



HUMAN RIGHTS *for* KIDS

Delaware 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

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 10 §1002, children under 12 years of age may be subject to delinquency proceedings in juvenile court for murder, rape or using a firearm during certain crimes of violence.

10 § 1002 Delinquent child not criminal; prosecution limited.

b)(1) Notwithstanding any other provision of law to the contrary, no child shall be prosecuted for a crime or act of delinquency arising from conduct that occurred when the child was under the age of 10 12, except for a child under the age of 12 accused of murder in the first degree, murder in the second degree, rape in the first degree, rape in the second degree, or accused of using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in § 4201 (c) of Title 11.

a. A child younger than 12 accused of murder in the first degree, murder in the second degree, rape in the first degree, or rape in the second degree, or accused of using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony set forth in § 4201(c) of Title 11, may not be prosecuted unless the delinquency petition includes a motion to determine competency pursuant § 1007A of this title. If the Court finds the child competent, prosecution of the case may resume at the discretion of the State. If the Court finds the child not competent the Court shall, contemporaneous with the entry of such finding, enter a dismissal of the charge or charges, and the State shall petition the Court to expunge the instant record of arrest as set forth in § 1018(f) of this title.

b. Notwithstanding subsection (b)(1) of this section, a child younger than 12 may be prosecuted if such child is accused of a title 11 violent felony or misdemeanor crime of violence and the delinquency petition includes a motion to determine competency pursuant § 1007A of this title. If the Court finds the child competent, prosecution of the case may resume at the discretion of the State. If the Court finds the child not competent the Court shall, contemporaneous with the entry of such finding, enter a dismissal of the charge or charges, and the State shall petition the Court to expunge the instant record of arrest as set forth in § 1018(f) of this title.

(2) A child under the age of 10 12 may be referred to and required to participate in any pre or post arrest diversionary program administered by the Division of Youth Rehabilitative Services, and such child may be referred to the Division of Prevention and Behavioral Health, the Division of Family Services, or any other state agency if the child is believed to be abused, neglected, dependent or otherwise in need of services. Notwithstanding any provisions to the contrary, referrals under this subsection shall not preclude subsequent participation in any pre or post arrest diversionary programs for which the child is eligible upon reaching age 12.

(3) A child under the age of 12, who could otherwise be charged with a Title 11 violent felony or a misdemeanor crime of violence if the child were 12 or older, shall be referred to the Juvenile Civil Citation Program under this title. Such child shall be assessed for appropriate programs and services available through the Department of Services for Children, Youth and Their Families. Referrals and participation in the Juvenile Civil Citation Program, shall not preclude subsequent

participation in any pre or post arrest diversionary programs for which the child is otherwise eligible upon reaching the age of 12.

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

Full Credit: 1/1

Pursuant to 10 §921, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

10 § 921 Exclusive original civil jurisdiction.

The Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning:

(2) a. Any child charged in this State with delinquency by having committed any act or violation of any laws of this State or any subdivision thereof, except murder in the first or second degree, rape in the first degree, rape in the second degree, unlawful sexual intercourse in the first degree, assault in the first degree, robbery in the first degree, (where such offense involves the display of what appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the crime, and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged under the laws of this State), kidnapping in the first degree, or any attempt to commit said crimes; any child 16 years of age or older charged with violation of Title 21, except as provided in paragraph (16) of this section or § 927 of this title; or any other crime over which the General Assembly has granted or may grant jurisdiction to another court.

b. Any child charged in this State with delinquency by having committed, after reaching his or her sixteenth birthday, murder in the second degree, manslaughter, robbery in the second degree, attempted murder (first or second degree), home invasion, burglary in the first degree or arson in the first degree; provided, however, that such child shall, after his or her first appearance in the Court, be given a hearing as soon as practicable to determine his or her amenability to the processes of the Court. The Court shall give immediate notice of such hearing in writing to the Department of Justice and to the child's custodian, near relative, attorney or other interested person, if known, and then the Court shall proceed in accordance with the provisions of § 1010 of this title. The Attorney General or 1 of his or her deputies shall be present at any such hearing.

Superior Court shall retain jurisdiction for purposes of sentencing and all other post-conviction proceedings if any judge or jury shall find the child guilty of a lesser included crime following a trial or plea of guilty in any prosecution for 1 of the crimes specifically defined in this subsection or for any crime where the child has been transferred to the Superior Court by the Family Court pursuant to § 1010 of this title;

(10) Any child in the State under the age of 16 years charged with delinquency by having committed a violation of any provision of Title 21; and any child in the State 16 years of age or older charged with having violated any of the provisions specified in § 927 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 10 § 1010, as amended by HB 115 (2021), the state shall transfer a child 16 and older to adult criminal court if they are alleged to have committed certain offenses. However, children as young as 13 can be charged as an adult if they are accused of first or second degree murder or rape.

10 § 1010 Proceeding against child as an adult; amenability proceeding; referral to another court.

(a) A child , aged 16 or older, shall be proceeded against as an adult where:

(1) The acts alleged to have been committed constitute first- or second-degree murder, rape in the first degree or rape in the second degree, assault in the first degree, robbery in the first degree (where such offense involves the display of what appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the crime and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged under the laws of this State) or kidnapping in the first degree, or any attempt to commit said crimes;

(2) The child is not amenable to the rehabilitative processes available to the Court;

(3) The child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were he or she charged as an adult under the laws of this State, and has reached his or her sixteenth birthday and the acts which form the basis of the current allegations constitute 1 or more of the following offenses: conspiracy first degree, rape in the third degree, arson first degree, burglary first degree, home invasion, §§ 4752 and 4753 of Title 16 or any attempt to commit any of the offenses set forth in this paragraph;

(4) The General Assembly has heretofore or shall hereafter so provide . ;

(5) Notwithstanding any in this Code to the contrary, a child over the age of 12 and under the age of 16 may be proceeded against as an adult only when they are alleged to have committed murder in the first degree, murder in the second degree, rape in the first degree, or rape in the second degree.

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 11 §636, a child may be convicted under the felony murder rule.

11 § 636 Murder in the first degree; class A felony.

(a) A person is guilty of murder in the first degree when:

(2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person recklessly causes the death of another person.

7. Ban Life Without Parole Sentences for Kids

Full Credit: 1/1

Pursuant to 11 § 4204A, every child is eligible for sentencing review before a judge after no more than 30 years.

§4204A - Youth convicted in superior court

(b)(1) Notwithstanding any provision of this title to the contrary, any offender sentenced to an aggregate term of incarceration in excess of 20 years for any offense or offenses other than murder first degree that were committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 20 years of the originally imposed Level V sentence.

(2) Notwithstanding any provision of this title to the contrary, any offender sentenced to a term of incarceration for murder first degree when said offense was committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.

8. Release Safety Valve for Kids Serving Lengthy Prison Sentences

Partial Credit: .5/1

Pursuant to 11 § 4204A, children convicted of non-homicide offenses are eligible for sentencing review after 20 years; however, children convicted of first degree murder are eligible for sentencing review after 30 years only for a single offense. Therefore, Delaware receives partial credit.

11 § 4204A Confinement of youth convicted in Superior Court.

(b) (1) Notwithstanding any provision of this title to the contrary, any offender sentenced to an aggregate term of incarceration in excess of 20 years for any offense or offenses other than murder first degree that were committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 20 years of the originally imposed Level V sentence.

(2) Notwithstanding any provision of this title to the contrary, any offender sentenced to a term of incarceration for murder first degree when said offense was committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.

(3) Notwithstanding any provision of this subsection or title to the contrary, any offender who has petitioned the Superior Court for sentence modification pursuant to this subsection shall not be eligible to submit a second or subsequent petition until at least 5 years have elapsed since the date on which the Court ruled upon the offender's most recent petition. Further, the Superior Court shall have the discretion at the time of each sentence modification hearing to prohibit a subsequent sentence modification petition for a period of time in excess of 5 years if the Superior Court finds there to be no reasonable likelihood that the interests of justice will require another hearing within 5 years.

(4) Notwithstanding the provisions of § 4205 or § 4217 of this title, any court rule or any other provision of law to the contrary, a Superior Court Judge upon consideration of a petition filed pursuant to this subsection (d), may modify, reduce or suspend such petitioner's sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the Court. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section.

(5) The Superior Court shall have the authority to promulgate appropriate rules to regulate the filing and litigation of sentence modification petitions pursuant to this paragraph.

9. Ban Solitary Confinement for Kids

No Credit: 0/1

There are no statutory provisions banning the use of solitary confinement.

10. Ban Incarcerating Kids with Adults

No Credit: 0/1

Pursuant to 10 §§ 921, 1007 and 4204A, children 16 and older may be detained or confined in an adult jail or lockup pending trial or incarcerated in an adult prison.

10 § 4204A Youth convicted in Superior Court.

(a) When a child who has not reached that child's eighteenth birthday is sentenced in Superior Court to a period of incarceration, such sentence shall initially be served in a juvenile facility upon imposition of the sentence and such child shall remain in the custody of or be transferred forthwith to the Division of Youth Rehabilitative Services until the child's eighteenth birthday, at which time such child shall be transferred forthwith to the Department of Correction to serve the remaining portion of said sentence.

(1) If a child has reached the child's sixteenth birthday has been sentenced in Superior Court, the Department of Services for Children, Youth and Their Families ("The Department") may file a motion in Superior Court to place the child in a secured detention facility other than a facility operated by the Department because the Department's secured detention facilities are at or beyond capacity or the child poses a security risk to self or other youth served by the Department in the facilities it operates. If a motion is filed, Superior Court shall conduct an evidentiary hearing unless the parties reach an agreement.

(2) After an evidentiary hearing, the Superior Court may order the child to be placed in a secured detention facility not operated by the Department if the Court finds by clear and convincing evidence that the Department's secured detention facilities are at or beyond capacity and the child's safety or health is at risk by remaining at a facility operated by the Department. If the Court makes such a finding, the Department shall thereafter provide the Court with a status on the capacity of the Department's secured detention facilities at least weekly, and no child may be held in a secured detention facility for adults for more than 30 days.

(3) After an evidentiary hearing, the Superior Court may order the child to be placed in a secured detention facility not operated by the Department if the Court finds by clear and convincing evidence that the child is a danger to self or other youth served by the Department in the facilities it operates and the child's needs would be better served at a facility not operated by the Department.

§ 1007 Disposition of child pending adjudication; payment for care

(d)(1) If a child aged 16 or older has been ordered by a court to be held in secure detention pending trial in Superior Court and is found to be nonamenable to Family Court pursuant to §§ 1010 and 1011 of this title, the Department of Services for Children, Youth and Their Families may file a motion in Superior Court to place the child in a secure detention facility other than a facility operated by the Department of Services for Children, Youth and Their Families because the Department's secure detention facilities are at or beyond capacity or the child poses a security risk to self or other youth served by the Department of Services for Children, Youth and Their Families in the facilities it operates. If a motion is filed, Superior Court shall conduct an evidentiary hearing unless the parties reach an agreement to a secure detention for the child.

a. After an evidentiary hearing, the Superior Court may order the child to be placed in a secure detention facility not operated by the Department of Services for Children, Youth and Their Families if the Court finds by clear and convincing evidence that the Department of Services for Children, Youth and Their Families 's secure detention facilities are at or beyond capacity and the child's safety or health is at risk by remaining at a facility operated by the Department of Services for Children, Youth and Their Families. If the Court makes such a finding, the Department of Services for Children, Youth and Their Families shall provide the Court with a status on the capacity of the Department of Services for Children, Youth and Their Families 's secured detention facilities at least weekly and no child may be held in a secured detention facility for adults for more than 60 days.

b. After an evidentiary hearing, the Superior Court may order the child to be placed in a secure detention facility not operated by the Department of Services for Children, Youth and Their Families if the Court finds by clear and convincing evidence that the child is a danger to self or other youth served by the Department of Services for Children, Youth and Their Families in the facilities it operates and the child's needs would be better served at a facility not operated by the Department of Services for Children, Youth and Their Families.

10 § 921 Exclusive original civil jurisdiction.

c. Any sentence imposed against any child 16 or 17 years old by a court having jurisdiction of the offenses in Title 21, except those offenses within the jurisdiction of the Family Court, shall be limited to a fine and costs. No court shall detain a child 16 years of age or older in a jail or adult correctional institution or jail pending trial on any violation of Title 21. Any child pending trial shall, in the default of bail, be detained only in a juvenile correctional facility.

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to 11 § 4347, formerly incarcerated children may be discharged from parole at the discretion of the Parole Board.

11 § 4347 Parole authority and procedure.

(i) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in § 4352 of this title, relating to a person who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a person on parole or conditional release has performed the obligations of that person's release for such time as shall satisfy the Board that the person's final release is not incompatible with the best interest of society and the welfare of the individual, the Board may make a final order of discharge and issue a certificate of discharge to the person; but no such order of discharge shall be made within 1 year after the date of release except where the sentence expires earlier thereto. Such discharge, and the discharge of a person who has served person's term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment. Except when discharged herein a person on parole or conditional release shall be on parole until the expiration of the maximum term for which the person is sentenced.

12. Voting Rights Restoration

No Credit: 0/1

Pursuant to the Delaware Constitution, a formerly incarcerated child can have their voting rights restored after the expiration of their sentence; however, children convicted of murder, manslaughter, bribery, or sex offenses are permanently disenfranchised.

Del. Const., Art. 5, § 2

no person adjudged mentally incompetent or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector; and the General Assembly may impose the forfeiture of the right of suffrage as a punishment for crime. Any person who is disqualified as a voter because of a conviction of a crime deemed by law a felony shall have such disqualification removed upon being pardoned, or after the expiration of the sentence, whichever may first occur. The term "sentence" as used in this Section shall include all periods of modification of a sentence, such as, but not limited to, probation, parole and suspension. The provision of this paragraph shall not apply to (1) those persons who were convicted of any felony of murder or manslaughter, (except vehicular homicide); or (2) those persons who were convicted

of any felony constituting an offense against public administration involving bribery or improper influence or abuse of office, or any like offense under the laws of any state or local jurisdiction, or of the United States, or of the District of Columbia; or (3) those persons who were convicted of any felony constituting a sexual offense, or any like offense under the laws of any state or local jurisdiction or of the United States or of the District of Columbia.