



HUMAN RIGHTS *for* KIDS

Pennsylvania 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

Although the Pennsylvania Supreme Court in *Com. v. Markle*, 475 Pa. 266 (Pa. 1977), ruled that a juvenile must have an opportunity to consult with an “interested and informed parent or adult, or counsel” before waiving their *Miranda* Rights, the Pennsylvania legislature has not codified this decision.

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

Full Credit: 1/1

Pursuant to §6302, only children 10 years of age or older may be adjudicated delinquent in the juvenile justice system.

§ 6302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Delinquent child." A child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation.

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

Full Credit: 1/1

Pursuant to §6302, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

§ 6302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Child." An individual who:

- (1) is under the age of 18 years;
- (2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years; or
- (3) is under the age of 21 years and was adjudicated dependent before reaching the age of 18 years, who has requested the court to retain jurisdiction and who remains under the jurisdiction of the court as a dependent child because the court has determined that the child is:
 - (i) completing secondary education or an equivalent credential;
 - (ii) enrolled in an institution which provides postsecondary or vocational education;
 - (iii) participating in a program actively designed to promote or remove barriers to employment;
 - (iv) employed for at least 80 hours per month; or
 - (v) incapable of doing any of the activities described in subparagraph (i), (ii), (iii) or (iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child.

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 § 6355, for a child of any age who is charged with murder, the case must be initiated in adult court. Similarly, for certain other enumerated offenses, if a child is 14 years or older, the case must be heard in adult court unless removed to juvenile court. Therefore, Pennsylvania receives no credit.

§ 6302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Delinquent act."

(1) The term means an act designated a crime under the law of this Commonwealth, or of another state if the act occurred in that state, or under Federal law, or an act which constitutes indirect criminal contempt under Chapter 62A (relating to protection of victims of sexual violence or intimidation) with respect to sexual violence or 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or the failure of a child to comply with a lawful sentence imposed for a summary offense, in which event notice of the fact shall be certified to the court.

(2) The term shall not include:

(i) The crime of murder.

(ii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct and a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used during the commission of the offense which, if committed by an adult, would be classified as:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(C) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(D) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(E) Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Kidnapping as defined in 18 Pa.C.S. § 2901 (relating to kidnapping).

(H) Voluntary manslaughter.

(I) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§ 901 (relating to criminal attempt), 902 (relating to criminal solicitation) and 903 (relating to criminal conspiracy).

(iii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct and has been previously adjudicated

delinquent of any of the following prohibited conduct which, if committed by an adult, would be classified as:

- (A) Rape as defined in 18 Pa.C.S. § 3121.
- (B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123.
- (C) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).
- (D) Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702.
- (E) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125.
- (F) Kidnapping as defined in 18 Pa.C.S. § 2901.
- (G) Voluntary manslaughter.
- (H) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§ 901, 902 and 903.
- (iv) Summary offenses.
- (v) A crime committed by a child who has been found guilty in a criminal proceeding for other than a summary offense.

§ 6355. Transfer to criminal proceedings.

(a) General rule.--After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances, of this Commonwealth, the court before hearing the petition on its merits may rule that this chapter is not applicable and that the offense should be prosecuted, and transfer the offense, where appropriate, to the division or a judge of the court assigned to conduct criminal proceedings, for prosecution of the offense if all of the following exist:

- (1) The child was 14 or more years of age at the time of the alleged conduct.
- (2) A hearing on whether the transfer should be made is held in conformity with this chapter.
- (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardian, or other custodian at least three days before the hearing.
- (4) The court finds:
 - (i) that there is a prima facie case that the child committed the delinquent act alleged;
 - (ii) that the delinquent act would be considered a felony if committed by an adult;
 - (iii) that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution. In determining whether the public interest can be served, the court shall consider the following factors:
 - (A) the impact of the offense on the victim or victims;
 - (B) the impact of the offense on the community;
 - (C) the threat to the safety of the public or any individual posed by the child;
 - (D) the nature and circumstances of the offense allegedly committed by the child;
 - (E) the degree of the child's culpability;
 - (F) the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and

(G) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:

- (I) age;
- (II) mental capacity;
- (III) maturity;
- (IV) the degree of criminal sophistication exhibited by the child;
- (V) previous records, if any;
- (VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child;
- (VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;
- (VIII) probation or institutional reports, if any;
- (IX) any other relevant factors; and
- (iv) that there are reasonable grounds to believe that the child is not committable to an institution for the mentally retarded or mentally ill.

(b) Chapter inapplicable following transfer.--The transfer terminates the applicability of this chapter over the child with respect to the delinquent acts alleged in the petition.

(c) Transfer at request of child.--The child may request that the case be transferred for prosecution in which event the court may order this chapter not applicable.

(d) Effect of transfer from criminal proceedings.--No hearing shall be conducted where this chapter becomes applicable because of a previous determination by the court in a criminal proceeding.

(e) Murder and other excluded acts.--Where the petition alleges conduct which if proven would constitute murder, or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of "delinquent act" in section 6302 (relating to definitions), the court shall require the offense to be prosecuted under the criminal law and procedures, except where the case has been transferred pursuant to section 6322 (relating to transfer from criminal proceedings) from the division or a judge of the court assigned to conduct criminal proceedings.

(f) Transfer action interlocutory.--The decision of the court to transfer or not to transfer the case shall be interlocutory.

(g) Burden of proof.--The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that a child is not amenable to treatment, supervision or rehabilitation as a juvenile shall rest with the Commonwealth unless the following apply:

- (1) (i) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the child was 14 years of age at the time of the offense; or
- (ii) the child was 15 years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and

(2) there is a prima facie case that the child committed a delinquent act which, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating

to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in section 6302.

If either of the preceding criteria are met, the burden of establishing by a preponderance of the evidence that retaining the case under this chapter serves the public interest and that the child is amenable to treatment, supervision or rehabilitation as a juvenile shall rest with the child.

§ 6322. Transfer from criminal proceedings.

(a) General rule.--Except as provided in 75 Pa.C.S. § 6303 (relating to rights and liabilities of minors) or in the event the child is charged with murder or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of "delinquent act" in section 6302 (relating to definitions) or has been found guilty in a criminal proceeding, if it appears to the court in a criminal proceeding that the defendant is a child, this chapter shall immediately become applicable, and the court shall forthwith halt further criminal proceedings, and, where appropriate, transfer the case to the division or a judge of the court assigned to conduct juvenile hearings, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. If it appears to the court in a criminal proceeding charging murder or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of "delinquent act" in section 6302, that the defendant is a child, the case may similarly be transferred and the provisions of this chapter applied. In determining whether to transfer a case charging murder or any of the offenses excluded from the definition of "delinquent act" in section 6302, the child shall be required to establish by a preponderance of the evidence that the transfer will serve the public interest. In determining whether the child has so established that the transfer will serve the public interest, the court shall consider the factors contained in section 6355(a)(4)(iii) (relating to transfer to criminal proceedings).

(b) Order.--If the court finds that the child has met the burden under subsection (a), the court shall make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order. If the court does not make its finding within 20 days of the hearing on the petition to transfer the case, the defendant's petition to transfer the case shall be denied by operation of law.

(c) Expedited review of transfer orders.--The transfer order shall be subject to the same expedited review applicable to orders granting or denying release or modifying the conditions of release prior to sentence, as provided in Rule 1762 of the Pennsylvania Rules of Appellate Procedure.

(d) Effect of transfer order.--Where review of the transfer order is not sought or where the transfer order is upheld the defendant shall be taken forthwith to the probation officer or to a place of detention designated by the court or released to the custody of his parent, guardian, custodian, or other person legally responsible for him, to be brought before the court at a time to be designated. The accusatory

pleading may serve in lieu of a petition otherwise required by this chapter, unless the court directs the filing of a petition.

(e) Transfer of convicted criminal cases.--If in a criminal proceeding, the child is found guilty of a crime classified as a misdemeanor, and the child and the attorney for the Commonwealth agree to the transfer, the case may be transferred for disposition to the division or a judge of the court assigned to conduct juvenile hearings.

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 § 2502, a child may be convicted under the felony murder rule.

§ 2502. Murder.

(b) Murder of the second degree.--A criminal homicide constitutes murder of the second degree when it is committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony.

(d) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Perpetration of a felony." The act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping.

"Principal." A person who is the actor or perpetrator of the crime.

7. Ban Life Without Parole Sentences for Kids

No Credit: 0/1

Pursuant to §1102.1, a child may be sentenced to life without parole. Therefore, Pennsylvania receives no credit.

§ 1102.1. Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer.

(a) First degree murder.--A person who has been convicted after June 24, 2012, of a murder of the first degree, first degree murder of an unborn child or murder of a law enforcement officer of the first degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life.

(b) Notice.--Reasonable notice to the defendant of the Commonwealth's intention to seek a sentence of life imprisonment without parole under subsection (a) shall be provided after conviction and before sentencing.

(c) Second degree murder.--A person who has been convicted after June 24, 2012, of a murder of the second degree, second degree murder of an unborn child or murder of a law enforcement officer of the second degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of imprisonment the minimum of which shall be at least 30 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of imprisonment the minimum of which shall be at least 20 years to life.

(d) Findings.--In determining whether to impose a sentence of life without parole under subsection (a), the court shall consider and make findings on the record regarding the following:

(1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.

(2) The impact of the offense on the community.

(3) The threat to the safety of the public or any individual posed by the defendant.

(4) The nature and circumstances of the offense committed by the defendant.

(5) The degree of the defendant's culpability.

(6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.

(7) Age-related characteristics of the defendant, including:

(i) Age.

(ii) Mental capacity.

(iii) Maturity.

(iv) The degree of criminal sophistication exhibited by the defendant.

- (v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.
- (vi) Probation or institutional reports.
- (vii) Other relevant factors.
- (e) Minimum sentence.--Nothing under this section shall prevent the sentencing court from imposing a minimum sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing may not supersede the mandatory minimum sentences provided under this section.
- (f) Appeal by Commonwealth.--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

8. Release Safety Valve for Kids Serving Lengthy Prison Sentences

No Credit: 0/1

There is no statutory provision allowing judges or the parole board to review the sentences of every child convicted in criminal court after a reasonable period of incarceration.

9. Ban Solitary Confinement for Kids

No Credit: 0/1

There are no statutory provisions banning the use of solitary confinement for children in both juvenile and adult correctional facilities.

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to §6327, children may be incarcerated in adult facilities. Therefore, Pennsylvania receives no credit.

§ 6327. Place of detention.

- (c) Detention in jail prohibited.--It is unlawful for any person in charge of or employed by a jail knowingly to receive for detention or to detain in the jail any

person whom he has or should have reason to believe is a child unless, in a criminal proceeding, the child has been charged with or has been found guilty of an act set forth in paragraph (2)(i), (ii), (iii) or (v) of the definition of "delinquent act" in section 6302 (relating to definitions).

(c.1) Detention of child.--

(1) A child who is subject to criminal proceedings having been charged with an act set forth under paragraph (2)(i), (ii) or (iii) of the definition of "delinquent act" in section 6302, who has not been released on bail and who may seek or is seeking transfer to juvenile proceedings under section 6322 (relating to transfer from criminal proceedings) may be detained in a secure detention facility approved by the Department of Public Welfare for the detention of alleged and adjudicated delinquent children if the attorney for the Commonwealth has consented to and the court has ordered the detention.

(2) Secure detention ordered under this subsection shall not affect a child's eligibility for or ability to post bail.

(3) For a child held in secure detention under this subsection, the court shall order the immediate transfer of the child to the county jail if any of the following apply:

(i) The court determines that the child is no longer seeking transfer under section 6322.

(ii) The court denies the motion filed under section 6322.

(iii) The child attains 18 years of age. This subparagraph does not apply if:

(A) the court has granted the motion filed under section 6322; or

(B) the child is otherwise under order of commitment to the secure detention facility pursuant to the jurisdiction of the court in a delinquency matter.

(d) Transfer of child subject to criminal proceedings.--If a case is transferred for criminal prosecution the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime. The court in making the transfer may order continued detention as a juvenile pending trial if the child is unable to provide bail.

Section 13-1306.2 - Juveniles incarcerated in adult facilities

(a) A person under twenty-one (21) years of age who is confined to an adult local correctional institution following conviction for a criminal offense who is otherwise eligible for educational services as provided under this act shall be eligible to receive educational services from the board of school directors in the same manner and to the same extent as a student who has been expelled pursuant to section 1318. (b) A person under twenty-one (21) years of age who is confined to an adult local correctional institution following a charge for a criminal offense who is otherwise eligible for educational services as provided under this act shall be eligible to receive services from the board of school directors in the same manner and to the same extent as a student who has been placed in an alternative education program for disruptive students. (c) The department shall effectuate necessary procedures for the transfer of funds from the school district of residence to the school district in which the local correctional institution is located. In

effectuating the transfer of funds, the department may deduct the appropriate amount from the Basic Education Funding allocation of any school district which had resident students who were provided educational services in the local correctional facility. (d) For purposes of this section, the term "convicted" means a finding of guilty by a judge or a jury or the entry of a plea of guilty or nolo contendere for an offense under 18 Pa.C.S. (relating to crimes and offenses) whether or not judgment of sentence has been imposed. (e) For purposes of this section, a "local correctional institution" shall include any jail, prison or detention facility operated by a county or jointly by more than one county or by a municipality. The term does not include any facility used for the detention or confinement of juveniles.

11. Ban Mandatory Post-Release Lifetime Supervision

No Credit: 0/1

There is no statutory provision allowing the parole or supervising authority to discharge a formerly incarcerated child from lengthy post-release supervision.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to § 1301, formerly incarcerated children who have reached voting age can vote five years after they have been discharged from imprisonment.

§ 1301. Qualifications to register.

(a) Eligibility.--An individual who will be at least 18 years of age on the day of the next election, who has been a citizen of the United States for at least one month prior to the next election and who has resided in this Commonwealth and the election district where the individual offers to vote for at least 30 days prior to the next ensuing election and has not been confined in a penal institution for a conviction of a felony within the last five years shall be eligible to register as provided in this chapter.

(b) Effect.--No individual shall be permitted to vote at any election unless the individual is registered under this subsection, except as provided by law or by order of a court of common pleas. No registered elector shall be required to register again for any election while the elector continues to reside at the same address.

(c) Removal of residence.--Except as otherwise provided by this part, a registered elector who removes residence from one place to another outside the elector's last election district shall not be entitled to vote in the election district of the elector's last residence except pursuant to the provisions of this section and sections 1501(b)

(relating to removal notices), 1502 (relating to transfer of registration) and 1902 (relating to procedure for voting following failure to return notification card).