

The United States of America's Compliance with the
Convention on the Elimination of All Forms of Racial Discrimination

Submitted by the U.S. Southern Prisons Coalition

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The **Southern Prisons Coalition** is a coalition of civil and human rights organizations representing people incarcerated in the Southeastern United States. This report is authored by the Southern Poverty Law Center on behalf of the following coalition members:

Southern Poverty Law Center
Legal Defense Fund
Promise of Justice Initiative
Florida Justice Institute
Southern Center for Human Rights

This report addresses the following portions of the Committee’s List of Themes for the US review:

13. Further measures to eliminate racial disparities at all stages of the criminal justice system, notably with regard to overrepresentation of racial and ethnic minorities, in particular people of African descent and Hispanic/Latino communities, who continue to be disproportionately arrested, incarcerated, subjected to harsher sentences, including life imprisonment without parole and the death penalty, and impacted by collateral consequences, such as felony disenfranchisement and welfare bans, especially in the context of the enforcement of minimum drug-offense sentencing policies (CERD/C/USA/CO/7-9, para. 20; CERD/C/USA/10-12, paras. 42 to 44). Updated statistics on the ethnic composition of the prison population, including persons sentenced to the death penalty.

14. Further efforts to address racial disparities at all levels in the juvenile justice system, including overrepresentation of racial and ethnic minorities, in particular people of African descent, Indigenous Peoples and Hispanic/Latino communities, who continue to be disproportionately arrested in schools and referred to the criminal justice system. Statistical data on juveniles from racial and ethnic minorities sentenced to life imprisonment without parole in recent years, disaggregated by race and ethnicity (CERD/C/USA/CO/7-9, para. 21; CERD/C/USA/10-12, paras. 117 to 120).

The subject matter of this report reflects the experiences of incarcerated people in the U.S. who, due to persistent, systemic discrimination, are disproportionately Black. The report outlines the multifaceted types of discrimination faced by Black people in the U.S. and provides policy recommendations to remedy the modern-day impacts of the legacy of chattel slavery and ongoing anti-Black racial discrimination in various areas, including in the southern prison system.

I. The United States’ Criminal Legal System Reflects Systemic Discrimination Against Black People and Creates Racial Disparities in the Carceral System.

In its Concluding Observations following the last U.S. review in 2014, the Committee called upon the U.S. “to take concrete and effective steps to eliminate racial disparities at all stages of the criminal justice system, taking into account the Committee’s general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.” Unfortunately, longstanding racial disparities continue unabated.

During the nearly quarter millennium of chattel slavery in the southern United States, people of African descent were held as property, forced to labor on white-owned plantations, and beaten, tortured, and killed for the slightest perceived transgressions – or, at times, for no reason at all. The 13th Amendment to the U.S. Constitution banned slavery in the US, but contained a crucial exception:

Neither slavery nor involuntary servitude, **except as a punishment for crime** whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Post-Reconstruction, in response to the newly emancipated status of Black people, southern states began inexorably to imprison Black people to deprive them of their full citizenship and prevent them from gaining any political power; this exception became the primary tool of racial control.

The U.S. has historically used Jim Crow laws, the Black Codes, and legal segregation, and now uses the criminal justice system and mass incarceration to effectuate racial control previously implemented through enslavement. In the 1800s, the U.S. Black Codes criminalized the ordinary conduct of Black people. In the modern era, policies created as part of the “war on drugs” like mandatory minimum sentences and policing tactics such as “stop and frisk” are the legal progeny of laws designed to subordinate Black people. As a result, these laws and policies are disproportionately applied to Black people and lead to prison sentences that are racially disparate. As a consequence, Black people in the U.S. suffer from disproportionate mass incarceration and systemic disenfranchisement in the areas of economic mobility, education, employment, housing, and suffrage.

Prison systems in the South, many of which are located on former slave plantations¹ or are named after former Confederate and enslavers, have been particularly prone to perpetuating certain elements of slavery-era conditions such as forced labor, lack of safety, and the separation of children from their parents. Black Americans are five times more likely to be incarcerated in state prisons.² As of 2019, these stark racial disparities devastated our southern region:³

State	Prison Population	% Black in Prison	% Black in Population
Alabama	28,304	52%	27%
Arkansas	17,759	41%	15%
Florida	96,009	47%	15%
Georgia	54,816	60%	31%
Louisiana	31,609	67%	32%
Mississippi	19,421	64%	38%
North Carolina	34,079	51%	21%
South Carolina	18,608	59%	27%
Texas	158,429	33%	12%

These disparities place human rights violations in U.S. prisons squarely within the mandate of this Committee.

¹ Such as the Angola state penitentiary in Louisiana.

² *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, Sentencing Project, 13 October 2021, at 5.

³ *Id.* at 20. While the U.S. prison population decreased to some degree due to reduced admissions during the pandemic, it is expected to increase when the pandemic eases.

Proposed Recommendation:

- Adopt and implement a national strategy to reduce mass incarceration with a specific focus on the causes of racial disparities in prosecution and sentencing as well as underlying causes of racial disparities in criminal justice such as discriminatory policing and inequitable access to education and training, housing, employment, health care, and public benefits.

II. The United States Disproportionately Places Black People in Solitary Confinement.

Black people face acute discrimination in the U.S. carceral system and are eight times more likely to be placed in solitary confinement and ten times more likely to be held there for excessively long periods of time.⁴ Yet, the U.S. recently represented in its Sixth Periodic Report to the Committee Against Torture that U.S. prisons use solitary confinement occasionally, “when correctional officials have no choice but to segregate inmates from the general population, typically when it is the only way to ensure the safety of inmates, staff, and the public.” The available data contradicts this assessment, especially for Black incarcerated individuals housed in states that were previously part of the Confederacy.

The use of solitary confinement is excessive in prisons across the country, and the conditions in which prisoners are held are inhumane, especially in the South. Both Louisiana and Florida held 10% of their prison populations in solitary confinement in 2019, while in Arkansas, the figure was 11%.^{5, 6} In Alabama, a federal district court recently found that many people are held in solitary confinement for weeks or months at a time, often unable to leave their cells even to shower, due to the lack of adequate correctional staffing.

Dozens of people have died by suicide in Alabama’s overcrowded and understaffed solitary confinement units over the last five years.⁷ In Georgia, where staffing shortages are also extreme, and conditions in solitary confinement units are similar to those in Alabama, the suicide rate is also appallingly high, with at least 9 death by suicide in the period from February to April 2022 alone. The crisis in Georgia’s prison is so dire that the U.S. Department of Justice (DOJ) has initiated a statewide investigation into violence there. Regrettably, the Georgia Department of Corrections has obstructed the DOJ’s investigation at every turn; recently, primarily by refusing to provide them with the basic documents and site visits to which they are entitled under the Civil Rights of Institutionalized Persons Act (CRIPA). On March 28, 2022, the DOJ filed a petition to enforce their CRIPA subpoena,⁸ and on July 1st, the judge ordered them to comply with the subpoena and turn over a multitude of records related to the DOJ’s investigation of violence within the state prison system.⁹

⁴ [The population prevalence of solitary confinement](#), Science Advances, 2021, at 5.

⁵ Grace Toohey, [Louisiana prisons over-rely on solitary confinement, report finds, but leaders committed to progress](#), The Advocate, 16 May 2019; Southern Poverty Law Center, [Solitary Confinement: Inhumane, Ineffective, and Wasteful](#), April 2019, at 6.

⁶ DecARcerate, [Solitary Confinement in Arkansas Prisons](#), January 2021, at 1.

⁷ [Braggs v. Dunn](#), 2021 WL 6128418 (M.D. Ala. Dec. 27, 2021).

⁸ [DOJ says state impeding investigation of prison violence](#), Atlanta Journal-Constitution, 4 April 2022.

⁹ [Judge says Georgia should turn over prison documents to federal](#), investigators Atlanta Journal-Constitution, 1 July 2022.

In South Carolina, prisons have kept thousands of incarcerated individuals in lockdown for periods ranging from several months to more than a year, both prior to and during the COVID-19 pandemic, due to chronic staffing shortages.¹⁰ These extended lockdowns are akin to long-term solitary confinement, depriving people of access to vocational and educational programming, visitation with loved ones, access to the outdoors, and significantly delaying access to lifesaving medical and mental health services. In North Carolina, an estimated 3,000 people were held in solitary confinement as of July 2019, hundreds of them for periods of months or even years.¹¹ One incarcerated person described the devastating impacts of the nine years he spent in solitary in a North Carolina prison:

After the nine years I spent in solitary confinement at Central Prison, I had a difficult time dealing with returning to the conditions of regular population when I was let out of solitary there in 2007. I was told that I had sensory deprivation syndrome. I had anxiety attacks when I was around other people. When I watched TV, sometimes I got dizzy if the camera was zooming in. Being back in solitary confinement now is bringing everything back up from before... Sometimes I feel like I am losing touch with reality, which is worse if I don't get letters. I feel helpless and abandoned, which makes me angry.¹²

The disparities in the use of solitary confinement on Black men and Latino are documented in a study conducted by The Liman Center at Yale Law School.¹³ Among the thirty-two jurisdictions that reported on race and ethnicity among male inmates in the total custodial population and in restrictive housing, Black men constituted 43.4% of the total male restrictive housing population as compared to 40.5% of the total male custodial population in those jurisdictions.¹⁴ Solitary confinement also has been imposed disproportionately on Hispanic and Latino men. While Hispanic and Latino men make up only 15.4% of the total male custodial population, they comprised 16.9% of the male restrictive housing population across all reporting jurisdictions.¹⁵ In North Carolina, Hispanic and Latino men make up 2.2% of the total custodial population and 2.1% of the restrictive housing population.¹⁶ Not only is there a disproportionate use of solitary confinement based on race, but disparities are exacerbated at the intersection of race and gender. Across reporting jurisdictions, Black females only accounted for 21.5% of the total female custodial population, however, they comprised 42.1% of the female restrictive housing population.¹⁷

¹⁰ E.g., [Inmates: Some S.C. prisons locked down 8 months](#), The Sumter Item, 23 December 2018.

¹¹ [Dewalt v. Hooks](#), ACLU of North Carolina.

¹² North Carolina NAACP Amicus Curiae Brief in Support of Plaintiffs, *Dewalt v. Hooks*, 2 July 2021.

¹³ *Time-In-Cell 2019: A Snapshot of Restrictive Housing based on Nationwide Survey of U.S. Prison Systems*, The Correctional Leaders Association & The Arthur Liman Center for Public Interest Law at Yale Law School, September 2020.

¹⁴ *Id.* at 25.

¹⁵ *Id.*

¹⁶ *Id.* at 30-31.

¹⁷ *Id.*

Proposed recommendations:

- Curtail the use of solitary confinement in federal detention facilities by mandating that it be used only where absolutely necessary to in emergency situations to prevent physical harm, only for the shortest possible time, and in no case for more than 15 consecutive days
- Ensure that any use of solitary confinement includes adequate out-of-cell time with meaningful programming and activities.
- Prohibit the use of solitary confinement for individuals under 18 years of age and for persons with mental illnesses.
- Incentivize states to reduce the use of solitary confinement through negative consideration of its use in funding programs, and by providing funding, training and other resources for the development and implementation of effective alternatives to its use.
- Consult with and study the correctional systems of UN member countries that employ minimal use of solitary confinement and other more humane correctional practices, such as Norway.
- Invite the UN Special Rapporteur on Torture to conduct a country visit and consult with the mandate regarding measures and best practices to reduce or eliminate the use of solitary confinement.

III. The Practice of Forced or Coerced Labor, in a Disproportionately Black Carceral System, Continues the Vestiges of Chattel Slavery in the United States.

As part of its Concluding Observations in 2014, the Committee called upon the U.S. to “take into account general recommendation 31 (2005).” General Recommendation 31 provides that State parties should comply with the UN’s Standard Minimum Rules for the Treatment of Prisoners, which, in turn, provide standards for labor performed by incarcerated people. As discussed below, none of the rules related to prison labor are being complied with by prison systems in the U.S. Many of the abuses that began in the years following the abolition of slavery have continued, albeit in somewhat modified forms, and these abuses are especially prevalent in the South.

The prison systems operated by states in the southern United States represent a deeply embedded legacy of slavery and racial exploitation. In many ways, southern prisons have been built on the foundations of the plantation system. For many years after Emancipation, southern states forced incarcerated people, who were disproportionately assigned to labor for private companies in arrangements known as convict leasing. Rather than being paid as wages, the funds earned went both into state coffers and into the pockets of unscrupulous officials. Incarcerated people were also ordered to perform manual labor for the state itself, shackled together in “chain gangs.” Many were forced to work in plantation-like conditions, such as cotton farms, and were subjected to harsh punishments for failing to work quickly or productively enough, harkening back to the abuses of slavery-era plantation bosses. While many (but not all) of the labor practices that were most directly reminiscent of slavery were eventually ended, to a large degree, through civil rights litigation, they nevertheless evolved into other practices that are less overtly exploitative but similarly harmful. In many Southern states, including Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, and Texas, incarcerated workers continue to perform farm labor on penal plantations, some of which are on the sites of former slave plantations.¹⁸

¹⁸ [Captive Labor: Exploitation of Incarcerated Workers](#), American Civil Liberties Union, 2022, at 34.

Louisiana, which incarcerates a larger percentage of its population than any other U.S. state, is illustrative of prison labor conditions in the United States and the harm to those forced to endure them. It is home to the Louisiana State Penitentiary—an 18,000-acre prison on the site of a former plantation, also commonly known as “Angola” or “the Farm.” All of those incarcerated at Angola are first assigned to field labor. Of the entire incarcerated population at Angola, 74% are Black.¹⁹ Writing about Angola, one author astutely observed that “[i]f in Germany today there were a prison built on top of a former concentration camp, and that prison disproportionately incarcerated Jewish people, it would rightly provoke outrage throughout the world.”²⁰

A series of interviews conducted in 2022 in Shreveport, Louisiana, by one of the organizations submitting this report, the Louisiana non-profit Promise of Justice Initiative (“PJI”), provide some of the personal narratives behind the statistics.²¹

Terrance Winn is 40-years-old and was born in Shreveport, Louisiana. He returned to the Shreveport community in 2020 after leaving prison, and shared his experience with PJI:

I was tried as an adult at the age of 16. I went to prison. I did 30 years and several months. I was incarcerated on the plantation known as Angola. . . I came straight from the school system to the prison system, and it’s like a contrast. It’s like I was just reading about slavery in history books, now I am an actual slave in prison. Because when I went to prison, you got cotton. They’re picking cotton and stuff.

I refused to pick cotton. I never picked cotton. I always went to the dungeon. I always got a write-up. I just go to lockdown. You’re in a one-man cell, you understand, by yourself 23 hours a day. For one hour: you get out for one hour. . . Throughout the duration of my incarceration, over half of my time was on lockdown. Over half. I did a lot of time in the cells. The cells will psychologically mess you up...

Despite spending so much time in isolation, he also spent years working the fields on other crops. “When you go out into that field and you are forced to work, all you can think about is slavery. And you’ll be like, ‘man, I’m a slave, after all these years after all the things that our people have been through, we are back here in slavery,’” he explained.

Alvin Reliford is also from Shreveport, Louisiana. He went to prison at the age of 17, and was held at Angola for 20 years. He is 73-years-old. Although he has been out of prison for decades, the time he spent working in the fields sticks with him today, in part because he remains on parole:

Well my least favorite job was when we was on our knees picking grass with our fingers and stuff. That was my least favorite job because my finger were always ripped

¹⁹ *Id.*

²⁰ Clint Smith, *How the Word Is Passed: A Reckoning with the History of Slavery Across America*, Little, Brown and Co., 1 June 2021, at 101.

²¹ The interviewees have given PJI their consent to make the content of these interviews public. A complete set of interviews, accompanied by video, will be published by PJI later this year.

up from the grass—the vines and stuff. And they had cane fields. The cane field you have to use the cane knife. And when you cut the cane you get blisters all on your hands and stuff. A couple guys used to tell me how to hold a knife and I learned how to do that. I learned how to make my hand hard. [They] used to tell me ‘you have to urinate in your hand to make it hard in order to hold that knife as long as you do.’

While Mr. Reliford has been home for many years, his relationship with forced labor remains raw. “Even though, you know, I made it through all that it’s like they still don’t want to let me go. I’m still on parole,” he told PJI.

The Mississippi State Penitentiary (also called Parchman Farm), where 67% of incarcerated people are Black, was modeled after slave plantations and expressly intended to operate like one.²² Parchman illustrates one of the most tragic ironies of the penal plantation system – more than 98% of the crops grown by incarcerated workers are sold for profits that help the state continue its system of mass incarceration.²³

People who refuse to work, or whose work is deemed inadequate, are often harshly punished. They may be denied basic privileges such as telephone calls, visitation with family, or access to the prison commissary, or they may lose “good time” off of their sentence, effectively lengthening their time in prison. Many wind up in solitary confinement.²⁴ In Louisiana, for example, failure to adequately perform required work can officially be punished with up to 30 days in solitary for a first offense and up to 180 days for a third offense, but the ACLU found that “in practice people are placed in confinement for indefinite periods of time,” violation of the Mandela Rules.

Some incarcerated people are punished even when their failure to work, or to perform up to the prison’s standards, is caused by illness or disability.²⁵ Brandon Jackson served 25 ½ years in prison before being released on parole in 2022. He didn’t go into the fields because his whole life he struggled with asthma, but that did not mean he did not have other jobs or do emergency assistance, even when it put him at risk.

This one time we had to do sandbagging because the levee was threatening to, you know, break. So they come in and make you sandbag...so sometimes you have to do it because you don’t want to be locked up. Because when you are locked up in a cell, you know, you cannot go and research the things you need to research pertaining to your case. Or you might have a deadline that you have to meet the next week. You are not going to meet that deadline if you are in the cell. And the courts don’t want to hear it and the courts don’t want to hear that.²⁶

²² *Captive Labor, supra*, at 35.

²³ *Id.*

²⁴ *Captive Labor, supra*, at 48.

²⁵ *Id.* at 50.

²⁶ Interview conducted by PJI.

A. Incarcerated People Are Often Not Paid for Their Labor or Are Paid Very Low Wages.

The Mandela Rules provide that incarcerated workers should receive equitable pay, be able to send money home to their families, and have a portion of their wages set aside to be given to them upon release. (Rule 103).

Minimum wage and overtime pay laws that protect most U.S. workers don't apply to incarcerated people.²⁷ The U.S. Supreme Court has also held that incarcerated workers have no right to form unions to help them negotiate for better pay or conditions, with the Court reasoning that permitting union activities could "stir up trouble among incarcerated individuals."²⁸ In many U.S. prison systems today, incarcerated people are forced or coerced to work jobs for which they are paid negligible wages – and some states pay nothing at all.²⁹ For example, more than 2100 incarcerated people currently work at Texas prison farms without pay, along with about 120,000 more who perform other types of work without pay.³⁰ The states of Alabama, Arkansas, Florida, Georgia, Mississippi, and South Carolina also pay nothing to incarcerated workers for most of the jobs they do.³¹

Incarcerated workers who are paid typically receive only cents per hour. People incarcerated in prisons operated by the U.S. federal government are required to perform physical labor unless medically unable and are paid between 12 cents and 40 cents per hour.³² The average hourly wage paid to incarcerated workers for non-industry jobs is between 13 and 52 cents per hour.³³ Incarcerated people are often required to work overtime or to be on call for emergency situations at all times without any additional compensation.³⁴

Curtis Ray Davis II is 52-years-old and is the executive director of the non-profit Decarcerate Louisiana. He was born in Shreveport, Louisiana. He maintains his innocence of the crime for which he was convicted. Upon his release five years ago, he returned to Shreveport after serving around 25 years in Angola.

In 1992, I was relegated directly to the field. At that job we made \$.04 an hour, which \$.02 we could keep and \$.02 would go to the state. We picked cotton, fruit products . . . Angola prison has such fertile land that they believe that you can cut off a person's finger and grow the person back. They are selling all the staple products . . . Seven thousand people on the same acreage as Manhattan, New York, but the acreage is about producing money based on slave labor. . . Slavery has never been abolished in the United States of America. It has been codified into law through the 13th Amendment and the Louisiana Constitution.

²⁷ *Captive Labor*, *supra*, at 58.

²⁸ *Jones v. North Carolina Prisoners Union*, 433 U.S. 119, ____ (1977).

²⁹ [How much do incarcerated people earn in each state?](#), Prison Policy Initiative, 10 April 2017.

³⁰ *Captive Labor*, *supra*, at 36, 55.

³¹ *Id.* at 55.

³² [Work Programs](#), US Bureau of Prisons.

³³ *Captive Labor*, *supra*, at 55.

³⁴ *Id.* at 56.

The massive prison labor system, both through labor that is turned into cash and through labor that replaces the need to pay external workers, is what allows US mass incarceration to persist. More than 80% of incarcerated workers perform low-skilled maintenance in the facilities that imprison them, performing the work of janitors, plumbers, electricians, and auto mechanics.³⁵ Incarcerated people are also assigned to work-crews that clean and maintain public lands and facilities outside the prisons. About half of these public works programs are located in southern states.³⁶ In Florida, where about 3500 incarcerated people are assigned to road crews and community work crews, a former state official candidly admits that “there’s no way we can take care of our facilities, our roads, our ditches, if we didn’t have inmate labor.”³⁷

Outside of prison, some of these jobs would pay more than \$20 per hour, but the state prison workers who are forced to do them often earn nothing or are paid less than \$1.50 per hour.³⁸ In North Carolina, for example, state law provides that contracted prison laborers are to be paid “in an amount not exceeding \$1.00 per day.”³⁹ Incarcerated people can earn as little as 5 cents per hour.

In 2004, the value of the prison maintenance services performed by incarcerated people nationally was estimated at \$9 billion.⁴⁰ States have a vested interest in maintaining the prison population at a high level since they would have to pay fair market wages to external workers if incarcerated people were not available to do the work both inside and outside the prisons.

State-run prison industries sell goods and services to other state agencies at a fraction of what the state would otherwise pay. Every state except Alaska operates a correctional system industry, and the U.S. federal government does the same.⁴¹ These workers produce everything from office supplies and furniture to agricultural products and license plates.⁴² The value of the goods and services they provide was more than \$2 billion in 2021.⁴³

State-owned prison industries also sell to private, for-profit companies at far lower costs than they would pay on the open market. For example, prison industries in Colorado and South Carolina sold more than \$10.5 million of milk between 2017 and 2020 to the conglomerate that markets 30% of milk produced in the U.S.⁴⁴

Incarcerated worker programs also provide labor to for-profit industries at extremely low rates.⁴⁵ Private companies often employ incarcerated people through work release programs, where they frequently work in hazardous jobs like poultry processing. Although they might be paid the

³⁵ *Captive Labor, supra*, at 38.

³⁶ *Captive Labor, supra*, at 30.

³⁷ *Id.*

³⁸ *Captive Labor, supra*, at 38.

³⁹ [N.C.G.S. Art 3, § 148-26\(a\)](#).

⁴⁰ *Captive Labor, supra*, at 38.

⁴¹ *Id.* at 29.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 41-42.

⁴⁵ [Involuntary Servitude: How Prison Labor is Modern Day Slavery](#), Harvard Political Review, 3 February 2022.

prevailing wage, they are only allowed to keep a minimal portion of their pay because of deductions for room and board, transportation costs, and other expenses.⁴⁶

In addition to their meager wages, incarcerated people also experience significant price gouging for goods and services such as commissary items,⁴⁷ medical care charges,⁴⁸ and exorbitant telephone fees,⁴⁹ which recalls the economic exploitation of sharecroppers in the years following the abolition of chattel slavery. Combined with offender-funded criminal legal systems that impose massive fines and fees on people convicted of crimes,⁵⁰ these charges cause many people who are eventually released from prison to be saddled with overwhelming debt for decades. Incarcerated workers' wages are also not counted for purposes of social safety net programs like Social Security, Medicare, and disability and unemployment benefits, leaving the workers without protections they have rightfully earned even after their sentences end.⁵¹

Notably, prisons often deduct up to 80% of wages to pay for court fines and fees, taxes, restitution, child support, and even "room and board."⁵² In Florida, a state-created "Prison Industries Trust Fund" deducts funds from incarcerated people's wages for the construction or renovation of correctional facilities and correctional work programs.⁵³

B. Incarcerated Workers Face Grave Threats to Their Health and Safety.

Federal worker safety standards do not apply to the vast majority of incarcerated workers⁵⁴, and many states, such as Texas, expressly exclude incarcerated workers from receiving compensation for work-related injuries.⁵⁵ The only protection afforded to prison workers under the US constitution is rendered all but meaningless by the evidentiary standard an injured worker would be required to meet in court. In addition to establishing unsafe conditions, the incarcerated person would have to prove that prison officials knew that those conditions posed a substantial risk of serious injury but did nothing to protect the worker from harm.⁵⁶

Yet much of the work required of incarcerated people is quite arduous and dangerous.⁵⁷ For example, the ACLU's recent report found that nearly one-third of counties in the state of Georgia use unpaid incarcerated workers as firefighters and emergency medical responders. In some counties, they are the sole source of fire and emergency response workers.⁵⁸ In Georgia and North

⁴⁶ *Captive Labor*, *supra*, at 46.

⁴⁷ [Following the Money of Mass Incarceration](#), Prison Policy Initiative, 25 January 2017.

⁴⁸ [Should Prisoners Have to Pay for Medical Care During a Pandemic?](#), The Marshall Project, 20 November 2020; [The \\$580 co-pay](#), The Marshall Project, 30 May 2018.

⁴⁹ [The staggeringly high price of a prison phone call](#), Katrina vanden Heuvel, Washington Post, 30 November 2021.

⁵⁰ [Who Pays? The True Cost of Incarceration on Families](#), Ella Baker Center for Human Rights, *et al.*, September 2015; [After a hard-won sentence reduction, Huntsville man's court debt is another obstacle to freedom](#), Southern Poverty Law Center, 12 November 2019.

⁵¹ *Captive Labor*, *supra*, at 60.

⁵² *Id.* at 58-59.

⁵³ *Id.* at 60.

⁵⁴ *Id.* at 61.

⁵⁵ [Regulating Prison Labor](#), The Regulatory Review, 20 October 2021.

⁵⁶ *Captive Labor*, *supra*, at 62.

⁵⁷ *Involuntary Servitude*, *supra*.

⁵⁸ *Captive Labor*, *supra*, at 41.

Carolina, at least 24 workers were injured in poultry plant accidents between 2015 and 2018. The ACLU found numerous instances in which incarcerated workers were maimed or killed using dangerous machinery, falling from trees, or fighting fires.⁵⁹ Furthermore, farm laborers are often required to work in extreme heat without adequate access to water. In Louisiana, one former prison worker recalled that if a worker collapsed from the heat and was deemed to be “faking,” he might be sent to solitary confinement or simply left unconscious in the field.⁶⁰

Prison workers are often tasked with dangerous work without being provided proper training or safety equipment. An SPLC investigation found that incarcerated people in at least eight states are sent to work at poultry plants in hazardous conditions.⁶¹ One such worker in Alabama was killed while operating a machine that caught his arm and pulled him inside. Workers at the plant apparently did not know how to turn the machine off.⁶²

C. Black Incarcerated Workers Face Discriminatory Work Assignment.

The Mandela rules provide that work assigned to incarcerated persons should help to prepare them for life and employment after release from prison (Rules 98 and 99). Incarcerated workers typically are not permitted to choose the type of work they perform, and work assignments are often made in a discriminatory manner. A 2016 study found Black men were much more likely than white men to be assigned to maintenance and facility service work, which are usually paid either the lowest wages or not paid at all, including agricultural field labor and low-level maintenance work.⁶³ Conversely, Black men were less likely to be assigned to prison industry jobs that earn higher wages and offer more valuable skills and experience.⁶⁴ Race was also a significant factor in job assignments for incarcerated women.⁶⁵ One formerly incarcerated woman in Louisiana reported that she had been assigned to farm labor in the fields while white women worked indoors in the dining hall or in housekeeping.⁶⁶

Proposed recommendations:

- Take steps to ensure that all federal laws that protect workers, including wage and hour, health, safety, and employment discrimination protections, are made applicable to people who perform work while incarcerated.
- Pay wages to incarcerated workers in federal detention facilities wages that are equal to what they would earn in the same job outside of prison, and adopt measures to incentivize state prison systems to do so.
- Mandate that work assignments in federal detention facilities be made in a fair and equitable manner that takes account of individual preference and abilities and the development of marketable skills to prepare persons for a successful return to the community.

⁵⁹ *Id.* at 62-63.

⁶⁰ *Id.* at 64.

⁶¹ [The Kill Line](#), Southern Poverty Law Center, 26 July 2018.

⁶² *Id.*

⁶³ *Captive Labor*, *supra*, at 52.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

- Reform offender-funded systems to eliminate the practice of charging incarcerated people for room, board, and other necessities during their incarceration.
- Track work assignments by race to identify disparities and investigate the causes of those disparities for remediation.

IV. The Racially Biased United States Carceral System Harms Black Children and Families.

The Committee’s 2014 Concluding Observations called upon the U.S. to take concrete and effective measures to address “the impact of incarceration on children and/or other dependents.”

As the crisis of mass incarceration in the U.S. escalated over the past several decades, it brought with it a companion crisis – hundreds of thousands of children whose parents are currently incarcerated, and millions more with a parent who was formerly incarcerated and labors under the immense, often lifelong burdens placed on people who have served their criminal sentences. These crises disproportionately impact people of African descent.

The number of children with a father in prison increased 500% from 1980 to 2000.⁶⁷ As of 2016, more than 5 million children had experienced parental incarceration. While 1 in 28 children across the country now experiences parental incarceration (compared with just 1 in 125 in 1985), there is a stark racial disparity. Among Black children, 11.4% have had at least one incarcerated parent, compared to 1.4% of their white peers.⁶⁸ In Louisiana, at least 94,000 children have a parent behind bars.⁶⁹ More than one-half of Louisiana’s prison population is Black, although Black people represent only about one-third of the state’s overall population.⁷⁰ Black people make up about 17% of Florida’s population but are 47% of those incarcerated in Florida’s prisons.⁷¹

According to a federal government analysis, nearly half of those incarcerated in state prisons, and more than one-half of those in federal prisons, were parents of minor children as of 2016. The average age of the children of federal prisoners was 10 years.⁷² At the time the survey was conducted, the Black federal prison population was higher than either the white or the Latinx population.⁷³ Parents are often incarcerated in facilities far away from their children, preventing meaningful opportunities for visitation.⁷⁴ Children of incarcerated parents are at high risk for being placed into foster care, which may result in permanent damage to their relationship with the parent or termination of parental rights.⁷⁵ Even if the parent is released from prison with parental rights intact, it may be difficult or impossible to reclaim a relationship with the child – the burdens of court debt, unemployment, and housing instability, combined with the years of missing both

⁶⁷ [A Shared Sentence](#), Annie E. Casey Foundation, 2016, at 1.

⁶⁸ [Cut Off From Caregivers: The Children of Incarcerated Parents in Louisiana](#), Southern Poverty Law Center, 2021, at 2.

⁶⁹ *Id.* at 2.

⁷⁰ [Incarceration Trends in Louisiana](#), Vera Institute of Justice, December 2019.

⁷¹ [Incarceration Trends in Florida](#), Vera Institute of Justice, December 2019.

⁷² [Parents in Prison and Their Minor Children: Survey of Prison Inmates](#), 2016, Bureau of Justice Statistics, March 2021, at Appendix Table 2.

⁷³ *Id.* See data tables.

⁷⁴ [Cut Off From Caregivers](#), *supra*, note 1, at 5-6.

⁷⁵ *Id.* at 6.

everyday interactions and milestones in the child's life, often lead to barriers to a meaningful reconnection.

The mental, emotional and financial strains of parental incarceration place children at higher risk of cognitive delays and behavioral problems that can result in difficulties in school.⁷⁶ Children whose fathers have been incarcerated are six times more likely to be expelled or suspended from school.⁷⁷ Again, these problems are exacerbated by their intersection with structural racism – Black children are far more likely overall to be suspended or expelled.

Parental incarceration causes serious damage to both mental and physical health. Unsurprisingly, numerous studies have shown that parental incarceration can lead to developmental and behavioral consequences and causes social and emotional impacts that can last into adulthood. These include elevated risk for depression, anxiety, substance abuse and suicidality, as well as difficulty in forming secure relationships.⁷⁸ Dominique Jones, a founder of the nonprofit Daughters Beyond Incarceration, explained how growing up without her father impacted her childhood:

I didn't have anyone to help me dealing with the trauma that I realize I was dealing with now, as a child. So, the way that I dealt with it was I physically fought: everywhere I went I was always known as being the most belligerent person on the team or in my area or wherever, I was always known to be violent People don't understand how traumatic it is for a child to have an incarcerated parent. You have kids who wait all year to see their parent, only to arrive on a visitation day and find out that their father has been placed in solitary confinement and can't have visitors anymore, or that their father was in a fight and is now in the infirmary. You have kids who are ashamed of their last name, because their parent is locked up. I know these experiences firsthand, for myself.⁷⁹

Black children are especially vulnerable to these harms due to multiple forms of structural racism, including poverty, segregated neighborhoods that lack resources and are often violent and unsafe, unequal access to quality education and adequate health care (both addressed below), and food and housing insecurity.

Children who experience parental incarceration also suffer damage to their physical health. Studies show that the risk of adverse childhood experiences (ACEs) is elevated for children with incarcerated parents, and these contribute to poor physical health outcomes such as lung and heart diseases. One federal government study showed a link between parental incarceration and a range of medical problems later in life, such as asthma, migraines, high cholesterol, and HIV/AIDS.⁸⁰

⁷⁶ E.g., Shlafer RJ, et al., [School-Based Outcomes Among Youth With Incarcerated Parents: Differences by School Setting](#), J Sch Health. 2017 Sep;87(9):687-695

⁷⁷ Martin, E., [Hidden Consequences: The Impact of Incarceration on Dependent Children](#), National Institute of Justice Journal, 1 March 2017.

⁷⁸ *Cut Off from Caregivers*, supra, at 5.

⁷⁹ *Id.* at 8.

⁸⁰ [The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults](#), National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, April 2013.

The incarceration of a parent is likely to be an economically devastating factor in the life of a child. Almost half of incarcerated parents were the breadwinners for their families,⁸¹ and nearly half lived with their children prior to incarceration, leaving children much more likely to become impoverished and even homeless. Black children of incarcerated fathers are especially at risk of homelessness.⁸² The non-incarcerated parent frequently experiences problems obtaining childcare, which inhibits their ability to work, and they often report being unable to pay for basic needs such as food, rent, utilities, and medical care.⁸³

Beyond the loss of income from the incarcerated parent, the expenses associated with incarceration are a tremendous burden on families. Traveling long distances to visit an incarcerated parent means costs for transportation and lodging. Charges for telephone communications, which must be paid by the family, are exorbitant. The correctional telecommunications industry collects \$1.5 billion annually from prisoner phone calls, with the average cost of a 15-minute call at \$5.74.⁸⁴ In 2017, the Prison Policy Initiative estimated that families spent \$2.9 billion per year on prison phone accounts and commissary charges for purchases such as hygiene items, pens and paper, and food.⁸⁵

Many essential services, such as medical care, also come at a price for people in prison. The vast majority of states have traditionally charged fees ranging from \$2 to \$8 per visit for medical care.⁸⁶ Such costs are far greater than the pennies per hour that incarcerated people earn for prison labor – for example, the hourly pay scale in an Oklahoma prison begins at just 5 cents, so the average fee of around \$4 is equivalent to nearly \$600 for someone earning minimum wage outside of prison.⁸⁷ Unless their families can help to foot the bill, some will simply not receive needed care, contributing to poor health that will continue to increase their financial burden over a shortened lifetime, or will be saddled with additional debt after release. Some prison systems have waived some medical care fees temporarily during the pandemic, but medical co-pays have been a fact of U.S. prison life for decades.

The financial burdens of incarceration on children and families continue long after the incarcerated parent is released. Barriers to finding employment and housing are numerous. Unpaid medical charges wind up as accumulated debt, leading to collection lawsuits and bad credit after release.⁸⁸ Bad credit, in turn, makes it more difficult to open a bank account, get a job, or obtain an apartment lease or a car loan.

More than half of formerly incarcerated people cannot find stable employment within the first year after release.⁸⁹ Those that are employed earn a median income of just \$10,000 per year.⁹⁰ The use of criminal background checks by employers frequently means that formerly incarcerated people

⁸¹ *A Shared Sentence*, *supra*, at 2.

⁸² *Cut Off From Caregivers*, *supra*, at 6.

⁸³ *A Shared Sentence*, *supra*, at 3.

⁸⁴ [The staggeringly high price of a prison phone call](#), Katrina vanden Heuvel, Washington Post, 30 November 2021.

⁸⁵ [Following the Money of Mass Incarceration](#), Prison Policy Initiative, 25 January 2017.

⁸⁶ [Should Prisoners Have to Pay for Medical Care During a Pandemic?](#), The Marshall Project, 20 November 2020.

⁸⁷ [The \\$580 co-pay](#), The Marshall Project, 30 May 2018.

⁸⁸ [Examining the Intersection Between Criminal Justice and Financial Services in the Deep South](#), Hope Policy Institute, 13 January 2021, at 9.

⁸⁹ [A better path forward for criminal justice: Prisoner reentry](#), Brookings Institute, April 2021.

⁹⁰ *Examining the Intersection*, *supra*.

are unable to even get a job interview. Although the U.S. Equal Employment Opportunity Commission has long recognized that criminal background checks have a disparately discriminatory impact based on race and national origin, their use is lawful if the background checks are deemed job-related and consistent with business necessity.⁹¹

A severe shortage of low-income housing units, combined with the use of criminal background checks for prospective tenants, makes finding affordable housing extremely difficult for people released from prison.⁹² Recognizing that public housing programs often bar people with criminal records, the Secretary of the U.S. Department of Housing and Urban Development recently directed the agency to undertake a review of all policies and programs to identify barriers to housing for those with criminal records and to the extent legally possible, to make such policies and programs more inclusive for this group.⁹³ A 2016 HUD memo detailed the discriminatory effects of justifying a housing decision based on an individual's criminal history and demonstrated the disproportionate impact on African Americans.⁹⁴

Lingering court debt also places a large financial strain on the formerly incarcerated parent. One report found that the average family paid \$13,000 in fines and fees.⁹⁵ In 2019, people in SPLC's Deep South region (where incarceration rates are highest) owed more than \$4 billion in federal criminal justice debt alone,⁹⁶ with billions more owed in state criminal justice systems. Upon release, fees continue to be charged for required post-release supervision.⁹⁷ Unpaid court debt can lead to driver's license suspension, preventing people who live in areas without reliable public transit from traveling to a job, even if they can find one.⁹⁸ People who are able to make only small payments toward their court debt often find that the total amount owed increases rather than decreases due to added fees.⁹⁹

Louisiana, like many southern states, currently funds its criminal legal system through fines, fees, and court costs that are disproportionately imposed on Black families and people experiencing poverty. In 2017, for example, Black families paid nearly 88% of bail bond fees and nearly 70% of conviction fees in New Orleans.¹⁰⁰ At the same time, Black families in New Orleans earn 63%

⁹¹ [Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act](#), Equal Employment Opportunity Commission, 25 April 2012.

⁹² [Barriers to Housing](#), Reentry and Housing Coalition, 2017.

⁹³ [Memorandum](#), "Eliminating Barriers That May Unnecessarily Prevent Individuals with Criminal Histories from Participating in HUD Programs," Housing and Urban Development Secretary Marcia Fudge, 12 April 2022.

⁹⁴ [Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#), Office of General Counsel, Department of Housing and Urban Development, 4 April 2016.

⁹⁵ [Who Pays? The True Cost of Incarceration on Families](#), Ella Baker Center for Human Rights, *et al.*, September 2015.

⁹⁶ *Examining the Intersection*, *supra*, at 3.

⁹⁷ *Id.* at 4.

⁹⁸ *Examining the Intersection*, *supra*, at 9.

⁹⁹ [After a hard-won sentence reduction, Huntsville man's court debt is another obstacle to freedom](#), Southern Poverty Law Center, 12 November 2019.

¹⁰⁰ [Panel reviewing how Louisiana courts are funded needs more time for recommendations](#), News From The States, 1 February 2022.

less than what white families earn. And in 2016, the median household income in New Orleans was \$25,324 for Black households and \$67,884 for white households.¹⁰¹

The financial burdens of fines, fees, and court costs, which are typically imposed on people who were already poor, often push the families of incarcerated people into an inexorable cycle of poverty for generations. That cycle, in turn, leads to less access to adequate education, housing, and health care, more problems in school, higher rates of foster care placement, and a higher likelihood of future involvement with the criminal legal system.

Proposed Recommendations:

- Adopt a national strategy to address the harms that mass incarceration inflicts upon the children and family members of incarcerated people, with a targeted goal of reducing racial disparities.
- Provide funding and resources for state, local, and civil society programs that work to alleviate these harms through the provision of medical and mental health care, housing, food and employment assistance, child care, income assistance, and other such programs and services.

V. The United States' Education System Disproportionately Disciplines Black Children and Pushes Them into the Juvenile Justice System.

In its 2014 Concluding Observations, the Committee urged the U.S. to “intensify its efforts to address racial disparities in the application of disciplinary measures, as well as the resulting “school-to-prison pipeline”, throughout the State party and ensure that juveniles are not transferred to adult courts”

A. School Discipline is Imposed in a Racially Discriminatory Manner.

Racial disparities in school discipline begin as early as preschool.¹⁰² Black children in U.S. schools are subjected to exclusionary school discipline practices at disproportionate rates, despite the lack of evidence that students of color misbehave more than their white peers,¹⁰³ Black students are overrepresented in both out-of-school suspension and in-school-suspension data.¹⁰⁴ Additionally, a 2020 study of nationwide school data showed that Black middle and high school students lost 103 school days per 100 students due to out-of-school suspensions, compared with just 21 days

¹⁰¹ *The New Orleans Prosperity Index: Tricentennial Edition*, Data Center Research, 11 April 2018.

¹⁰² Rasheed Malik, *New Data Reveal 250 Preschoolers Are Suspended or Expelled Every Day*, CTR. AMERICAN PROGRESS (Nov. 6, 2017) (citing a 2016 study that found an estimated 50,000 preschoolers were suspended and another 17,000 were expelled), available at <https://www.americanprogress.org/issues/early-childhood/news/2017/11/06/442280/new-data-reveal-250-preschoolers-suspended-expelled-every-day/>

¹⁰³ Russell Skiba, et al, *New and Developing Research on Disparities in Discipline*, THE EQUITY PROJECT AT INDIANA UNIVERSITY, 2, (Mar. 2014), https://indrc.indiana.edu/tools-resources/pdf-disciplineseries/disparity_newresearch_full_040414.pdf.

¹⁰⁴ U.S. Dep’t of Educ., Civ. Rts. Data Collection, An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-18 School Year (2021), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf>.

per 100 white students.¹⁰⁵ Black students continue to face intersectional, disparate treatment in school settings based on race, gender, and/or disability status.¹⁰⁶

Recent analysis of the Civil Rights Data Collection (CRDC) between the 2015-2016 and 2017-2018 school years indicated a two percent decrease in the overall use of exclusionary discipline practices. However, it showed an increase in the use of school discipline practices that exacerbate the school-to-prison pipeline, namely school-related arrests and referrals to law enforcement. In examining racial disparities, the federal government found that “[i]n 2017-18, Black students accounted for 28.7% of all students referred to law enforcement and 31.6% of all students arrested at school or during a school-related activity—twice their share of total student enrollment of 15.1%.”

Research shows that the presence of school-based law enforcement does not reduce school violence and can actually increase behavioral incidents, exacerbate the problem of discriminatory and excessive punishment, and further the criminalization of school children.¹⁰⁷ In Florida, for example, by 2019, there were more police officers working in schools than school nurses.¹⁰⁸ Youth arrests in schools rose dramatically as a result. During the 2018-2019 school year, police arrested Florida elementary school students, including children as young as 5 and 6 years old, 345 times.¹⁰⁹ Black students were 4.5 times more likely overall to be arrested for disorderly conduct at school. For Black girls, the figure was 6 times.¹¹⁰ Black youths are disproportionately targeted for arrest overall, and once in detention, they are more likely to be placed in solitary confinement.¹¹¹

Schools in other states have also engaged school police officers in ordinary and relatively minor school discipline matters. For example, a Black Georgia mother sued her son’s school district after he was arrested by an officer enforcing the school’s dress code.¹¹² An Alabama student faced criminal charges after getting into a fight at school.¹¹³ These arrests are sometimes accompanied by a dangerous and disproportionate use of force. For example, in 2021, 16-year-old Black student Taylor Bracey was physically assaulted at Florida’s Liberty High School by a school resource officer who slammed her head into the concrete pavement and caused her to lose consciousness.¹¹⁴

¹⁰⁵ [School Suspension Data Shows Glaring Disparities in Discipline by Race](#), US News and World Report, 13 October 2020.

¹⁰⁶ Losen, D.J., et al., [Lost Opportunities: How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn](#), 2020; [Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity](#), NAACP Legal Defense Fund, 2014; Russell J. Skiba, R.J., et al., [The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment](#), The Indiana Educ. Policy Ctr., June 2000; see also U.S. Dep’t of Educ., [Resolution Letter for Compliance Rev. #05-12-5001](#), Nov. 2014, (investigation revealed students engaging in similar misconduct did not always receive the same discipline and black students were disproportionately represented compared to white students during 2010-2011 and 2011-2012 school years in proportion of students disciplined).

¹⁰⁷ [Making schools safe and just](#), National Education Association, 28 April 2022.

¹⁰⁸ [The Cost of School Policing](#), American Civil Liberties Union of Florida, Equality Florida, Florida Social Justice in Schools Project, Southern Poverty Law Center, and The League of Women Voters of Florida, 2019, at 5.

¹⁰⁹ *Id.* at 6.

¹¹⁰ *Id.* at 17.

¹¹¹ [G.H. v. Tamayo](#), Southern Poverty Law Center, 2019.

¹¹² [Envisioning School Safety Without Police](#), Learning for Justice, 2021.

¹¹³ *Id.*

¹¹⁴ [Florida teen body-slammed by school resource officer ‘traumatized,’ family says](#), ABC News, 31 January 2021.

Following the incident, she has suffered from sleep deprivation, headaches, blurry vision, and memory loss.

Despite the demonstrated adverse effects of law enforcement presence in schools, the practice has grown. The number of public schools with security staff increased by 20% during the period from 2005 to 2018 and was significantly higher in schools where a large majority of students were people of color.¹¹⁵ Recent events will lead to further police presence. On June 25, 2022, President Biden signed the Bipartisan Safer Communities Act into law, which contains \$300 million in funding that can be used for school hardening measures, including threat assessments, metal detectors, and school-based law enforcement.¹¹⁶

Discriminatory school discipline practices may increase the likelihood that impacted children will become involved in the criminal legal system. Of children in juvenile justice placements, 61% report having been suspended or expelled from school in the year preceding the placement.¹¹⁷ For those who enter juvenile detention facilities, the educational deficit may grow to an insurmountable degree – even though classes are provided, students returning to their schools often find that they did not receive full, or any, academic credit toward graduation.¹¹⁸

In addition to discipline practices that remove students from classrooms, research also demonstrates racial disparities in the use of corporal punishment. According to the U.S. Department of Education, about 70,000 public school students were subjected to corporal punishment – being physically struck – in schools in 19 states during the 2017-18 school year. Thousands of children seek medical treatment for injuries inflicted by corporal punishment.¹¹⁹ Nationally, about 5.6% of students overall experience corporal punishment in schools, but that figure is 9.7% for Black students. A report prepared by SPLC and the Center for Civil Rights Remedies found that in five states, the rate at which corporal punishment was imposed on Black students was 10% or higher. In one state – Missouri – the rate was 17.5%. Most instances of corporal punishment take place in the American South. In one Alabama school district, the corporal punishment rate for Black students was 31.6%, compared with 10.1% for white students, a gap that persisted over time.¹²⁰ The starkest numbers were found in Mississippi, which has both the highest rates of corporal punishment overall and the largest racial disparities of students receiving corporal punishment. One report found that almost one-half of all Black girls in the U.S. who were subjected to corporal punishment in public schools lived in Mississippi.¹²¹

¹¹⁵ [Percentage of public schools with security staff present at least once a week, and percentage with security staff routinely carrying a firearm, by selected school characteristics: 2005–06 through 2017–18](#), National Center for Education Statistics.

¹¹⁶ [PL 117-159; Civil rights leaders' letter to Speaker Pelosi urging gun control not cause students additional harm](#), June 20, 2022; [Safer Communities Act Takes Long Overdue Step Forward, Implementation Must Protect Marginalized Communities](#), Leadership Conference on Civil and Human Rights, June 24, 2022.

¹¹⁷ [Credit Overdue](#), Southern Poverty Law Center, 2020, at 9.

¹¹⁸ *Id.* at 4.

¹¹⁹ [Spare the Kids: SPLC and other advocates push to end corporal punishment in schools](#), Southern Poverty Law Center, 29 April 2022.

¹²⁰ [The Striking Outlier: The Persistent, Painful and Problematic Practice of Corporal Punishment in Schools](#), Southern Poverty Law Center, 2019, at 21-23.

¹²¹ *Id.* at 23-24.

Data shows that Black students are no more likely to misbehave than their white peers but are nevertheless punished more harshly, including through the use of corporal punishment.¹²² Other studies also indicate that Black students are given harsher punishments for the same behavior as white students, even accounting for factors such as prior discipline records.¹²³ The use of corporal punishment in schools contributes to poorer school performance, absenteeism, and drop-out rates, which in turn contribute to a greater likelihood of becoming involved in the criminal legal system.¹²⁴ SPLC and many other advocacy organizations are supporting legislation that would ban corporal punishment in schools that receive federal funding.¹²⁵

Although little research has been devoted to the intersection of race and sexual orientation in the context of school discipline, it appears that LGBTQ youth “constitute a ‘pipeline population’ because LGBTQ youth of color are significantly overrepresented in juvenile detention facilities.”¹²⁶ This is not surprising since they also are overrepresented in the many known pathways into those facilities, such as homelessness, substance abuse, victimization, and mental health issues.

B. Black Children Are More Likely to Be Prosecuted as Adults.

The U.S. Supreme Court has recognized that children who commit crimes are less culpable and more likely to change than their adult counterparts due to their physical and psychological immaturity and susceptibility to negative influences. Yet many U.S. states continue to frequently charge and prosecute children in the adult criminal justice system. Those youth convicted “as adults” are often incarcerated in adult jails and are denied adequate educational, mental health, and rehabilitative services.

The state of Florida prosecutes more children on felony charges than any other – nearly 4,500 in the last five years. This figure actually represents a reduction in the sheer number of such charges from a decade earlier – when 10-12,000 children annually were being charged in adult courts – but as a percentage of overall juvenile arrests, the rate has increased.¹²⁷ Unlike most other states, Florida law allows prosecutors to make the decision to charge children as young as 14 in the adult system without any court oversight, a decision that is not appealable. Although juvenile courts can also transfer children to adult courts, 98% of adult charges brought against juveniles in Florida are the result of prosecutorial decisions.

Black children are arrested in Florida far more frequently, and those who are charged with crimes are more likely than their white peers to be subjected to adult courts and jails. In fiscal year 2020-21, 46% of juveniles arrested in Florida were Black, but they represented 61% of those prosecuted in the adult system.¹²⁸

¹²² *Id.* at 21.

¹²³ *Id.* at 21-22.

¹²⁴ *Id.* at 25.

¹²⁵ S. 2029, [Protecting our Students in Schools Act of 2021](#), 117th Congress.

¹²⁶ Green, M., [LGBTQ Youth of Color in the School-to-Prison Pipeline: Freedom, Liberation, and Resistance](#), Aleph, UCLA Undergraduate Research Journal for the Humanities and Social Sciences, at 42.

¹²⁷ [Criminal Injustice: States unfairly prosecute children as adults](#), Southern Poverty Law Center, 21, January 2022.

¹²⁸ *Id.*

One notable problem is the charging of teenagers with sex offenses for engaging in consensual sex acts with other teens. Once convicted, these teens are not only subjected to incarceration but also saddled with the burden of a lifetime sex offender registry, which significantly limits their opportunities for stable employment, housing, and social integration. In an Alabama lawsuit, *Pennington v. Taylor*, SPLC, and other civil rights organizations represented three Alabama men who were victims of this unfair system.¹²⁹ Two of the men had been charged as teens after engaging in consensual sex with another teen. The complaint describes how the sex offender registry requirement has been an obstacle to housing, stable employment, and even their ability to have normal relationships with their children and grandchildren.

Proposed recommendations:

- Adopt a national strategy to reduce and ultimately eliminate the use of corporal punishment in schools, with a targeted goal of reducing racial disparities, and provide training and resources to schools to implement alternatives.
- Vigorously enforce laws protecting children from discrimination and other violations of their rights occasioned by the use of corporal punishment, and conduct thorough and transparent investigations of all potential violations.
- Assist schools in implementing alternatives to the excessive presence of law enforcement officers in schools and reinvesting those resources in restorative and other evidence-based practices that produce healthy, culturally-affirming school climates and improve academic achievement.¹³⁰
- Adopt legislation prohibiting or substantially restricting the imposition of adult criminal processes and penalties on children.
- Increase oversight and enforcement of federal civil rights laws, including Titles IV and VI of the Civil Rights Act of 1964 with the goal of dismantling the school to prison pipeline and eliminating the use of discriminatory school discipline practices.
- In implementing the Bipartisan Safer Communities Act, the federal government should develop a strategy to ensure the funding does not contribute to the over-policing and over-surveillance of Black students and other students of color.

¹²⁹ [Complaint](#), *Pennington v. Taylor*, Middle District of Alabama, 2019.

¹³⁰ [NAACP Legal Defense and Educational Fund Supports Federal Counseling Not Criminalization in Schools Act](#), NAACP Legal Defense and Educational Fund, August 8, 2020.