



## Maryland 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>	2 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 § 3-8A-05, children as young as 7 years old may be subject to delinquency proceedings in juvenile court.

**§ 3-8A-05**

(d) In a delinquency proceeding there is no presumption of incapacity as a result of infancy for a child who is at least 7 years old.

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

Full Credit: 1/1

Pursuant to § 3-8A-01, the jurisdiction of the juvenile court for delinquent acts extends to anyone under the age of 18.

**§ 3-8A-01 - Definitions**

(a) In this subtitle the following words have the meanings indicated, unless the context of their use indicates otherwise.

(d) "Child" means an individual under the age of 18 years.

(l) "Delinquent act" means an act which would be a crime if committed by an adult.

(m) "Delinquent child" is a child who has committed a delinquent act and requires guidance, treatment, or rehabilitation.

**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 §3-8A-06, the state may seek to transfer a child less than 14 years of age to adult criminal court, and pursuant to §3-8A-03 a child 14 years of age or older who is accused of specified offenses must be tried in adult court.

**§ 3-8A-06 - Waiver of jurisdiction**

(a) The court may waive the exclusive jurisdiction conferred by § 3-8A-03 of this subtitle with respect to a petition alleging delinquency by:

(1) A child who is 15 years old or older; or

(2) A child who has not reached his 15th birthday, but who is charged with committing an act that, if committed by an adult, would be punishable by life imprisonment.

(b) The court may not waive its jurisdiction under this section until after it has conducted a waiver hearing, held prior to an adjudicatory hearing and after notice has been given to all parties as prescribed by the Maryland Rules. The waiver hearing is solely to determine whether the court should waive its jurisdiction.

(c) (1) Notice of the waiver hearing shall be given to a victim as provided under § 11-104 of the Criminal Procedure Article.

- (2) (i) A victim may submit a victim impact statement to the court as provided in § 11-402 of the Criminal Procedure Article.
- (ii) This paragraph does not preclude a victim who has not filed a notification request form under § 11-104 of the Criminal Procedure Article from submitting a victim impact statement to the court.
- (iii) The court may consider a victim impact statement in determining whether to waive jurisdiction under this section.
- (d) (1) The court may not waive its jurisdiction under this section unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures.
- (2) For purposes of determining whether to waive its jurisdiction under this section, the court shall assume that the child committed the delinquent act alleged.
- (e) In making its determination, the court shall consider the following criteria individually and in relation to each other on the record:
- (1) Age of the child;
- (2) Mental and physical condition of the child;
- (3) The child's amenability to treatment in any institution, facility, or program available to delinquents;
- (4) The nature of the offense and the child's alleged participation in it; and (5) The public safety.
- (f) If jurisdiction is waived under this section, the court shall order the child held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult. The petition alleging delinquency shall be considered a charging document for purposes of detaining the child pending a bail hearing.
- (g) An order waiving jurisdiction is interlocutory.
- (h) If the court has once waived its jurisdiction with respect to a child in accordance with this section, and that child is subsequently brought before the court on another charge of delinquency, the court may waive its jurisdiction in the subsequent proceeding after summary review.

### **§ 3-8A-03 - Jurisdiction of court**

- (a) In addition to the jurisdiction specified in Subtitle 8 of this title, the court has exclusive original jurisdiction over:
- (1) A child who is alleged to be delinquent or in need of supervision or who has received a citation for a violation;
- (2) Except as provided in subsection (d)(6) of this section, a peace order proceeding in which the respondent is a child; and
- (3) Proceedings arising under the Interstate Compact on Juveniles.
- (b) The court has concurrent jurisdiction over proceedings against an adult for the violation of § 3-8A-30 of this subtitle. However, the court may waive its jurisdiction under this subsection upon its own motion or upon the motion of any party to the proceeding, if charges against the adult arising from the same incident are pending in the criminal court. Upon motion by either the State's Attorney or the adult

charged under § 3-8A-30 of this subtitle, the court shall waive its jurisdiction, and the adult shall be tried in the criminal court according to the usual criminal procedure.

(c) The jurisdiction of the court is concurrent with that of the District Court in any criminal case arising under the compulsory public school attendance laws of this State.

(d) The court does not have jurisdiction over:

(1) A child at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;

(2) A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;

(3) A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration;

(4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article:

(i) Abduction;

(ii) Kidnapping;

(iii) Second degree murder;

(iv) Manslaughter, except involuntary manslaughter;

(v) Second degree rape;

(vi) Robbery under § 3-403 of the Criminal Law Article;

(vii) Third degree sexual offense under § 3-307(a)(1) of the Criminal Law Article;

(viii) A crime in violation of § 5-133, § 5-134, § 5-138, or § 5-203 of the Public Safety Article;

(ix) Using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;

(x) Use of a firearm under § 5-622 of the Criminal Law Article;

(xi) Carjacking or armed carjacking under § 3-405 of the Criminal Law Article;

(xii) Assault in the first degree under § 3-202 of the Criminal Law Article;

(xiii) Attempted murder in the second degree under § 2-206 of the Criminal Law Article;

(xiv) Attempted rape in the second degree under § 3-310 of the Criminal Law Article;

(xv) Attempted robbery under § 3-403 of the Criminal Law Article; or

(xvi) A violation of § 4-203, § 4-204, § 4-404, or § 4-405 of the Criminal Law Article;

(5) A child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed

by an adult, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article; or

(6) A peace order proceeding in which the victim, as defined in § 3-8A-01(cc)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4-501 of the Family Law Article.

(e) If the child is charged with two or more violations of the Maryland Vehicle Law, another traffic law or ordinance, or the State Boat Act, allegedly arising out of the same incident and which would result in the child being brought before both the court and a court exercising criminal jurisdiction, the court has exclusive jurisdiction over all of the charges.

## **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 §2-201, a child may be convicted under the felony murder rule.

### **§ 2-201 - [Effective 10/1/2020] Murder in the first degree**

(a) A murder is in the first degree if it is:

(1) a deliberate, premeditated, and willful killing;

(2) committed by lying in wait;

(3) committed by poison; or

(4) committed in the perpetration of or an attempt to perpetrate:

(i) arson in the first degree;

(ii) burning a barn, stable, tobacco house, warehouse, or other outbuilding that:

1. is not parcel to a dwelling; and

2. contains cattle, goods, wares, merchandise, horses, grain, hay, or tobacco;

(iii) burglary in the first, second, or third degree;

(iv) carjacking or armed carjacking;

(v) escape in the first degree from a State correctional facility or a local correctional facility;

(vi) kidnapping under § 3-502 or § 3-503(a)(2) of this article;

(vii) mayhem;

(viii) rape;

(ix) robbery under § 3-402 or § 3-403 of this article;

(x) sexual offense in the first or second degree;

(xi) sodomy as that crime existed before October 1, 2020; or

(xii) a violation of § 4-503 of this article concerning destructive devices.

(b) (1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:

(i) imprisonment for life without the possibility of parole; or

(ii) imprisonment for life.

## **7. Ban Life Without Parole Sentences for Kids**

No Credit: 0/1

Pursuant to §2-304, a child may be sentenced to life without parole.

### **§ 2-304 - First degree murder - Sentencing procedure - Imprisonment for life without the possibility of parole**

(a) If the State gave notice under § 2-203(1) of this title, the court shall conduct a separate sentencing proceeding as soon as practicable after the defendant is found guilty of murder in the first degree to determine whether the defendant shall be sentenced to imprisonment for life without the possibility of parole or to imprisonment for life.

## **8. 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

Pursuant to §9-614.1 a child may be placed in “restrictive housing” for punishment or protection upon a finding by “clear and convincing evidence” that such placement is necessary due to an immediate risk of physical harm or security of the facility. As a result, Maryland receives no credit.

### **§ 9-614.1 - Placing minor in restrictive housing**

(a) In this section, "restrictive housing" has the meaning stated in § 9-614 of this subtitle.

(b) This section applies to a facility operated by a correctional unit, as defined in § 2-401 of this article.

(c) A minor may not be placed in restrictive housing unless the managing official of the facility finds by clear and convincing evidence that there is an immediate and substantial risk:

- (1) of physical harm to the minor, other inmates, or staff; or
- (2) to the security of the facility.

(d) A minor placed in restrictive housing shall be provided:

(1) daily physical and mental health assessments to determine whether the minor may be released from restrictive housing;

(2) the same standard of access that is provided to inmates not in restrictive housing to:

(i) phone calls;

(ii) visits;

(iii) mail;

(iv) food;

(v) water;

(vi) showers;

(vii) sanitary supplies;

(viii) property, including clothing and bedding; and

(ix) medical, mental, and dental health care; and

(3) unless it would pose a risk of physical harm to the minor or another, maximized access to recreation, education, and programming.

(e) If a privilege or condition described in subsection (d) of this section is not provided to the minor, the managing official or the managing official's designee shall record the reason in the minor's file.

### **§ 9-614 - Restrictive housing reports.**

(a) "Restrictive housing" defined. --

(1) In this section, "restrictive housing" means a form of physical separation in which the inmate is placed in a locked room or cell for approximately 22 hours or more out of a 24-hour period.

(2) "Restrictive housing" includes administrative segregation and disciplinary segregation.

### **§2-401 – Definitions**

(a) In this subtitle the following words have the meanings indicated.

(b)(1) "Correctional unit" means a unit of Maryland State or local government that is directly responsible for the care, custody, and control of individuals committed to the custody of the unit for the commission or alleged commission of a crime or an act that would be a crime if committed by an adult.

(2) "Correctional unit" includes:

(i) the Department of Public Safety and Correctional Services;

(ii) the Department of Juvenile Services; and

(iii) the office of the sheriff of a county or other unit of government with responsibility for operating a local correctional facility or county detention center.

## **10. Ban Incarcerating Kids with Adults**

No Credit: 0/1

Pursuant to §3-8A-16, children may be detained or confined in an adult jail or lockup. Additionally, there is no prohibition on incarcerating children in adult prisons.

### **§ 3-8A-16 - Transfer to other facilities**

(a) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court or the intake officer immediately when a person, who is or appears to be under the age of 18 years, is received at the facility and shall deliver him to the court upon request or transfer him to the facility designated by the intake officer or the court, unless the court has waived its jurisdiction with respect to the person and he is being proceeded against as an adult.

(b) When a case is transferred to another court for criminal prosecution, the child shall promptly be transferred to the appropriate officer or adult detention facility in accordance with the law governing the detention of persons charged with crime.

(c) A child may not be transported together with adults who have been charged with or convicted of a crime unless the court has waived its jurisdiction and the child is being proceeded against as an adult.

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

No Credit: 0/1

Pursuant to §7-308, formerly incarcerated children serving lifetime or other lengthy parole terms remain in legal custody for the duration of their full sentence.

### **§ 7-308 - Parole order**

(a) Written order. - A parole shall be evidenced by a written order.

(b) Effect of order. - Parole entitles the recipient:

(1) to leave the correctional facility in which the recipient was confined; and

(2) if the recipient satisfactorily complies with all the terms and conditions provided in the parole order, to serve the remainder of the recipient's term of confinement outside the confines of the correctional facility.

(c) A parolee remains in legal custody until the expiration of the parolee's full, undiminished term.

### **§ 7-502. Legal custody.**

(a) In general. - An individual on mandatory supervision remains in legal custody until the expiration of the individual's full term.



(b) Applicability of laws, rules, regulations, and conditions relating to parolees. - An individual on mandatory supervision is subject to:

(1) all laws, rules, regulations, and conditions that apply to parolees; and

(2) any special conditions established by a commissioner.

(c) Application for diminution credits. - If an inmate is convicted and sentenced to imprisonment for a crime committed while on mandatory supervision and the mandatory supervision is revoked, diminution credits that were awarded before the inmate's release on mandatory supervision may not be applied toward the inmate's term of confinement on return to the Division.

## **12. Voting Rights Restoration**

Full Credit: 1/1

Pursuant to §3-102, a formerly incarcerated child who has reached voting age can vote after he or she has been discharged from imprisonment.

### **§ 3-102 - Qualifications for voter registration**

(a) (1) Except as provided in subsection (b) of this section, an individual may become registered to vote if the individual:

(i) is a citizen of the United States;

(ii) is at least 16 years old;

(iii) is a resident of the State as of the day the individual seeks to register; and

(iv) registers pursuant to this title.

(2) Notwithstanding paragraph (1)(ii) of this subsection, an individual under the age of 18 years:

(i) may vote in a primary election in which candidates are nominated for a general or special election that will occur when the individual is at least 18 years old; and

(ii) may not vote in any other election.

(b) An individual is not qualified to be a registered voter if the individual:

(1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction;

(2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process; or

(3) has been convicted of buying or selling votes.