New York 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.

Section 305.2 - Custody by a peace officer or a police officer without a warrant

7. A child shall not be questioned pursuant to this section unless he and a person required to be notified pursuant to subdivision three if present, have been advised:(a) of the child's right to remain silent;(b) that the statements made by the child may be used in a court of law;(c) of the child's right to have an attorney present at such questioning; and(d) of the child's right to have an attorney provided for him without charge if he is indigent.

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

No Credit: 0/1

Pursuant to FCA §301.2, the age of juvenile delinquency has been raised from 7 to 12, but the statute allows for prosecution of children as young as 7 for certain crimes. Therefore, New York receives no credit.

§301.2. Definitions.

1. "Juvenile delinquent" means:
(a)(i) a person at least twelve and less than eighteen years of age, having committed an act that would constitute a crime if committed by an adult; or
(ii) a person over sixteen and less than seventeen years of age or, a person over sixteen and less than eighteen years of age commencing October first, two thousand nineteen, having committed an act that would constitute a violation as defined by subdivision three of section 10.00 of the penal law if committed by an adult, where such violation is alleged to have occurred in the same transaction or occurrence of the alleged criminal act; or
(iii) a person over the age of seven and less than twelve years of age having committed an act that would constitute one of the following crimes, if committed by an adult: (A) aggravated criminally negligent homicide as defined in section 125.11 of the penal law; (B) vehicular manslaughter in the second degree as defined in section 125.12 of the penal law; (C) vehicular manslaughter in the first degree as defined in section 125.13 of the penal law; (D) aggravated vehicular homicide as defined in section 125.14 of the penal law; (E) manslaughter in the second degree as defined in section 125.15 of the penal law; (F) manslaughter in the first degree as defined in section 125.20 of the penal law; (G) aggravated manslaughter in the second degree as defined in section 125.21 of the penal law; (H) aggravated manslaughter in the first degree as defined in section 125.22 of the penal law; (I) murder in the second degree as defined in section 125.25 of the penal law; (J) aggravated murder as defined in section 125.26 of the penal law; and (K)

murder in the first degree as defined in section 125.27 of the penal law; and
(b) who is:
(i) not criminally responsible for such conduct by reason of infancy; or
(ii) the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law.

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

Full Credit: 1/1

§ 30.00 Infancy
1. Except as provided in subdivisions two and three of this section, a person less than seventeen, or commencing October first, two thousand nineteen, a person less than eighteen years old is not criminally responsible for conduct.

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

No Credit: 0/1

Pursuant to FCA §30.00, children between 13 and 17 years of age alleged to have committed certain offenses are presumed to be criminally responsible allowing those cases to be initiated in adult criminal court. Since children less than 14 years of age may be prosecuted as adults, and a child status hearing is not always required for children 14 and older before proceeding against a child in adult court, New York receives no credit.

§ 30.00 Infancy
1. Except as provided in subdivisions two and three of this section, a person less than seventeen, or commencing October first, two thousand nineteen, a person less than eighteen years old is not criminally responsible for conduct.
2. A person thirteen, fourteen or, fifteen years of age is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of this chapter; and a person fourteen or, fifteen years of age is criminally responsible for acts constituting the crimes defined in section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20

(manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of this chapter.

3. A person sixteen or commencing October first, two thousand nineteen, seventeen years of age is criminally responsible for acts constituting:

(a) a felony, as defined in subdivision five of section 10.00 of this chapter;

(b) a traffic infraction, as defined in subdivision two of section 10.00 of this chapter;

(c) a violation, as defined in subdivision three of section 10.00 of this chapter;

(d) a misdemeanor as defined in subdivision four of section 10.00 of this chapter, but only when the charge for such misdemeanor is:

(i) accompanied by a felony charge that is shown to have been committed as a part of the same criminal transaction, as defined in subdivision two of section 40.10 of the criminal procedure law ;

(ii) results from reduction or dismissal in satisfaction of a charge for a felony offense, in accordance with a plea of guilty pursuant to subdivision four of section 220.10 of the criminal procedure law ; or

(iii) a misdemeanor defined in the vehicle and traffic law.

4. In any prosecution for an offense, lack of criminal responsibility by reason of infancy, as defined in this section, is a defense.

§ 722.20 Proceedings upon felony complaint; juvenile offender

1. When a juvenile offender is arraigned before a youth part, the provisions of this section shall apply. If the youth part is not in session, the defendant shall be brought before the most accessible magistrate designated by the appellate division of the supreme court to act as a youth part for the purpose of making a determination whether such juvenile shall be detained. If the defendant is ordered to be detained, he or she shall be brought before the next session of the youth part. If the defendant is not detained, he or she shall be ordered to appear at the next session of the youth part.

2. If the defendant waives a hearing upon the felony complaint, the court must order that the defendant be held for the action of the grand jury with respect to the charge or charges contained in the felony complaint.

3. If there be a hearing, then at the conclusion of the hearing, the youth part court must dispose of the felony complaint as follows:

(a) If there is reasonable cause to believe that the defendant committed a crime for which a person under the age of sixteen is criminally responsible, the court must order that the defendant be held for the action of a grand jury; or
(b) If there is not reasonable cause to believe that the defendant committed a crime for which a person under the age of sixteen is criminally responsible but there is reasonable cause to believe that the defendant is a "juvenile delinquent" as defined in subdivision one of section 301.2 of the family court act , the court must specify the act or acts it found reasonable cause to believe the defendant did and direct that the action be removed to the family court in accordance with the provisions of article seven hundred twenty-five of this title; or
(c) If there is not reasonable cause to believe that the defendant committed any criminal act, the court must dismiss the felony complaint and discharge the defendant from custody if he is in custody, or if he is at liberty on bail, it must exonerate the bail.
4. Notwithstanding the provisions of subdivisions two and three of this section, the court shall, at the request of the district attorney, order removal of an action against a juvenile offender to the family court pursuant to the provisions of article seven hundred twenty-five of this title if, upon consideration of the criteria specified in subdivision two of section 722.22 of this article, it is determined that to do so would be in the interests of justice. Where, however, the felony complaint charges the juvenile offender with murder in the second degree as defined in section 125.25 of the penal law , rape in the first degree as defined in subdivision one of section 130.35 of the penal law , criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law , or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter, a determination that such action be removed to the family court shall, in addition, be based upon a finding of one or more of the following factors: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in proof of the crime.
5. Notwithstanding the provisions of subdivision two, three, or four of this section, if a currently undetermined felony complaint against a juvenile offender is pending, and the defendant has not waived a hearing pursuant to subdivision two of this section and a hearing pursuant to subdivision three of this section has not commenced, the defendant may move to remove the action to family court pursuant to 722.22 of this article. The procedural rules of subdivisions one and two of section 210.45 of this chapter are applicable to a motion pursuant to this subdivision.
Upon such motion, the court shall proceed and determine the motion as provided in section 722.22 of this article; provided, however, that the exception provisions of paragraph (b) of subdivision one of section 722.22 of this article shall not apply when there is not reasonable cause to believe that the juvenile offender committed

one or more of the crimes enumerated therein, and in such event the provisions of paragraph (a) thereof shall apply.
6. (a) If the court orders removal of the action to family court, it shall state on the record the factor or factors upon which its determination is based, and the court shall give its reasons for removal in detail and not in conclusory terms.
(b) The district attorney shall state upon the record the reasons for his consent to removal of the action to the family court where such consent is required. The reasons shall be stated in detail and not in conclusory terms.
(c) For the purpose of making a determination pursuant to subdivision four or five of this section, the court may make such inquiry as it deems necessary. Any evidence which is not legally privileged may be introduced. If the defendant testifies, his testimony may not be introduced against him in any future proceeding, except to impeach his testimony at such future proceeding as inconsistent prior testimony.
(d) Where a motion for removal by the defendant pursuant to subdivision five of this section has been denied, no further motion pursuant to this section or section 722.22 of this article may be made by the juvenile offender with respect to the same offense or offenses.
(e) Except as provided by paragraph (f) of this subdivision, this section shall not be construed to limit the powers of the grand jury.
(f) Where a motion by the defendant pursuant to subdivision five of this section has been granted, there shall be no further proceedings against the juvenile offender in any local or superior criminal court including the youth part of the superior court for the offense or offenses which were the subject of the removal order.

§ 722.21 Proceedings upon felony complaint; adolescent offender
1. When an adolescent offender is arraigned before a youth part, the provisions of this section shall apply. If the youth part is not in session, the defendant shall be brought before the most accessible magistrate designated by the appellate division of the supreme court to act as a youth part for the purpose of making a determination whether such adolescent offender shall be detained. If the defendant is ordered to be detained, he or she shall be brought before the next session of the youth part. If the defendant is not detained, he or she shall be ordered to appear at the next session of the youth part.
2. If the defendant waives a hearing upon the felony complaint, the court must order that the defendant be held for the action of the grand jury with respect to the charge or charges contained in the felony complaint.
3. If there be a hearing, then at the conclusion of the hearing, the youth part court must dispose of the felony complaint as follows:
(a) If there is reasonable cause to believe that the defendant committed a felony, the court must order that the defendant be held for the action of a grand jury; or
(b) If there is not reasonable cause to believe that the defendant committed a felony but there is reasonable cause to believe that the defendant is a "juvenile delinquent" as defined in subdivision one of section 301.2 of the family court act , the court must

specify the act or acts it found reasonable cause to believe the defendant did and direct that the action be transferred to the family court in accordance with the provisions of article seven hundred twenty-five of this title, provided, however, notwithstanding any other provision of law, section 308.1 of the family court act shall apply to actions transferred pursuant to this subdivision and such actions shall not be considered removals subject to subdivision thirteen of such section 308.1 ; or

(c) If there is not reasonable cause to believe that the defendant committed any criminal act, the court must dismiss the felony complaint and discharge the defendant from custody if he is in custody, or if he is at liberty on bail, it must exonerate the bail.

4. Notwithstanding the provisions of subdivisions two and three of this section, where the defendant is charged with a felony, other than a class A felony defined outside article two hundred twenty of the penal law, a violent felony defined in section 70.02 of the penal law or a felony listed in paragraph one or two of subdivision forty-two of section 1.20 of this chapter, except as provided in paragraph (c) of subdivision two of section 722.23 of this article, the court shall, upon notice from the district attorney that he or she will not file a motion to prevent removal pursuant to section 722.23 of this article, order transfer of an action against an adolescent offender to the family court pursuant to the provisions of article seven hundred twenty-five of this title, provided, however, notwithstanding any other provision of law, section 308.1 of the family court act shall apply to actions transferred pursuant to this subdivision and such actions shall not be considered removals subject to subdivision thirteen of such section 308.1 .

5. Notwithstanding subdivisions two and three of this section, at the request of the district attorney, the court shall order removal of an action against an adolescent offender charged with an offense listed in paragraph (a) of subdivision two of section 722.23 of this article, to the family court pursuant to the provisions of article seven hundred twenty-five of this title and upon consideration of the criteria specified in subdivision two of section 722.22 of this article, it is determined that to do so would be in the interests of justice. Where, however, the felony complaint charges the adolescent offender with murder in the second degree as defined in section 125.25 of the penal law , rape in the first degree as defined in subdivision one of section 130.35 of the penal law , criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law , or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter, a determination that such action be removed to the family court shall, in addition, be based upon a finding of one or more of the following factors: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in proof of the crime.

6. (a) If the court orders removal of the action to family court pursuant to subdivision five of this section, it shall state on the record the factor or factors upon which its determination is based, and the court shall give its reasons for removal in detail and not in conclusory terms.
(b) The district attorney shall state upon the record the reasons for his consent to removal of the action to the family court where such consent is required. The reasons shall be stated in detail and not in conclusory terms.
(c) For the purpose of making a determination pursuant to subdivision five the court may make such inquiry as it deems necessary. Any evidence which is not legally privileged may be introduced. If the defendant testifies, his testimony may not be introduced against him in any future proceeding, except to impeach his testimony at such future proceeding as inconsistent prior testimony.
(d) Except as provided by paragraph (e), this section shall not be construed to limit the powers of the grand jury.
(e) Where an action against a defendant has been removed to the family court pursuant to this section, there shall be no further proceedings against the adolescent offender in any local or superior criminal court including the youth part of the superior court for the offense or offenses which were the subject of the removal order.

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.

§70.05 Sentence of imprisonment for juvenile offender.
1. Indeterminate sentence. A sentence of imprisonment for a felony committed by a juvenile offender shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section. The court shall further provide that where a juvenile offender is under placement pursuant to article three of the family court act, any sentence imposed pursuant to this section which is to be served consecutively with such placement shall be served in a facility designated pursuant to subdivision four of section 70.20 of this article prior to service of the placement in any previously designated facility.
2. Maximum term of sentence. The maximum term of an indeterminate sentence for a juvenile offender shall be at least three years and the term shall be fixed as follows:
(a) For the class A felony of murder in the second degree, the term shall be life imprisonment;

(b) For the class A felony of arson in the first degree, or for the class A felony of kidnapping in the first degree the term shall be fixed by the court, and shall be at least twelve years but shall not exceed fifteen years;
(c) For a class B felony, the term shall be fixed by the court, and shall not exceed ten years;
(d) For a class C felony, the term shall be fixed by the court, and shall not exceed seven years; and
(e) For a class D felony, the term shall be fixed by the court and shall not exceed four years.
3. Minimum period of imprisonment. The minimum period of imprisonment under an indeterminate sentence for a juvenile offender shall be specified in the sentence as follows:
(a) For the class A felony of murder in the second degree, the minimum period of imprisonment shall be fixed by the court and shall be not less than five years but shall not exceed nine years provided, however, that where the sentence is for an offense specified in subdivision one or two of section 125.25 of this chapter and the defendant was fourteen or fifteen years old at the time of such offense, the minimum period of imprisonment shall be not less than seven and one-half years but shall not exceed fifteen years;
(b) For the class A felony of arson in the first degree, or for the class A felony of kidnapping in the first degree, the minimum period of imprisonment shall be fixed by the court and shall be not less than four years but shall not exceed six years; and
(c) For a class B, C or D felony, the minimum period of imprisonment shall be fixed by the court at one-third of the maximum term imposed.

Section 60.10 - Authorized disposition; juvenile offender
1. When a juvenile offender is convicted of a crime, the court shall sentence the defendant to imprisonment in accordance with section 70.05 or sentence him upon a youthful offender finding in accordance with section 60.02 of this chapter.

Section 60.10-A - Authorized disposition; adolescent offender
When an adolescent offender is convicted of an offense, the court shall sentence the defendant to any sentence authorized to be imposed on a person who committed such offense at age eighteen or older. When a sentence is imposed, the court shall consider the age of the defendant in exercising its discretion at sentencing.

6. Ban Felony-Murder Rule for Kids

Partial Credit: .5/1

Pursuant to §125.25, children may claim an affirmative defense to a charge of second degree murder predicated on the felony murder rule. However, because there are several exceptions to claiming the defense, New York receives partial credit.

§ 125.25 Murder in the second degree
A person is guilty of murder in the second degree when:
3. Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, criminal sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:
(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and
(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and
(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and
(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury;

7. Ban Life Without Parole Sentences for Kids

No Credit: 0/1

Pursuant to §70.0, a child may be sentenced to life without parole.

§ 70.00 Sentence of imprisonment for felony.
5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the procedures provided by law for imposing a sentence for such crime. A defendant who was eighteen years of age or older at the time of the commission of the crime must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the

defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant who was seventeen years of age or younger at the time of the commission of the crime may be sentenced, in accordance with law, to the applicable indeterminate sentence with a maximum term of life imprisonment. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter.

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 N.Y. Correct. Law § 137, the use of solitary confinement is prohibited for special populations, including those under the age of 21 in adult correctional facilities. However, there are no statutory provisions banning the use of solitary confinement for children in juvenile facilities. Therefore, New York receives partial credit.

Section 137 - Program of treatment, control, discipline at correctional facilities
(h) Persons in a special population as defined in subdivision thirtythree of section two of this chapter shall not be placed in segregated confinement for any length of time, except in keeplock for a period prior to a disciplinary hearing pursuant to paragraph (l) of this subdivision. Individuals in a special population who are in keeplock prior to a disciplinary hearing shall be given seven hours a day out-of-cell time or shall be transferred to a residential rehabilitation unit or residential mental health treatment unit as expeditiously as possible, but in no case longer than forty-eight hours from the time an individual is admitted to keeplock.

Section 2 - Definitions
33. "Special populations" means any person:(a) twenty-one years of age or younger;

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to §304.1, children may be held in adult correctional facilities with the approval of the Office of Children and Family Services. Further, pursuant to §508, children over 16 convicted as either a juvenile or adolescent offender may be transferred to an adult facility with the permission of the sentencing court. Therefore, New York receives no credit.

§ 304. 1 Detention.
1. A facility certified by the office of children and family services as a juvenile detention facility must be operated in conformity with the regulations of the office of children and family services.
2. No child to whom the provisions of this article may apply shall be detained in any prison, jail, lockup, or other place used for adults convicted of crime or under arrest and charged with crime without the approval of the office of children and family services in the case of each child and the statement of its reasons therefor. The office of children and family services shall promulgate and publish the rules which it shall apply in determining whether approval should be granted pursuant to this subdivision.
3. The detention of a child under ten years of age in a secure detention facility shall not be directed under any of the provisions of this article.
4. A detention facility which receives a child under subdivision four of section 305.2 of this part shall immediately notify the child's parent or other person legally responsible for his or her care or, if such legally responsible person is unavailable the person with whom the child resides, that he or she has been placed in detention.

§508 Juvenile offender and adolescent offender facilities
1. The office of children and family services shall maintain secure facilities for the care and confinement of juvenile offenders and adolescent offenders committed for a sentence pursuant to the sentencing provisions of the penal law. Such facilities shall provide appropriate services to juvenile offenders and adolescent offenders including but not limited to residential care, educational and vocational training, physical and mental health services, and employment counseling.
2. Juvenile offenders and adolescent offenders shall be confined in such facilities until the age of twenty-one in accordance with their sentences, and shall not be released, discharged or permitted home visits except pursuant to the provisions of this section.
3. The office of children and family services shall report in writing to the sentencing court and district attorney, not less than once every six months during the period of confinement, on the status, adjustment, programs and progress of the offender. The office of children and family services may transfer an offender not less than eighteen years of age to the department of corrections and community supervision if

the commissioner of the office certifies to the commissioner of corrections and community supervision that there is no substantial likelihood that the youth will benefit from the programs offered by office facilities.
4. The office of children and family services may apply to the sentencing court for permission to transfer a youth not less than sixteen nor more than eighteen years of age to the department of corrections and community supervision. Such application shall be made upon notice to the youth, who shall be entitled to be heard upon the application and to be represented by counsel. The court shall grant the application if it is satisfied that there is no substantial likelihood that the youth will benefit from the programs offered by the office facilities.
5. The office of children and family services may transfer an offender not less than eighteen nor more than twenty-one years of age to the department of corrections and community supervision if the commissioner of the office certifies to the commissioner of corrections and community supervision that there is no substantial likelihood that the youth will benefit from the programs offered by office facilities.
6. At age twenty-one, all juvenile offenders shall be transferred to the custody of the department of corrections and community supervision for confinement pursuant to the correction law.
7. While in the custody of the office of children and family services, an offender shall be subject to the rules and regulations of the office, except that his or her parole, temporary release and discharge shall be governed by the laws applicable to inmates of state correctional facilities and his or her transfer to state hospitals in the office of mental health shall be governed by section five hundred nine of this article; provided, however, that an otherwise eligible offender may receive the six-month limited credit time allowance for successful participation in one or more programs developed by the office of children and family services that are comparable to the programs set forth in section eight hundred three-b of the correction law, taking into consideration the age of offenders. The commissioner of the office of children and family services shall, however, establish and operate temporary release programs at office of children and family services facilities for eligible juvenile offenders and adolescent offenders and contract with the department of corrections and community supervision for the provision of parole supervision services for temporary releasees. The rules and regulations for these programs shall not be inconsistent with the laws for temporary release applicable to inmates of state correctional facilities. For the purposes of temporary release programs for juvenile offenders and adolescent offenders only, when referred to or defined in article twenty-six of the correction law, "institution" shall mean any facility designated by the commissioner of the office of children and family services, "department" shall mean the office of children and family services, "inmate" shall mean a juvenile offender or adolescent offender residing in an office of children and family services facility, and "commissioner" shall mean the commissioner of the office of children and family services. Time spent in office of children and family services facilities and in juvenile detention facilities shall be credited towards the sentence imposed in the same manner and to the same extent applicable to inmates

of state correctional facilities.
8. Whenever a juvenile offender, adolescent offender or a juvenile offender or adolescent offender adjudicated a youthful offender shall be delivered to the director of an office of children and family services facility pursuant to a commitment to the office of children and family services, the officer so delivering such person shall deliver to such facility director a certified copy of the sentence received by such officer from the clerk of the court by which such person shall have been sentenced, a copy of the report of the probation officer's investigation and report, any other pre-sentence memoranda filed with the court, a copy of the person's fingerprint records, a detailed summary of available medical records, psychiatric records and reports relating to assaults, or other violent acts, attempts at suicide or escape by the person while in the custody of a local detention facility.
9. Notwithstanding any provision of law, including section five hundred one-c of this article, the office of children and family services shall make records pertaining to a person convicted of a sex offense as defined in subdivision (p) of section 10.03 of the mental hygiene law available upon request to the commissioner of mental health or the commissioner of the office for people with developmental disabilities, as appropriate; a case review panel; and the attorney general; in accordance with the provisions of article ten of the mental hygiene law.

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to §259-J of the Executive Law, formerly incarcerated children may be discharged from parole. Therefore, New York receives full credit.

§ Section 259-J Discharge of sentence
1. Except where a determinate sentence was imposed for a felony other than a felony defined in article two hundred twenty or article two hundred twenty-one of the penal law, if the board of parole is satisfied that an absolute discharge from presumptive release, parole, conditional release or release to a period of post-release supervision is in the best interests of society, the board may grant such a discharge prior to the expiration of the full term or maximum term to any person who has been on unrevoked community supervision for at least three consecutive years. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted. No such discharge shall be granted unless the board is satisfied that the parolee or releasee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee or DNA databank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith.
2. The chairman of the board of parole shall promulgate rules and regulations governing the issuance of discharges from community supervision pursuant to this section to assure that such discharges are consistent with public safety.

3. Notwithstanding any other provision of this section to the contrary, where a term of post-release supervision in excess of five years has been imposed on a person convicted of a crime defined in article one hundred thirty of the penal law, including a sexually motivated felony, the board of parole may grant a discharge from post-release supervision prior to the expiration of the maximum term of post-release supervision. Such a discharge may be granted only after the person has served at least five years of post-release supervision, and only to a person who has been on unrevoked post-release supervision for at least three consecutive years. No such discharge shall be granted unless the board of parole or the department acting pursuant to its responsibility under subdivision one of section two hundred one of the correction law consults with any licensed psychologist, qualified psychiatrist, or other mental health professional who is providing care or treatment to the supervisee; and the board: (a) determines that a discharge from post-release supervision is in the best interests of society; and (b) is satisfied that the supervisee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee, or DNA data bank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith. Before making a determination to discharge a person from a period of post-release supervision, the board of parole may request that the commissioner of the office of mental health arrange a psychiatric evaluation of the supervisee. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to section 5-106 of the Election Law, formerly incarcerated children have their voting rights restored after they have been discharged from imprisonment or parole. Therefore, New York receives full credit.

§ 5–106. Qualifications of voters; reasons for exclusion
2. No person who has been convicted of a felony pursuant to the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the governor, or his maximum sentence of imprisonment has expired, or he has been discharged from parole. The governor, however, may attach as a condition to any such pardon a provision that any such person shall not have the right of suffrage until it shall have been separately restored to him.
3. No person who has been convicted in a federal court, of a felony, or a crime or offense which would constitute a felony under the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the president of the United States, or his

maximum sentence of imprisonment has expired, or he has been discharged from parole.
4. No person who has been convicted in another state for a crime or offense which would constitute a felony under the laws of this state shall have the right to register for or vote at any election in this state unless he shall have been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or his maximum sentence has expired, or he has been discharged from parole.
5. The provisions of subdivisions two, three and four of this section shall not apply if the person so convicted is not sentenced to either death or imprisonment, or if the execution of a sentence of imprisonment is suspended.
6. No person who has been adjudged incompetent by order of a court of competent judicial authority shall have the right to register for or vote at any election in this state unless thereafter he shall have been adjudged competent pursuant to law.

New York Constitution
§3. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his or her vote, shall swear or affirm before such officers that he or she has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.