

## **United States of America**

### **Submission to the United Nations Universal Periodic Review**

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### **Criminal and Juvenile Justice**

#### **Submitted by:**<sup>1</sup>

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#### **Endorsed by:**

American Academy of Child and Adolescent Psychiatry (AACAP); American Civil Liberties Union (ACLU) of Mississippi; The Children and Family Justice Center; Center for Children's Law and Policy; Center for Community Alternatives; Champaign-Urbana (Illinois) Citizens for Peace and Justice; Civil Justice Clinic, Washington University School of Law; Colorado Criminal Defense Bar; Families Against Mandatory Minimums (FAMM); Human Rights Caucus, Northeastern University School of Law; Interfaith Drug Policy Initiative; Iowa Coalition 4 Juvenile Justice; Juvenile Justice Initiative of Illinois; Juvenile Justice Project of Louisiana; Justice Policy Institute; Juvenile Law Center; Law Offices of Deborah LaBelle; Leonard Peltier Defense Offense Committee; Malcolm X Center for Self Determination; Meiklejohn Civil Liberties Institute; The Mental Health Association of the District of Columbia; Metro Atlanta Task Force for the Homeless; Midwest Coalition for Human Rights; National Center for Youth Law; National Juvenile Justice Network; National Prison Project of the ACLU; The National Social and Economic Rights Initiative (NESRI); Nebraska Coalition for the Fair Sentencing of Youth; The Pendulum Foundation; Public Interest Projects; Rainbow PUSH Coalition; Ute Ritz-Deutch, Ph.D.; Sex Abuse Treatment Alliance & CURE-SORT; South Bay Communities Alliance; Students for Sensible Drug Policy; Treaties Task Force of the Social Justice Center of Marin; United Church of Christ/Justice and Witness Ministries; Youth Justice Coalition; Youth RISE (Resources, Information, Support and Education)

## **I. EXECUTIVE SUMMARY**

1. The United States, in the administration of its criminal justice system, continues to fall short of meeting its international human rights obligations, in accordance with the Universal Declaration of Human Rights and other international instruments, including U.N. treaties that it has ratified. At issue are violations of rights protected by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; and, the International Convention to Eliminate All Forms of Racial Discrimination. The international human rights framework also provides special protections and assistance for children who are criminally involved. In order to bring its juvenile and criminal justice systems in line with its human rights obligations, the U.S. must, as a matter of urgency, address the following pervasive issues and practices, which violate or undermine applicable human rights norms and standards:

2. Sentencing:
  - Racially disparate sentencing
  - Juvenile life without parole sentencing
  - Collateral consequences of felony convictions
3. Conditions of Confinement
  - Violations of incarcerated women’s reproductive rights
  - Treatment of mentally ill prisoners
  - Confinement in supermax facilities
4. Prison Oversight
  - Barriers imposed by the Prison Litigation Reform Act

## **II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **A. Sentencing Practices**

#### **1. Racially Disparate Sentencing**

5. In violation of Articles 2 and 5(a) of the U.N. Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>2</sup> and Article 26 of the International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup>, the U.S. criminal justice system operates according to a double standard in its imposition of mandatory minimum sentences<sup>4</sup> for drug-related offenses. The inconsistent application of penalty statutes, racially biased sentencing schemes, and the failure to consider racial and ethnic impact of sentencing and corrections legislation has resulted in disparate sentencing based on race.

6. Mandatory minimum sentences have consistently been shown to have a disproportionately severe impact on African Americans. The United States Sentencing Commission, in a 15-year overview of the federal sentencing system since the full implementation of the Sentencing Reform Act of 1984, concluded that “mandatory penalty statutes are used inconsistently” and disproportionately affect African American

defendants.<sup>5</sup> As a result, African American drug defendants are 20 percent more likely to be sentenced to prison than white drug defendants.<sup>6</sup>

7. Due in large part to the racially disparate application of mandatory sentences, African Americans, on average, now serve almost as much time in federal prison for a drug offense (58.7 months) as whites do for a violent offense (61.7 months).<sup>7</sup> Between 1994 and 2003, the average time served by African Americans for a drug offense increased by 62 percent, compared with a 17 percent increase among white drug defendants.<sup>8</sup>

8. The broad range of mandatory minimum sentences for drug offenses includes substantially different penalty structures for crack and powder cocaine. For example, a defendant convicted of possessing five grams of crack cocaine – between 10 and 50 doses – receives a five-year mandatory sentence. To receive the same sentence for a powder cocaine violation, a defendant would have to possess 500 grams – between 2,500 and 5,000 doses. This is commonly referred to as the “100-to-1 sentencing disparity.”

9. A 2002 Sentencing Commission report found the average sentence for less than 25 grams of crack cocaine was 65 months, compared to 14 months for the same quantity range of powder cocaine.<sup>9</sup> Despite the fact that two-thirds of regular crack cocaine users in the U.S. are either white or Latino, 80 percent of those sentenced in federal court for a crack cocaine offense are African American.<sup>10</sup>

10. A bill pending in Congress will reduce the sentencing disparity between crack and powder cocaine, but it will still treat low-level offenses involving crack cocaine more harshly than powder offenses. While the legislative changes to the crack cocaine penalty statute would mark progress, they do not fully address the distinct racial disparity the law created in the federal criminal justice system.

## **2. Juvenile Life Without Parole Sentencing**

11. In the U.S., there are more than 2500 people serving life without the possibility of parole sentences for crimes committed before they turned 18.<sup>11</sup> This is the harshest punishment imposed on young people in the United States, as the U.S. Supreme Court ruled it unconstitutional to execute youthful offenders in 2005. The U.S. is the only nation in the world known to impose life without the possibility of parole – an irrevocable and final judgment – on people under age 18.<sup>12</sup>

12. Sentencing youthful offenders to life in prison without the possibility of parole violates or drastically undermines at least three international treaties to which the U.S. is a party: the ICCPR; the CERD; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>13</sup> The international committees responsible for monitoring compliance with these treaties have criticized the U.S. for its continued use of juvenile life without parole as a form of punishment.<sup>14</sup>

13. Juvenile life without parole sentencing violates the rights and special protections given to children under the international human rights framework. Specifically, life without parole sentences for those who commit their crimes before the age of 18 is a prohibition that is universally applied outside of the U.S.<sup>15</sup> Article 37 of the United Nations Convention on the Rights of the Child (CRC),<sup>16</sup> which only the United States and Somalia have not ratified, explicitly prohibits life without parole sentences for children. The ICCPR, at Articles 10.3 and 14.4, requires that youthful offenders be treated in accordance with their age and the desirability of promoting their rehabilitation.

14. The imposition of life without parole sentences on young people is especially cruel because children are different from adults. Juvenile justice is founded on the majority view that children, even those convicted of grave crimes, deserve the opportunity for second chances. Behavioral research confirms what is recognized by international, federal, and state laws: children do not have adult levels of judgment, impulse control, or ability to assess risks. There is widespread agreement among child development researchers that young people who commit crimes are more likely to reform their behavior and have a better chance at rehabilitation than adults.<sup>17</sup> The Supreme Court agrees - in *Roper v. Simmons* the Court explained, "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."<sup>18</sup> Youth deserve meaningful and periodic reviews of their life sentences, to ensure that those who can prove that they have reformed are given an opportunity to re-enter society.

### **3. Collateral Consequences of Felony Convictions**

15. In violation of the CERD Articles 3 and 5(e)(iii), which guarantee the right to social services, housing, and employment without racial discrimination in purpose *or effect*, the United States law excludes people convicted of felony drug offenses from economic aid programs, including the Supplemental Nutritional Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and housing assistance programs. Denying these critical assistance programs harms the 700,000 people who leave prison every year by creating obstacles to successful reintegration into communities after incarceration and complicates family reunification. A disparate rate of incarceration for racial and ethnic minorities translates in to significant racial and ethnic disparities among those impacted by the collateral consequences of felony convictions.

16. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 permitted the denial of food stamp and TANF eligibility of ex-drug offenders. By 2005, most states (35) had enacted laws that modified the ineligibility of drug offenders to receive TANF or SNAP.<sup>19</sup> However, many states continue to fully enact these bans. Of the individuals convicted of a drug-related crime and released from prison in states with SNAP and TANF bans, about one-fourth in 2001 were parents who could have been eligible for food stamps.<sup>20</sup> In 2003, according to the HIRE Network, it was estimated that 92,000 women were ineligible to receive welfare benefits due to this law, 48 percent of whom are African American or Latina. The United States Government Accountability Office noted in a 2005 report that female ex-offenders are more likely to experience the

negative impact of the food stamps bans as they are almost twice as likely to live with their minor children and have low incomes—elements which would make them eligible had they not been convicted of a drug conviction.<sup>21</sup>

17. The United States Housing Act of 1937 and the 1998 amendment to it, the Quality Housing and Work Responsibility Act, currently allow for a Public Housing Authority (PHA) to terminate the lease of a tenant based on a drug conviction. According to current PHA policy, tenants who live with a person convicted of a drug crime, who may or may not be a tenant, can be evicted, even if he or she had no foresight or ability to control the occupant's current or past behavior.<sup>22</sup> This of course has serious repercussions for the children or dependants, spouses, and even parents of individuals previously convicted for using or selling drugs. Instead of helping needy families, this policy leaves families without a home and separates them.

18. Due to the racial disparities in law enforcement and criminal justice practices, the number of those exposed to collateral consequences is racially disparate, with African Americans bearing the brunt of the policies. Federal policies should not discriminate against former drug users, families of current drug users, or individuals who are trying to reenter back into society. These policies impose unfair restrictions on individuals whose only crime may be possession and creates a severe barrier for people who are struggling with drug problems to regain and maintain control in their lives and keep families together. By rendering people with drug problems hungry and homeless, the United States exacerbates, not ameliorates, the problems associated with drug use and misuse and our criminal justice system.

## **B. Conditions of Confinement**

### **1. Violations of Incarcerated Women's Reproductive Rights**

19. As of December 31, 2008, 114,852 women were incarcerated in U.S. federal and state prisons.<sup>23</sup> Two-thirds of women in state prisons are incarcerated for non-violent crimes – crimes that frequently arise out of drug addiction and poverty such as drug sales, larceny, and fraud.<sup>24</sup> Women of color are imprisoned at alarmingly disproportionate rates: two-thirds of women held in local jails and state and federal prisons are women of color.<sup>25</sup> And the majority of incarcerated women are already mothers to, and the sole support and caregivers of, young children.<sup>26</sup>

20. The forced, coerced, and uninformed sterilization of women of color is regularly practiced in California state women's prisons. Longitudinal data gathered from California's women's prisons since 2007 has found aggressive, medically unnecessary sterilization primarily of women of color, including nonconsensual tubal ligation after birth and coerced partial and complete hysterectomies and oophorectomies.<sup>27</sup> These findings indicate that the California women's prison system is also destroying people's reproductive capacity through abysmal baseline gynecologic care leading to infertility and imprisonment throughout one's reproductive years due to mandatory minimum and life without parole sentencing trends.

21. A forthcoming report by Justice Now also details the degrading treatment of pregnant, birthing and post-partum people in California women's prisons, including verbal and physical abuse, substandard medical care, poor diet, high risk of maternal complications and death, obstruction of breastfeeding, and the shackling of pregnant women in transport to the hospital. Finally, this report documents an alarming rate of women in prison who, due to prison regulations and domestic law, are forced to terminate their parental rights over their children and give them up to family members, child protection services, or to the foster care system.

22. These practices are in violation of domestic and international law, specifically Articles 2, 7, 17, and 23 of the ICCPR, Articles 5(e)(iv) of the CERD, and Article 1 of the CAT. These articles span the right to freedom from discrimination based on status, equality before the law, the right to privacy, the right to family, the right to freedom from racial discrimination in health care, and the right to freedom from torture, other cruel, inhuman or degrading treatment. These abuses are also violations of Articles 12 and 17 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the rights to freedom from discrimination in health care and family relations<sup>28</sup>, and Article 12 General Comment 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to the highest attainable standard of health.<sup>29</sup>

## **2. Treatment of Mentally Ill Prisoners**

23. According to Human Rights Watch, "prisons have become the nation's primary mental health facilities."<sup>30</sup> According to the most recent report by the BJS, 56 percent of state prisoners, 45 percent of federal prisoners, and 64 percent of jail prisoners in the U.S. suffer from mental illness.<sup>31</sup> Between 16 percent and 21 percent of prisoners have a severe mental illness, defined as schizophrenia, bipolar disorder, or severe depression.<sup>32</sup> And experts estimate that people with mental retardation may constitute as much as ten percent of the prison population.<sup>33</sup>

24. Treatment for mental illness in prison is extremely limited and, inmates often do not receive treatment at all, despite reporting suicidal thoughts, self-injury, and paranoia.<sup>34</sup> When provided, it often consists of brief psychologist visits to cell-fronts or the provision of psychotropic medication.<sup>35</sup> The state of Georgia, for example, recently reported that it had "reduced psychiatrist and psychologist staffing by 30 percent with significant budget savings" despite "moderate to significant medical and legal risk."<sup>36</sup> However, the U.N. Human Rights Committee has stated unequivocally that humane treatment of prisoners "cannot be dependent on the resources available."<sup>37</sup>

25. Article 10 of the ICCPR creates an affirmative duty to provide rehabilitation for inmates by requiring that the "essential aim" of imprisonment is "reformation and social rehabilitation." This includes access to mental health services. However, only one-third of U.S. prisoners categorized as having a mental health condition are given any treatment while in prison.<sup>38</sup> Instead, prison officials frequently segregate mentally ill inmates including in solitary confinement,<sup>39</sup> on the basis that their mental illness prevents them from conforming to prison rules or leads them to act out.<sup>40</sup> A federal court determined

that half of the mentally ill inmates in one state were living in the segregation units of their prisons.<sup>41</sup> Inmates with serious mental illnesses are often haphazardly released into the community without having received needed treatment, making them likely to recidivate.<sup>42</sup> Such practices effectively penalize the mentally ill for their illness, in violation of the Convention on the Rights of Persons with Disabilities (CRPD), to which the U.S. became a signatory in 2009.<sup>43</sup>

### 3. Confinement in Super-Maximum Security (Supermax) Prisons

26. The use of supermax prisons, sometimes referred to as prisons within prisons, is a growing trend in the U.S. Currently, there are approximately 20,000 inmates in 57 supermax prisons in 40 states.<sup>44</sup> In these facilities, prisoners serve lengthy terms in conditions that amount to solitary confinement. Prisoners are kept in cells that generally measure 60 to 80 square feet for 23 hours per day; exercise and recreation time is spent in another small cell or outdoor cage; books and other materials are severely restricted; and, prisoners' day-to-day interpersonal contact is limited to prison officials.<sup>45</sup>

27. Because supermax facilities are intended to house inmates who are viewed as the most dangerous in the prison system,<sup>46</sup> many prisoners in these facilities are held in solitary confinement indefinitely. For example, one-third of the inmates at the Tamms Correctional Center in Illinois have been incarcerated there since it opened in 1998.<sup>47</sup> Lifetime confinement to supermax facilities is an increasing concern as the U.S. engages in criminal prosecution of terrorist suspects who are housed almost exclusively in supermax facilities.<sup>48</sup>

28. Research has repeatedly shown that the use of solitary confinement causes profound psychological effects, including hallucinations, irrational rage, suicidal thoughts and behavior, and loss of self-control.<sup>49</sup> A U.S. court has concluded that supermax conditions “may well hover on the edge of what is humanly tolerable for those with normal resilience, *particularly when endured for extended periods of time.*”<sup>50</sup> Moreover, the Special Rapporteur on Torture and the United Nations Human Rights Committee have criticized the excessively harsh conditions in some U.S. supermax facilities, observing that solitary confinement may amount to torture or other ill treatment.<sup>51</sup>

29. Although legal reform has improved the process by which prisoners are assigned to supermax facilities, prison officials maintain significant discretion in housing assignments of prisoners.<sup>52</sup> Assignments are frequently made based on subjective judgments regarding dangerousness<sup>53</sup> that frequently involve a determination of whether the inmate is a member of a gang, resulting in the disproportionate classification of African-American and Latino inmates to supermax units.<sup>54</sup> Such practices violate the CERD, including Articles 2.1(c) and 5(a). In addition, the creation of new supermax units leads to “net widening,” in which additional inmates are deliberately deemed to meet the requirements for supermax classification when more supermax beds become available.<sup>55</sup> Moreover, assignment to supermax facilities is frequently used to protect vulnerable inmates, who may benefit from greater protection but who are needlessly penalized by the isolation and restricted movement.<sup>56</sup>

## **C. Prison Oversight**

### **1. Barriers Imposed by the Prison Litigation Reform Act (PLRA)**

30. The Prison Litigation Reform Act of 1995<sup>57</sup> (PLRA) created a separate and unequal civil justice system for prisoners in the United States. Although the stated purpose of the PLRA was to curtail allegedly frivolous litigation by prisoners, in practice the law creates nearly insurmountable barriers for prisoners seeking to vindicate their civil and human rights in court and greatly undermines the crucial oversight role played by federal courts in addressing violations of constitutional and other federal rights in prisons, jails and youth detention facilities.

#### **a. The Physical Injury Requirement**

31. The PLRA's "physical injury" requirement prevents domestic prisoners, juveniles, and pre-trial detainees from obtaining money damages in federal court for rights violations that do not result in a physical injury, no matter how egregious. Even some forms of torture or cruel and demeaning treatment have been found to lack a "physical injury" for PLRA purposes.<sup>58</sup> The following are a few examples of cases in which prisoners have been denied relief because they had no "physical injury":

- Actions challenging the violation of prisoners' religious rights guaranteed by the U.S. Constitution and protected by Congress in the Religious Land Use and Institutionalized Persons Act;<sup>59</sup>
- An action challenging sexual assault including forcible sodomy;<sup>60</sup>
- Cases challenging a prisoner's false arrest and illegal detention,<sup>61</sup> and
- An action challenging placement in filthy cells and exposure to the deranged behavior of psychiatric patients.<sup>62</sup>

#### **b. The PLRA's Exhaustion Requirement**

32. The PLRA also requires courts to dismiss a prisoner's case if he or she has not completed all internal complaint procedures at his or her facility prior to filing suit. This provision of the PLRA is often referred to as the "exhaustion requirement."<sup>63</sup> On its face, encouraging correctional facilities to manage problems and improve conditions without court intervention is a sound idea. Unfortunately, in practice, this provision of the PLRA has done great damage to the ability of prisoners to seek protection and remedies for serious violations of their civil and other human rights.<sup>64</sup>

33. Arbitrary and burdensome grievance requirements and procedures prevent prisoners from seeking redress for serious rights violations. Deadlines are very short in many grievance systems, almost always a month or less, and often five days or less.<sup>65</sup> Nonetheless, these deadlines operate as statutes of limitations for federal civil rights claims. Moreover, a typical system does not have just one deadline that could lead to forfeiture of a claim; it may have three or more such deadlines as prisoners must appeal to all levels of the grievance system.



34. As a general matter, prisoners have very low rates of literacy and education.<sup>66</sup> Moreover, the number of severely mentally ill and cognitively impaired persons in prison is staggering.<sup>67</sup> For these individuals, the convoluted requirements of most grievance systems and internal complaint processes are virtually impossible to navigate. Thus, constitutional claims for many of the most vulnerable are lost irrevocably under PLRA because of technical misunderstandings rather than lack of legal merit.

35. Finally, prisoners who do file grievances often face threats and retaliation. Under some grievance regimes, prisoners are even required to obtain grievance forms from or file their grievances with the same officials who have abused them or violated their rights. Many prisoners are simply too afraid to file grievances for fear of the consequences—and with good reason.<sup>68</sup> All these factors bar prisoners' access to the courts and undermine remedies for serious rights violations.

#### **b. Application of the PLRA to Juveniles**

36. Although juvenile detainees are far less likely than adult prisoners to file lawsuits, they must nevertheless comply with all PLRA requirements.<sup>69</sup> Application of the PLRA to incarcerated youth is especially problematic because youth are exceptionally vulnerable to abuse in institutions and often lack the understanding and developmental capacity to complain effectively. Evidence of widespread staff sexual and physical abuse and harassment of youth in custody has been an issue in states from New York to Hawaii.<sup>70</sup> In the Texas juvenile system, boys and girls were sexually and physically abused by staff, and faced retaliation, including being thrown into an isolation cell in shackles, if they complained.<sup>71</sup>

#### **c. The PLRA Violates Human Rights Protections**

37. The PLRA's restrictions on access to the courts for prisoners undermine the core international human rights principle of equality of all persons before the law embodied in the ICCPR.<sup>72</sup> Indeed, the ICCPR specifically requires that "[a]ll persons shall be equal before the courts and tribunals."<sup>73</sup> The PLRA further undermines the core human rights principle that persons whose rights are violated are entitled to an effective remedy.<sup>74</sup> These principles are embodied in the ICCPR and the Convention Against Torture.<sup>75</sup> The CAT Committee clearly recognized that the PLRA undermines effective remedies for prisoners in its most recent review of U.S. compliance with the CAT in 2006, when it called for repeal of the PLRA's physical injury requirement.<sup>76</sup> CERD similarly requires adequate redress for victims of racial discrimination.<sup>77</sup> In addition, the PLRA's application to children disregards international human rights principles embodied in the ICCPR<sup>78</sup> and the CRC<sup>79</sup> that recognize the special needs and status of children and the obligation to provide incarcerated youth with age-appropriate treatment.

38. The barriers posed by the PLRA to prisoners seeking relief through the courts underscore the urgent need for the U.S. to participate in two mechanisms already in place that would significantly enhance external oversight of detention facilities. In particular, the U.S. has not signed the Optional Protocol to the Convention Against Torture

(OPCAT)<sup>80</sup>, and refuses to recognize Article 22 of the CAT. The additional oversight provided through the OPCAT is urgently needed in the U.S. in order to prevent a range of human rights abuses in detention, including those discussed in this report.<sup>81</sup> The U.S. should also recognize the competence of the CAT Committee to consider communications from or on behalf of detainees under Article 22 of the CAT, once they have exhausted available avenues of relief within the U.S. legal system. Permitting Article 22 communications - which would require the U.S. to report in writing to the CAT Committee the steps it has taken in response to individual communications - would help address abuse that often remains unresolved by the U.S. legal system.

### **III. Concluding Recommendations**

#### **A. General Recommendations**

1. Comply fully with international treaty obligations under the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of Persons with Disabilities (CRPD), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
2. Ratify the following international instruments: the Optional Protocol to the Convention Against Torture (OPCAT); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and, the International Convention on the Rights of the Child (CRC);
3. Permit Article 22 communications with the Committee Against Torture; and,
4. Enact the *Prison Abuse Remedies Act of 2009*, H.R. 4335 (PARA).<sup>82</sup>

#### **B. Issue-Specific Recommendations**

##### **1. Sentencing Practices**

###### **Racially Disparate Sentencing**

5. End all mandatory sentencing practices.
6. Amend penalties for crack cocaine to be equivalent with those for powder cocaine, and eliminate similar egregious sentencing disparities.
7. Mandate the preparation of racial/ethnic impact statements to be submitted in conjunction with proposed sentencing and corrections legislation.

###### **Juvenile Life Without Parole Sentencing**

8. Abolish the practice of sentencing people under age 18 to life in prison without the possibility of parole.
9. Provide meaningful review of the sentences of people currently serving life without parole for crimes committed under age 18 after they have served 10 years, and every three years thereafter, to determine whether they have been rehabilitated and may return to the community.

### **Collateral Consequences of Felony Convictions**

10. End implementation of all practices of collateral consequences for drug convictions.
11. Reinstate benefits for individuals with prior drug convictions.

## **2. Conditions of Confinement**

### **Violations of Incarcerated Women's Reproductive Rights**

12. Cease performing sterilizations in the prison setting and comply with domestic and international law prohibiting the use of federal funds for sterilization in the incarceration settings.
13. End the practice of shackling of incarcerated pregnant women, including in transport to and from the hospital setting.

### **Treatment of Mentally Ill Prisoners**

14. Develop and implement quality screening methodology to identify mental illness at prison intake in order to provide treatment as needed.
15. Define minimum standards for mental health treatment of those inmates.

### **Confinement in Super-Maximum Security (Supermax) Prisons**

16. Cease the placement of vulnerable inmates, including the mentally ill, in solitary confinement conditions where less punitive alternatives are available.
17. House prisoners in the least restrictive unit possible, in order to cease the expansion of supermax confinement.

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<sup>1</sup> *The Campaign for the Fair Sentencing of Youth* is dedicated to ending the practice of sentencing youth to prison for the rest of their lives without hope of release. *The Drug Policy Alliance Network (DPA Network)* is the nation's leading organization promoting policy alternatives to the drug war that are grounded in science, compassion, health and human rights. *Justice Now* works with women prisoners and local communities to build a safe, compassionate world without prisons. *The Sentencing Project* is a national organization working for a fair and effective criminal justice system by promoting reforms in sentencing law and practice, and alternatives to incarceration.

2 CERD, adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 3, 1969, ratified by the United States on October 21, 1994.

3 ICCPR, adopted December 16, 1966, G.A. Res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992.

<sup>4</sup> Mandatory minimum sentences are statutorily prescribed terms of imprisonment that automatically attach upon conviction of certain criminal conduct, usually pertaining to drug or firearm offenses. Absent very narrow criteria for relief, a sentencing judge is powerless to impose a term of imprisonment below the mandatory minimum. Sentences are disproportionately severe relative to the conduct for which a person has been convicted because mandatory minimum sentences for drug offenses rely solely upon the weight of the substance as a proxy for the defendant's role and culpability.

<sup>5</sup> United States Sentencing Commission, *Fifteen Years of Guideline Sentencing*, 2003, at 89.

<sup>6</sup> *Id.* at 122.

<sup>7</sup> BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2003, NCJ 210299, October 2005, at 112.

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<sup>8</sup> *Id.*; BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 1994, NCJ 163063, April 1998, at 85.

<sup>9</sup> United States Department of Justice, *Federal Cocaine Offenses: An Analysis of Crack and Powder Penalties*, March 2002.

<sup>10</sup> Substance Abuse and Mental Health Services Administration, *Results from the 2005 National Survey on Drug Use and Health: Detailed Table J*, 2006, at Table 1.43a; and, United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy*, May 2007, at 15.

<sup>11</sup> HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR YOUTH OFFENDERS IN THE UNITED STATES IN 2008 2 (2008), <http://www.hrw.org/sites/default/files/reports/us1005execsum.pdf>.

<sup>12</sup> Connie de la Vega & Michelle Leighton, *Sentencing our Children to Die in Prison: Global Law & Practice*, University of San Francisco Law Review 42.4 (2008): 938-1044. Available at: [http://works.bepress.com/connie\\_de\\_la\\_vega/1](http://works.bepress.com/connie_de_la_vega/1).

<sup>13</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1983), entered into force June 26, 1987, ratified by the United States on October 21, 1994.

<sup>14</sup> Brief of Amnesty Int'l, et al. as Amici Curiae Supporting Petitioner at 1-2, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) and *Sullivan v. Florida*, 129 S.Ct. 2157 (2009) (No. 08-7621), at 24-30.

<sup>15</sup> *Id.*

<sup>16</sup> CRC, adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990.

<sup>17</sup> Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741,742 (2000).

<sup>18</sup> See *Roper v. Simmons*, 543 U.S. 551, 569–73 (2005).

<sup>19</sup> United States Government Accountability Office. (Sep 2005). *Drug Offenders: Various factors may limit the impacts of federal laws that provide for denial of selected benefits*. Retrieved from <http://www.gao.gov/highlights/d05238high.pdf> , 17 September 2008.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Department Of Housing And Urban Development Y. Rucker (00-1770) 535 U.S. 125 (2002)

<sup>23</sup> BUREAU OF JUSTICE STAT., U.S. DEP'T OF JUSTICE, PRISONERS IN 2008 (2009), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> Beth E. Richie, *Challenges Incarcerated Women Face as They Return to Their Communities: Findings from Life History Interviews*, 47 CRIME & DELINQ. 368, 368–89 (2001).

<sup>26</sup> *Id.*

<sup>27</sup> Justice Now Interviews with people imprisoned at CCWF (Jul. 2004, Jun. 2006, Sep. 2006, and Jun. 2007). Anecdotal evidence further supports the data. For example, a woman imprisoned at CCWF in a July 17, 2008 interview observed, “I finally got sent to [the hospital] to get a tonsillectomy, and I met five women from [the prison] getting hysterectomies within a 24 hour period. There’s a joke going around that [the hospital] is selling women’s uteruses.”

<sup>28</sup> CEDAW, articles 12 and 17, Dec. 18, 1979, 1249 U.N.T.S. 513.

<sup>29</sup> Committee on Economic, Social, and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health, ¶ 8, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR, General Comment 14].

<sup>30</sup> Human Rights Watch, ILL-EQUIPPED: US PRISONS AND OFFENDERS WITH MENTAL ILLNESS, October 13, 2003, <http://www.hrw.org/reports/2003/usa1003>.

<sup>31</sup> James, Doris J. & Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, Bureau of Justice Statistics, Bureau of Justice Statistics, December 14, 2006.

<sup>32</sup> National Commission on Correctional Health Care, PREVALENCE OF COMMUNICABLE DISEASE, CHRONIC DISEASE, AND MENTAL ILLNESS AMONG THE INMATE POPULATION, INMATES: A REPORT TO CONGRESS (2002), <http://www.ncchc.org/stbr/volume1/chapter3.pdf>.

<sup>33</sup> Leigh Ann Davis, *People with Mental Retardation in the Criminal Justice System*, available at [www.thearc.org/faqs/crimqa.html](http://www.thearc.org/faqs/crimqa.html).

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- <sup>34</sup> *Hadix v. Caruso*, 4:92-CV-110, 2006 WL 3275865 (W.D. Mich. Nov. 13, 2006).
- <sup>35</sup> See Human Rights Watch, MENTAL HEALTH, HUMAN RIGHTS, AND U.S. PRISONS (September 22, 2009), [http://www.hrw.org/en/news/2009/09/22/mental-illness-human-rights-and-us-prisons#\\_Prisons\\_and\\_Prisoners](http://www.hrw.org/en/news/2009/09/22/mental-illness-human-rights-and-us-prisons#_Prisons_and_Prisoners); Michael Rezendes, *UMass Finds Gap Between Studies, Real Life*, BOSTON GLOBE, Dec. 10, 2007.
- <sup>36</sup> Georgia Department of Corrections, Office of Health Services, GEORGIA DEPARTMENT OF CORRECTIONS, HEALTH SERVICES OVERVIEW FOR 2002, <http://www.dcor.state.ga.us/pdf/hsovrFY03.pdf>.
- <sup>37</sup> Human Rights Committee, General Comment 21, article 10 (Forty-fourth session, 1992), replaces general comment 9 concerning humane treatment of persons deprived of liberty, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994).
- <sup>38</sup> Doris J. James & Lauren E. Glaze, U.S. DEPT. OF JUST. OFFICE OF JUST PROGRAMS, SPECIAL REPORT: MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 (Dec. 14, 2006).
- <sup>39</sup> Thomas White, National Commission on Correctional Health Care, Letter to Gary Maynard, Director of the Iowa Department of Corrections, February 13, 2005, <http://www.doc.state.ia.us/publications/DrWhitesFindings.doc>.
- <sup>40</sup> See The Commission On Safety and Abuse in American Prisons, CONFRONTING CONFINEMENT, June 2006.
- <sup>41</sup> *Goff v. Harper*, Findings of Fact and Conclusions of Law, No. 4-90-CV-50365 (S.D. Iowa, June 5, 1997).
- <sup>42</sup> See Fred Cohen, THE MENTALLY DISORDERED INMATE AND THE LAW: 2005 TRENDS AND DEVELOPMENTS UPDATE 7.2 (2005) (*describing Brad H. v. City of New York*, 712 N.Y.S.2d 336, 345 (2000)).
- <sup>43</sup> General Assembly, CRPD, adopted January 24, 2007, A/RES/61/106, entered into force May 3, 2008, signed by the United States on July 30, 2009, <http://www.unhcr.org/refworld/docid/45f973632.html>.
- <sup>44</sup> Daniel P Mears and Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 2006 JUSTICE QUARTERLY 232, 232-33.
- <sup>45</sup> Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 2003 Crime & Delinquency 124, 127.
- <sup>46</sup> Daniel P Mears and Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 2006 JUSTICE QUARTERLY 232.
- <sup>47</sup> Amnesty International, *Conditions Must be Improved at Tamms Correctional Facility in Illinois*, Mar. 25, 2009.
- <sup>48</sup> Carrie Johnson and Walter Pincus, *Supermax Prisons in U.S. Already Hold International Terrorists*, THE WASHINGTON POST, May 22, 2009.
- <sup>49</sup> For a review of research studies, *see id.* at 148.
- <sup>50</sup> *Madrid v. Gomez*, 889 F. Supp. 1146, 1280 (N.D. Cal. 1995) (emphasis added).
- <sup>51</sup> INTERIM REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, July 28, 2008, 10-11; *Estrella v. Uruguay*, Comm. No. 74/1980, U.N. GAOR Hum. Rts, Mar. 29, 1993.
- <sup>52</sup> *Wilkinson v. Austin*, 504 U.S. 209 (2005); Leena Kurki and Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 2001 CRIME AND JUSTICE: A REVIEW OF RESEARCH, 385-424.
- <sup>53</sup> CONFRONTING CONFINEMENT, *supra* note 44 at 56.
- <sup>54</sup> Terry Kupers, PRISON MADNESS: THE MENTAL HEALTH CRISIS BEHIND BARS AND WHAT WE MUST DO ABOUT IT 237 (1999).
- <sup>55</sup> See Kurki and Morris, *supra* note 9; Jerry R. DeMaio, *If You Build It, They Will Come: The Threat of Overclassification In Wisconsin's Supermax Prison*, 2001 WIS. L. REV. 207, 219-20.
- <sup>56</sup> CONFRONTING CONFINEMENT, *supra* note 44 at 56.
- <sup>57</sup> Pub. L. 104-134 (Apr. 26, 1996).
- <sup>58</sup> The provision reads as follows: "No Federal civil action may be brought by a prisoner confined in a jail, prison or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e).
- <sup>59</sup> *Searles v. Van Bebber*, 251 F.3d 869 (10th Cir. 2001) (no damages for violation of religious rights); *Allah v. Al-Hafeez*, 226 F.3d 247 (3d Cir. 2000) (damages are not available for violation of religious rights).

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<sup>60</sup> See *Hancock v. Payne*, 2006 WL 21751 at \*1, 3 (S.D. Miss. Jan. 4, 2006) (complaints that officers forcibly sodomized prisoners barred by provision); *Smith v. Shady*, 2006 WL 314514 at \*2 (M.D. Pa. Feb. 3, 2006) (complaint that correctional officer grabbed penis barred by provision).

<sup>61</sup> *Young v. Knight*, 113 F.3d 1248, 1997 WL 297692 (10th Cir. June 5, 1997); see also *Colby v. Sarpy Co.*, 2006 WL 519396 (D. Neb. Mar. 1, 2006) (dismissal of a claim of wrongful confinement for four months). Other examples include: *Luong v. Hatt*, 979 F. Supp. 481 (N.D. Tex. 1997) (involving claim that prison officials failed to protect prisoner from repeated beatings that resulted in cuts and bruises), and *Weatherspoon v. Valdez*, 2005 WL 1201118 (N.D. Tex. May 17, 2005) (claim that prison officials deliberately caused prisoner to experience pain and depression by denying him psychiatric medications).

<sup>62</sup> *Harper v. Showers*, 174 F.3d 716 (5th Cir. 1999).

<sup>63</sup> 42 U.S.C. § 1997e(a).

<sup>64</sup> See Giovanna E. Shay & Joanna Kalb, *More Stories of Jurisdiction Stripping and Executive Power: The Supreme Court's Recent Prison Litigation Reform Act (PLRA[IS THERE A WORD MISSING HERE?])*, 29 *Cardozo Law Review* 291, 321 (2007) (reporting that in cases in which an exhaustion issue was raised after the Supreme Court decision in *Woodford v. Ngo*, 548 U.S. 81, 126 S. Ct. 2378 (2006), all of the prisoner's claims survived in fewer than 15 percent of reported cases).

<sup>65</sup> See *Woodford v. Ngo*, *supra* note 68 at 2402 (Stevens, J., dissenting) (noting that most grievance systems have deadlines of 15 days or less, and that the grievance systems of nine states have deadlines of between two and five days).

<sup>66</sup> The National Center for Education Statistics reported in 1994 that seven out of ten prisoners perform at the lowest literacy levels. Karl O. Haigler et al., U.S. Dept. of Educ., *Literacy Behind Prison Walls: Profiles of the Prison Population from the National Adult Literacy Survey* xviii, 17-19 (2003), available at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=94102>.

<sup>67</sup> See discussion at pages 5-6 for further information.

<sup>68</sup> See, e.g., *Pearson v. Welborn*, 471 F.3d 732, 745 (7th Cir. 2006) (affirming jury verdict that prisoner was sent to a "supermax" facility for a year in retaliation for First Amendment-protected complaints about conditions); *Dannenberg v. Valadez*, 338 F.3d 1070, 1071-72 (9th Cir. 2003) (noting jury verdict for plaintiff on claim of retaliation for assisting another prisoner with litigation); *Walker v. Bain*, 257 F.3d 660, 663-64 (6th Cir. 2001) (noting jury verdict for plaintiff whose legal papers were confiscated in retaliation for filing grievances), cert. denied, 535 U.S. 1095 (2002).

<sup>69</sup> See 18 U.S.C. § 3626; 42 U.S.C. § 1997e; 28 U.S.C. § 1915; and 28 U.S.C. § 1915A. [MORE SPECIFIC CITATIONS WOULD BE GOOD]

<sup>70</sup> See, e.g., American Civil Liberties Union of Hawai'i, "Hawai'i Youth Correctional Facility to Pay Over Half a Million Dollars for 'Relentless Campaign of Harassment' of Gay and Transgender Youth" (June 15, 2006) (threats of violence and physical and sexual assault), available at <http://www.acluhawaii.org/news.php?id=24>; Letter from Deval Patrick, Civil Rights Division of U.S. Department of Justice to Louisiana Governor Mike Foster, July 15, 1996, available at <http://www.usdoj.gov/crt/split/documents/lajuvfind3.htm> (describing physical and sexual assaults on youth held in secure juvenile facilities in Louisiana); American Civil Liberties Union & Human Rights Watch, *Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls* 44-56, 63-71 (2006).

<sup>71</sup> See Gregg Jones, et al., *TYC Facilities Ruled by Fear*, *Dallas Morning News*, March 18, 2007, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnes/stories/031807dnprotycretalii>.

<sup>72</sup> The ICCPR, at Article 26, provides that :

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>73</sup> *Id.* at art. 14, sec. 1.

<sup>74</sup> *Id.* at art. 2, sec. 3.

<sup>75</sup> CAT, art. 14, sec. 1.

<sup>76</sup> Committee Against Torture, *supra* note 24, ¶29.

<sup>77</sup> CERD, art. 6.

<sup>78</sup> ICCPR, art. 24, sec. 1; art. 10, sec. 3.

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<sup>79</sup> CRC, art. 37(c).

<sup>80</sup> OPCAT, G.A. Res. 57/199, U.N. Doc. A/RES/57/199 (Dec. 18, 2002). *See also* Just Detention International, Fact Sheet, U.N. Optional Protocol to the Convention Against Torture (OPCAT) (2009).

<sup>81</sup> Similarly, Rule 55 of the Standard Minimum Rules for the Treatment of Prisoners calls for regular inspections of detention facilities by qualified inspectors appointed by a competent authority.

<sup>82</sup> PARA reinstates the ability of prisoners to challenge conditions of confinement that violate their constitutional rights by reforming the PLRA. In particular, PARA addresses the unintended consequences of the PLRA by repealing the “physical injury” requirement; exempting juveniles under age eighteen (18) from the burdens created by the PLRA; and amending the “exhaustion requirement” to allow prison officials to deal administratively with problems in the first instance, but without the ability to block legitimate claims from reaching the federal courts.