South Carolina 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 out of 12
TIER RATING:	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 § 63-19-20, there is no minimum age for a child to be adjudicated delinquent. See statutory code below.

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

Credit: 1/1

Pursuant to § 63-19-20, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

§63-19-20 - Definitions
(1) 'Child' or 'juvenile' means a person less than eighteen years of age. 'Child' or 'juvenile' does not mean a person seventeen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person seventeen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

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

No Credit: 0/1

Pursuant to §63-19-20 (above), 17-year-old children charged with certain felony offenses are excluded from the jurisdiction of the juvenile court. Additionally, pursuant to §63-19-1210(6), the court may transfer a child of any age to adult court if charged with murder or criminal sexual conduct. Therefore, South Carolina receives no credit.

§63-3-510 - Exclusive original jurisdiction
(A) Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action:
(1) Concerning any child living or found within the geographical limits of its jurisdiction:

(a) who is neglected as to proper or necessary support or education as required by law, or as to medical, psychiatric, psychological, or other care necessary to his well-being, or who is abandoned by his parent or other custodian;
(b) whose occupation, behavior, condition, environment, or associations are such as to injure or endanger his welfare or that of others;
(c) who is beyond the control of his parent or other custodian;
(d) who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in Section 63-3-520;
(e) whose custody is the subject of controversy, except in those cases where the law now gives other courts concurrent jurisdiction. In the consideration of these cases, the court shall have concurrent jurisdiction to hear and determine the issue of custody and support.
(2) For the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child. Provided, that nothing herein is intended to conflict with the authority of probate courts in dealing with mental cases.
(3) Concerning any person eighteen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance prior to having become eighteen years of age and such person shall be dealt with under the provisions of this title relating to children.
(4) For the detention of a juvenile in a juvenile detention facility who is charged with committing a criminal offense when detention in a secure facility is found to be necessary pursuant to the standards set forth in Section 63-19-820 and when the facility exists in, or is otherwise available to, the county in which the crime occurred.
(B) Whenever the court has acquired the jurisdiction of any child under eighteen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty-two years. Any child who has been adjudicated delinquent and placed on probation by the court remains under the authority of the court only until the expiration of the specified term of his probation. This specified term of probation may expire before but not after the twentieth birthday of the child.

§63-19-1210 - Transfer of jurisdiction
(1) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of eighteen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been

transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this chapter. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.
(2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.
(3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.
(4) If a child seventeen years of age or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.
(5) If a child fourteen, fifteen, or sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.
(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the In accordance with the jurisdiction granted to the family court pursuant to Sections 63-3-510, 63-3-520, and 63-3-530, jurisdiction over a case involving a child must be transferred or retained as follows: petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the

case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.
(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 63-19-2020 dealing with the confidentiality of identity and fingerprints does not apply.
(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.
(9) If a child fourteen years of age or older is charged with a violation of Section 16-23-430, Section 16-23-20, or Section 44-53-445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.
(10) If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.

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 §16-3-10, a child can be convicted of felony murder.

§16-3-10 - "Murder" defined

"Murder" is the killing of any person with malice aforethought, either express or implied.

Section 16-3-20 - Punishment for murder;
(C) The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:
(a) Statutory aggravating circumstances:
(1) The murder was committed while in the commission of the following crimes or acts:
(a) criminal sexual conduct in any degree;(b) kidnapping;
(c) trafficking in persons;(d) burglary in any degree;(e) robbery while armed with a deadly weapon;(f) larceny with use of a deadly weapon;(g) killing by poison;(h) drug trafficking as defined in Section 44-53-370(e), 44-53-375(B), 44-53-440, or 44-53-445;(i) physical torture;(j) dismemberment of a person; or(k) arson in the first degree as defined in Section 16-11-110(A).

(b) Mitigating circumstances:
(4) The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.
(5) The defendant acted under duress or under the domination of another person.
(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
(7) The age or mentality of the defendant at the time of the crime.
(8) The defendant was provoked by the victim into committing the murder.
(9) The defendant was below the age of eighteen at the time of the crime.

7. Ban Life Without Parole Sentences for Kids

No Credit: 0/1

There are no statutory provisions prohibiting life without parole sentences for children. Therefore, South Carolina receives no credit.

§16-3-20 - Punishment for murder; separate sentencing proceeding when death penalty sought
(A) A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, "life" or "life imprisonment" means until

death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. In cases where the defendant is eligible for parole, the judge must charge the applicable parole eligibility statute. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section. Under no circumstances may a female who is pregnant be executed so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death to life imprisonment under the provisions of Section 14, Article IV of the Constitution of South Carolina, 1895, the commutee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

8. Have 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 §63-19-820, a child may be incarcerated in an adult facility. Therefore, South Carolina receives no credit.

§63-19-820 - Out-of-home placement

(A) When the officer who took the child into custody determines that placement of a juvenile outside the home is necessary, the authorized representative of the Department of Juvenile Justice shall make a diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when these alternatives are appropriate and available.

(B) A child is eligible for detention in a secure juvenile detention facility only if the child:

(1) is charged with a violent crime as defined in Section 16-1-60;

(2) is charged with a crime which, if committed by an adult, would be a felony or a misdemeanor other than a violent crime, and the child:

(a) is already detained or on probation or conditional release or is awaiting adjudication in connection with another delinquency proceeding;

(b) has a demonstrable recent record of wilful failures to appear at court proceedings;

(c) has a demonstrable recent record of violent conduct resulting in physical injury to others; or

(d) has a demonstrable recent record of adjudications for other felonies or misdemeanors; and

(i) there is reason to believe the child is a flight risk or poses a threat of serious harm to others; or

(ii) the instant offense involved the use of a firearm;

(3) is a fugitive from another jurisdiction;

(4) requests protection in writing under circumstances that present an immediate threat of serious physical injury;

(5) had in his possession a deadly weapon;

(6) has a demonstrable recent record of wilful failure to comply with prior placement orders including, but not limited to, a house arrest order;

(7) has no suitable alternative placement and it is determined that detention is in the child's best interest or is necessary to protect the child or public, or both; or

(8) is charged with an assault and battery or an assault and battery of a high and aggravated nature on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity.

(C) No child may be placed in secure confinement or ordered detained by the court in secure confinement in an adult jail or other place of detention for adults for more than six hours. However, the prohibition against the secure confinement of juveniles in adult jails does not apply to juveniles who have been waived to the court of general sessions for the purpose of standing trial as an adult. Juveniles placed in secure confinement in an adult jail during this six-hour period must be confined in an area of the jail which is separated by sight and sound from adults similarly confined.

(D) Temporary holdover facilities may hold juveniles during the period between initial custody and the initial detention hearing before a family court judge for a period up to forty-eight hours, excluding weekends and state holidays.
(E) A child who is taken into custody because of a violation of law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained in an adult detention facility. A child who is taken into custody because of a violation of the law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained more than twenty-four hours in a juvenile detention facility, unless an order previously has been issued by the court, of which the child has notice and which notifies the child that further violation of the court's order may result in the secure detention of that child in a juvenile detention facility. If a juvenile is ordered detained for violating a valid court order, the juvenile may be held in secure confinement in a juvenile detention facility for not more than seventy-two hours, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody.
(F) Children ten years of age and younger must not be incarcerated in a jail or detention facility for any reason. Children eleven or twelve years of age who are taken into custody for a violation of law which would be a criminal offense under the laws of this State if committed by an adult or who violates conditions of probation for such an offense must be incarcerated in a jail or detention facility only by order of the family court.
(G) For purposes of this section, "adult jail" or other place of detention for adults includes a state, county, or municipal police station, law enforcement lockup, or holding cell. "Secure confinement" means an area having bars or other restraints designed to hold one person or a group of persons at a law enforcement location for any period of time and for any reason. Secure confinement in an adult jail or other place of detention does not include a room or a multipurpose area within the law enforcement center which is not secured by locks or other security devices. Rooms or areas of this type include lobbies, offices, and interrogation rooms. Juveniles held in these areas are considered to be in nonsecure custody as long as the room or area is not designed for or intended for use as a residential area, the juvenile is not handcuffed to a stationary object while in the room or area, and the juvenile is under A child who meets the criteria provided in this subsection is eligible for detention. Detention is not mandatory for a child meeting the criteria if that child can be supervised adequately at home or in a less secure setting or program. If the officer does not consent to the release of the child, the parents or other responsible adult may apply to the family court within the circuit for an ex parte order of release of the child. The officer's written report must be furnished to the family court judge who may establish conditions for the release. 2 Section 63-19-820 - Out-of-home placement S.C. Code § 63-19-820 continuous visual supervision by facility staff while in this room or area which is located within the law enforcement center. Secure confinement also does not include a room or area used by law enforcement for processing "booking" purposes, irrespective of whether it is

determined to be secure or nonsecure, as long as the juvenile's confinement in the area is limited to the time necessary to fingerprint, photograph, or otherwise "book" the juvenile in accordance with state law.

11. Ban Mandatory Post-Release Lifetime Supervision

Full Credit: 1/1

Pursuant to §24-21-950, a formerly incarcerated child who is subject to parole supervision may apply to the Board of Paroles and Pardons after a period of 5 years.

§24-21-940 - Definitions
A. "Pardon" means that an individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided.
B. "Successful completion of supervision" as used in this article shall mean free of conviction of any type other than minor traffic offenses.

§24-21-920 - Clemency in other cases
In all other cases than those referred to in Section 24-21-910 the right of granting clemency shall be vested in the Board.

§24-21-950 - Guidelines for determining eligibility for pardon
(A) The following guidelines must be utilized by the board when determining when an individual is eligible for pardon consideration.
(1) Probationers must be considered upon the request of the individual anytime after discharge from supervision.
(2) Persons discharged from a sentence without benefit of parole must be considered upon the request of the individual anytime after the date of discharge.
(3) Parolees must be considered for a pardon upon the request of the individual anytime after the successful completion of five years under supervision. Parolees successfully completing the maximum parole period, if less than five years, must be considered for pardon upon the request of the individual anytime after the date of discharge.
(4) An inmate must be considered for pardon before a parole eligibility date only when he can produce evidence comprising the most extraordinary circumstances.
(5) The victim of a crime or a member of a convicted person's family living within this State may petition for a pardon for a person who has completed supervision or has been discharged from a sentence.
(B) Persons discharged from a sentence without benefit of supervision must be considered upon the request of the individual anytime after the date of discharge.

Section 24-21-930 - Order of pardon

An order of pardon must be signed by at least two-thirds of the members of the board. Upon the issue of the order by the board, the director, or one lawfully acting for him, must issue a pardon order which provides for the restoration of the pardon applicant's civil rights.

§24-21-670 - Term of parole
Any prisoner who may be paroled under authority of this chapter shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as may be provided for by law.

§24-21-660 - Effect of parole
Any prisoner who has been paroled is subject during the remainder of his original term of imprisonment, up to the maximum, to the conditions and restrictions imposed in the order of parole or by law imposed. Every such paroled prisoner must remain in the jurisdiction of the board and may at any time on the order of the board, be imprisoned as and where therein designated.

12. Voting Rights Restoration

Full Credit: 1/1

Pursuant to §7-5-120, formerly incarcerated children who have reached voting age can vote after they have been discharged from imprisonment, probation or parole.

§7-5-120 - Qualifications for registration; persons disqualified from registering or voting
(A) Every citizen of this State and the United States who applies for registration must be registered if he meets the following qualifications:
(1) meets the age qualification as provided in Section 4, Article II of the Constitution of this State;
(2) is not laboring under disabilities named in the Constitution of 1895 of this State; and
(3) is a resident in the county and in the polling precinct in which the elector offers to vote.
(B) A person is disqualified from being registered or voting if he:
(1) is mentally incompetent as adjudicated by a court of competent jurisdiction; or
(2) is serving a term of imprisonment resulting from a conviction of a crime; or
(3) is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.

§24-21-1000 - Certificate of pardon

For those applicants to be granted a pardon, a certificate of pardon shall be issued by the Board stating that the individual is absolved from all legal consequences of his crime and conviction, and that all of his civil rights are restored.

§24-21-990 - Civil rights restored upon pardon

(1) register to vote;
(2) vote;
(3) serve on a jury;
(4) hold public office, except as provided in Section 16-13-210;
(5) testify without having the fact of his conviction introduced for impeachment purposes to the extent provided by Rule 609(c) of the South Carolina Rules of Evidence;
(6) not have his testimony excluded in a legal proceeding if convicted of perjury; and
(7) be licensed for any occupation requiring a license.