



The Inhumane Treatment of Children in the U.S. Criminal Justice System

Image Credit: Richard Ross

A JOINT SUBMISSION TO:
The Expert Mechanism to Advance Racial
Justice and Equality in Law Enforcement

ON BEHALF OF:



ANNEX

This is a joint submission on behalf of the following organizations:

Human Rights for Kids
National Association of Criminal Defense Lawyers
The Gault Center
Equal Justice USA
Youth First Justice Collaborative
RISE for Youth
Juvenile Law Center
Justice Policy Institute
Center for Families, Children and the Courts; University of Baltimore School of Law
Bridge Maryland
The National Healing Collective
Strategies for Youth

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I. Intro

Every year approximately 53,000 children are prosecuted as adults which has resulted in the mass incarceration of children in the United States. Today, there are more than 32,000 people incarcerated in U.S. prisons for offenses committed as children. The vast majority of this population – 79.69% – are racial minorities.ⁱ African Americans make up nearly 60% of prisoners who have been incarcerated since they were children. Approximately 29.24% of this population is serving life or de facto life sentences (40 years or more). International human rights law recognizes that such treatment and punishment of children who have committed offenses are forms of torture pursuant to the CRC and ICCPR. This pattern of practice is also highly suggestive of conduct that may constitute a “crime against humanity” under Article 7 of the Rome Statute of the International Criminal Court as children of color, and Black children in particular, were the target of a dehumanization effort in the 1990’s that labeled them “Super Predators” in a deliberate attempt to make it easier to prosecute them as adults.

II. Historical Background

When the 13th Amendment to the U.S. Constitution abolished slavery while extending its existence as “punishment for crime,” former Confederate states utilized this loophole to establish “black codes” that criminalized activities such as loitering as a path to “re-enslave” individuals who were unemployed or underemployed. Black codes became a convenient way to extend the free labor afforded by enslaved people – by first locking out formerly enslaved people from economic opportunities, arresting them for being unemployed, and then farming them back out to labor on the plantations from which they had just been freed.ⁱⁱ

After Reconstruction following the Civil War, states continued to come up with creative laws to systematically target newly-freed African Americans. In 1898, delegates in Louisiana, for example, convened at a state Constitutional Convention with the stated purpose of “establishing the supremacy of the white race.”ⁱⁱⁱ One of the tools deployed to this end was to allow non-unanimous jury convictions against Black defendants in criminal cases. One local paper endorsing the change in law wrote at the time, “nine times out of ten” non-unanimous juries removed the need for “popular justice” (lynching).^{iv} At the time, media in the state regularly commented on the fact that “juries in these . . . localities seem to think that it is their bounden duty to render a verdict of ‘guilty as charged,’ because the accused has black skin.”^v The non-unanimous jury rule was a facially neutral legal mechanism by which Louisiana could circumvent the 13th and 14th Amendments in order to lynch black defendants in open court or re-enslave them.

Black boys and men were the targets of “facially neutral laws” that regularly violated their constitutional and human rights. One example is that of fourteen-year-old George Stinney Jr. who was convicted of murder in 1944 in South Carolina.^{vi} The all White-jury deliberated for all of ten minutes before George was sentenced to death. Because of his small size, at 5ft 1in and weighing just 95lb, the guards had difficulty strapping him to the electric chair.^{vii} As he was being killed “the death mask slipped from his face

revealing the tears falling from his scared, open eyes.”^{viii} He was exonerated 70 years after his murder.

Localities in states across the country also practiced ‘popular justice’ whereby Black boys were lynched and their murderers subsequently protected from prosecution or accountability. In 1955, fourteen-year-old Emmett Till was brutally tortured and lynched in Mississippi for allegedly offending a White woman in her family store.^{ix} His murderers were acquitted by an all-White jury.^x Between the end of Reconstruction in 1877 and 1950 at least 4084 African Americans were lynched in twelve Southern states.^{xi}

Racial terrorism of this kind leaves scars. One of the enduring legacies of slavery and racial terror in America is generational trauma which frequently appears in the form of adverse childhood experiences (ACEs) among Black children which, if left unaddressed, often leads to behavioral issues in adolescence.

The racialized beginnings of the post-civil war criminal justice system provide important context for understanding where we are today.

A concerted effort to dehumanize children of color in the criminal justice system re-emerged in the 1980’s and 90’s. The press fed the narrative by depicting ‘teen killers’ and ‘young thugs’ primarily as children of color.”^{xii} This narrative led to a wave of draconian policies that were rooted, in part, by racism. “These reforms lowered the minimum age for transfer, increased the number of transfer-eligible offenses, or expanded prosecutorial discretion and reduced judicial discretion in transfer decision-making.”^{xiii} As a result, over a six year period beginning in 1993, the number of children housed in adult jails more than doubled.^{xiv} By the early 2000s, approximately 200,000 children were being charged as adults annually.^{xv}

This policy shift occurred alongside the emergence of the “super-predator theory”^{xvi} that proclaimed the appearance of a new wave of children who were more violent and less remorseful than ever before. Characterizing these kids as “Godless” “jobless” and “fatherless” monsters with “no respect for human life,”^{xvii} a major proponent of this now discredited theory emphasized that “the trouble will be greatest in Black inner-city neighborhoods.”^{xviii} The theory became so mainstream in American culture at the time that its messaging even permeated out of the White House. In 1996, then First Lady Hilary Clinton said to the media: “They are often the kinds of kids that are called ‘super predators.’ No conscience, no empathy, we can talk about why they ended up that way, but first we have to bring them to heel.”^{xix}

One consequence of the campaign to dehumanize Black and Brown children was to make it morally, socially, and legally acceptable to violate their human rights. Studies have shown that “dehumanization is a necessary precondition for culturally and/or state sanctioned violence.”^{xx} Referring to Black children as “Super Predators” and “Godless monsters” made the public more comfortable treating them as adults and violating their human rights under the ICCPR and CRC. The data presented in this submission calls particular attention to the spike in adult prosecutions and continued incarceration rate of Black children post-1990’s where we see the consequences wrought by the policies of the Super Predator Era.

III. Children Killed Pre-Arrest/Investigation

A 2025 study by the Johns Hopkins Center for Gun Violence Solutions found that 317 children under age 18 were shot by police between 2015 and 2020.^{xxi} Approximately one-third of these children died. More than half of these children—54%—were Black. These findings mirrored a 2020 study, where researchers at Children’s National Hospital found that Black children were six times more likely to be shot to death by police than White children.^{xxii}

Included below are but a few examples of Black children killed by law enforcement over the past decade:

- A. A Black 12-year-old boy, Tamir Rice, was gunned down in a park in Cleveland when police responded to a 911 dispatch in 2014. The 911 caller identified Tamir as a “juvenile” and the toy gun he was playing with as “probably fake.” Once on the scene officers gave Tamir 2 seconds to respond to their command before opening fire. Nearly 5 minutes passed before responding officers began administering first aid. The officers were never charged.
- B. A Black 14-year-old boy, Cameron Tillman, was gunned down in Louisiana by officers responding to a report of “armed men” in an abandoned house in 2014. Cameron and the other boys had been playing with a BB gun in the house they regularly hung out at after school. The officer in Cameron’s case was never prosecuted.
- C. A Black 15-year-old boy, Jordan Edwards, was gunned down while leaving a house party by Dallas police officer Roy Oliver in 2017. Oliver was convicted of his murder.
- D. A Black 17-year-old boy, Laquan McDonald, was killed by Officer Jason Van Dyke of the Chicago Police Department after he was shot 16 times in 2014. Van Dyke was later convicted of murder. At least sixteen police officers were later implicated in an elaborate cover-up to justify officers killing the boy and to shield Van Dyke from arrest and prosecution.

IV. The United States is engaged in one of the largest government-sanctioned human rights abuses against children in the world today. Children suffer numerous human rights abuses in violation of Articles 37, 39 and 40 of the CRC and Articles 10 and 14 of the ICCPR.^{xxiii}

The U.S. routinely exploits its reserved right under Articles 10 and 14 of the ICCPR to transfer children into the adult criminal justice system under purportedly “exceptional circumstances.”^{xxiv} The Inter-American Commission on Human Rights has found that the “ambiguity of this reservation has been converted into an expansive gap in juvenile justice systems across the U.S., resulting in the violation of children’s human rights on federal, state, and local levels.”

- A. In 35 states, the District of Columbia, and the federal government children **under the age of 10** can be arrested and prosecuted.^{xxv} The youngest child ever arrested on record was a four (4) year old in Florida.^{xxvi} In a five-year period, between 2013 and

2018, it was reported that more than 30,000 children aged 9 or younger were arrested and faced prosecution in juvenile court throughout the United States.^{xxvii}

In 39 states and D.C. children are subject to custodial interrogation and waiver of Miranda rights without benefit of parental consultation or legal counsel to understand their rights, which vastly increases their risk for giving false confessions and wrongful convictions.^{xxviii}

- B. Every U.S. state, the District of Columbia, and the federal government allow children under 18 years old to be tried as adults.^{xxix} The states of Georgia, Texas, Wisconsin, and Louisiana exclude all 17-year-olds from juvenile court altogether even for low level offenses such as shoplifting, school fights, or drug possession.^{xxx} Particularly disturbing are the 30 states which allow children under the age of 14 to be convicted and sentenced as an adult. It is not uncommon in some of these states to see children as young as 10, 11, or 12 brought before judges in adult criminal court.^{xxxi} For example, just last year a judge in Wisconsin ruled that a 12 year old boy, who was accused of committing a serious crime when he was ten (10), will be tried as an adult.^{xxxii}

In 44 states children are subject to mandatory minimum sentences where they are sentenced by the exact same standards that are used for adults. Their child status is often ignored, and in the event it is considered, courts are still bound by the statutorily mandated sentences that are used for adults.^{xxxiii}

In 22 states, children can be given life without parole sentences and in 39 states they can be given de facto life without parole sentences (through consecutive or individual terms longer than 39 years without review).^{xxxiv} According to a 2024 survey, 6,301 individuals are currently serving life sentences some with and some without parole. This represents 19.47% of the total number of individuals who have been incarcerated since they were children.^{xxxv} An additional 3,162 individuals are serving de facto life sentences (40 years or longer). This represents 9.77% of the total population of children sentenced as adults who remain incarcerated.^{xxxvi}

As a result, the U.S. prison population of individuals who were convicted as adults for crimes they committed as children (32,359) is greater than that of 171 other countries and independent territories, exceeding the total number of people in prison in almost 80% of the other countries and territories of the world.

The vast majority of children convicted as adults and who remain incarcerated today are racial minorities (79.69%).^{xxxvii}



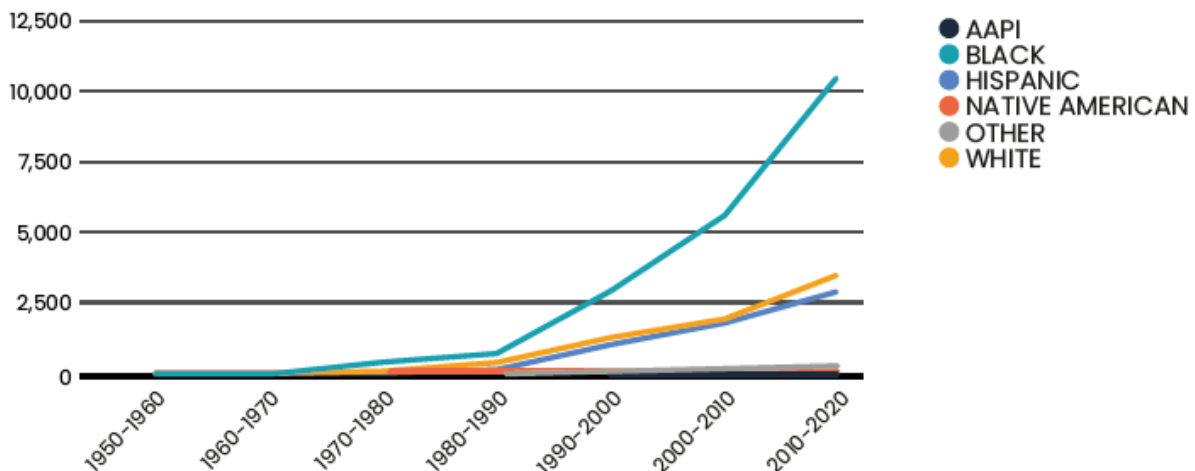
KEY	RACE/ETHNICITY	COUNT	PERCENTAGE
	ASIAN AMERICAN/ PACIFIC ISLANDER	241	0.74%
	BLACK	18,819	58.16%
	HISPANIC	5,860	18.11%
	NATIVE AMERICAN	373	1.15%
	OTHER	491	1.52%
	WHITE	6,570	20.30%

*Hawaii provided no breakdown on Race/Ethnicity, and is not represented in this graph.

Girls incarcerated as adults are subjected to racial disparities similar to those seen in the larger criminal justice system. A 2024 study found that Black girls constitute nearly 42% of the overall female population, and girls of color make up 60% of the women who have been incarcerated since childhood.^{xxxviii}

Children of color are sentenced to longer prison terms than White children when given numbered sentences. Children of color also receive more life sentences than White children. The average longest sentence was almost 60 years greater for Black children than White children.^{xxxix}

While the incarceration rate of people sent to prison as children remained fairly consistent across racial demographics before 1990, we see a massive increase in the number of Black children who remain incarcerated for offenses that occurred over the past 30 years which coincides with the advent of the “Super Predator Theory”.^{xl}



- C. In 47 states and D.C. children under the age of 18 can be held in adult jails and prisons.^{xli} Children are five times more likely to be sexually and physically assaulted in adult prisons,^{xlii} and face an outside risk of other forms of victimization as well.^{xliii} Children who are incarcerated with adults are also at a far higher risk for suicide than their peers in the juvenile justice system, and they face far worse health

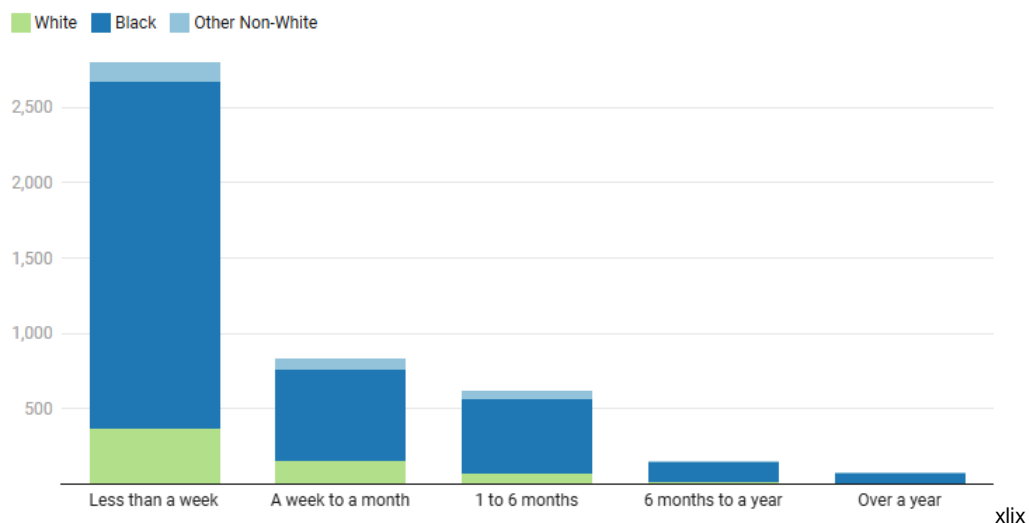
outcomes.^{xliv} The suicide rate of juveniles in adult jails is almost 7.7 times larger than that of juvenile detention centers; similarly, the suicide rate among juveniles in adult lockups is more than 5 times larger than that of juvenile detention facilities.^{xliv}

Just last year a 16 year old White girl committed suicide while being detained in an adult jail in Mississippi.^{xlvi} This follows the suicide of a young Black man in New York, after he was released from the notorious Riker's Island Jail where he was held in solitary confinement for two years when he was 16 years old.^{xlvi}

Between January 1, 2018, and the end of September 2024, the state of Maryland booked teens in adult jails nearly 4,800 times. Almost all of these children were Black.^{xlvi} Black youth were also incarcerated longer in adult jails than all other youth.

Black teens made up the vast majority of bookings in adult jails since 2018

White youth were more likely to have shorter stays.



V. The U.S. Incarcerates Children Who Have Been Victimized

Nearly every child in the U.S. criminal justice system is a survivor of abuse, neglect, and familial trauma. A 2024 survey of 892 women incarcerated for crimes committed as children revealed that 84% experienced emotional, physical, and sexual abuse prior to their offense. A similar study in Maryland, where Black prisoners incarcerated since childhood made up 80% of respondents, 76% reported emotional abuse, 74% suffered physical abuse, and 40% endured sexual abuse prior to their incarceration.^l These findings have been consistent across multiple states where similar surveys have been conducted.

Between 2010 and 2020, more than 6,200 child victims of human trafficking were arrested for prostitution.^{li} Victims are often incarcerated for crimes that directly result from being trafficked. Just last year a young Black woman, who was 16 years old when she killed the man who raped and trafficked her, was sentenced to 11 years in prison in

Wisconsin. Available research indicates that between 30% and 40% of children tried as adults in the United States were victims of human trafficking prior to their offense.^{lii}

VI. CONCLUSION & RECOMMENDATIONS

The United States' treatment of children in the adult criminal justice system, resulting in their mass incarceration, is a violation of its treaty obligation pursuant to the ICCPR and violates Articles 37 – 40 of the CRC.

The U.S. should immediately ratify the CRC and comply with its existing obligations under the ICCPR. Specifically, the practice of automatically excluding 17 year olds from juvenile court in Wisconsin, Texas, Louisiana, and Georgia should be prohibited. The practice of trying children as adults should be significantly curtailed in every state. Finally, the U.S. should prohibit the practice of housing children in adult jails and prisons, as well as placing children in solitary confinement.

END NOTES

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