

# Rights



## What Is a "Right"?

A *right* can be:

- A legal entitlement, usually intended either to prevent a government from abusing its power over its citizens, or to require it to provide a benefit or service.
- A moral entitlement, though not necessarily expressed in laws.
- When a government recognizes something as a right, it must respect that right, even if it is not backed by specific laws. That is why groups, like "animals' rights" promoters, want their ideas recognized as rights.
- Rights are often broad and general, leading to controversy about what is and is not included in a particular right. The right for persons to carry guns around with them, or a woman's right to have an abortion are examples of rights that are currently controversial.
- Rights differ from country to country, depending on each country's culture; and within the United States, rights differ from

## Contents

- 1** Rights
- 2** What Is a "Right"?
- 3** Rights in U.S. Law
  - 3.1** Freedoms
  - 3.2** Voting Rights
  - 3.3** Protections
  - 3.4** Rights of the Accused
  - 3.5** Right to privacy
  - 3.6** Limits on Rights
  - 3.7** Children's Rights
    - 3.7.1** Parental responsibilities
    - 3.7.2** Child Labor laws
    - 3.7.3** Juvenile courts
    - 3.7.4** Children and contracts
  - 3.8** Parents' Rights
    - 3.8.1** Parental rights and children's medical care
    - 3.8.2** Parents' right to sue
    - 3.8.3** Termination of parental rights
  - 3.9** Victims' Rights
- 4** Rights and the United Nations
  - 4.1** Universal Declaration of Human Rights
  - 4.2** Convention on the Rights of the Child

state to state.

- Sometimes the term "rights" is used to express ideals rather than realities—statements of moral or ethical preferences that people would like to enact into law, rather than principles that actually have the force of law.



## **Rights in U.S. Law**

Several kinds of rights are established by law in the United States Constitution.

### **Freedoms**

Fundamental freedoms include the right to freedom of

- religion
- speech
- the press
- assembly
- petition to the government for redress of grievances

### **Voting Rights**

A critically important set of rights guarantees most U.S. citizens the right to vote, which may not be denied on account of

- race,
- color,
- previous condition of servitude,
- sex, or
- age, once a person is 18 years old

or older.

## Protections

The U.S. Constitution

- requires the states to abide by many federally recognized rights;
- requires equal protection of the laws for everyone within a state;
- forbids states to restrict or reduce the rights of any citizen; and
- empowers the states to make their own laws on areas not covered in the Constitution.

This means that individual states may recognize additional rights, which apply in that state only.

Such state rights may go above and beyond rights granted under the Constitution, or they may result in stronger protection than that provided by federal law.

## Rights of the Accused

In the United States, persons who are accused of a crime have the right to

- due process of law, the established legal procedures and safeguards appropriate for the situation;
- be informed of the accusation against them;
- a speedy trial by an impartial jury, a group of citizens selected according to court procedures, to decide on the facts of the case;

- be confronted with the witnesses against them;
- obtain witnesses in their favor;
- have legal assistance for their defense;
- not be tried more than once for the same offense; and
- not be forced to testify against themselves.

In addition,

- If a person is charged with a crime, the government is not allowed to require “excessive” bail—the amount of money pledged as security that the accused person will appear in court for trial or other legal procedures.
- If the person is convicted, the government may not inflict “excessive” fines or “cruel and unusual punishment.”

### **Right to privacy**

Before authorizing a home or person to be searched,

- A judge must determine that there is a good reason for the search.
- The search warrant must describe exactly
  - what may be searched, and
  - what is being searched for.

### **Limits on Rights**

Even when enacted into law, rights are not limitless.

- "Freedom of religion," for instance, does not mean that one is allowed to rob a bank or commit a murder or other crime on the grounds that one's religion requires it.
- "Freedom of speech" does not allow someone to shout "Fire!" in a crowded theater.
- "Freedom of the press" does not mean one is allowed knowingly to print false, harmful information about someone else.

Many questions arise about whether a particular right applies in a specific situation, especially in situations the legislators who established the rights did not foresee.

- Does the "right to bear arms" mean the government must allow criminals to own semi-automatic weapons?

The legislators and voters who enacted the right to bear arms were thinking about the possible need to resist an overbearing government, since they had recently done just that to gain independence. In those days, guns were large, cumbersome weapons. Assault rifles had not been invented, and the majority

of the population did not live in concentrated metropolitan areas. Today, however, efforts to keep guns out of the hands of criminals are frequently challenged as infringements on the right of citizens to own or carry guns.

- Other rights with clearer meanings can also lead to long, drawn-out legal proceedings.

For example, governments must pay a reasonable price for private property they take for public use. But what is a “reasonable price?” And does “public use” include projects like dormitories and classrooms for private universities?

- Sometimes, the rights of one group conflict with the rights of another group. This is often the case with parents’ and children’s rights.

### **Children’s Rights**

For centuries, children were perceived by the law as a kind of property owned by their parents. Parents could do almost anything with their children and be within the limits of the law. Gradually, over the past several generations, that attitude has changed, and the rights of parents to neglect, harm, or exploit their children have been restricted.

## Parental responsibilities

In the United States, the most fundamental children's rights are expressed as parents' or guardians' responsibilities and are generally thought of as child welfare or child protection. Child-welfare laws vary from state to state, although they are guided by federal standards. In general, a child today has a right to

- food, clothing, and shelter;
- education up to the age the child's state requires;
- medical care, especially care necessary to save the child's life;
- safety, including competent supervision; and
- protection from harm.

Most states require significant efforts by child-welfare agencies to assist parents to meet these responsibilities. If parents repeatedly fail, or refuse, to accept these responsibilities, they may voluntarily give up their parental rights; or the court may legally terminate their parental rights, freeing the children for adoption.

- Adoption laws require adults to show that they can take proper care of a child they adopt, and that they can meet all the responsibilities required of parents.
- You can find specific information about [child-welfare laws for](#)

[each state.](#) at the Child Welfare Information Gateway, a site of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

Some children's rights take the form of laws that limit what adults may require children to do.

### **Child Labor laws**

Some national and state laws set limits on the use of children as workers.

- Children under a stated age are not allowed to be employed at all.
- Different ages at which children may be employed for various kinds of work are established.
- Children may not be employed at all in certain occupations or activities, such as pornographic activities.
- Hours of permissible employment—both the times of day and the total hours worked—and other requirements are prescribed for children old enough to work.
- Minimum wages are set for children who work.
- There may be exceptions to these laws for children working on family farms or within their own family.

For more specific information, go to the [Department of Labor Web site](#) that



also has links to child labor laws for each state.

### **Juvenile courts**

Designed for children or teens under the age of majority (usually 18), juvenile courts differ significantly from adult courts.

- Some rights of adults are extended to juveniles, but others are not.
- A juvenile found guilty of a crime may be confined and/or rehabilitated only in a facility that meets special requirements.
- Laws also provide for exceptions, when underage offenders may be treated like adults in criminal cases.

The [\*\*Office of Juvenile Justice and Delinquency Prevention\*\*](#), U.S.

Department of Justice, offers information about juvenile justice laws and processes and some details about juvenile law in specific states.

### **Children and contracts**

Unless they are authorized by the courts under a process called "emancipation," underage minors cannot make a legal contract, such as signing a rental agreement or borrowing money. (For more information about emancipation, see [\*\*Teenagers on Their Own.\*\*](#))

## Parents' Rights

In the United States, parents and legal guardians of minors have the right to direct their children's lives in matters both large and small, including

- what they eat and wear,
- where they go to school,
- what values they are taught,
- who their friends are, and
- how they are disciplined.

## Parental rights and children's medical care

Parents and guardians have the right to

- consent to or refuse medical treatment for a minor child—even emergency medical treatment;
- receive information that arises from medical treatment; and
- share medical information with whomever they deem appropriate.

But these rights are not limitless. States may limit parents' control over their children's medical treatment in some areas; for instance, states may allow teenagers to

- receive treatment for alcohol or drug abuse, or a sexually transmitted disease;
- receive birth control devices; or
- receive abortions

without their parents' knowledge or

consent.

In some states,

- Judges have the discretion to decide that a minor, rather than a parent, is competent to make a sound decision about his or her own medical treatment.
- The court may overrule parents who refuse to allow a life-saving treatment for their child on grounds that their religion forbids the treatment. The court then orders the child to be treated despite the parents' objection.

### **Parents' right to sue**

Parents or guardians may bring a lawsuit or be sued on behalf of their minor children.

### **Termination of parental rights**

Under some rare circumstances, the court may decide to end the parents' rights over their child. There is a strong consensus in the United States that children are better off in their parents' home if it can possibly be arranged for their needs to be met there. Even in the face of strong evidence to the contrary, parents are often given a second—and sometimes a third, fourth, and fifth—chance to correct the problems that brought the family to the attention of

the authorities. This practice is intended to promote the children's "best interest." However, the well-meant effort to keep the family together often involves a long, drawn-out period of indecision, during which the child may suffer severely from the uncertainty; and it may expose the child to more of the abuse or neglect that initially led to involvement with the court.

In general, reasons for ending parental rights are

- *Abandonment.* Parents who fail to carry out their basic responsibility to keep the child safe may be judged to have abandoned the child. This category includes parents who
  - put a child out of the house;
  - leave the child for long periods of time with a person who is unable to care for them properly;
  - show no interest in contacting, visiting, or supporting a child who is not residing with them over long periods of time.
- *Abuse.* This category includes parents who have physically or sexually abused a child and whom the court does not trust to correct the behavior in the future.
- *Neglect.* This category includes

parents who fail to provide for a child's basic needs for food, shelter, clothing, medical care, or education for reasons other than poverty.

- *Inability to meet parental responsibilities.* This category includes parents who because of serious mental or physical illness or chronic drug or alcohol addiction cannot care for their children.

Parents who for one reason or another decide that they cannot provide for their children may also voluntarily surrender their rights, freeing the children for adoption.

### **Victims' Rights**

If you are the victim of a crime, such as abuse or assault, the criminal justice system accords you certain rights.

Victims' rights differ from state to state, but generally include the right to

- reasonable protection from the accused;
- reasonable notice of public court proceedings;
- attendance and participation at public court proceedings;
- restitution and/or compensation;
- information about the criminal justice process; and
- be treated with fairness, dignity, and respect for their privacy.

The National Crime Victims' Law Institute has [more information about victims' rights in your state.](#)



## Rights and the United Nations

The United Nations (UN) was formed in the aftermath of World War II, with the intention of creating a forum where countries could address their conflicts in a peaceable manner, without going to war. The nearly 200 member countries of the UN are supposed to work together for peace and human betterment.

### Universal Declaration of Human Rights

In 1948, the UN adopted a "[Universal Declaration of Human Rights](#)," that incorporates many of the rights of U.S. citizens and includes others, such as

- the right freely to leave or enter one's own country,
- the right to a nationality, and
- the right to a living wage.

The Declaration has no force in law, but it was envisioned as a standard of achievement, a "measuring stick" by which all countries could judge their progress toward a world in which all people enjoy not only fundamental freedoms and justice under the law, but also well-paying jobs, a comfortable standard of living, and a stable world without war.

The Declaration was later supplemented by two additional documents:

- the International Covenant on Civil and Political Rights, and
- the International Covenant on Economic, Social, and Cultural Rights.

Both covenants were adopted in 1966 and went into effect in 1976 after approval by the required number of countries. These documents are treaties that commit the countries that sign them to work toward the rights envisioned in the Declaration. The treaties provide for countries that have signed them to present reports to the appropriate monitoring bodies in the UN on their progress toward the stated goals.

The United States has signed on to both treaties. However, according to U.S. law, a treaty is not in effect until the Senate approves it. By and large, U.S. senators are reluctant to approve any treaties they think might infringe on U.S. or even individual states' sovereignty. Although the Senate approved the International Covenant on Civil and Political Rights in 1992, it added "reservations" that rendered the whole covenant ineffective. The Senate has not yet voted on the International Covenant on Economic, Social and Cultural Rights.

## Convention on the Rights of the Child

The League of Nations, predecessor of the United Nations, recognized the issue of children's rights when it adopted an early Declaration of the Rights of the Child in 1924. The concept was revived in the UN after World War II and adopted in an expanded version in 1959.

In 1989, the UN produced yet another, even more expanded version, called the [Convention on the Rights of the Child](#).

Like the Universal Declaration of Human Rights, the Convention on the Rights of the Child is an idealistic document that articulates a desirable standard of achievement, but without the force of law.

Although the United States played an active role in drafting the document, and signed it in 1995, Congress has yet to ratify the Convention on the Rights of the Child.

- Those opposed have concerns that the Convention would impair individual states' rights to make laws about children—for instance, moving the age at which someone under 18 could be charged as an adult in a criminal case—by giving that responsibility to the federal government.
- The document has been ratified by every member nation of the UN except the United States and



Somalia.

- There are both proponents and opponents of ratification in the United States, but it does not appear to be a priority of the government at this time.

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