Colorado 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:	6.5 out of 12
TIER RATING:	2

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

Full Credit: 1/1

Pursuant to §19-2-104, the juvenile court does not have jurisdiction over children under 10 years of age.

§ 19-2-104. Jurisdiction
(1) Except as otherwise provided by law, the juvenile court shall have exclusive original jurisdiction in proceedings:
(a) Concerning any juvenile ten years of age or older who has violated:
(I) Any federal or state law, except nonfelony state traffic, game and fish, and parks and recreation laws or rules; the offenses specified in section 18-13-121 , concerning tobacco products; the offense specified in section 18-13-122 , concerning the illegal possession or consumption of ethyl alcohol or marijuana by an underage person or illegal possession of marijuana paraphernalia by an underage person; the offenses specified in section 18-18-406(5)(a)(I) , (5)(b)(I) , and (5)(b)(II) , concerning marijuana and marijuana concentrate; and the civil infraction in section 18-7-109(3) concerning exchange of a private image by a juvenile;
(II) Any county or municipal ordinance except traffic ordinances, the penalty for which may be a jail sentence of more than ten days; or
(III) Any lawful order of the court made under this title.

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

Full Credit: 1/1

Pursuant to §19-2-103, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

§ 19-1-103. Definitions
(18) "Child" means a person under eighteen years of age.
(68) "Juvenile", as used in article 2 of this title, means a child as defined in subsection (18) of this section.
(71) "Juvenile delinquent", as used in article 2 of this title, means a juvenile who has been found guilty of a delinquent act.

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 §19-2-518, the state may seek to transfer a child less than 14 years of age to adult criminal court, and pursuant to §19-2-517 the state may direct file a child 16 years of age or older who is accused of specified offenses in adult court.

§ 19-2-518. Transfers

(1) (a) The juvenile court may enter an order certifying a juvenile to be held for criminal proceedings in the district court if:

(I) A petition filed in juvenile court alleges the juvenile is:

(A) Twelve or thirteen years of age at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a class 1 or class 2 felony or a crime of violence, as defined in section 18-1.3-406, C.R.S.; or

(B) Fourteen years of age or older at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a felony; and

(II) After investigation and a hearing, the juvenile court finds it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction.

(b) A petition may be transferred from the juvenile court to the district court only after a hearing as provided in this section.

§ 19-2-517. Direct filing

(1) A juvenile may be charged by the direct filing of an information in the district court or by indictment only if:

(a) The juvenile is sixteen years of age or older at the time of the commission of the alleged offense and:

(I) Is alleged to have committed a class 1 or class 2 felony; or

(II) Is alleged to have committed a sexual assault that is a crime of violence pursuant to section 18-1.3-406, C.R.S ., or a sexual assault under the circumstances described in section 18-3-402(5)(a), C.R.S .; or

(III)(A) Is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406, C.R.S ., other than a sexual assault as described in subparagraph (II) of this paragraph (a), or is alleged to have committed sexual assault pursuant to section 18-3-402, C.R.S ., sexual assault on a child pursuant to section 18-3-405, C.R.S ., or sexual assault on a child by one in a position of trust pursuant to section 18-3-405.3, C.R. S .; and

(B) Is found to have a prior adjudicated felony offense; or

(IV) Has previously been subject to proceedings in district court as a result of a direct filing pursuant to this section or a transfer pursuant to section 19-2-518 ; except that:

(A) If the juvenile is found not guilty in district court of the prior felony or any lesser included offense, the subsequent charge shall be remanded to the juvenile court; and

(B) If the juvenile is convicted in district court in the prior case of a lesser included or nonenumerated offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section, the subsequent charge may be remanded to the juvenile court.

5. Ban Mandatory Minimum Sentencing for Kids

No Credit: 0/1

Pursuant to §19-2-518, judges may depart from mandatory minimums when sentencing a child who has been convicted in adult criminal court; however, this discretion does not apply in cases involving a Class 1 felony or sex offense. Therefore, Colorado receives no credit.

§19-2-518. Transfers - definition
(1) (d) (I) If a juvenile is convicted in cases in which criminal charges are transferred to the District Court pursuant to this section, the District Court Judge shall sentence the juvenile either:
(A) as an adult; except that a juvenile is excluded from the mandatory minimum sentencing provisions in section 18-1.3-406, unless the juvenile is convicted of a Class 1 felony or a sex offense that is subject to Part 9 of Article 1.3 of Title 18, or;
(B) To the Youthful Offender System in the Department of Corrections in accordance with section 18-1.3-407; except that a juvenile is not eligible for sentencing to the Youthful Offender System if the juvenile is convicted of a Class 1 felony; any sexual offense described in section 18-6-301 or 18-6-302, or part 4 of Article 3 of Title 18; or a second or subsequent offense, if the juvenile received a sentence to the Department of Corrections or to the Youthful Offender system for the prior offense.

6. Ban Felony-Murder Rule for Kids

Partial Credit: .5/1

Pursuant to §18-3-103, children may claim an affirmative defense to a charge of second degree murder predicated on the felony murder rule. Because there are several exceptions to claiming the defense, Colorado receives partial credit.

§ 18-3-103. Murder in the Second degree

(1) A person commits the crime of murder in the second degree if:
(a) The person knowingly causes the death of a person; or
(b) Acting either alone or with one or more persons, he or she commits or attempts to commit felony arson, robbery, burglary, kidnapping, sexual assault as prohibited by section 18-3-402, sexual assault in the first or second degree as prohibited by section 18-3-402 or 18-3-403, as those sections existed prior to July 1, 2000, or a class 3 felony for sexual assault on a child as provided in section 18-3-405(2), or the felony crime of escape as provided in section 18-8-208, and, in the course of or in furtherance of the crime that he or she is committing or attempting to commit, or of immediate flight therefrom, the death of a person, other than one of the participants, is caused by any participant.

(1.5) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:(a) Was not the only participant in the underlying crime; and(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and(c) Was not armed with a deadly weapon; and(d) Did not engage himself or herself in or intend to engage in and had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious bodily injury.

7. Ban Life Without Parole Sentences for Kids

Full Credit: 1/1

Pursuant to §18-1.3-401, children may not be sentenced to life without the possibility of parole.

§ 18-1.3-401. Felonies classified--presumptive penalties

4(b)(I) Notwithstanding the provisions of sub-subparagraph (A) of subparagraph (V) of paragraph (a) of subsection (1) of this section and notwithstanding the provisions of paragraph (a) of this subsection (4), as to a person who is convicted as an adult of a class 1 felony following direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S ., or transfer of proceedings to the district court pursuant to section 19-2-518, C.R.S ., the district court judge shall sentence the person to a term of life imprisonment with the possibility of parole after serving a period of forty years, less any earned time granted pursuant to section 17-22.5-405, C.R.S . Regardless of whether the state board of parole releases the person on parole, the person shall remain in the legal custody of the department of corrections for the remainder of the person's life and shall not be discharged.
(II) The provisions of this paragraph (b) shall apply to persons sentenced for offenses committed on or after July 1, 2006.
(c)(I) Notwithstanding the provisions of sub-subparagraph (A) of subparagraph (V) of paragraph (a) of subsection (1) of this section and notwithstanding the provisions of paragraphs (a) and (b) of this subsection (4), as to a person who is convicted as an adult of a class 1 felony following a direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S ., or transfer of proceedings to the district court pursuant to section 19-2-518, C.R.S ., or pursuant to either of these sections as they existed prior to their repeal and reenactment, with amendments, by House Bill 96-1005, which felony was committed on or after July 1, 1990, and before July 1, 2006, and who received a sentence to life imprisonment without the possibility of parole:
(A) If the felony for which the person was convicted is murder in the first degree, as described in section 18-3-102(1)(b) , then the district court, after holding a hearing, may sentence the person to a determinate sentence within the range of thirty to

fifty years in prison, less any earned time granted pursuant to section 17-22.5-405, C.R.S ., if, after considering the factors described in subparagraph (II) of this paragraph (c), the district court finds extraordinary mitigating circumstances. Alternatively, the court may sentence the person to a term of life imprisonment with the possibility of parole after serving forty years, less any earned time granted pursuant to section 17-22.5-405, C.R.S .
(B) If the felony for which the person was convicted is not murder in the first degree, as described in section 18-3-102(1)(b) , then the district court shall sentence the person to a term of life imprisonment with the possibility of parole after serving forty years, less any earned time granted pursuant to section 17-22.5-405, C.R.S .
(II) In determining whether extraordinary mitigating circumstances exist, the court shall conduct a sentencing hearing, make factual findings to support its decision, and consider relevant evidence presented by either party regarding the following factors:
(A) The diminished culpability and heightened capacity for change associated with youth;
(B) The offender's developmental maturity and chronological age at the time of the offense and the hallmark features of such age, including but not limited to immaturity, impetuosity, and inability to appreciate risks and consequences;
(C) The offender's capacity for change and potential for rehabilitation, including any evidence of the offender's efforts toward, or amenability to, rehabilitation;
(D) The impact of the offense upon any victim or victim's immediate family; and
(E) Any other factors that the court deems relevant to its decision, so long as the court identifies such factors on the record.
(III) If a person is sentenced to a determinate range of thirty to fifty years in prison pursuant to this paragraph (c), the court shall impose a mandatory period of ten years parole.

8. Release Safety Valve for Kids Serving Lengthy Prison Sentences

Credit: 1/1

Pursuant to §17-34-102, children who have been incarcerated for 25 years and complete a specialized program for juveniles convicted as adults become eligible to apply for early parole.

§ 17-34-102. Specialized program for juveniles convicted as adults
(1) The department shall develop and implement a specialized program for offenders who have been sentenced to an adult prison for a felony offense committed while the offender was less than eighteen years of age as a result of the filing of criminal charges by an information or indictment pursuant to section 19-2-517, C.R.S ., or the transfer of proceedings to the district court pursuant to section 19-2-518, C.R.S ., or pursuant to either of these sections as they existed prior to their repeal and reenactment, with amendments, by House Bill 96-1005, and who

are determined to be appropriate for placement in the specialized program. The department shall implement the specialized program within or in conjunction with a facility operated by, or under contract with, the department.
(7) Notwithstanding any provision of law, an offender who successfully completes the specialized program is eligible to apply for early parole pursuant to the provisions of section 17-22.5-403(4.5) or 17-22.5-403.7 .
(8)(a) Except as described in paragraph (b) of this subsection (8), if an offender has served at least twenty-five calendar years of his or her sentence and successfully completed the specialized program, unless rebutted by relevant evidence, it is presumed that:
(I) The offender has met the factual burden of presenting extraordinary mitigating circumstances; and
(II) The offender's release to early parole is compatible with the safety and welfare of society.
(b) If an offender who committed murder in the first degree, as described in section 18-3-102(1)(a) , (1)(c) , (1)(e) , or (1)(f), C.R.S ., has served thirty years of his or her sentence and successfully completed the program, unless rebutted by relevant evidence, the presumptions described in subparagraphs (I) and (II) of paragraph (a) of this subsection (8) apply.

9. Ban Solitary Confinement for Kids

No Credit: .5/1

Pursuant to §26-20-102 through §26-20-104.5, solitary confinement is prohibited for children in juvenile detention facilities, and pursuant to §17-26-303, solitary confinement is prohibited for juveniles held in local jails. However, such protections are not in place for children in adult facilities. Therefore, Colorado receives partial credit.

§ 26-20-103. Basis for use of restraint or seclusion
(1) Subject to the provisions of this article, an agency may only use restraint or seclusion on an individual:
(a) In cases of emergency, as defined in section 26-20-102(3) ; and
(b)(I) After the failure of less restrictive alternatives; or
(II) After a determination that such alternatives would be inappropriate or ineffective under the circumstances.
(1.5) Restraint and seclusion must never be used:
(a) As a punishment or disciplinary sanction;
(b) As part of a treatment plan or behavior modification plan;
(c) For the purpose of retaliation by staff; or
(d) For the purpose of protection, unless:
(I) The restraint or seclusion is ordered by the court; or
(II) In an emergency, as provided for in subsection (1) of this section.

(2) An agency that uses restraint or seclusion pursuant to the provisions of subsection (1) of this section shall use such restraint or seclusion:
(a) Only for the purpose of preventing the continuation or renewal of an emergency;
(b) Only for the period of time necessary to accomplish its purpose; and
(c) In the case of physical restraint, only if no more force than is necessary to limit the individual's freedom of movement is used.

§ 26-20-104.5. Duties relating to use of seclusion by division of youth services

(1) Notwithstanding the provisions of section 26-20-103 to the contrary, if the division of youth services holds a youth in seclusion in any secure state-operated or state-owned facility:
(a) A staff member shall check the youth's safety at varying intervals, but at least every fifteen minutes;
(b) Within one hour after the beginning of the youth's seclusion period, and every hour thereafter, a staff member shall notify the facility director or his or her designee of the seclusion and receive his or her written approval of the seclusion; and
(c) Within twelve hours after the beginning of the youth's seclusion period, the division of youth services shall notify the youth's parent, guardian, or legal custodian and inform that person that the youth is or was in seclusion and the reason for his or her seclusion.
(2)(a) A youth placed in seclusion because of an ongoing emergency must not be held in seclusion beyond four consecutive hours, unless the requirements of paragraph (b) of this subsection (2) are satisfied.
(b) If an emergency situation occurs that continues beyond four consecutive hours, the division of youth services may not continue the use of seclusion for that youth unless the following criteria are met and documented:
(I) A qualified mental health professional, or, if such professional is not available, the facility director or his or her designee, determines that referral of the youth in seclusion to a mental health facility is not warranted; and
(II) The director of the division of youth services, or his or her designee, approves at or before the conclusion of four hours, and every hour thereafter, the continued use of seclusion.
(c) A youth may not be held in seclusion under any circumstances for more than eight total hours in two consecutive calendar days without a written court order.
(3) Notwithstanding any other provision of this section, the division of youth services may place a youth alone in a room or area from which egress is involuntarily prevented if such confinement is part of a routine practice that is applicable to substantial portions of the population. Such confinement must be imposed only for the completion of administrative tasks and should last no longer than necessary to achieve the task safely and effectively.

§ 26-20-102. Definitions
As used in this article 20, unless the context otherwise requires:
(1)(a) "Agency" means:
(b) "Agency" does not include:
(I) The department of corrections or any public or private entity that has entered into a contract for services with such department;
(II) Any law enforcement agency of the state or of a political subdivision of the state;
(III) A juvenile probation department or division authorized pursuant to section 19-2-204, C.R.S .;
(IV) Any county department of human or social services when engaged in performance of duties pursuant to part 3 of article 3 of title 19.

§17-26-303. Placement in restrictive housing in a local jail.
(1) A local jail shall not involuntarily place an individual in restrictive housing, including for disciplinary reasons, if the individual meets any of the following conditions:
(f) the individual is under eighteen years of age; or

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to § 19-2-508, children may be detained or confined in an adult jail or lockup. Additionally, there is no prohibition on incarcerating children in adult prisons.

§ 19-2-508. Detention and shelter--hearing--time limits--findings--review--confinement with adult offenders--restrictions
(4)(a) No jail shall receive a juvenile for detention following a detention hearing pursuant to this section unless the juvenile has been ordered by the court to be held for criminal proceedings as an adult pursuant to a transfer or unless the juvenile is to be held for criminal proceedings as an adult pursuant to a direct filing. No juvenile under the age of fourteen and, except upon order of the court, no juvenile fourteen years of age or older shall be detained in a jail, lockup, or other place used for the confinement of adult offenders. The exception for detention in a jail shall be used only if the juvenile is being held for criminal proceedings as an adult pursuant to a direct filing or transfer.
(b) Whenever a juvenile is held pursuant to a direct filing or transfer in a facility where adults are held, the juvenile shall be physically segregated from the adult offenders.

11. Ban Mandatory Post-Release Lifetime Supervision

Partial Credit: .5/1

Pursuant to §18-1.3-401, children sentenced to life imprisonment are ineligible for discharge from lifetime parole. However, most other formerly incarcerated children may be discharged from parole pursuant to §17-2-201. Therefore, Colorado receives partial credit.

§ 18-1.3-401. Felonies classified--presumptive penalties
(IV) If a person is sentenced to a term of life imprisonment with the possibility of parole after serving forty years, less any earned time granted pursuant to section 17-22.5-405, C.R.S ., regardless of whether the state board of parole releases the person on parole, the person shall remain in the legal custody of the department of corrections for the remainder of his or her life and shall not be discharged.

§ 17-2-201. State board of parole - definitions
(5) (a) As to any person sentenced for conviction of a felony committed prior to July 1, 1979, or of a misdemeanor and as to any person sentenced for conviction of an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., committed prior to July 1, 1996, or a class 1 felony and as to any person sentenced as a habitual criminal pursuant to section 18-1.3-801, C.R.S., for an offense committed prior to July 1, 2003, the board has the sole power to grant or refuse to grant parole and to fix the condition thereof and has full discretion to set the duration of the term of parole granted, but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court or five years, whichever is less; except that the five-year limitation shall not apply to parole granted pursuant to section 17-22.5-403.7 for a class 1 felony.
(a.3) (I) Any person sentenced as a habitual criminal pursuant to section 18-1.3-801 (1.5) or (2), C.R.S., for an offense committed on or after July 1, 2003, shall be subject to the mandatory parole set forth in section 18-1.3-401 (1) (a) (V) (A) or 18-1.3-401.5, C.R.S., for the class or level of felony of which the person is convicted.
(II) As to any person sentenced as a habitual criminal pursuant to section 18-1.3-801 (1) or (2.5), C.R.S., for an offense committed on or after July 1, 2003, upon completion of forty calendar years of incarceration in the department of corrections, the parole board may schedule a hearing to determine whether the inmate may be released on parole. If the inmate is released on parole, the life sentence shall continue and shall not be deemed to be discharged until such time as the parole board may discharge the offender. The offender shall serve at least five years on parole prior to discharge. If the parole board revokes the parole, the offender shall be returned to the department of corrections to serve the remainder of the life sentence. The parole board need only reconsider granting parole to such inmate once every three years.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to 1-1-104, a formerly incarcerated child who has reached voting age can vote after they have been discharged from imprisonment.

§ 1-1-104. Definitions.
As used in this code, unless the context otherwise requires:
(49.3) (a) "Term of imprisonment" or "full term of imprisonment" means the period during which an individual is serving a sentence of detention or confinement in any correctional facility, jail, or other location for a felony conviction.
(b) This subsection (49.3) applies to this code for the purpose of applying section 10 of article VII of the state constitution.
(c) "Term of imprisonment" or "full term of imprisonment" does not include the period during which an individual is on parole.