



# HUMAN RIGHTS *for* KIDS

## Florida 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>	3 out of 12
<b>TIER RATING:</b>	4

### 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 §985.03, children as young as 7 may be adjudicated delinquent in juvenile court and children younger than 7 may also be adjudicated delinquent if they are accused of a forcible felony.

**§985.031 Age limitation; exception.—**

- (1) This section may be cited as the “Kaia Rolle Act.”
- (2) A child younger than 7 years of age may not be arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before he or she reaches 7 years of age, unless the violation of law is a forcible felony as defined in s. 776.08.

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

Full Credit: 1/1

Pursuant to §985.03, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

**§985.03 Definitions.**

—As used in this chapter, the term:

- (7) “Child” or “juvenile” or “youth” means any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.

**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 §985.56, a child less than 14 years of age charged with a violation of law punishable by death or life imprisonment is subject to adult criminal court, and pursuant to §985.557 the state may direct file a child 14 years of age or older who is accused of specified offenses in adult court.

**§985.56 Indictment of a juvenile. —**

(1) A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the court as set forth in s. 985.0301(2) unless and until an indictment on the charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult:

- (a) On the offense punishable by death or by life imprisonment; and
- (b) On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or by life

imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.

(2) An adjudicatory hearing may not be held until 21 days after the child is taken into custody and charged with having committed an offense punishable by death or by life imprisonment, unless the state attorney advises the court in writing that he or she does not intend to present the case to the grand jury, or has presented the case to the grand jury and the grand jury has not returned an indictment. If the court receives such a notice from the state attorney, or if the grand jury fails to act within the 21-day period, the court may proceed as otherwise authorized under this part.

(3) If the child is found to have committed the offense punishable by death or by life imprisonment, the child shall be sentenced as an adult. If the juvenile is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he or she was indicted as a part of the criminal episode, the court may sentence under s. 985.565.

(4)(a) Once a child has been indicted pursuant to this section and has been found to have committed any offense for which he or she was indicted as a part of the criminal episode, the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 985.565.

(b) When a child has been indicted pursuant to this section, the court shall immediately transfer and certify to the adult circuit court all felony cases pertaining to the child, for prosecution of the child as an adult, which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. If the child is acquitted of all charged offenses or lesser included offenses contained in the indictment case, all felony cases that were transferred to adult court pursuant to this paragraph shall be subject to the same penalties such cases were subject to before being transferred to adult court.

**§985.556 Waiver of juvenile court jurisdiction; hearing.—**

(2) INVOLUNTARY DISCRETIONARY WAIVER.— Except as provided in subsection (3), the state attorney may file a motion requesting the court to transfer the child for criminal prosecution if the child was 14 years of age or older at the time the alleged delinquent act or violation of law was committed.

(3) INVOLUNTARY MANDATORY WAIVER.—

(a) If the child was 14 years of age or older, and if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person; or

(b) If the child was 14 years of age or older at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated

delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person; the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such request, or proceed under s. 985.557(1). Upon the state attorney's request, the court shall either enter an order transferring the case and certifying the case for trial as if the child were an adult or provide written reasons for not issuing such an order.

(4) WAIVER HEARING.—

(a) Within 7 days, excluding Saturdays, Sundays, and legal holidays, after the date a petition alleging that a child has committed a delinquent act or violation of law has been filed, or later with the approval of the court, but before an adjudicatory hearing and after considering the recommendation of the juvenile probation officer, the state attorney may file a motion requesting the court to transfer the child for criminal prosecution.

(b) After the filing of the motion of the state attorney, summonses must be issued and served in conformity with s. 985.319. A copy of the motion and a copy of the delinquency petition, if not already served, must be attached to each summons.

(c) The court shall conduct a hearing on all transfer request motions for the purpose of determining whether a child should be transferred. In making its determination, the court shall consider:

1. The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
4. The probable cause as found in the report, affidavit, or complaint.
5. The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults.
6. The sophistication and maturity of the child.
7. The record and previous history of the child, including:
  - a. Previous contacts with the department, the Department of Corrections, the former Department of Health and Rehabilitative Services, the Department of Children and Families, other law enforcement agencies, and courts;
  - b. Prior periods of probation;
  - c. Prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving an offense classified as a

felony or has twice previously been found to have committed a delinquent act or violation of law involving an offense classified as a misdemeanor; and

d. Prior commitments to institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense, by the use of procedures, services, and facilities currently available to the court.

**§ 985.557 Direct filing of an information; discretionary criteria.—**

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was 14 or 15 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

1. Arson;
2. Sexual battery;
3. Robbery;
4. Kidnapping;
5. Aggravated child abuse;
6. Aggravated assault;
7. Aggravated stalking;
8. Murder;
9. Manslaughter;
10. Unlawful throwing, placing, or discharging of a destructive device or bomb;
11. Armed burglary in violation of s. 810.02(2)(b) or specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), or burglary with an assault or battery in violation of s. 810.02(2)(a);
12. Aggravated battery;
13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
14. Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
15. Grand theft in violation of s. 812.014(2)(a);
16. Possessing or discharging any weapon or firearm on school property in violation of s. 790.115;
17. Home invasion robbery;
18. Carjacking; or
19. Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b) if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

(b) With respect to any child who was 16 or 17 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state

attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed. However, the state attorney may not file an information on a child charged with a misdemeanor, unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified as a felony under state law.

(2) **EFFECT OF DIRECT FILE.**—

(a) Once a child has been transferred for criminal prosecution pursuant to an information and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 985.565.

## **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.

### **§ 985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.**

(4) **SENTENCING ALTERNATIVES.**—

(a) *Adult sanctions.*—

3. Notwithstanding any other provision to the contrary, if the state attorney is required to file a motion to transfer and certify the juvenile for prosecution as an adult under s. 985.556(3) and that motion is granted, the court must impose adult sanctions.

4. Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions.

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

No Credit: 0/1

Pursuant to juvenile transfer laws and §782.04, a child may be convicted under the felony murder rule.

### **§ 782.04 Murder.**—

(1)(a) The unlawful killing of a human being:

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

a. Trafficking offense prohibited by s. 893.135(1),

b. Arson,

- c. Sexual battery,
  - d. Robbery,
  - e. Burglary,
  - f. Kidnapping,
  - g. Escape,
  - h. Aggravated child abuse,
  - i. Aggravated abuse of an elderly person or disabled adult,
  - j. Aircraft piracy,
  - k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
  - l. Carjacking,
  - m. Home-invasion robbery,
  - n. Aggravated stalking,
  - o. Murder of another human being,
  - p. Resisting an officer with violence to his or her person,
  - q. Aggravated fleeing or eluding with serious bodily injury or death,
  - r. Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35, or
  - s. Human trafficking;
- is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

## 7. Ban Life Without Parole Sentences for Kids

Partial Credit: 0/1

Pursuant to §775.082, children can be sentenced to life without parole and be excluded from sentencing review.

### **§ 775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—**

(b)1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18

years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

**§ 921.1402 Review of sentences for persons convicted of specified offenses committed while under the age of 18 years.—**

(1) For purposes of this section, the term “juvenile offender” means a person sentenced to imprisonment in the custody of the Department of Corrections for an offense committed on or after July 1, 2014, and committed before he or she attained 18 years of age.

(2)(a) A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b)1.:

1. Murder;
2. Manslaughter;
3. Sexual battery;
4. Armed burglary;
5. Armed robbery;
6. Armed carjacking;
7. Home-invasion robbery;
8. Human trafficking for commercial sexual activity with a child under 18 years of age;
9. False imprisonment under s. 787.02(3)(a); or
10. Kidnapping.

(b) A juvenile offender sentenced to a term of more than 25 years under s. 775.082(3)(a)5.a. or s. 775.082(3)(b)2.a. is entitled to a review of his or her sentence after 25 years.

(c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b)2., s. 775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.

(d) A juvenile offender sentenced to a term of 20 years or more under s. 775.082(3)(c) is entitled to a review of his or her sentence after 20 years. If the



juvenile offender is not resentenced at the initial review hearing, he or she is eligible for one subsequent review hearing 10 years after the initial review hearing.

(3) The Department of Corrections shall notify a juvenile offender of his or her eligibility to request a sentence review hearing 18 months before the juvenile offender is entitled to a sentence review hearing under this section.

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

(5) A juvenile offender who is eligible for a sentence review hearing under this section is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

(6) Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider any factor it deems appropriate, including all of the following:

(a) Whether the juvenile offender demonstrates maturity and rehabilitation.

(b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.

(d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

(e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

(g) Whether the juvenile offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

(7) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

## **8. Release Safety Valve for Kids Serving Lengthy Prison Sentences**

Partial Credit: .5/1

Pursuant to §921.1402, most children convicted in adult court are eligible for sentencing review after 15, 20, or 25 years depending on the offense; however, children convicted of homicide and who were previously convicted of a specified offense are excluded from eligibility for sentencing review. Therefore, Florida receives partial credit.

## **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 §985.265, children may be held in adult correctional facilities.

### **§ 985.265 Detention transfer and release; education; adult jails. —**

(5) The court shall order the delivery of a child to a jail or other facility intended or used for the detention of adults:

(a) When the child has been transferred or indicted for criminal prosecution as an adult under part X, except that the court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility; or

(b) When a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.

The child shall be housed separately from adult inmates to prohibit a child from having regular contact with incarcerated adults, including trustees. “Regular contact” means sight and sound contact. Separation of children from adults shall permit no more than haphazard or accidental contact. The receiving jail or other

facility shall contain a separate section for children and shall have an adequate staff to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 minutes. This subsection does not prohibit placing two or more children in the same cell. Under no circumstances shall a child be placed in the same cell with an adult.

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

Full Credit: 1/1

Pursuant to §947.24, formerly incarcerated children may be discharged from parole at the discretion of the commission after 2 years.

### **§ 947.24 Discharge from parole supervision or release supervision.—**

(1) When a person is placed on parole, control release, or conditional release, the commission shall determine the period of time the person will be under parole supervision or release supervision in the following manner:

(a) If the person is being paroled or released under supervision from a single or concurrent sentence, the period of time the person will be under parole supervision or release supervision may not exceed 2 years unless the commission designates a longer period of time, in which case it must advise the parolee or releasee in writing of the reasons for the extended period. In any event, the period of parole supervision or release supervision may not exceed the maximum period for which the person has been sentenced.

(b) If the person is being paroled or released under supervision from a consecutive sentence or sentences, the period of time the person will be under parole supervision or release supervision will be for the maximum period for which the person was sentenced.

(2) The commission shall review the progress of each person who has been placed on parole, control release, or conditional release after 2 years of supervision in the community and biennially thereafter. The department shall provide to the commission the information necessary to conduct such a review. Such review must include consideration of whether to modify the reporting schedule, thereby authorizing the person under parole supervision or release supervision to submit reports quarterly, semiannually, or annually. The commission, after having retained jurisdiction of a person for a sufficient length of time to evidence satisfactory rehabilitation and cooperation, may further modify the terms and conditions of the person's parole, control release, or conditional release, may discharge the person from parole supervision or release supervision, may relieve the person from making further reports, or may permit the person to leave the state or country, upon finding that such action is in the best interests of the person and society.

(3) Upon the termination of an offender's term of supervision, which is monitored by the commission, including, but not limited to, parole, the commission must notify

the offender in writing of all outstanding terms at the time of termination to assist the offender in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751.

(4) This section does not affect the rights of a parolee to request modification of the terms and conditions of parole under s. 947.19.

## **12. Voting Rights Restoration**

Partial Credit: .5/1

Pursuant to §98.0751, formerly incarcerated children must have completed all terms of their sentence, including supervised release before they can have their voting rights restored. However, children convicted of murder or a felony sexual offense may only have their voting rights restored by the Governor. Therefore, Florida receives partial credit.

### **§ 98.0751 Restoration of voting rights; termination of ineligibility subsequent to a felony conviction. —**

(1) A person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification terminated and his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of his or her sentence, including parole or probation. The voting disqualification does not terminate unless a person's civil rights are restored pursuant to s. 8, Art. IV of the State Constitution if the disqualification arises from a felony conviction of murder or a felony sexual offense, or if the person has not completed all terms of sentence, as specified in subsection (2).

(2) For purposes of this section, the term:

(a) "Completion of all terms of sentence" means any portion of a sentence that is contained in the four corners of the sentencing document, including, but not limited to:

1. Release from any term of imprisonment ordered by the court as a part of the sentence;
2. Termination from any term of probation or community control ordered by the court as a part of the sentence;
3. Fulfillment of any term ordered by the court as a part of the sentence;
4. Termination from any term of any supervision, which is monitored by the Florida Commission on Offender Review, including, but not limited to, parole; and
- 5.a. Full payment of restitution ordered to a victim by the court as a part of the sentence. A victim includes, but is not limited to, a person or persons, the estate or estates thereof, an entity, the state, or the Federal Government.