



# HUMAN RIGHTS *for* KIDS

## Vermont 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.

<b>TOTAL POINTS:</b>	4 out of 12
<b>TIER RATING:</b>	3

### 1. Due Process Protections at Point of Entry for Kids

No Credit: 0/1

While the Vermont Supreme Court ruled in *In Re ETC*, 449 A.2d 937 (1982), that prior to a custodial interrogation children must be given the opportunity to consult with an interested adult, these protections have not been codified in statute.

#### **§ 5228. Constitutional protections for a child in delinquency proceedings**

A child charged with a delinquent act need not be a witness against, nor otherwise incriminate, himself or herself. Any extrajudicial statement, if constitutionally inadmissible in a criminal proceeding, shall not be used against the child. Evidence

illegally seized or obtained shall not be used over objection to establish the charge against the child. A confession out of court is insufficient to support an adjudication of delinquency unless corroborated in whole or in part by other substantial evidence.

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

No Credit: 0/1

Pursuant to §5102, children under 10 years of age may be subject to delinquency proceedings in juvenile court for charges of murder. Therefore, Vermont receives no credit.

### **§5102 - Definitions and provisions of general application**

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming 10 years of age and prior to becoming 22 years of age, unless otherwise provided in chapter 52 or 52A of this title; provided, however:

(i) that an individual who is alleged to have committed an act before attaining 10 years of age which would be murder as defined in 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency proceedings; and

(ii) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

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

Full Credit: 1/1

Pursuant to §5102, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 22.

### **§5102 - Definitions and provisions of general application**

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming 10 years of age and prior to becoming 22 years of age, unless otherwise provided in chapter 52 or 52A of this title; provided, however:

(i) that an individual who is alleged to have committed an act before attaining 10 years of age which would be murder as defined in 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency proceedings; and

(ii) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

#### **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 §5204, children as young as 12 years old may be subject to transfer to adult court. Additionally, pursuant to §5201, cases involving children over 14 years of age for certain enumerated offenses must be initiated in adult court. Therefore, Vermont receives no credit.

#### **§5204 - Transfer from family division of the superior court**

(a) [Effective July 1, 2022] After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained 16 years of age but not 20 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition is a felony not specified in subdivisions (1)-(12) of this subsection or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed the charged offense; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) the maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community;

(2) the extent and nature of the child's prior record of delinquency;

(3) the nature of past treatment efforts and the nature of the child's response to them;

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

(5) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(6) the prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings;

(7) whether the protection of the community would be better served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(e) A transfer under this section shall terminate the jurisdiction of the Family Division of the Superior Court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f) (1) The Family Division, following completion of the transfer hearing, shall make findings and, if the court orders transfer of jurisdiction from the Family Division, shall state the reasons for that order. If the Family Division orders transfer of jurisdiction, the child shall be treated as an adult. The State's Attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the Family Division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the court shall transfer the proceedings to the Criminal Division and the child shall be treated as an adult. The State's Attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall constitute a final order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained 16 years of age at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the Court shall order the sealing of all applicable files and records of the Court, and such order shall be carried out as provided in subsection 5119(e) of this title.

### **§5201 - Commencement of delinquency proceedings**

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c)(1) Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining 14 years of age, but not 22 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter and chapter 52A of this title, unless the State's Attorney files the charge directly as a youthful offender petition in the Family Division.

(2)(A) Any proceeding concerning a child who is alleged to have committed one of the following acts after attaining 14 years of age, but not 22 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter and chapter 52A of this title, unless the State's Attorney files the charge directly as a youthful offender petition in the Family Division:(i) a violation of a condition of release as defined in 13 V.S.A. § 7559 imposed by the Criminal Division for any of the offenses listed in subsection 5204(a) of this title; or(ii) a violation of a condition of release as defined in 13 V.S.A. § 7559 imposed by the Criminal Division for an offense that was transferred from the Family Division pursuant to section 5204 of this title.

(B) This subdivision

(2) shall not apply to a proceeding that is the subject of a final order accepting the case for youthful offender treatment pursuant to subsection 5281(d) of this title.

(3) Any proceeding concerning a child who is alleged to have committed one of the following acts after attaining 16 years of age, but not 22 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter and chapter 52A of this title, unless the State's Attorney files the charge directly as a youthful offender petition in the Family Division:

(A) using a firearm while committing a felony in violation of 13 V.S.A. § 4005, or an attempt to commit that offense;

(B) trafficking a regulated drug in violation of 18 V.S.A. chapter 84, subchapter 1, or an attempt to commit that offense; or

(C) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3), or an attempt to commit that offense.

(d) Any proceeding concerning a child who is alleged to have committed any offense other than those specified in subsection 5204(a) of this title or subdivision (c)(2) or (3) of this section before attaining 19 years of age shall originate in the Family Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(e) [Repealed.]

(f) If the State requests that custody of the child be transferred to the Department, a temporary care hearing shall be held as provided in subchapter 3 of this chapter.

(g) A petition may be withdrawn by the State's Attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

## **5. Ban Mandatory Minimum Sentencing for Kids**

No Credit: 0/1

Pursuant to §5293, children convicted in adult court must be sentenced as if they were adults. Therefore, Vermont receives no credit.

### **§5293 - Disposition of minors adjudicated as adult offenders; separation of persons under 18 years from adults**

(b) Sentencing of minor. If a minor is convicted of an offense in a court of criminal jurisdiction as an adult, the court shall sentence the minor as an adult.

## **6. Ban Felony-Murder Rule for Kids**

No Credit: 0/1

Pursuant to §2301, children may be convicted under the felony murder rule.

### **§2301 - Murder-degrees**

1. Murder committed by means of poison, or by lying in wait, or by willful, deliberate, and premeditated killing, or committed in perpetrating or attempting to perpetrate arson, sexual assault, aggravated sexual assault, kidnapping, robbery, or burglary shall be murder in the first degree. All other kinds of murder shall be murder in the second degree.

### **7. Ban Life Without Parole Sentences for Kids**

Full Credit: 1/1

Pursuant to §7045, children may not be sentenced to life imprisonment without the possibility of parole.

#### **§7045 - Life without parole sentence prohibited for persons under 18 years of age**

A court shall not sentence a person to life imprisonment without the possibility of parole if the person was under 18 years of age at the time of the commission of the offense.

### **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 §5293, children may be incarcerated in adult facilities. Therefore, Vermont receives no credit.

**§5292 - Detention in adult facilities of minors charged or adjudicated as delinquents**

(a) A minor charged with a delinquent act shall not be detained under this chapter in a jail or other facility intended or used for the detention of adults unless the child is alleged to have committed a crime punishable by life imprisonment and it appears to the satisfaction of the court that public safety and protection reasonably require such detention.

(b) A minor who has been adjudicated as a delinquent child shall not by virtue of such adjudication be committed or transferred to an institution or other facility used primarily for the execution of sentences of persons convicted of a crime.

(c) The official in charge of a jail or other facility intended or used for the detention of adult offenders or persons charged with crime shall inform the court immediately when a minor who is or appears to be under the age of 18 years is received at the facility other than pursuant to subsection (a) of this section or section 5293 of this title and shall deliver the minor to the court upon request of the court or transfer the minor to the detention facility designated by the court by order.

**§5293 - Disposition of minors adjudicated as adult offenders; separation of persons under 18 years from adults**

(a) Pretrial detention.

(1) A minor who is under the age of 18 who has been arrested shall not be placed in a facility for adult offenders unless a felony charge has been filed in the criminal division of the superior court or the criminal division of the superior court has exercised jurisdiction over the matter and the state's attorney has determined that a felony charge will be filed without delay. A minor who is eligible for release under chapter 229 of Title 13 shall be released.

(2) (A) A minor who is under the age of 18 who has been arrested for a misdemeanor shall immediately and without first being taken elsewhere:

(i) be released to his or her custodial parent, guardian, or custodian; or

(ii) be delivered to the criminal division of the superior court.

(B) If the minor is delivered to the criminal division of the superior court, the arresting officer shall immediately file written notice thereof with the court together with a statement of the reason for taking the minor into custody. A minor who is eligible for release under chapter 229 of Title 13 shall be released. In the event that the minor is not released:

(i) the minor shall not be detained in a facility for adult offenders; and

(ii) The court shall defer to the commissioner of corrections concerning the facility in which the minor shall be detained.



(c) Placement of minors under 16. The commissioner of corrections shall not place a minor under the age of 16 who has been sentenced to a term of imprisonment in a correctional facility used to house adult offenders.

(d) Placement of minors over 16 convicted of felony. The commissioner of corrections may place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a felony and who has been sentenced to a term of imprisonment.

(e) Placement of minor over 16 convicted of misdemeanor. The commissioner of corrections shall not place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a misdemeanor.

(f) Transfer of minor at 18th birthday. At the 18th birthday of a minor convicted of a misdemeanor, the commissioner may transfer the minor to a facility for adult offenders.

(g) Applicability. The provisions of this section shall apply to the commitment of minors to institutions within or outside the state of Vermont.

## **11. Ban Mandatory Post-Release Lifetime Supervision**

Full Credit: 1/1

Pursuant to §506, formerly incarcerated children may be discharged from parole at the discretion of the Parole Board.

### **§506 - Termination and discharge**

(a) If warranted by the conduct of the parolee and the ends of justice the board may terminate the period of parole supervision and discharge the parolee from parole supervision. Supervision of a parolee serving a life sentence may be terminated only after 15 years measured from the date of first confinement. (b) The board shall discharge the parolee at the expiration of the maximum term of his or her sentence.

## **12. Voting Rights Restoration**

Full Credit: 1/1

Pursuant to §807, incarcerated persons retain the right to vote.

### **§807 - Voting rights**

(a) Notwithstanding any other provision of law, a person who is convicted of a crime shall retain the right to vote by early voter absentee ballot in a primary or general election at the person's last voluntary residence during the term of the person's

commitment under a sentence of confinement provided the person otherwise fulfills all voting requirements.

(b) No person sentenced to the custody of the commissioner of corrections may use the place of involuntary confinement as the person's place of residence for the purpose of qualifying to vote.