



2020 State Ratings Report

*Human Rights Protections for
Children in the U.S. Justice System*

Acknowledgments

We would like to thank the Coalition for Public Safety, Represent Justice, and the Weissberg Foundation for their support and partnership in the creation of this report.

We also want to thank all of the advocates and policymakers who work alongside us – in a bipartisan fashion – to end human rights violations against children in the juvenile and criminal justice systems. Lastly, we are grateful for the significant contributions to the development of this report by Sarah Camiscoli of Yale Law School, our 2020 summer law clerk.

This report is dedicated to all of the children who continue to suffer human rights violations in juvenile detention facilities and adult jails, lock-ups, and prisons across the country.

Photography by Richard Ross from juvenile-in-justice.com

Designed by Sandra Yeh

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“There is no keener revelation of a society’s soul
than the way in which it treats its children.”

Nelson Mandela

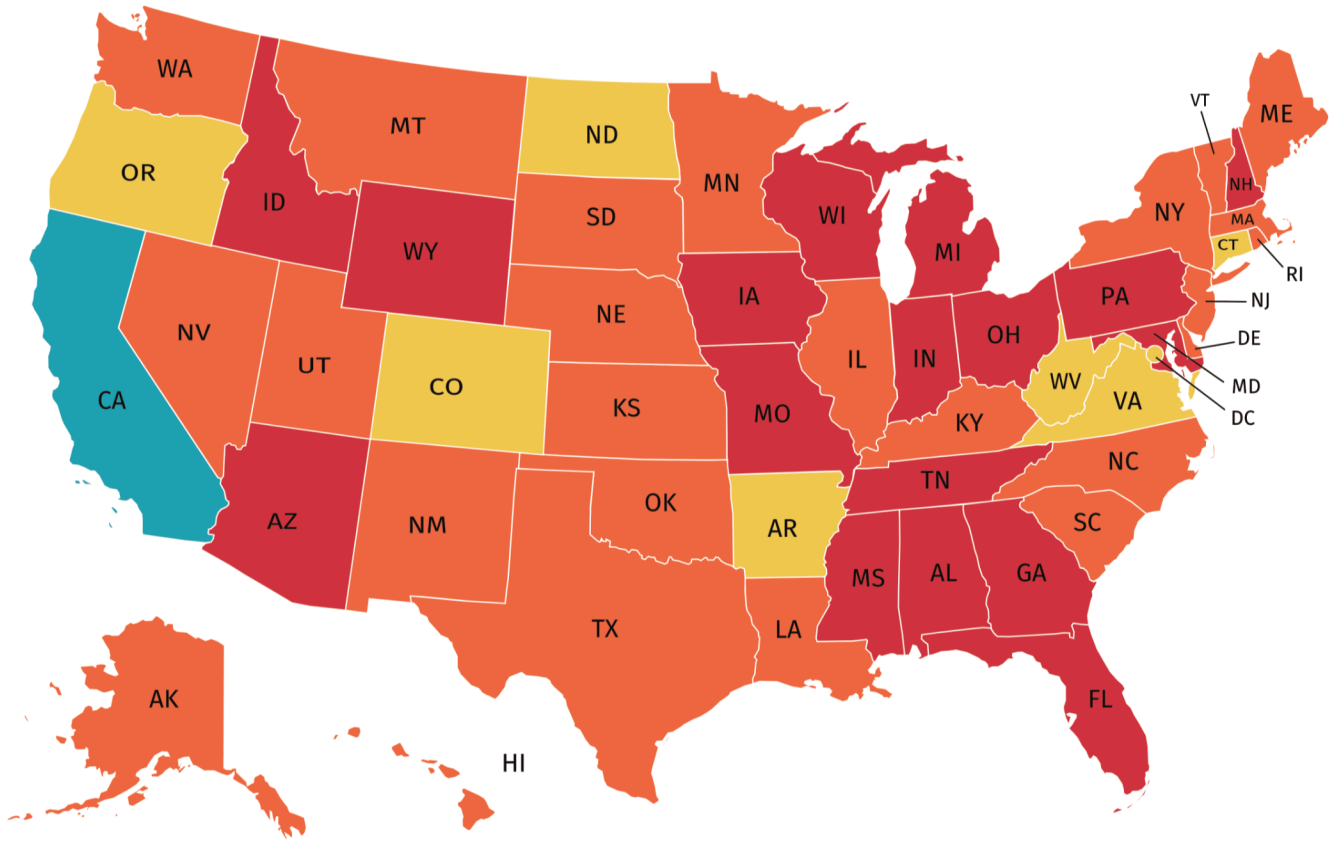
Introduction

For the past three decades a tragic confluence of factors, including the policies inspired by the now debunked “super-predator” theory, have wreaked havoc on children involved in the criminal justice system. Back in May 2017 a bipartisan group of advocates, including 5 Republican and 3 Democratic state legislators from across the country, joined together to establish Human Rights for Kids to advocate on behalf of these vulnerable children. Our *2020 State Ratings Report on Human Rights Protections for Children in the U.S. Justice System* is the first ever national review and rating of how well or how poorly states are doing at protecting the human rights of children in the justice system.

The report examines 12 categories of law that are vital to establishing a basic legal framework to protect the human rights of system-involved youth. These categories cover four main areas: (1) entrance into the juvenile and criminal justice systems, (2) the treatment of children as adults, (3) conditions of confinement, and (4) release and social reintegration of child offenders. The report itself only examines policies enacted by state legislatures and does not account for state court decisions or administrative rules, which may create additional protections for children. It is also important to note that while our report is informed by human rights norms, including those found in the U.N. Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, it is not comprehensive in scope.

Our findings reveal that the overwhelming majority of the nation – 42 states – have made minimal to no efforts to create a legal framework to protect the human rights of children in the justice system. The worst offenders include Alabama, Georgia, Maryland, Mississippi, Tennessee, and Wyoming who garnered only two points, respectively, in our ratings process. Despite common misconceptions, traditionally “blue” or “liberal states” including Maryland, Illinois, New York, Vermont, and Delaware are also among the worst states when it comes to protecting children’s rights in the justice system. These states would be well served by looking to the leadership of traditionally “red” or “conservative states” including Arkansas, North Dakota, and West Virginia whose current legal framework better reflects the principle that there is no such thing as a throw-away child. An in-depth analysis of each state, including the statutory provisions we reviewed in determining each state’s score, can be found on our website at humanrightsforkids.org.

Our State Ratings Report is intended to help educate policymakers across the country and challenge them to live up to our highest ideals by changing the horrific way in which children in our justice system are treated. Some may choose to look the other way at one of the worst ongoing child rights abuses in the world today, but no one can ever again say that they did not know.



Best Human Rights Protectors

California (9.5)
North Dakota (8)
Arkansas (7.5)

Worst Human Rights Offenders

Alabama (2)
Georgia (2)
Maryland (2)
Mississippi (2)
Tennessee (2)
Wyoming (2)

1 Tier One (10+ points)

State has created an impressive legal framework to protect the human rights of children in its justice system and has taken its obligation to defend human rights seriously.

8 Tier Two (7 - 9 points)

State has passed several laws to protect the human rights of children in the justice system and should take additional steps to improve and implement its burgeoning legal framework.

27 Tier Three (4 - 6 points)

State has made minimal efforts to protect the human rights of children in the justice system and should take immediate action to improve and implement its laws.

15 Tier Four (1 - 3 points)

State has made little to no effort to protect the human rights of children in the justice system and is likely in violation of international human rights standards.

Categories



DUE PROCESS

States receive credit for this category if they have a statutory provision requiring children to consult with their parents or legal counsel before waiving their Miranda Rights or being subject to a custodial police interrogation. States will not receive credit if such protections are limited to children subject to delinquency proceedings. States may receive partial credit if they apply these protections to some children under a certain age (i.e. under 16), but not all children under 18.



MINIMUM COURT AGE

States receive credit for this category if they statutorily prohibit *all* children less than 10 years of age from being adjudicated delinquent in the juvenile court system, regardless of the charged offense. Children this young who come into conflict with the law should be provided treatment and services in the child welfare system in compliance with human rights standards. No exceptions can be permitted to receive credit for this category.



MAXIMUM COURT AGE

States receive credit for this category if they statutorily permit children less than 18 years of age to be adjudicated in the juvenile justice system and have not excluded teenagers under the age of majority. No exceptions can be permitted to receive credit for this category.



LIFE WITHOUT PAROLE

States receive credit for this category if they statutorily ban life without parole sentences from being imposed on all children under 18 years of age. No exceptions can be permitted to receive credit for this category. States that permit judges to review and modify a child's sentence, including life without parole, after a term of years will receive full credit for this category.



ADULT COURTS

(A) States receive credit under this subsection if they statutorily prohibit the transfer of children under 14 years of age into the adult criminal justice system. No exceptions can be permitted to receive credit for this subsection, which includes exclusions based on the type of crime committed. For example, if a child under 14 may be transferred to the adult system on a charge of homicide, the state does not receive credit for this category.

(B) States receive credit under this subsection if they require a mandatory child status hearing in all cases involving children less than 18 years of age before allowing transfer to adult criminal court. States that allow children to be subject to direct file in adult court or statutorily exclude certain children from the jurisdiction of the juvenile court, may receive full credit only if they require an immediate child status or reverse waiver hearing in adult criminal court. No exceptions can be permitted to receive credit for this subsection.

States may receive partial credit for this category if they meet the requirements of either subsections (A) or (B).



MANDATORY MINIMUM SENTENCES

States receive credit for this category if judges, masters, magistrates, or others with sentencing authority are authorized to depart from *all* mandatory minimum sentences when sentencing children in adult criminal court. States will only be awarded credit if they allow discretion at the time that a sentence is being imposed and not if they "theoretically" allow a judge to later suspend the sentence. Nor will states receive credit for allowing greater judicial discretion under 'youthful offender' laws. States may receive partial credit if they authorize sentencing authorities to depart, up to a certain percentage, from any mandatory minimum sentence for any offense in adult criminal court.



FELONY-MURDER RULE

States receive credit for this category if they statutorily eliminate the application of the felony murder rule to children less than 18 years of age. In cases where a child does not kill or intend to kill another person during the commission of a felony, he or she should receive a sentence based on his or her overall culpability, which takes into account the child's trauma history and potential for rehabilitation. States will receive credit for this category if they do not have the felony murder rule, have banned the felony murder rule for children, or have created an affirmative defense for persons who do not kill or intend to kill during the commission of the felony. States may receive partial credit if they place strict limits on the applicability of the affirmative defense or allow children who did not kill or intend to kill to still be prosecuted pursuant to the rule under other circumstances.



INCARCERATION

States receive credit for this category if they statutorily prohibit the housing of children under 18 years of age in adult correctional facilities, including local jails and state prisons. A child who has committed serious crimes or who may be subject to prosecution in the adult criminal justice system must continue to be housed in juvenile correctional facilities until they reach 18 years of age.



SOLITARY CONFINEMENT

States receive credit for this category if they statutorily prohibit the use of solitary confinement or administrative segregation on children for punitive and safety-related reasons. States are allowed to have individual confinement for children as a "cooling off" period, but such removal should be used only in extreme cases, and only for as long as reasonably necessary for the child to be reintegrated with the rest of the children in the facility. States may receive partial credit for this category if they ban the use of solitary/room confinement, isolation, or administrative segregation for children in juvenile detention facilities. However, in order to receive full credit, states must have protections in place for kids in both juvenile and adult correctional facilities.



POST-RELEASE SUPERVISION

States receive credit for this category if they statutorily authorize formerly incarcerated children serving lengthy terms of post-release supervision to be discharged from supervision at the discretion of the paroling authority or judge. States will receive credit if they have statutory provisions that apply to all formerly incarcerated individuals, including children. States may receive partial credit if they allow most formerly incarcerated children to be eligible for early discharge from supervision.



RELEASE SAFETY VALVE

States receive credit for this category if they allow either the parole board or judges to review all sentences previously imposed on child offenders after no more than 30 calendar years (end de facto life without parole). States may receive partial credit for this category if they have statutes permitting sentencing review for nearly all offenses committed by children. However, to receive full credit states must allow children serving multiple sentences of any duration and for any offenses to be eligible for review.



VOTING RIGHTS

States that have eliminated voting rights for persons convicted of serious offenses will receive credit for this category if they statutorily require or permit the restoration of voting rights for formerly incarcerated children who have been released from prison. States will not receive credit if they require Gubernatorial action before voting rights can be restored. If a state allows for the reinstatement of voting rights upon completion of the person's sentence, which includes parole or supervision, the state must allow formerly incarcerated children to seek discharge from parole or supervision at a reasonable point after they have been released in order to receive credit for this category. A state may receive partial credit if the vast majority of formerly incarcerated children can have their voting rights restored without executive action. However, a state will not receive any credit if it permanently disenfranchises formerly incarcerated children convicted of certain offenses.

State Ratings Chart

Total Score

- Tier 1 (10+ points)
- Tier 2 (7-9 points)
- Tier 3 (4-6 points)
- Tier 4 (1-3 points)

Credit

- Full Credit
- Partial Credit
- No Credit

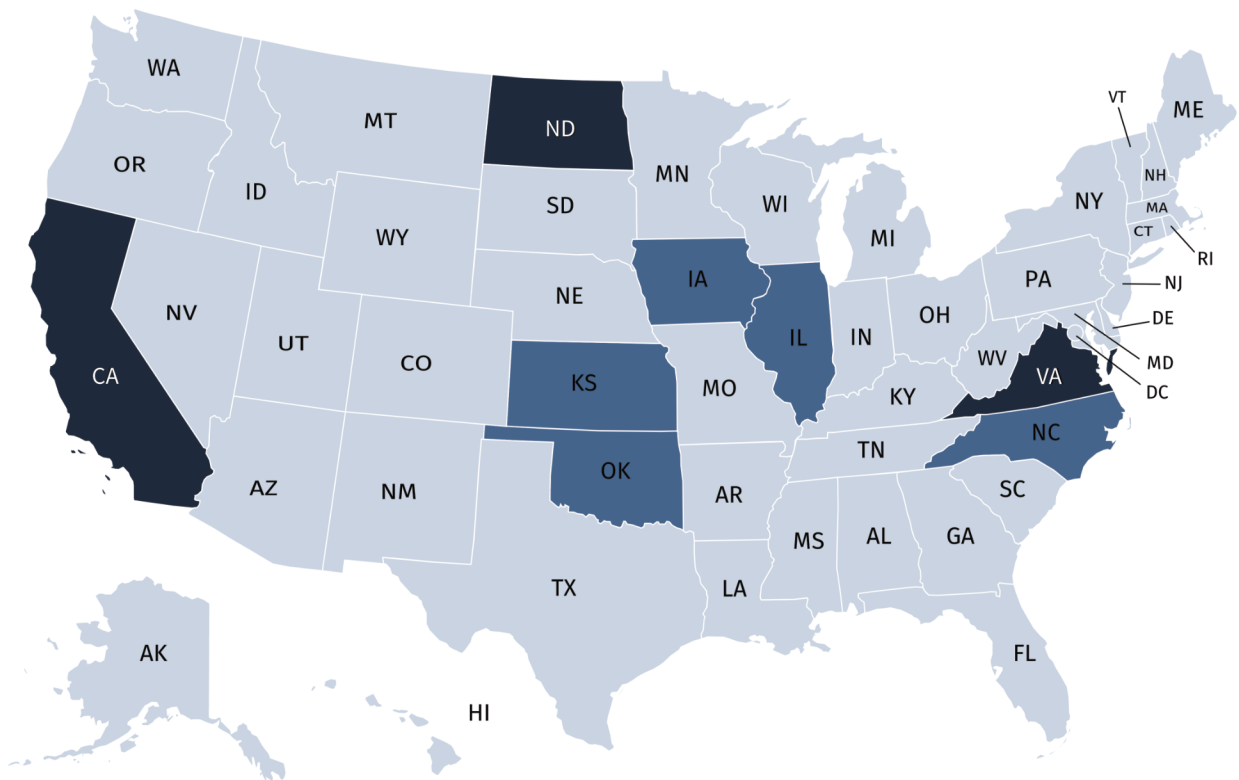
Alabama	2												
Alaska	4												
Arizona	2.5												
Arkansas	7.5												
California	9.5												
Colorado	6.5												
Connecticut	7												
Delaware	3.5												
District of Columbia	7												
Florida	3												
Georgia	2												
Hawaii	5.5												
Idaho	3												
Illinois	3.5												
Indiana	3												
Iowa	2.5												
Kansas	5.5												
Kentucky	3.5												
Louisiana	4												
Maine	4												
Maryland	2												
Massachusetts	6												
Michigan	3												
Minnesota	4.5												
Mississippi	2												
Missouri	3												

Montana	4.5												
Nebraska	5												
Nevada	5.5												
New Hampshire	3												
New Jersey	6												
New Mexico	4.5												
New York	3.5												
North Carolina	3.5												
North Dakota	8												
Ohio	3												
Oklahoma	3.5												
Oregon	7												
Pennsylvania	3												
Rhode Island	4												
South Carolina	3.5												
South Dakota	5												
Tennessee	2												
Texas	4												
Utah	4.5												
Vermont	4												
Virginia	6.5												
Washington	5												
West Virginia	7												
Wisconsin	3												
Wyoming	2												



Due Process

● Full Credit ● Partial Credit ● No Credit



"Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance . . ."

- *Article 37 of the U.N. Convention on the Rights of the Child*

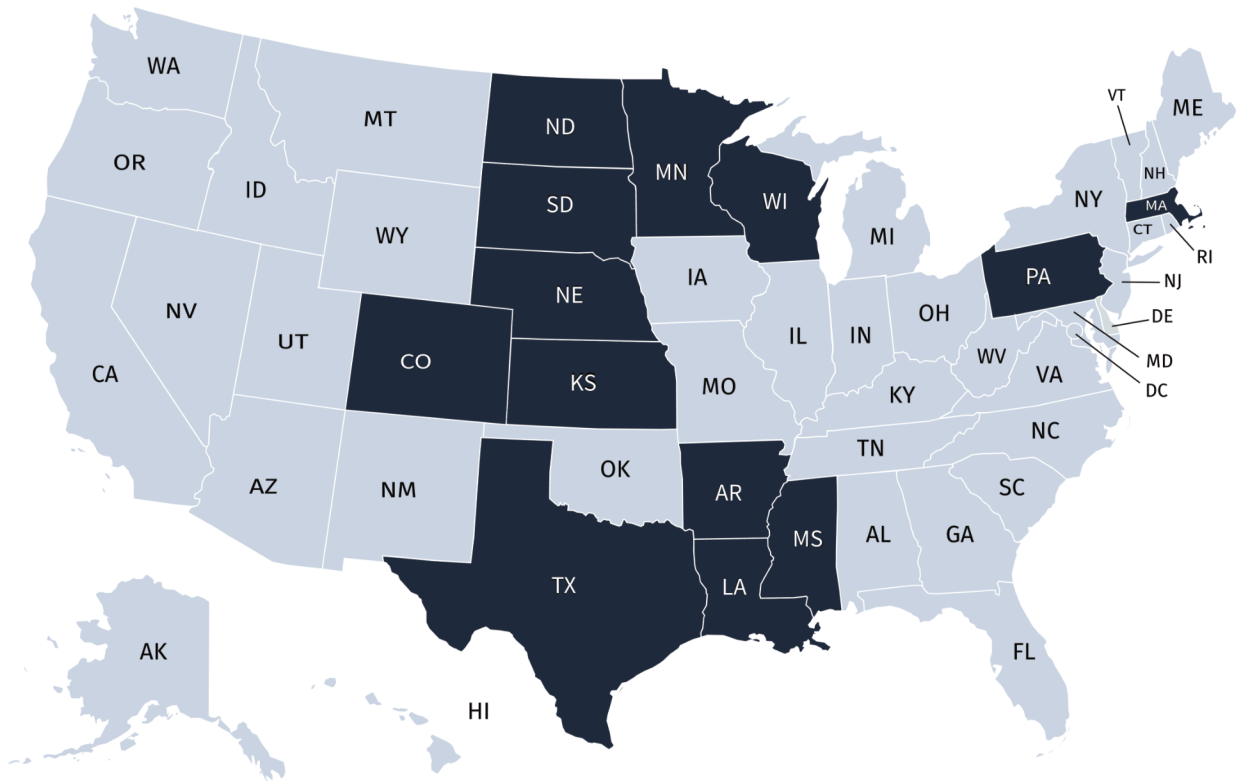
"Every child alleged as or accused of having infringed the penal law has at least the following guarantees . . . Not to be compelled to give testimony or to confess guilt."

- *Article 40 of the U.N. Convention on the Rights of the Child*

In 2019, the U.N. Committee on the Rights of the Child (CRC) affirmed that the assistance available to children involved in the justice system under the Convention on the Rights of the Child should be provided throughout the entire process, "beginning with the interviewing (interrogation) of the child by the police . . ." In the United States, such legal protections are absolutely essential to safeguarding children's constitutional rights under *Miranda v. Arizona*. Unfortunately, only Virginia, North Dakota, and California received full credit for having laws that require children to consult with legal counsel or their parents prior to a custodial interrogation. States without such protections, including those that received only partial credit, should look to North Dakota and California which have the most expansive legal protections in place for children at the point of entry into the justice system.

Minimum Court Age

● Full Credit ● Partial Credit ● No Credit

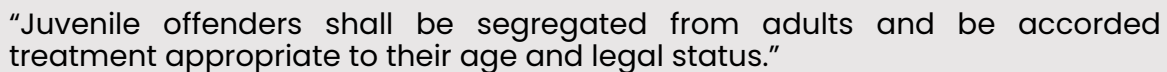


"States Parties shall seek . . . the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law."

- *Article 40 of the U.N. Convention on the Rights of the Child*

One of the central pillars of human rights for children in the justice system is the establishment of a minimum age of criminal culpability. While the CRC has encouraged states to set the age at 14, our review of state laws around the United States revealed that only a minority of states set a minimum age of at least 10, with Massachusetts being the only state to set a minimum age of 12. While states are encouraged to follow the example of Massachusetts in this category, they can also look to policies adopted in Arkansas, Louisiana, and Texas which set the minimum age of responsibility at 10. This is what we have deemed minimally necessary to protect the human rights of children in the justice system, which we also believe will help to end the school to prison pipeline. Unfortunately, 37 states and the District of Columbia have failed to meet this standard.

● Full Credit ● Partial Credit ● No Credit



“States . . . shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law . . .”

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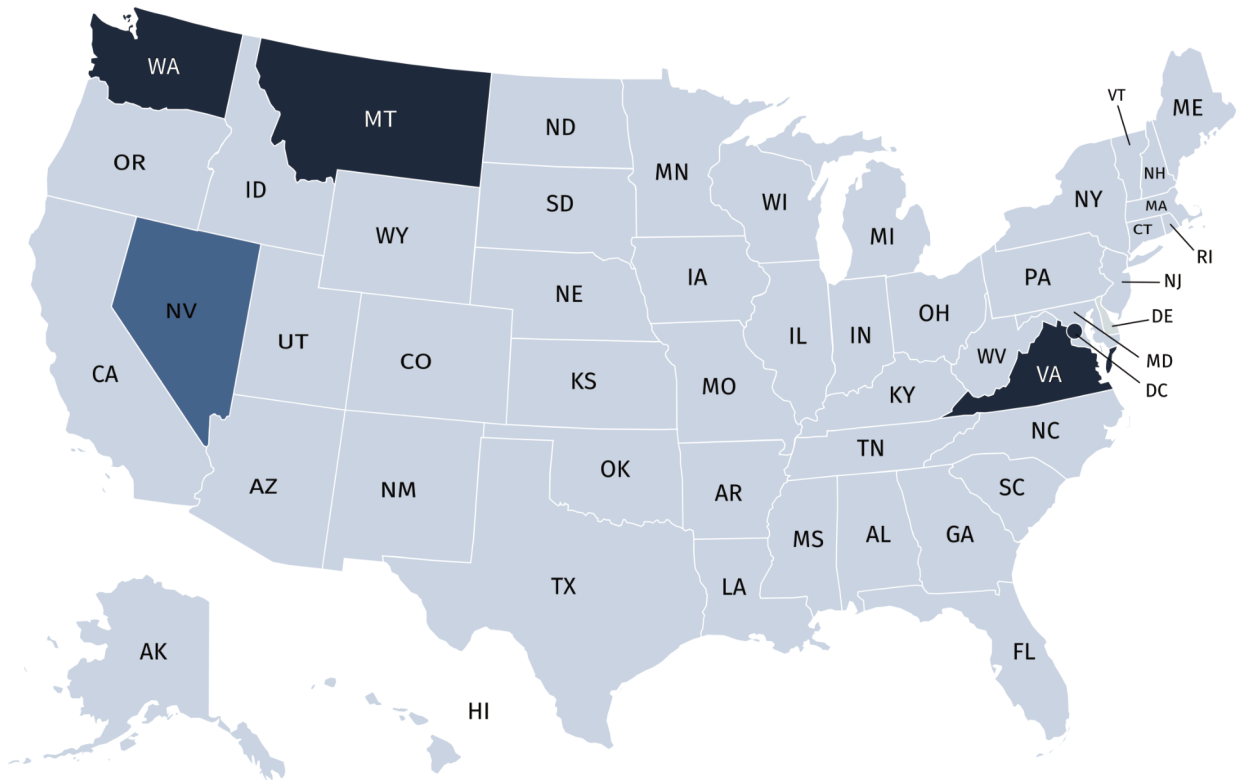


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Mandatory Minimum Sentences

● Full Credit ● Partial Credit ● No Credit



"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age."

- *Article 37 of the U.N. Convention on the Rights of the Child*

"Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status . . . the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."

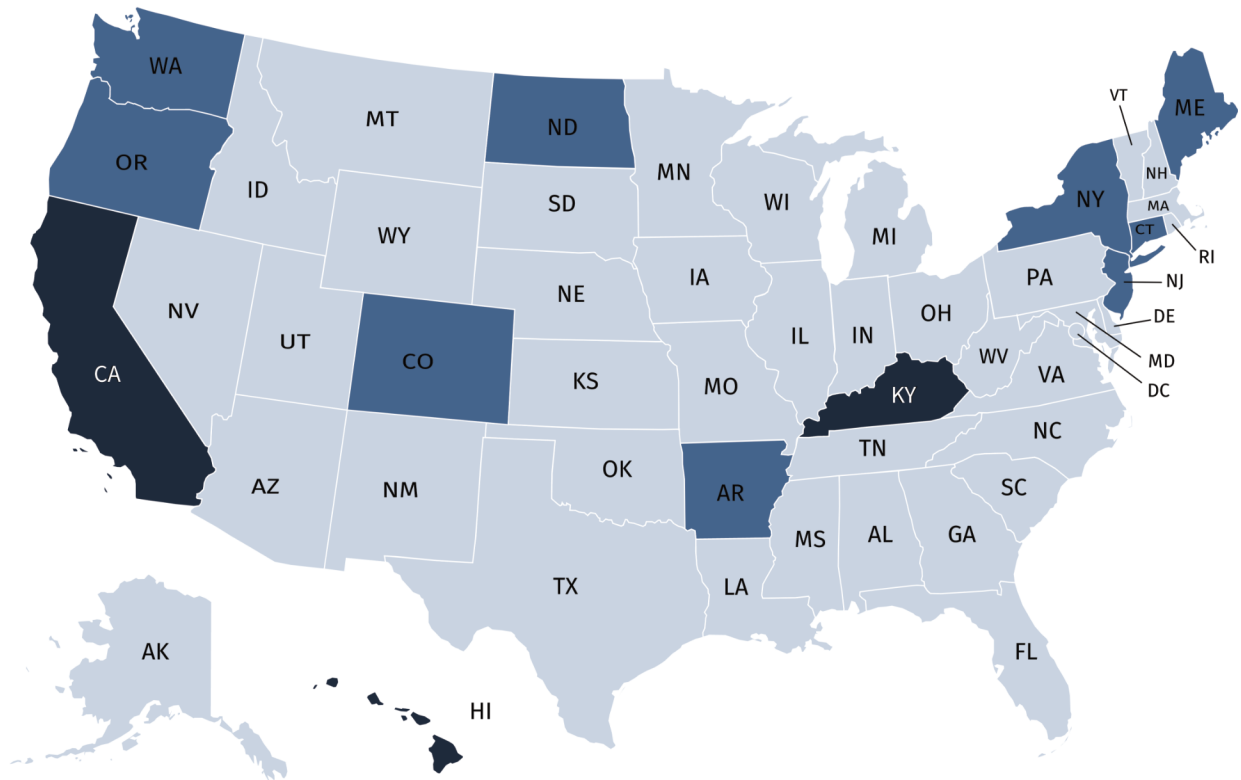
- *Articles 10 and 14 of the International Covenant on Civil and Political Rights*

Because children may be prosecuted under the laws of every state in the adult criminal justice system it is vital for states to adopt policies that allow judges or juries to sentence children differently than they would adult offenders. In light of children's diminished culpability relative to adults and increased prospects for treatment and rehabilitation, states must allow sentencers to depart from any mandatory minimum sentence after a child has been convicted in adult court. Only 4 jurisdictions – Virginia, Montana, Washington, and the District of Columbia – received full credit for this category. Nevada received partial credit for allowing judges to depart up to 35% below otherwise applicable mandatory minimum sentences. Unfortunately, most of the country has not enacted policies giving greater flexibility to judges who are sentencing children. The absence of this flexibility violates human rights standards. States should look to the Commonwealth of Virginia for model provisions on how children should be sentenced if they are convicted in adult court.



Felony-Murder Rule

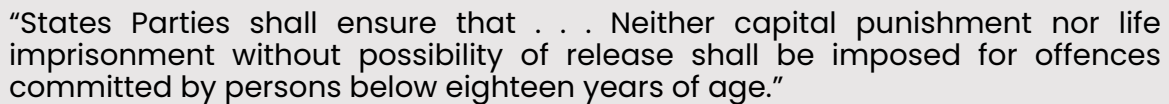
● Full Credit ● Partial Credit ● No Credit



"In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."

- *Article 14 of the International Covenant on Civil and Political Rights*

Children often fail to appreciate the unintended consequences of their actions. Nowhere is this more apparent than in felony murder cases where children can be criminally convicted of murder even though they did not kill or intend to kill anyone during the commission of a felony offense. To be consistent with human rights standards in treating children differently than adults and promoting their rehabilitation, states must ban the application of the felony murder doctrine to children who do not have the actual intent to kill another person. California, Hawaii, and Kentucky are the only states that received full credit for banning the application of the felony murder doctrine to children. While some states received partial credit for creating an affirmative defense to felony murder, they did not receive full credit because their statutes had exceptions that could still lead to criminal liability for a child who did not kill or intend to kill during the course of a felony offense.

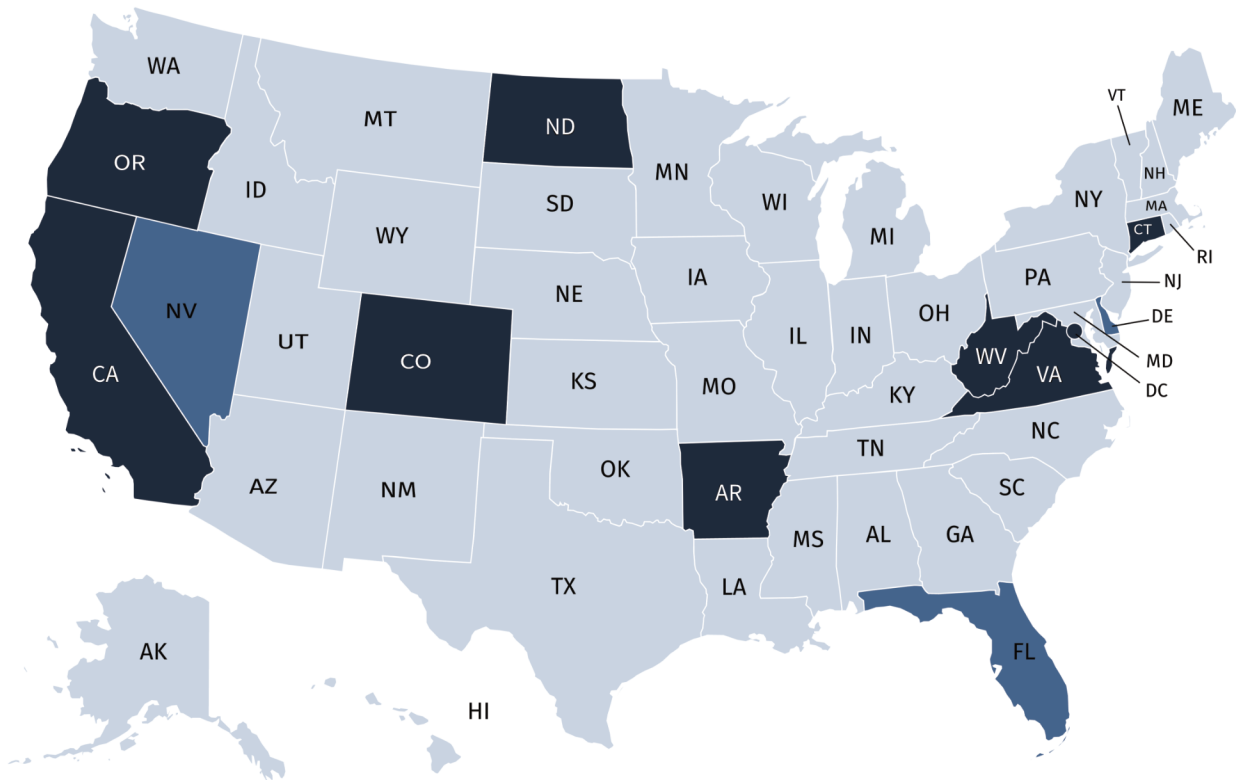


The use of life without parole sentences on children is perhaps the worst human rights violation profiled in our report, having been deemed cruel, degrading, and inhumane punishment the world over. Such sentences cast an irrevocable judgement on a child that deem him or her unworthy of living in free society ever again – no matter how much he or she changes over time. Such punishment is categorically prohibited by the Convention on the Rights of the Child; however, the United States remains the only nation that hasn't ratified this treaty. States must ban life without parole altogether – with no exceptions – in order to receive full credit. To date, 20 states and the District of Columbia have enacted statutes banning the practice of sentencing children to die in prison. States that have active parole systems should look to Utah or Nevada for model language on banning juvenile life without parole. States without parole systems can look to North Dakota or the District of Columbia for model language.



Release Safety Valve

● Full Credit ● Partial Credit ● No Credit



"States Parties shall ensure that . . . Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age . . . States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment . . . to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement."

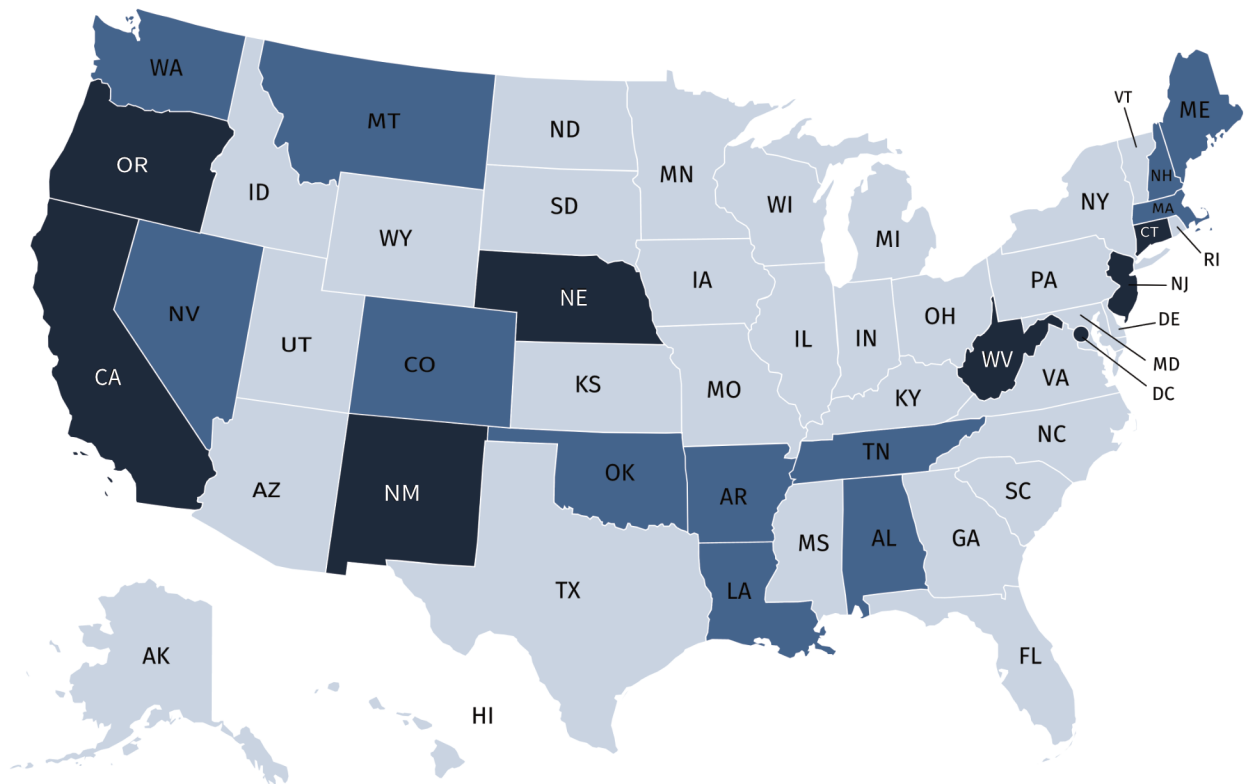
- Articles 25 and 37 of the U.N. Convention on the Rights of the Child

Banning the use of life without parole sentences on children can be an empty promise if states can circumvent such statutes through the use of stacked or consecutive sentences and/or sentencing enhancements. To come into full compliance with Articles 25 and 37 of the Convention on the Rights of the Child, therefore, states must enact policies that end de facto life without parole by requiring periodic sentencing review for all child offenders given lengthy prison sentences. Referred to as a "release safety valve," only 11 states and the District of Columbia received full or partial credit for this category. Model sentencing review laws have been enacted by legislatures in West Virginia (parole) and the District of Columbia (judicial) which give two equally viable alternatives for states to come into compliance with this category.



Solitary Confinement

● Full Credit ● Partial Credit ● No Credit



"States Parties shall ensure that . . . No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

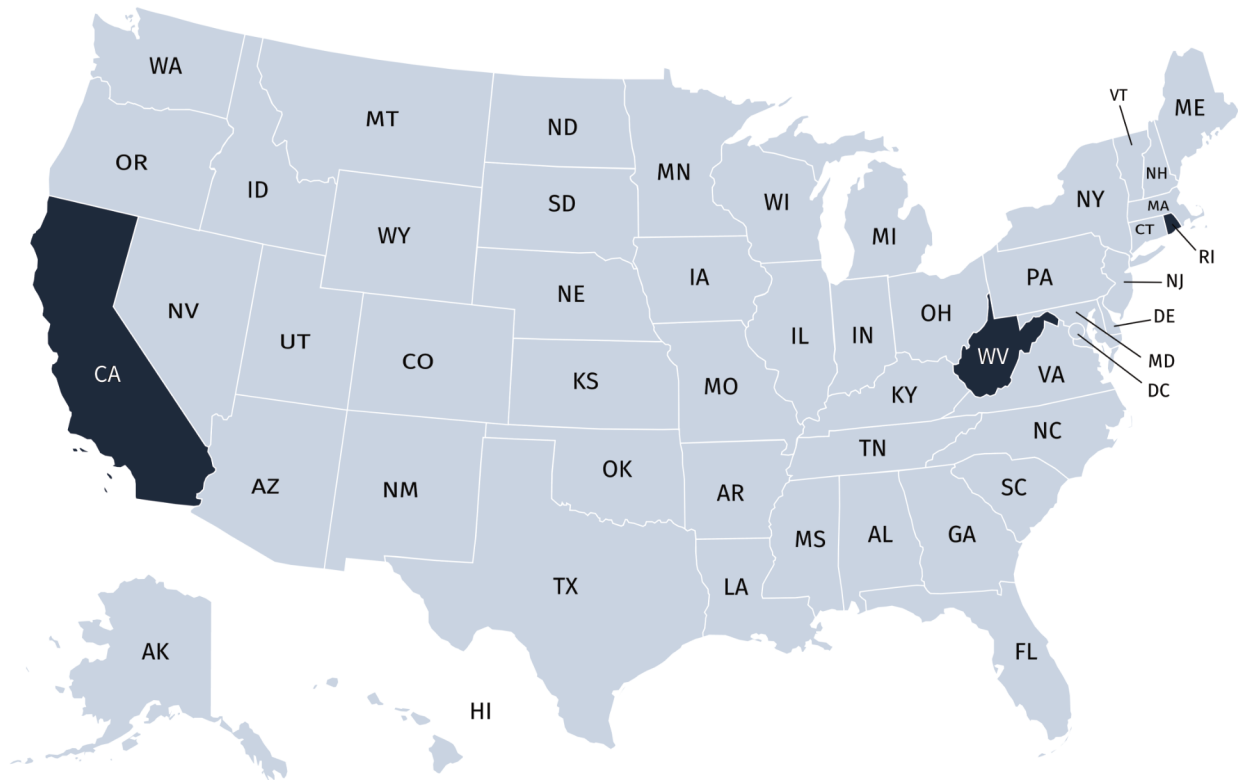
- Article 37 of the U.N. Convention on the Rights of the Child

The use of solitary confinement on children is strictly prohibited as a form of cruel and inhumane treatment under international human rights standards. Yet, the majority of states – 31 – do not have statutory provisions in place banning such treatment or provisions that strictly regulate the use of limited room seclusion for children in state custody. Sadly, only 7 states and the District of Columbia received full credit for banning solitary confinement for children. While some states did receive partial credit for their statutes protecting children in the juvenile justice system, children in adult prisons remain vulnerable to this human rights abuse. Indeed, children held in adult prisons are often at greater risk for being subject to solitary confinement as they tend to fall through the cracks of administrative regulations aimed at protecting children in the juvenile justice system. States that received only partial credit should enact legislation expanding such protections to children held in adult prisons, or, better yet, ban children from being incarcerated in adult prisons altogether. California and West Virginia have the best laws in the country as they ban solitary confinement for children in juvenile facilities and prohibit kids from being incarcerated in adult prisons.



Incarceration

● Full Credit ● Partial Credit ● No Credit



"States Parties shall ensure that...every child deprived of liberty shall be separated from adults."

- *Article 37 of the U.N. Convention on the Rights of the Child*

"Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication . . . Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

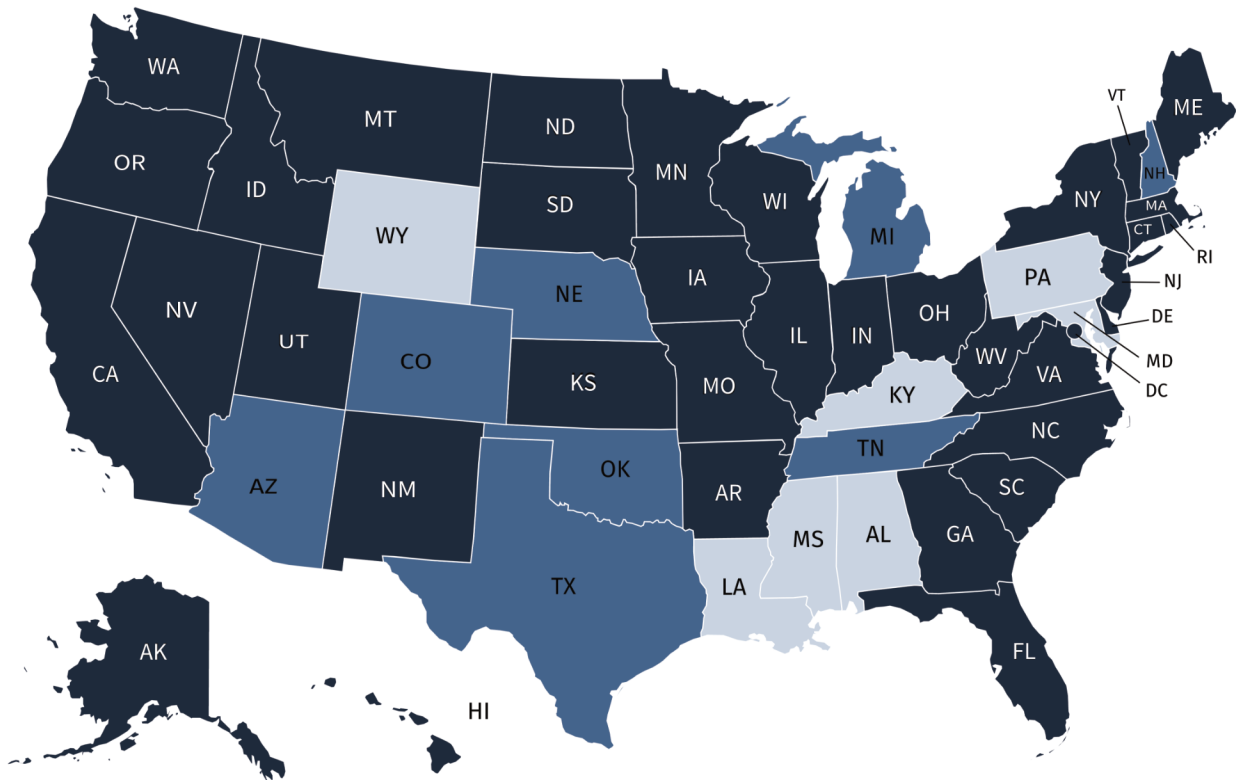
-*Article 10 of the International Covenant on Civil and Political Rights*

Detaining or incarcerating children in adult jails, lock-ups, or prisons is a very clear violation of human rights standards under both the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Such treatment of children increases their risk of being subject to physical and sexual violence and limits the education and rehabilitative programming that would otherwise be available to them. Additionally, children held in adult facilities are often subject to conditions of solitary confinement or room seclusion which is also a violation of human rights standards. This category was the greatest national human rights failure of any we tracked. While many states sought to strictly regulate sight and sound restrictions between children and adults in detention facilities, only 3 states prohibited detaining or incarcerating children under any circumstances in adult facilities. California, Rhode Island, and West Virginia are the only states in compliance with this category. Every other state should enact statutory protections similar to those found in these jurisdictions.



Post-Release Supervision

● Full Credit ● Partial Credit ● No Credit



"States Parties recognize the right of every child . . . having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

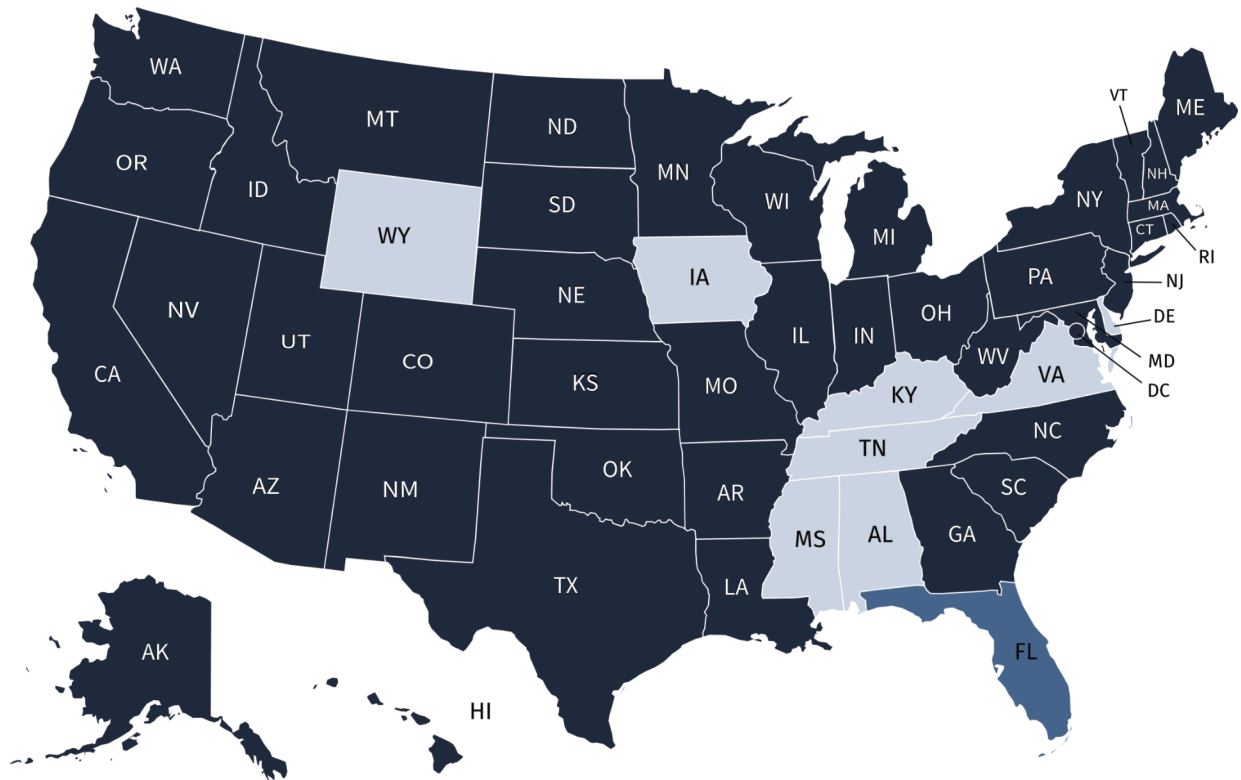
- Article 40 of the U.N. Convention on the Rights of the Child

Promoting reintegration and the assumption of a constructive role in society for formerly incarcerated children necessarily includes the ability to discharge their full sentence, including any period of post-release supervision. In General Comment 24, the Children's Rights Committee stated that promoting reintegration requires a child in conflict with the law to be "protected from actions or attitudes that hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity." In many states, post-release supervision is considered a part of an offender's sentence. For formerly incarcerated children serving lengthy prison sentences this could mean lifetime supervision that hinders his or her ability to move on with their life, exercise their full rights of citizenship, or assume a constructive role in society. Therefore, states should enact laws that allow the supervising authority to discharge a formerly incarcerated youth from supervision at a reasonable point after release. All but 7 states received full or partial credit for this category, with Alaska having one of the best laws in the nation.



Voting Rights

● Full Credit ● Partial Credit ● No Credit



"States Parties recognize the right of every child . . . having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

- Article 40 of the U.N. Convention on the Rights of the Child

The successful treatment and full social reintegration of children who come into conflict with the law is the chief human rights principle behind many of the protections found in the Convention on the Rights of the Child. However, a child cannot achieve full social reintegration if he or she is denied the rights and privileges afforded to their fellow citizens. No right is more important to active citizenship than the right of suffrage. Therefore, states must create a pathway for formerly incarcerated children – who have reached the age of majority – to have their voting rights restored upon release. States that require the completion of the entire sentence – including post-release supervision – before the restoration of voting rights is permitted, must also create a mechanism that allows formerly incarcerated children to be discharged from state supervision in order to earn credit for this category. The overwhelming majority of states – 41 and the District of Columbia – have statutes in place creating a pathway for all formerly incarcerated children to register to vote. While Florida received partial credit, Alabama, Delaware, Iowa, Kentucky, Mississippi, Tennessee, Virginia, and Wyoming received no credit. These states can look to Vermont where voting rights are never taken away or Nevada where formerly incarcerated youth are permitted to vote once they've been released from prison, for model language to receive credit for this category.

“As concluded by the Human Rights Committee in its observations on the United States’ compliance with the International Covenant on Civil and Political Rights, the United States does not limit its treatment of children as adults to exceptional circumstances. The Commission observes that the ambiguity of this reservation has been converted into an expansive gap in juvenile justice systems across the U.S., resulting in the violation of children’s human rights on federal, state, and local levels.”

Inter-American Commission on Human Rights, 2018

A Call to Action

This report offers a sobering assessment of the legal and policy failures that have facilitated the proliferation of human rights violations against children in the criminal justice system. From the point of entry to sentencing and incarceration, our findings make clear that we have a long way to go if we are to be a nation that protects and defends the human rights of children who come into conflict with the law. These state policy decisions have far-reaching and real world consequences. Every year, more than 76,000 children are tried in the adult criminal justice system, with kids as young as 10 years old being eligible for prosecution in adult court. It is estimated that on any given day 4,500 children are housed in adult jails and prisons. And more than 10,000 people are currently serving life sentences – with or without parole – for offenses committed as children. It is currently unknown the total number of people incarcerated in U.S. prisons serving lengthy mandatory minimum sentences for crimes committed as children.

Despite all of this, there are reasons to be hopeful. Arkansas, North Dakota, and California lead the nation when it comes to protecting the human rights of children in the justice system. What this tells us is that these basic human rights principles are bi-partisan in nature. Unfortunately, so too are the states that are human rights offenders with Maryland, Alabama, and Georgia on the wrong side of our ratings map. Republicans and Democrats are both leading on these issues; and they are also both failing. This report offers us a snapshot of who we are today, but not who we are capable of being. Human Rights for Kids was founded on the belief that all of us have the ability to help create a world free of suffering and harm, a world worthy of our children. This report is a challenge to advocates and policymakers everywhere to prioritize changing the way the criminal justice system treats children.

As Nelson Mandela powerfully said, “there is no keener revelation of a society’s soul than the way in which it treats its children.” How we respond to this report will reveal a great deal about the soul of our nation.



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