assault as defined in RSA 632-A:3;

(2) Another before, after, while engaged in the commission of, or while attempting to commit robbery or burglary while armed with a deadly weapon, the death being caused by the use of such weapon;

(3) Another in perpetrating or attempting to perpetrate arson as defined in RSA 634:1, I, II, or III;

(4) The president or president-elect or vice-president or vice-president-elect of the United States, the governor or governor-elect of New Hampshire or any state or any member or member-elect of the congress of the United States, or any candidate for such office after such candidate has been nominated at his party's primary, when such killing is motivated by knowledge of the foregoing capacity of the victim.

II. For the purpose of RSA 630:1-a, I(a), "purposely" shall mean that the actor's conscious object is the death of another, and that his act or acts in furtherance of that object were deliberate and premeditated.

7. Ban Life Without Parole Sentences for Kids

No Credit: 0/1

Pursuant to §630:1-a, a child can be sentenced to life without parole.

§630:1-a First Degree Murder. –

III. A person convicted of a murder in the first degree shall be sentenced to life imprisonment and shall not be eligible for parole at any time.

8. Safety Release 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 §126-U:5-a, solitary confinement is prohibited for children in detention facilities, but such protections are not in place for children being tried as an adult. Therefore, New Hampshire receives partial credit.

§126-U:5-a Limitation on the Use of Seclusion. –

I. Seclusion may not be used as a form of punishment or discipline. It may only be used when a child's behavior poses a substantial and imminent risk of physical harm to the child or to others, and may only continue until that danger has dissipated.

II. Seclusion shall only be used by trained personnel after other approaches to the

control of behavior have been attempted and been unsuccessful, or are reasonably concluded to be unlikely to succeed based on the history of actual attempts to control the behavior of a particular child.

III. Seclusion shall not be used in a manner that unnecessarily subjects the child to the risk of ridicule, humiliation, or emotional or physical harm.

§126-U:1 Definitions. –

In this chapter:

I. "Child" means a person who has not reached the age of 18 years and who is not under adult criminal prosecution or sentence of actual incarceration resulting therefrom, either due to having reached the age of 17 years or due to the completion of proceedings for transfer to the adult criminal justice system under RSA 169-B:24, RSA 169-B:25, or RSA 169-B:26. "Child" also includes a person in actual attendance at a school who is less than 22 years of age and who has not received a high school diploma.

II. "Director" refers to the program director, school principal, or other official highest in rank and with authority over the activities of a school or facility.

III. "Facility" includes any of the following when used for the placement, custody, or treatment of children:

(a) The youth services center maintained by the department of health and human services, or any other setting established for the commitment or detention of children pursuant to RSA 169-B, RSA 169-C, or RSA 169-D.

(b) Child care agencies regulated by RSA 170-E.

(c) Any foster home, group home, crisis home, or shelter care setting used for the placement of children at any stage of proceedings under RSA 169-B, RSA 169-C, or RSA 169-D or following disposition under those chapters.

(d) Any hospital, building, or other place, whether public or private, which is part of the state services systems established under RSA 135-C:3 and RSA 171-A:4, including but not limited to:

(1) The Anna Philbrook center.

(2) The acute psychiatric services building.

(3) Any designated receiving facility.

(4) A community mental health center as defined in RSA 135-C:7, or any of its subdivisions or contractors.

(5) An area agency as defined in RSA 171-A:2, or any of its subdivisions or contractors.

(e) Any residence, treatment center, or other place used for the voluntary or involuntary custody, treatment or care of children with developmental, intellectual, or other disabilities under RSA 171-A or 171-B.

(f) Community living facilities for persons with developmental disabilities or mental illness as authorized by RSA 126-A:19, when used for the placement of children.

V-a. "Seclusion" means the involuntary placement of a child alone in a place where no other person is present and from which the particular child is unable to exit, either due to physical manipulation by a person, a lock, or other mechanical device

or barrier. The term shall not include the voluntary separation of a child from a stressful environment for the purpose of allowing the child to regain self-control, when such separation is to an area which a child is able to leave. Seclusion does not include circumstances in which there is no physical barrier between the child and any other person or the child is physically able to leave the place. A circumstance may be considered seclusion even if a window or other device for visual observation is present, if the other elements of this definition are satisfied.

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to §169-B:11 and §169-B:19, children may be detained or confined in an adult facility. Therefore, New Hampshire receives no credit.

§169-B:11 Release Prior to Arraignment. –

An officer taking a minor into custody pursuant to RSA 169-B:9 may release the minor to a parent, guardian or custodian pending arraignment; however, if the minor is not released within 4 hours of being taken into custody, the court shall be notified, and thereupon, placement, until arraignment, shall be determined by the court.

I. A minor taken into custody pursuant to RSA 169-B:9 shall be released to a parent, guardian, or custodian pending arraignment; or

II. If such a person is not available, the court may release the minor under the supervision of a relative or friend; or may release the minor to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169-C:3, XIII, a crisis home, a shelter care facility, a group home with expenses charged according to RSA 169-B:40, or an alcohol crisis center certified to accept juveniles; or

III. If the court determines that continued detention is required, based upon the criteria specified under RSA 169-B:14, I(e)(2), it may order continued detention at an alternative to secure detention, or any facility certified for the detention of minors by the commissioner of the department of health and human services. A minor shall not be held in any facility where adults charged, convicted or committed for criminal offenses are simultaneously detained except that a juvenile alleged or found to be delinquent may be held for up to 6 hours in a metropolitan area or up to 24 hours in a non-metropolitan area for processing and while awaiting release or transfer to a juvenile facility, provided that the detention is in a room or cell separate and removed from all contact, both sight and sound, with all adult inmates.

§169-B:15 No Detention at Jail. – Following arraignment no minor shall be detained in any facility where adults charged, convicted or committed for criminal offenses are simultaneously detained.

§169-B:19 Dispositional Hearing. –

I. The department of health and human services shall provide the court with costs of the recommended services, placements and programs. If the court finds that a minor is delinquent, the court may order the least restrictive of the following dispositions, which the court finds is the most appropriate:

(c) If the court retains jurisdiction over the minor pursuant to RSA 169-B:4, V, the court may modify any dispositional order to transfer supervision from the department of health and human services to the department of corrections, or to transfer the place of detention from the youth development center to an adult facility.

11. Ban Mandatory Post-Release Lifetime Supervision

Partial Credit: .5/1

Pursuant to §651-A:21 and A:12, most children are eligible for final discharge of parole and a reduction of their maximum sentence while on parole. However, children serving life or de facto life sentences could be excluded from these provisions. Therefore, the state receives partial credit.

§651-A:21 Final Discharge. –

I. Upon the expiration of the term of his maximum sentence, a paroled prisoner shall be entitled to receive a final discharge, provided that at the time of such expiration no proceedings are pending for his recommitment. Such proceedings shall be deemed to be pending when a warrant has been issued or an arrest has been made under RSA 651-A:15-a.

II. For each parolee affected by this section, the board shall determine the amount of time the parolee was at liberty while in noncompliance with the terms and conditions of parole, as specified in RSA 651-A:19. The board may recommit the parolee to the state prison for a period not to exceed the amount of time so determined.

§651-A:12 Reduction of Maximum Sentence While on Parole. – Any person who is on parole from the state prison on a permit under the provisions of this chapter may be granted a reduction of maximum term of his or her sentence equal to 1/3 of the period of time during which the parolee is at liberty on said permit, provided that in making such a decision, the parole board shall consider the conduct of the parolee while under supervision, the seriousness of the offense, the amount of restitution owed, and any information provided by the victim. The parolee may be granted a discharge at the expiration of his or her maximum sentence less deductions provided for in this chapter.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to §607-A:2, a formerly incarcerated child who has reached voting age can vote after they have been discharged from imprisonment.

§607-A:2 Rights Lost. –

I. (a) A person sentenced for a felony, from the time of his or her sentence until his or her final discharge, may not:

(1) Vote in an election, but if execution of sentence is suspended with or without the defendant being placed on probation or he or she is paroled after commitment to imprisonment, the correctional facility shall provide the offender written notice that he or she may vote during the period of the suspension or parole; or

(2) Seek the nomination of a political party or become a candidate for or hold public office.

(b) In this paragraph, "final discharge" means the release of a prisoner from incarceration. A person who is on probation or parole shall be considered to be finally discharged for the purpose of this section.