



## Children's Rights

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- [Background](#)
- [Before the Twentieth Century](#)
- [Children's Rights Violations in the United States](#)
- [Convention on the Rights of the Child](#)
- [Additional Resources](#)
- [Organizations](#)

### Background

When people in the United States think of [CHILDREN'S RIGHTS](#) they usually think of children in third world countries who are victims of abusive child labor practices or insurmountable poverty. They may not realize that the rights of children are violated in the United States as well. Even though [CHILD LABOR LAWS](#) were passed decades ago prohibiting employment of underage youngsters, pockets of oppressive child labor exist, literally, on American soil; child farm laborers work long hours in squalid conditions and often receive half the standard [MINIMUM WAGE](#). And although numerous studies show that children do better when two parents are involved their upbringing, many [CUSTODY](#) laws make it extremely difficult for non-custodial parents to spend quality time with their children.

To be sure, the United States is still better than most countries when it comes to how children are treated. Yet children's rights is a topic that few people know much about. In fact, although many people know that the United Nations Convention on the Rights of the Child was formulated in 1989, they are probably unaware that the United States is one of two countries (the other is Somalia) that have not ratified the Convention. The U.S. government has given what it believes are sound reasons for not having ratified the Convention and repeatedly has affirmed its commitment to children's rights in the United States and abroad. Yet there is no question that some children do fall into the cracks, and others' problems are unwisely minimized.

### Before the Twentieth Century

It was not uncommon for children to be exploited before the 1930s. Children routinely worked in hazardous conditions in mills, factories, and sweatshops, and on farms. They might begin working before they had reached their tenth birthday, and they received little in the way of wages. Labor laws did not exist to protect children or adults, but children were often subject to more exploitative conditions because they were easier to manipulate.

The plight of small children did lead to the enactment of some laws, and the federal government tried in 1918 and again in 1922, to enact national child labor laws. Both times, the effort was struck down by the U.S. Supreme Court, which ruled that it was up to the individual states to enact child labor legislation.

### ***The Fair Labor Standards Act (FLSA)***

In 1938, partly in response to the Great Depression, Congress passed the **FAIR LABOR STANDARDS ACT** (FLSA). This law protected workers from long hours and unfair pay by establishing a 40-hour work week and a minimum wage. It also protected children from exploitation by establishing that they would have to be at least 16 to work in most nonagricultural industries. Younger children could still work certain jobs provided the hours and wages were fair. (It was still possible, in other words, for children to get a newspaper route.) FLSA was challenged in the courts soon after its passage but its constitutionality was upheld by the U.S. Supreme Court in 1941.

## **Children's Rights Violations in the United States**

Although the United States does not have the gruesome record of children's rights violations that other countries have, it is not free of violations. Some are more subtle than others, but they do exist. **HUMAN RIGHTS** groups monitor alleged instances of violations and work to educate the public and the government with the goal of correcting the problem.

### ***Child Labor Violations***

FLSA protects, among other groups, child laborers. When it was enacted, farming was primarily a family activity, and it was understood that children would help on the family farm. Thus, the restrictions on agricultural work are much less stringent. By the end of the twentieth century, the number of family farms had dwindled, and most farming was done on large commercial establishments. But the lax restrictions remained, and farm conglomerates took advantage of this.

Under FLSA, no child under the age of 13 can work in a nonagricultural setting, and children of 14 and 15 can work but only for a set number of hours each day. For children working on a farm, the situation is quite different. Children can go to work in the fields as young as nine years old in some states, as long as they have signed parental consent.

Even with the relaxed standards for agricultural work, children are often overworked, are expected to work during what would be school hours, and are paid far less than what is legally required. A report issued in 2000 by Human Rights Watch noted that children under the age of 16 are often required to put in several hours before the school day begins; during the summer months they may work 12-hour days.

The dangers of agricultural work are surprisingly many, and for minors these dangers are even more troubling. Agricultural workers can be exposed to pesticides and other chemicals. They may be sent to work in oppressive heat but without adequate water to keep from becoming dehydrated. Often, they work with heavy or dangerous equipment— equipment that children often have little experience with. Because they work long hours, often having to rise before dawn to begin their work, lack of sleep is a major problem. For children, this is not only more dangerous, it also curtails their ability to succeed in school. Injury is common; children can fall or have accidents with heavy equipment or sharp objects.

It is important to remember that many adult farm workers are also exploited, forced to work long hours for little pay. Often, families are so poor and desperate that they feel compelled to give their young children permission to work on the farm, thus bringing in a small but needed amount of extra money.

Organizations such as Human Rights Watch have urged the U.S. government to revise FLSA to offer additional protection to minor children working on farms, and to ensure that farms are more careful about

whom they hire and also more diligent about improving working conditions and wages.

### ***Benefits of Joint Custody***

**DIVORCE** was less common before 1970 than it was by the end of the twentieth century, but children whose parents divorced were likely to be placed in the custody of one parent. The other parent might get visitation rights, but these were usually limited. For children whose parents are both loving and responsible but no longer married to each other, this can be emotionally devastating.

The concept of *joint custody* was developed in the early 1970s to [REDRESS](#) this imbalance. In 1973, Indiana passed the first state joint custody [STATUTE](#) in the United States. As of 2002, all states have a joint custody statute on the books. There are two types of joint custody. In *Joint legal custody* both parents share decision-making responsibility. In *Joint physical custody* children spend almost an equal amount of time with each parent. Unfortunately, joint custody is still not particularly common. In some cases, of course, there are [MITIGATING CIRCUMSTANCES](#). One parent may have abandoned the family or may have verbally, physically, or even sexually abused the children in question. But for the average parent, who wants what is best for the child but is no longer able to see the child except for brief visits, the issue is one of fairness to that parent as well as the child. The majority of non-custodial parents are fathers.

According to statistics released by the U.S. Department of Health and Human Services in 1999, children who do not live with both parents are twice as likely to drop out of school, twice as likely to end up in jail, and four times as likely to need help for behavioral or emotional problems. Organizations such as the Children's Rights Council (CRC) raised the level of awareness on this issue to the point that joint custody, both legal and physical, became more common.

### ***Children as Detainees***

Illegal [ALIENS](#) who try to enter the United States may be detained and deported. This is true whether the aliens are adults or children. In 2000, nearly 4,700 children were detained by the U.S. IMMIGRATION and Naturalization Service (INS). Children are detained by INS after being picked up at U.S. borders without a parent or [GUARDIAN](#) and without proper documentation. The issue with these children is not that they are stopped from entering the United States illegally, but that they are held in such facilities as juvenile and county jails. Moreover, they face [DEPORTATION](#), often to countries where they may be persecuted. They have no right to paid legal [COUNSEL](#). Reports that some who are detained in jails are mistreated has led human rights organizations to call for investigations.

In 2001 U.S. Senator Dianne Feinstein introduced the Unaccompanied Alien Child Protection Act, which would establish an Office of Children's Service at the U.S. Department of Justice. This office would be in charge of ensuring that children are treated humanely while in custody and that decisions on their future would be made based on their short- and long-term needs. It would also provide for legal counsel and guardians, as necessary, to be appointed to represent the children's interests.

## **Convention on the Rights of the Child**

In an effort to create a universally accepted set of children's rights, the United Nations General Assembly adopted the Convention on the Rights of the Child in November 1989. This document promises children the basic human rights of life and liberty, as well as access to education and health care. It also calls for protection against [DISCRIMINATION](#) and abuse, protection from economic exploitation, and protection against torture.

## Encyclopedia of Everyday Law: Children's Rights

While children's rights have become more visible since then, there are still many instances around the world of children's rights violations.

The United States did sign the Convention in 1995 but it was never submitted to the Senate for [RATIFICATION](#). Although the government has stated that it has no intention of ratifying the Convention, it has consistently reaffirmed its commitment to children's rights.

Among the reason the United States has failed to ratify the Convention is the fact that the Convention clearly states that anyone under the age of 18 is a child. The U.S. government has reservations about how that would affect matters when a 16- or 17-year old commits a crime; currently, in certain instances that child can be tried as an adult. Also, the United States Government says that many of the declarations included in the document are not issues for which the federal government is in charge. For example, education in the United States is controlled by the states, not the federal government.

Whether the United States eventually ratifies the Convention, it still does maintain an enviable record of honoring most children's rights. Human rights groups are convinced that the United States can and should do more, and they continue to make their points of view known in the United States and abroad.

### **Additional Resources**

*The Child Advocacy Handbook*. Fernandez, Happy Craven, Pilgrim Press, 1980.

*Children's Rights: A Reference Handbook*. Edmonds, Beverly C., and William R. Fernekes, ABC-CLIO, 1996.

*Children's Rights in the United States: In Search of a National Policy*. Walker, Nancy E., Catherine M. Brooks, and Lawrence S. Wrightsman, Sage Publications, 1999.

*The Children's Rights Movement: A History of Advocacy and Protection*. Hawes, Joseph M., Twayne Publishers, 1991.

*What Are My Rights? Ninety-Five Questions and Answers about Teens and the Law*. Jacobs, Thomas A., Free Spirit Publications, 1997.

### **Organizations**

***Amnesty International USA***  
322 Eighth Avenue  
New York, NY 10001 USA

Phone: (212) 807-8400

Fax: (212) 627-1451

URL: <http://www.aiusa.org>

Primary Contact: Bill Schulz, Executive Director

***Children's Rights Council***  
6200 Editors Park Drive, Suite 103 Avenue

## Encyclopedia of Everyday Law: Children's Rights

Hyattsville, MD 20782 USA  
Phone: (301) 559-3120  
Fax: (301) 559-3124  
URL: <http://www.gocrc.com>  
Primary Contact: David L. Levy, President

### ***Human Rights Watch***

350 Fifth Avenue  
New York, NY 10118 USA  
Phone: (212) 490-4700  
Fax: (212) 736-1300  
URL: <http://www.hrw.org>  
Primary Contact: Kenneth Roth, Executive Director

### ***United Nations Children's Fund (UNICEF)***

3 United Nations Plaza  
New York, NY 10017 USA  
Phone: (212) 326-7000  
Fax: (212) 887-7465  
URL: <http://www.unicef.org>  
Primary Contact: Carol Bellamy, Executive Director

### ***United States Department of Justice, Civil Rights Division***

950 Pennsylvania Avenue NW  
Washington, DC 20530 USA  
Phone: (202) 514-2648 Phone: (800) 375-5283  
Fax: (202) 514-1776  
URL: <http://www.usdoj.gov> Primary Contact: Ralph L. Boyd, Jr., Assistant Attorney General

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