



HUMAN RIGHTS *for* KIDS

Oklahoma 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:	3.5 out of 12
TIER RATING:	3

1. Due Process Protections at Point of Entry for Kids

Partial Credit: .5/1

Oklahoma's statute provides protections for children under 16, but they do not apply to youthful offenders over the age of 16. Therefore, Oklahoma receives partial credit.

§10A-2-2-301. Conduct of interrogations - Appointment of counsel - Guardians ad litem

A. No information gained by a custodial interrogation of a youthful offender under sixteen (16) years of age or a child nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the youthful

offender or child unless the custodial interrogation about any alleged offense by any law enforcement officer or investigative agency, or employee of the court, or employee of the Office of Juvenile Affairs is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the youthful offender or child. No such custodial interrogation shall commence until the youthful offender or child and the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the youthful offender or child have been fully advised of the constitutional and legal rights of the youthful offender or child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court if the parties are without sufficient financial means; provided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein. It is further provided that where private counsel is appointed in such cases, the court shall set reasonable compensation and order the payment out of the court fund. As used in this section, "custodial interrogation" means questioning of a youthful offender under sixteen (16) years of age or child while that youthful offender or child is in law enforcement custody or while that youthful offender or child is being deprived of freedom of action in any significant way by a law enforcement officer, employee of the court, or employee of the Office. Custodial interrogation shall conform with all requirements for interrogation of adult criminal offenders. The term "custodial interrogation" shall not be deemed to mean questioning of a youthful offender or child by a public school administrator or teacher, so long as such questioning is not being conducted on behalf of a law enforcement officer, an employee of the court or an employee of the Office. Any information gained from noncustodial questioning of a child or youthful offender by a public school administrator or teacher concerning a wrongful act committed on public school property shall be admissible into evidence against the youthful offender or child.

B. A custodial interrogation of a youthful offender over sixteen (16) years of age shall conform with all the requirements for the interrogation of an adult.

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

No Credit: 0/1

Pursuant to § 10A-1-1-105, there is no minimum age for when a child may be adjudicated delinquent in juvenile court.

§10A-1-1-105. Definitions

When used in the Oklahoma Children's Code, unless the context otherwise requires:

8. "Child" means any unmarried person under eighteen (18) years of age;

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

Full Credit: 1/1

Pursuant to §10A-2-1-103, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18

§10A-2-1-103. Definitions

When used in the Oklahoma Juvenile Code, unless the context otherwise requires:
6. "Child" or "juvenile" means any person under eighteen (18) years of age, except for any person charged and convicted for any offense specified in the Youthful Offender Act or against whom judgment and sentence has been deferred for such offense, or any person who is certified as an adult pursuant to any certification procedure authorized in the Oklahoma Juvenile Code for any offense which results in a conviction or against whom judgment and sentence has been deferred for such offense;

13. "Delinquent child or juvenile" means a juvenile who:

- a. has violated any federal or state law or municipal ordinance except a traffic statute or traffic ordinance or any provision of the Oklahoma Wildlife Conservation Code, the Oklahoma Vessel and Motor Regulation Act or the Oklahoma Boating Safety Regulation Act, or has violated any lawful order of the court made pursuant to the provisions of the Oklahoma Juvenile Code, or
- b. has habitually violated traffic laws, traffic ordinances or boating safety laws or rules;

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 §10A-2-5-205, children less than 14 years of age may be tried in adult court. Additionally, pursuant to §10A-2-5-206, children 15 or older who are charged with certain enumerated offenses must be tried in adult 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, Oklahoma receives no credit.

§10A-2-5-205. Certification as youthful offender or juvenile

A. Any person thirteen (13) or fourteen (14) years of age who is charged with murder in the first degree shall be held accountable for the act as if the person were an adult; provided, the person may be certified as a youthful offender or a juvenile as provided by this section, unless the person is subject to the provisions of subsection G of Section 2-5-204 of this title.

B. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with murder in the first degree at that time shall be held accountable for his or her act as if the person was an adult and shall not be subject to the provisions of the Youthful Offender Act or the provisions of the Juvenile Code for certification as a juvenile. The person shall have all the statutory rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Oklahoma Statutes shall apply. A person having been convicted as an adult pursuant to this paragraph shall be tried as an adult for every subsequent offense.

E. The court shall rule on any motions for certification as a youthful offender or an alleged juvenile delinquent before ruling on whether to bind the accused over for trial. When ruling on a motion for certification as a youthful offender or juvenile, the court shall give consideration to the following guidelines with greatest weight to be given to paragraphs 1, 2 and 3:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
2. Whether the offense was against persons, and, if personal injury resulted, the degree of personal injury;
3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions;
4. The sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living;
5. The prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system;
6. The reasonable likelihood of rehabilitation of the accused person if such person is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and
7. Whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children. The court, in its decision on a motion for certification as a youthful offender or juvenile, shall detail findings of fact and conclusions of law to each of the above considerations, and shall state that the court has considered each of the guidelines in reaching its decision.

F. The order certifying a person as a youthful offender or an alleged juvenile delinquent or denying the request for certification as either a youthful offender or an alleged juvenile delinquent shall be a final order, appealable to the Court of Criminal Appeals when entered.

G. An order certifying the accused person as a youthful offender or an alleged juvenile delinquent shall not be reviewable by the trial court.

§10A-2-5-206. Certain acts mandating youthful offender status – Filing of delinquency petition or youthful offender information – Warrant, certification process – Guidelines

A. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with:

1. Murder in the second degree;
2. Kidnapping;
3. Manslaughter in the first degree;
4. Robbery with a dangerous weapon or a firearm or attempt thereof;
5. Robbery in the first degree or attempt thereof;
6. Rape in the first degree or attempt thereof;
7. Rape by instrumentation or attempt thereof;
8. Forcible sodomy;
9. Lewd molestation;
10. Arson in the first degree or attempt thereof; or
11. Any offense in violation of Section 652 of Title 21 of the Oklahoma Statutes, shall be held accountable for such acts as a youthful offender.

B. Any person sixteen (16) or seventeen (17) years of age who is charged with:

1. Burglary in the first degree or attempted burglary in the first degree;
2. Battery or assault and battery on a state employee or contractor while in the custody or supervision of the Office of Juvenile Affairs;
3. Aggravated assault and battery of a police officer;
4. Intimidating a witness;
5. Trafficking in or manufacturing illegal drugs;
6. Assault or assault and battery with a deadly weapon;
7. Maiming;
8. Residential burglary in the second degree after two or more adjudications that are separated in time for delinquency for committing burglary in the first degree or residential burglary in the second degree;
9. Rape in the second degree; or
10. Use of a firearm while in commission of a felony, shall be held accountable for such acts as a youthful offender.

C. The district attorney may file a petition alleging the person to be a delinquent or may file an information against the accused person charging the person as a youthful offender. The district attorney shall notify the Office of Juvenile Affairs upon the filing of youthful offender charges.

- D. 1. Upon the filing of the information against such alleged youthful offender, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, and to have an attorney present.
2. The warrant shall be personally served together with a certified copy of the information on the alleged youthful offender and on a custodial parent, guardian or next friend of the accused person.

3. When personal service of a custodial parent, guardian or next friend of the alleged youthful offender cannot be effected, service may be made by certified mail to the last-known address of the person, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first-class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

4. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a thorough search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

E. The court shall commence a preliminary hearing within ninety (90) days of the filing of the information pursuant to Section 258 of Title 22 of the Oklahoma Statutes, to determine whether the crime was committed and whether there is probable cause to believe the accused person committed the crime. If the preliminary hearing is not commenced within ninety (90) days, the state shall be prohibited from seeking an adult sentence unless the ninety-day requirement is waived by the defendant. If the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Oklahoma shall make reasonable efforts to locate the accused in order to commence the proceedings. An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. An accused who fails to cooperate with providing information in locating the accused parent, guardian, or next friend for purpose of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information.

F. 1. The accused person may file a motion for certification to the juvenile justice system before the start of the criminal preliminary hearing: a. upon the filing of such motion, the complete juvenile record of the accused shall be made available to the district attorney and the accused person, b. at the conclusion of the state's case at the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

2. If no motion to certify the accused person to the juvenile justice system has been filed, at the conclusion of the criminal preliminary hearing the court may on its own

motion hold a hearing on the matter of the certification of the accused youthful offender to the juvenile system.

3. The court shall rule on the certification motion before ruling on whether to bind the accused over for trial. When ruling on the certification motion, the court shall give consideration to the following guidelines with the greatest weight given to subparagraphs a, b and c:

- a. whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner,
- b. whether the offense was against persons, and if personal injury resulted, the degree of personal injury,
- c. the record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions,
- d. the sophistication and maturity of the accused person and the accused person's capability of distinguishing right from wrong as determined by consideration of the accused person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living,
- e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,
- f. the reasonable likelihood of rehabilitation of the accused person if the accused is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court, and
- g. whether the offense occurred while the accused person was escaping or in an escape status from an institution for youthful offenders or juvenile delinquents.

4. In its decision on the motion for certification as an alleged juvenile delinquent, the court shall detail findings of fact and conclusions of law to each of the above considerations and shall state that the court has considered each of the guidelines in reaching its decision.

5. An order certifying a person or denying such certification to the juvenile justice system shall be a final order, appealable when entered.

G. Upon conviction, sentence may be imposed as a sentence for a youthful offender as provided by Section 2-5-209 of this title. If the youthful offender sentence is imposed as an adult sentence as provided by Section 2-5-208 of this title, the convicted person may be incarcerated with the adult population.

§10A-2-5-204. Treatment of a child certified as an adult or youthful offender in criminal proceedings

G. A child or youthful offender shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court as a juvenile delinquent or youthful offender processes in any further proceedings if:

1. The child or youthful offender has been certified to stand trial as an adult pursuant to any certification procedure provided by law and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentence has been deferred; or

2. The youthful offender has been certified for the imposition of an adult sentence as provided by Section 2-5-208 of this title and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred. H. Except as otherwise provided in the Youthful Offender Act, a person who has been certified as a youthful offender shall be prosecuted as a youthful offender in all subsequent criminal proceedings until the youthful offender has attained eighteen (18) years of age. All proceedings for the commission of a crime committed after a youthful offender has reached eighteen (18) years of age shall be adult 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 §21-701.7, a child may be convicted under the felony murder rule.

§21-701.7. Murder in the first degree

B. A person also commits the crime of murder in the first degree, regardless of malice, when that person or any other person takes the life of a human being during, or if the death of a human being results from, the commission or attempted commission of murder of another person, shooting or discharge of a firearm or crossbow with intent to kill, intentional discharge of a firearm or other deadly weapon into any dwelling or building as provided in Section 1289.17A of this title, forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, eluding an officer, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances or synthetic controlled substances, trafficking in illegal drugs, or manufacturing or attempting to manufacture a controlled dangerous substance.

7. Ban Life Without Parole Sentences for Kids

No Credit: 0/1

There are no statutory provisions prohibiting life without parole sentences for children. Therefore, Oklahoma receives no credit.

§21-701.9. Punishment for murder

A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be punished by death, by imprisonment for life without parole or by imprisonment for life. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree, as described in subsection E of Section 701.7 of this title, shall not be entitled to or afforded the benefit of deferment of the sentence.

B. A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be guilty of a felony punishable by imprisonment in a state penal institution for not less than ten (10) years nor more than life.

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 §10A-2-7-603, solitary confinement is prohibited for children in juvenile detention facilities, but such protections are not in place for children in adult facilities. Therefore, Oklahoma receives partial credit.

§10A-2-7-603. Rules, policies and procedures required in facilities

A. The Board of Juvenile Affairs shall promulgate written rules, outline policies and procedures governing the operation of those facilities operated by or through contract with the Office of Juvenile Affairs wherein juveniles may be housed. Said policies and procedures shall include, but not be limited to, standards of cleanliness, temperature and lighting, availability of medical and dental care, provision of food, furnishings, clothing and toilet articles, supervision, appropriate and permissible use of restriction and confinement, procedures for enforcing rules of conduct consistent with due process of law and visitation privileges.

B. The policies prescribed shall, at a minimum, ensure that:

1. A child shall not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or solitary confinement;

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to §10A-2-5-204, children may be incarcerated in adult facilities.

§10A-2-5-204. Treatment of a child certified as an adult or youthful offender in criminal proceedings

E. Upon arrest and detention of a person subject to the provisions of Section 2-5-205 or 2-5-206 of this title, the person has the same right to be released on bail as would an adult in the same circumstances and, if detained, may be detained in a county jail if separated by sight and sound from the adult population as otherwise authorized by law. If no such county jail is available, then such person may be detained at a juvenile detention facility. The sheriff, chief of police, or juvenile or adult detention facility operator shall forthwith notify the Office of Juvenile Affairs of any such arrest and detention.

F. Upon certification for the imposition of an adult sentence, a verdict of guilty or entry of a plea of guilty or nolo contendere by a youthful offender who has been certified for the imposition of an adult sentence as provided by Section 2—5-208 of this title, the person may be detained as an adult and, if incarcerated, may be incarcerated with the adult population.

§10A-2-5-205. Certification as youthful offender or juvenile

H. If the accused person is prosecuted as an adult and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred, the person may be incarcerated with the adult population and shall be prosecuted as an adult in all subsequent criminal proceedings.

§10A-2-3-101. Conditions of detention of child - Detention or confinement in adult facility - Access to facilities and data

E. 1. Except as otherwise provided in this section, no child shall be placed in secure detention in a jail, adult lockup, or other adult detention facility unless:

a. the child is detained for the commission of a crime that would constitute a felony if committed by an adult, and

b. the child is awaiting an initial court appearance, and

c. the initial court appearance of the child is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays, and

d. the court of jurisdiction is outside of the Standard Metropolitan Statistical Area as defined by the Bureau of Census, and

e. there is no existing acceptable alternative placement for the child, and

f. the jail, adult lockup or adult detention facility provides sight and sound separation for juveniles, pursuant to standards required by subsection E of Section 2-3-103 of this title, or

g. the jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Office of Juvenile Affairs, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:

- (1) total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities,
- (2) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities, and
- (3) separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both.

11. Ban Mandatory Post-Release Lifetime Supervision

Partial Credit: .5/1

Pursuant to §57-512, formerly incarcerated children can be discharged from parole at the end of a three year period. However, children serving lengthy parole terms for sex offenses are ineligible for early parole discharge. Therefore, Oklahoma receives partial credit.

§57-512. Supervision of inmates paroled from state institutions - Conditions for release - Violations

Any inmate in a state penal institution who has been granted a parole shall be released from the institution upon the following conditions:

1. That he comply with specified requirements of the Division of Community Services of the Department of Corrections under the active supervision of a Probation and Parole Officer. Such active supervision shall be for a period not to exceed three (3) years, except as provided in paragraph 2 of this section.
2. That he be actively supervised by a Probation and Parole Officer for an extended period not to exceed the expiration of the maximum term or terms for which he was sentenced if convicted of a sex offense or upon the determination by the Division of Community Services that the best interests of the public and the parolee will be served by such an extended period of supervision.

Provided, for the purposes of this section, the term "sex offense" shall not include a violation of paragraph 1 of subsection A of Section 1021 of Title 21 of the Oklahoma Statutes. The Probation and Parole Officer, upon information sufficient to give him reasonable grounds to believe that the parolee has violated the terms of and conditions of his parole, shall notify the Deputy Director of the Division of

Community Services in accordance with Section 516 of Title 57 of the Oklahoma Statutes.

§57-350. Deduction from sentence of time spent on parole - Revocation of parole

A. Every person, hereinafter referred to as "convict", who has been or who in the future may be sentenced to imprisonment in any state penal institution shall, in addition to any other deductions provided for by law, be entitled to a deduction from his sentence for all time during which he has been or may be on parole. The provisions of this section are hereby declared to be both retroactive and prospective, and to apply to convicts who are on parole on the effective date of this act as well as to convicts who may be paroled thereafter; and shall at the discretion of the paroling authority apply to time on a parole which has been or shall be revoked.

B. Beginning November 1, 1987, the paroling authority also shall have the discretion to revoke all or any portion of the parole.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to §26-4-101, formerly incarcerated children have their voting rights restored after they have been discharged from imprisonment, probation, or parole.

§26-4-101. Persons entitled to become registered voters - Exceptions.

Every person who is a qualified elector as defined by Section 1 of Article III of the Oklahoma Constitution shall be entitled to become a registered voter in the precinct of his or her residence, with the following conditions:

1. Persons convicted of a felony shall be eligible to register to vote when they have fully served their sentence of court-mandated calendar days, including any term of incarceration, parole or supervision, or completed a period of probation ordered by any court; and
2. Any person who has been adjudged to be an incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes shall be ineligible to register to vote. When such incapacitated person has been adjudged to be no longer incapacitated such person shall be eligible to become a registered voter. The provisions of this paragraph shall not prohibit any person adjudged to be a partially incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes from being eligible to register to vote unless the order adjudging the person to be partially incapacitated restricts such person from being eligible to register to vote.