



HUMAN RIGHTS *for* KIDS

Arkansas State Ratings Report

Human Rights for Kids (HRFK) annual state ratings process tracks the presence or absence of 12 categories of state statutes that are critical to protecting the human rights of children in the criminal justice system. It is important to note that these 12 categories are not exhaustive of all the important legislation needed to safeguard children's human rights. Furthermore, the ratings do not assess the effectiveness or implementation of these laws in the state. The purpose of the annual state ratings process is to document policies enacted by state legislatures, motivate legislators and policy advocates, and bring attention to the need to prioritize children in criminal justice reform and human rights advocacy. For each category, we track whether a state has a statute consistent with the described policy.

TOTAL POINTS:	6 out of 12
TIER RATING:	3

1. Due Process Protections at Point of Entry for Kids

No Credit: 0/1

There are no statutory protections in place requiring children to consult with their parents, legal guardians, or legal counsel prior to waiving their Miranda Rights or being subject to a custodial interrogation for proceedings in either juvenile or adult court.

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

No Credit: 0/1

Pursuant to §9-27-303, only children 10 years of age or older may be adjudicated delinquent in the juvenile justice system, but children of any age can be charged with capital murder or murder in the first degree. Therefore, Arkansas receives no credit.

§ 9-27-303. Definitions

(15) "Delinquent juvenile" means:

(A) A juvenile ten (10) years old or older who:

(i) Has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state;

(ii) Has violated § 5-73-119; or

(iii) Has violated § 5-71-217(d)(2), cyberbullying of a school employee; or

(B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;

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

Full Credit 1/1

Pursuant to §9-27-303 and §9-27-306, the jurisdiction of the juvenile court for delinquent acts extends to all children under 18 years of age.

§ 9-27-303. Definitions

(32) "Juvenile" means an individual who is:

(A) From birth to eighteen (18) years of age, whether married or single; or

(B) Adjudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of circuit court prior to eighteen (18) years of age and for whom the juvenile division of circuit court retains jurisdiction;

§ 9-27-306 - Jurisdiction.

(a) (1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including without limitation:

(A) (i) Proceedings in which a juvenile is alleged to be delinquent as defined in this subchapter, including juveniles ten (10) to eighteen (18) years of age.

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

Partial Credit: .5/1

Pursuant to §9-27-318, children 14 years of age or older are eligible for transfer to adult criminal court. Because a motion must be filed before a reverse transfer hearing is held, Arkansas does not get full credit.

§ 9-27-318. Filing and transfer to the criminal division of circuit court

(c) A prosecuting attorney may charge a juvenile in either the juvenile or criminal division of circuit court when a case involves a juvenile:

(1) At least sixteen (16) years old when he or she engages in conduct that, if committed by an adult, would be any felony; or

(2) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that, if committed by an adult, would be:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Kidnapping, § 5-11-102;

(D) Aggravated robbery, § 5-12-103;

(E) Rape, § 5-14-103;

(F) Battery in the first degree, § 5-13-201; or

(G) Terroristic act, § 5-13-310.

(e) Upon the motion of the court or of any party, the judge of the division of circuit court in which a delinquency petition or criminal charges have been filed shall conduct a transfer hearing to determine whether to transfer the case to another division of circuit court.

(f) The court shall conduct a transfer hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days from the date of the motion to transfer the case.

(g) In the transfer hearing, the court shall consider all of the following factors:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court;

(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

(4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;

(5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;

(7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday;

(8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;

(9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(10) Any other factors deemed relevant by the judge.

(h)

(1) The court shall make written findings on all of the factors set forth in subsection (g) of this section.

(2) Upon a finding by clear and convincing evidence that a case should be transferred to another division of circuit court, the judge shall enter an order to that effect.

(i) Upon a finding by the criminal division of circuit court that a juvenile fourteen (14) through seventeen (17) years of age and charged with the crimes in subdivision (c)(2) of this section should be transferred to the juvenile division of circuit court, the criminal division of circuit court may enter an order to transfer as an extended juvenile jurisdiction case.

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

Partial Credit: .5/1

Pursuant to §5-10-102, children may claim an affirmative defense to a charge of first degree murder predicated on the felony murder rule. Because there are several exceptions to claiming the defense, Arkansas receives partial credit.

5-10-102. Murder in the first degree.

(a) A person commits murder in the first degree if:

(1) Acting alone or with one (1) or more other persons:

(A) The person commits or attempts to commit a felony; and

(B) In the course of and in the furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life;

(b) It is an affirmative defense to any prosecution under subdivision (a)(1) of this section for an offense in which the defendant was not the only participant that the defendant:

(1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the homicidal act's commission;

- (2) Was not armed with a deadly weapon;
- (3) Reasonably believed that no other participant was armed with a deadly weapon; and
- (4) Reasonably believed that no other participant intended to engage in conduct that could result in death or serious physical injury.

7. Ban Life Without Parole Sentences for Kids

Full Credit: 1/1

Pursuant to §5-4-108, children may not be sentenced to life without the possibility of parole.

§ 5-4-108. Sentencing for person who committed an offense when he or she was less than 18 years of age

A defendant shall not be sentenced to death or life imprisonment without the possibility of parole for an offense if the defendant was less than eighteen (18) years of age at the time the offense was committed.

8. Release Safety Valve for Kids Serving Lengthy Prison Sentences

Partial Credit: .5/1

Pursuant to §16-93-621, children become eligible for parole after no more than 20, 25, or 30 years depending on the offenses committed. However in 2022, Ark. Parole Bd. v. Johnson, 2022 Ark. 209 (Ark. 2022), in interpreting subdivisions (a)(2) of the statute, the state court held that any consecutive sentences imposed alongside a sentence for an offense where a death occurred must also run consecutively for parole eligibility. Therefore, Arkansas receives partial credit.

§ 16-93-621. Parole eligibility – A person who was a minor at the time of committing an offense that was committed before, on, or after March 20, 2017

(1) A minor who was convicted and sentenced to the Department of Correction for an offense committed before he or she was eighteen (18) years of age and in which the death of another person did not occur is eligible for release on parole no later than after twenty (20) years of incarceration, including any applicable sentencing enhancements, and including an instance in which multiple sentences are to be served consecutively or concurrently, unless by law the minor is eligible for earlier parole eligibility.

(2)(A) A minor who was convicted and sentenced to the department for an offense committed before he or she was eighteen (18) years of age, in which the death of another person occurred, and that was committed before, on, or after March 20,

2017, is eligible for release on parole no later than after twenty-five (25) years of incarceration if he or she was convicted of murder in the first degree, § 5-10-102, or no later than after thirty (30) years of incarceration if he or she was convicted of capital murder, § 5-10-101, including any applicable sentencing enhancements, unless by law the minor is eligible for earlier parole eligibility.

(B) Subdivision (a)(2)(A) of this section applies retroactively to a minor whose offense was committed before he or she was eighteen (18) years of age, including minors serving sentences of life, regardless of the original sentences that were imposed.

9. Ban Solitary Confinement for Kids

Partial Credit: .5/1

Pursuant to § 9-27-371, solitary confinement is prohibited for children in juvenile detention facilities, but such protections are not in place for children in adult facilities. Therefore, Arkansas receives partial credit.

§ 9-27-371. Punitive isolation or solitary confinement of juveniles

(a) As used in this section:

(1) "Punitive isolation" means the placement of a juvenile in a location that is separate from the general population as a punishment; and

(2) "Solitary confinement" means the isolation of a juvenile in a cell separate from the general population as a punishment.

(b) A juvenile who has been placed or detained in a juvenile detention facility shall not be placed in punitive isolation or solitary confinement as a disciplinary measure for more than twenty-four (24) hours unless the:

(1) Placement of the juvenile in punitive isolation or solitary confinement is due to:

(A) A physical or sexual assault committed by the juvenile while in the juvenile detention facility;

(B) Conduct of the juvenile that poses an imminent threat of harm to the safety or well-being of the juvenile, the staff, or other juveniles in the juvenile detention facility; or

(C) The juvenile escaping or attempting to escape from the juvenile detention facility; and

(2)(A) Director of the juvenile detention facility provides written authorization to place the juvenile in punitive isolation or solitary confinement for more than twenty-four (24) hours.

(B) The director of the juvenile detention facility shall provide the written authorization described in subdivision (2)(A) of this section for every twenty-four-hour period during which the juvenile remains in punitive isolation or solitary confinement after the initial twenty-four (24) hours.

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to §9-27-336, children may be incarcerated in adult facilities.

§9-27-336. Limitations on detention.

(b) A juvenile shall not be placed or confined in a jail or lock-up used for the detention of adults except under the following circumstances:

(1) A juvenile who has been formally transferred from the juvenile division of circuit court to the criminal division of circuit court and against whom felony charges have been filed or a juvenile whom the prosecuting attorney has the discretion to charge in circuit court and to prosecute as an adult and against whom the circuit court's jurisdiction has been invoked by the filing of felony charges may be held in an adult jail or lock-up;

(2) (A) A juvenile alleged to have committed a delinquent act may be held in an adult jail or lock-up for up to six (6) hours for purposes of identification, processing, or arranging for release or transfer to an alternative facility, provided that he or she is separated by sight and sound from adults who are pretrial detainees or convicted persons.

(B) A holding for those purposes shall be limited to the minimum time necessary and shall not include travel time for transporting the juvenile to the alternative facility; or

(3) (A) A juvenile alleged to have committed a delinquent act who is awaiting an initial appearance before a judge may be held in an adult jail or lock-up for up to twenty-four (24) hours, excluding weekends and holidays, provided the following conditions exist:

(i) The alleged act would be a misdemeanor or a felony if committed by an adult or is a violation of 5-73-119;

(ii) The geographical area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the current designation of the United States Census Bureau;

(iii) No acceptable alternative placement for the juvenile exists; and

(iv) The juvenile is separated by sight and sound from adults who are pretrial detainees or convicted persons.

(B) (i) A juvenile awaiting an initial appearance and being held in an adult jail or lock-up pursuant to the twenty-four-hour exception, as provided in subdivision (b)(3)(A) of this section, may be held for an additional period not to exceed twenty-four (24) hours, provided that the following conditions exist:

(a) The conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within twenty-four (24) hours; and

(b) All the conditions in subdivision (b)(3)(A) of this section exist.

(ii) Criteria will be adopted by the Governor or his or her designee to establish what

distance, highway or road conditions, or ground transportation limitations will provide a basis for holding a juvenile in an adult jail or lock-up under this exception

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to §16-93-622, formerly incarcerated children become eligible to be discharged from parole after no more than 5 years.

§ 16-93-622. Parole Discharge for Offenders Who Are Minors - Reinstatement of Rights

(a) The Parole Board may discharge a person from parole if:

(1) The person:

(A) Was released on parole under § 16-93-621 for having committed an offense as a minor; and

(B) Has served at least five (5) years on parole without a violation; and

(2) The prosecuting attorney in the county where the person was originally convicted has consented to the discharge of the person from parole.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to §16-93-622, formerly incarcerated children are eligible to have their voting rights restored after they have been discharged from parole.

§ 16-93-622. Parole Discharge for Offenders Who Are Minors - Reinstatement of Rights

(b) Unless otherwise provided by Arkansas Constitution, Amendment 51, a person who has been discharged from parole under subsection (a) of this section shall have his or her constitutional right to vote restored.