



**Response to the Call for Input  
for the  
Fourth Annual Report of the International Independent Expert Mechanism to Advance  
Racial Justice and Equality in Law Enforcement  
On systemic racism against Africans and people of African descent in the criminal justice  
system**

**Submitted by The Advocates for Human Rights**  
a non-governmental organization in special consultative status with ECOSOC since 1996

**Witness to Innocence**  
and  
**The World Coalition Against the Death Penalty**

for the 60th Session of the Human Rights Council

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**Witness to Innocence** (WTI) is the only national organization in the United States composed of and led by exonerated death row survivors and their family members. The mission of WTI is to abolish the death penalty by empowering exonerated death row survivors and their loved ones to become effective leaders in the abolition movement. WTI actively challenges political leaders and the public to grapple with the reality of a fatally flawed criminal justice system that sends innocent people to death row. WTI also supports death row survivors and their loved ones as they confront the challenges of life after exoneration, providing social work and peer support services. WTI was founded 2003 by Sister Helen Prejean, internationally renowned anti-death penalty activist, author, and Nobel Prize nominee, and Ray Krone, the 100th person exonerated from death row in the United States. WTI began its program operation under the administrative and fiscal sponsorship of Sister Helen Prejean's Moratorium Campaign Education Fund. Two years later WTI moved to Philadelphia, Pennsylvania and launched their first visible national organizing campaign in September 2005. WTI has since become one of the most powerful and unique anti-death penalty

organizations in the United States. WTI exoneree members have played an essential role in the abolition movement by sharing their stories with millions of people around the country and around the world. WTI has educated tens of thousands of Americans through speaking events at colleges, universities, professional associations, academic conferences, law schools, faith communities, K-12 schools, and civic groups. WTI has testified before state legislatures, met with government officials and world leaders, and reached tens of millions of people worldwide through the media. WTI has shifted public opinion on the death penalty, playing an integral role in successful repeal campaigns in states across the country.

**The World Coalition Against the Death Penalty** is a membership-based global network committed to strengthening the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition. The World Coalition Against the Death Penalty is committed to making visible gender and intersectional discrimination at work in capital punishment as well as to strengthen the protection of women and gender and sexual minorities facing the death penalty.

## EXECUTIVE SUMMARY

1. This response to the Expert Mechanism’s Call for Input highlights systemic racism against Africans and people of African descent in the United States. It presents the results of research and studies regarding discrimination against African Americans<sup>1</sup> in the context of traffic and pedestrian stops and arrests, as well as discrimination during the pre-trial and trial phases of the criminal legal process, including in death penalty cases. It also highlights racial disparities in wrongful convictions and exonerations, and concludes with a discussion of the intersection of gender and race in the criminal legal system, sharing the results of recently published research regarding intersectional discrimination in capital cases.

### I. Discrimination during traffic and pedestrian stops

2. Stanford University’s review of approximately 100 million traffic stops between 2011 and 2018 in the United States revealed that state and local police agencies are more likely to stop African American drivers than white drivers.<sup>2</sup> After sunset, however, when it is harder for an officer to discern a driver’s racial identity, officers stop African American drivers less often.<sup>3</sup>
3. Additionally, a study in Kansas City found that investigatory stops—often used as a pretext to check for a warrant or a valid license—differed significantly by race, with officers stopping African American drivers more frequently than white drivers.<sup>4</sup>
4. These stops often lead to racially disparate searches. Police officers are less likely to find illegal drugs, weapons, or other forms of contraband in the cars of African American drivers,<sup>5</sup> but they searched African American drivers 1.7 times as often as white drivers.<sup>6</sup> A California study found that African American Californians are twice as likely to be searched as white Californians, despite the fact that searches of African Americans are less likely to yield contraband and evidence of a crime.<sup>7</sup>
5. Pedestrian stop-and-searches reveal similar racial disparities. In 2022, the Crime and Justice Institute conducted a study of Milwaukee’s stop-and-frisk policies, finding that

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<sup>1</sup> Many studies in the United States regarding Africans and people of African descent use the term “African American” as a racial or ethnic category. This category may include people of African descent who do not identify as African American. Rather than assume the broader interpretation of “African American” to include all persons of African descent, this report uses the term “African American” unless the original study uses different terminology.

<sup>2</sup> E. Pierson et al., (2020). A large-scale analysis of racial disparities in police stops across the United States. *Nature Human Behaviour*, 4(7), 736–745. <https://www.nature.com/articles/s41562-020-0858-1>.

<sup>3</sup> Grogger, J. & Ridgeway, G. (2006). Testing for racial profiling in traffic stops from behind a veil of darkness. *Journal of the American Statistical Association*. 101, 878–887. <https://doi.org/10.1198/016214506000000168>.

<sup>4</sup> Epp, C. R., Maynard-Moody, S., & Haider-Markel, D. P. (2014). *Pulled over: How police stops define race and citizenship*. University of Chicago Press. Available at [https://www.researchgate.net/publication/268207105\\_Pulled\\_Over\\_How\\_Police\\_Stops\\_Define\\_Race\\_and\\_Citizenship](https://www.researchgate.net/publication/268207105_Pulled_Over_How_Police_Stops_Define_Race_and_Citizenship).

<sup>5</sup> Harris, D. (2012). Hearing on “[Ending Racial Profiling in America](#),” [Testimony of David A. Harris](#). United States Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Human Rights; Pierson et al. (2020).

<sup>6</sup> Tapp, S. N., & Davis, E. J. (2022) [Contacts between police and the public, 2020](#). Bureau of Justice Statistics.

<sup>7</sup> Lofstrom, M., Hayes, J., Martin, B., & Premkumar, D. (2021, October). *Racial disparities in law enforcement stops* [Policy brief]. Public Policy Institute of California. <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>.

African American pedestrians were 4.5 times as likely to get stopped by police, 10.1 times as likely to be subjected to a field interview, and 2.6 times as likely to be frisked as white pedestrians.<sup>8</sup> A similar study analyzing 125,000 pedestrian stops in New York found that African Americans were stopped more frequently than white pedestrians, even after controlling for precinct variability and race-specific estimates of crime participation.<sup>9</sup>

## II. Discriminatory arrests

6. African Americans are arrested in the United States at disproportionately high rates. A 2023 study found that on average, when two offenders of different races are suspected of committing the same offense together against the same victim, African American suspects are significantly more likely to be arrested than their white counterparts, especially for suspected assault offenses.<sup>10</sup>
7. These discriminatory arrests contribute to severe racial disparities within the U.S. prison system. In general, across time periods, disproportionate arrest rates explain between 70% and 80% of African American overrepresentation in U.S. prisons.<sup>11</sup>

## III. Pre-trial and trial phases

8. Many of these disparate outcomes can be traced to official misconduct, driven by entrenched racial bias and the enduring legacy of systemic racism—factors that contribute to the disproportionate occurrence of official misconduct in cases involving African American defendants:
9. Official misconduct (including *Brady* violations,<sup>12</sup> witness tampering, and perjury by a state official) is more common in murder convictions that lead to wrongful convictions and subsequent exonerations of African American defendants than white defendants. 72% of

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<sup>8</sup> Crime and Justice Institute (2022). [City of Milwaukee settlement agreement: Analysis of 2022 traffic stops, field interviews, no-action encounters, and frisks](#); ACLU-DC & ACLU Analytics. (2020). [Racial disparities in stops by the DC Metropolitan Police Department: Review of five months of data](#); *Wisconsin State Journal*. (2022, May 12). ACLU, [Milwaukee police stop-and-frisk resolution efforts continue](#); ACLU Illinois. (2023). [Stop and frisk](#); Palmer, C., & Orso, A. (2023, March 17).

<sup>9</sup> Gelman, A., Fagan, J., & Kiss, A. (2007). An Analysis of the New York City Police Department’s “Stop-and-Frisk” Policy in the Context of Claims of Racial Bias. *Journal of the American Statistical Association*, 102(479), 813–823. <https://doi.org/10.1198/016214506000001040>. <https://www.tandfonline.com/doi/abs/10.1198/016214506000001040>.

<sup>10</sup> Lantz B, Wenger MR, Craig CJ. What If They Were White? The Differential Arrest Consequences of Victim Characteristics for Black and White Co-offenders. *Soc Probl*. 2023 May;70(2):297-320. doi: 10.1093/socpro/spab043. Epub 2021 Sep 8. PMID: 37408736; PMCID: PMC10321492. <https://pmc.ncbi.nlm.nih.gov/articles/PMC10321492/>

<sup>11</sup> Beck, A. J., & Blumstein, A. (2018). Racial disproportionality in U.S. State Prisons: Accounting for the effects of racial and ethnic differences in criminal involvement, arrests, sentencing, and time served. *Journal of Quantitative Criminology*, 34(3), 853–883. <https://doi.org/10.1007/s10940-017-9357-6>; Blumstein, A. (1993). Racial disproportionality of U.S. prison populations revisited. *University of Colorado Law Review*, 64, 743–760; Blumstein, A. (1982).

<sup>12</sup> *Brady v. Maryland*, 373 U.S. 83 (1963), is the U.S. Supreme Court case recognizing that the prosecution violates a defendant’s due process rights when the prosecution suppresses evidence favorable to the defendant, thereby recognizing that prosecutors have a duty to disclose exculpatory evidence. <https://supreme.justia.com/cases/federal/us/373/83/>.

all murder prosecutions that lead to exoneration include official misconduct.<sup>13</sup> In capital cases, official misconduct is significantly higher for exonerations of African Americans sentenced to death (85%), compared to their white counterparts (70%).<sup>14</sup>

10. Authorities engaged in witness tampering (including misleading a witness at lineup, threatening a witness, and suborning perjury) in 42% of murder exonerations involving African American defendants, compared with 25% of exonerations involving white defendants.<sup>15</sup>
11. Witness to Innocence provides two case studies illustrating official misconduct resulting in wrongful convictions and death sentences of Black men:
  - John Thompson spent 18 years in prison (14 in solitary confinement on death row) for crimes he did not commit. His conviction arose out of official suppression of evidence, and that misconduct came to light only after a prosecutor's deathbed confession that officials had intentionally withheld exonerating blood evidence. Thompson was exonerated after authorities issued a seventh warrant for his execution.<sup>16</sup>
  - Kwame Ajamu was wrongfully convicted and sentenced to death as a teenager. His conviction arose out of coerced eyewitness testimony of a 13-year-old boy and other police misconduct. Authorities ignored Ajamu's alibis and denied him access to an attorney until immediately before his arraignment. He spent 28 years in prison for a crime he did not commit.<sup>17</sup>
12. Coerced confessions are particularly common and often implicate African Americans. After a multiple homicide, police arrested and questioned 16-year-old Antonio Burnette and 22-year-old Raymond Jackson, both of whom were under the influence of drugs and alcohol at the time. They implicated two young African American men: Kendrick Scott and Justly Johnson, whom a jury subsequently convicted of first-degree murder. 18 years later, however, both were exonerated. Burnette testified during the exoneration proceedings that the police "whooped" him during his interrogation and that he feared authorities would charge him with murder if he did not say what they wanted to hear, and a cousin of Jackson's testified that Jackson had told her that he had lied because he had been afraid of the police and the prosecution.<sup>18</sup>
13. One study found that police used threats in 52% of tainted identification procedures that produced false identification of African American murder exonerees, compared with 11% of procedures yielding false identifications of white exonerees.<sup>19</sup> For example, a jury convicted Charles Wilhite of murder in 2010. The critical eyewitness testified that a

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<sup>13</sup> University of California Irvine Newkirk Center for Science and Society, University of Michigan Law School, & Michigan State University Law School. (2022). *Race and Wrongful Convictions in the United States*, 2022 (S. R. Gross, Ed.) p.13. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4245863](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4245863).

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Witness to Innocence, *John Thompson*, <https://www.witnesstoinnocence.org/single-post/john-thompson> (last visited Apr. 24, 2025).

<sup>17</sup> Witness to Innocence, *Kwame Ajamu*, <https://www.witnesstoinnocence.org/single-post/kwame-ajamu> (last visited Apr. 24, 2025).

<sup>18</sup> University of California Irvine Newkirk Center for Science and Society, University of Michigan Law School, & Michigan State University Law School. (2022). *Race and Wrongful Convictions in the United States*, 2022 (S. R. Gross, Ed.) p.13. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4245863](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4245863).

<sup>19</sup> *Id.* at 14.

detective repeatedly threatened to charge him as an accessory to murder if he didn't identify Wilhite, who was subsequently acquitted at retrial in 2013.<sup>20</sup>

14. Similarly, a Louisiana court exonerated Glenn Ford after he had spent 30 years on death row. His lawyers uncovered significant issues with the case, including the state's expert witnesses providing false testimony, police officers lying, and authorities hiding reports implicating other suspects. One of the actual suspects even confessed to the crime. In 2015, the former prosecutor publicly apologized, acknowledging Ford's innocence and his own shortcomings in the case. The prosecutor admitted he had been inattentive and had failed to investigate credible rumors about other suspects. He also highlighted systemic unfairness, including Ford's inadequate legal representation, an all-white jury, and racial discrimination in juror selection.<sup>21</sup>
15. Jury selection contributes to racial disparities at trial. A study by the Equal Justice Initiative (EJI), published in early 2025, found that in dozens of capital trials where the racial makeup of the jury was known, "innocent individuals were condemned to die based on verdicts reached by nondiverse juries. Black jurors were severely underrepresented in, and sometimes completely absent from, the decision-making process in those trials."<sup>22</sup>
16. Although courts created protections such as *Batson* challenges<sup>23</sup> to guard against racial bias in jury selection,<sup>24</sup> racial minorities are still often struck from the jury pool, resulting in predominantly white petit juries.<sup>25</sup> White juries are more likely to sentence African American defendants to death: "many of those on death row today were tried and sentenced by all-White or nearly all-White juries."<sup>26</sup> Further, in capital cases, "all-White juries are more likely to convict than racially diverse juries."<sup>27</sup>
17. One study of capital jury selection in South Carolina found that prosecutors were more than twice as likely to use peremptory strikes against African American potential jurors as opposed to white potential jurors.<sup>28</sup> A North Carolina study of more than 7,400 jurors from

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<sup>20</sup> Possley, M. (2017, September 7). *Charles Wilhite*. University of Michigan Law School National Registry of Exonerations. <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4100>.

<sup>21</sup> Stroud, A. M. M. III. (2017, November 21). *Lead prosecutor apologizes for role in sending man to death row*. Shreveport Times. <https://www.shreveporttimes.com/story/opinion/readers/2015/03/20/lead-prosecutor-offers-apology-in-the-case-of-exonerated-death-row-inmate-glenn-ford/25049063/>.

<sup>22</sup> Equal Justice Initiative, *Unreliable Verdicts, Racial Bias and Wrongful Convictions*, Feb. 2025, <https://eji.org/report/unreliable-verdicts/profiles-in-exoneration/>. For further discussion, see The Advocates for Human Rights et al., *United States of America: Stakeholder Report for the United Nations Universal Periodic Review: The Death Penalty*, 7 Apr. 2025, ¶¶ 54-59, <https://www.theadvocatesforhumanrights.org/Res/UPR%20USA%20DP%20TAHR%20WCADP%20CCDPW%20AUWCLIHRLC%202.pdf>.

<sup>23</sup> In *Batson v. Kentucky*, 476 U.S. 79 (1986), the U.S. Supreme Court held that a prosecutor's use of peremptory challenges to exclude Black people from the jury violated a defendant's right to a fair trial. <https://www.oyez.org/cases/1985/84-6263>.

<sup>24</sup> See generally *Batson v. Kentucky*, 476 U.S. 79 (1986) (providing the framework for challenging peremptory strikes when prosecutors use such strikes to remove a juror based solely on that juror's race).

<sup>25</sup> DEATH PENALTY INFO. CTR., ENDURING INJUSTICE: THE PERSISTENCE OF RACIAL DISCRIMINATION IN THE U.S. DEATH PENALTY 40–41 (2020), <https://deathpenaltyinfo.org/research/analysis/reports/in-depth/enduring-injustice-the-persistence-of-racial-discrimination-in-the-u-s-death-penalty>.

<sup>26</sup> *Id.* at 39.

<sup>27</sup> *Id.* at 43.

<sup>28</sup> Ann M. Eisenberg et al., "If It Walks Like Systematic Exclusion and Quacks Like Systematic Exclusion: Follow-Up on Removal of Women and African-Americans in Jury Selection in South Carolina Capital Cases, 1997-2014," 68 *South Carolina Law Review* 373 (2017) [If It Walks Like Systematic Exclusion and Quacks Like Systematic.pdf](#)

173 capital cases over a 20-year period found that prosecutors consistently struck African American jurors at around twice the rate of other jurors.<sup>29</sup> A North Carolina judge recently ruled that race played an impermissible role in jury selection for Hasson Bacote, an African American man who successfully challenged his death sentence.<sup>30</sup>

18. Juries and courts disproportionately sentence African Americans to death. One review of over 50 studies found that African American defendants are more likely than their white counterparts to be convicted and sentenced to death for capital crimes.<sup>31</sup> As of late 2024, more than 1,960 people were on death row at the state level, and 40 people were on federal death row.<sup>32</sup> The death row population is over 41% African American, even though African Americans make up about 13% of the population.<sup>33</sup> In 2021, Black women accounted for more than 25% of women sentenced to death.<sup>34</sup>
19. Disparities in charging and sentencing capital-eligible homicides were the largest in capital cases with white victims.<sup>35</sup> Another review of a dataset of 2,328 Georgia first-degree murder convictions that produced 1,317 death-eligible cases found that two sets of factors operated in combination to determine who would be executed: “victim race and gender, and a set of case-specific features that are often correlated with race.”<sup>36</sup>
20. In addition, race of the victim is highly predictive of which defendants will be sentenced to death. In one study, the death sentence was imposed in 10.92% (107/980) of cases with a White victim, compared to 1.33% (20/1,503) in cases with a black victim.<sup>37</sup> Put another way, in the United States, a person who kills a White victim is 430% more likely to be sentenced to death than a person who kills a Black victim.<sup>38</sup>
21. The Supreme Court has not afforded remedial measures to the disparities in death penalty sentencing. The most notable case in death penalty jurisprudence is perhaps *McCleskey v. Kemp*, in which the Court held that data showing systemic discrimination in death penalty

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<sup>29</sup> O’Brien, B., & Grosso, C. M. (2011, September 29). *Report on jury selection study*. Michigan State University College of Law.

[https://www.aclu.org/sites/default/files/field\\_document/jss\\_revised\\_report\\_with\\_appendix\\_29\\_sept\\_2011.pdf](https://www.aclu.org/sites/default/files/field_document/jss_revised_report_with_appendix_29_sept_2011.pdf).

<sup>30</sup> American Civil Liberties Union. (2025, February 7). *North Carolina judge finds racial bias in death penalty landmark case* [Press release]. <https://www.aclu.org/press-releases/north-carolina-judge-finds-racial-bias-in-death-penalty-in-landmark-case>.

<sup>31</sup> Jeffrey A. Fagan & Amanda Geller, *Police, Race, and the Production of Capital Homicides*, 23 Berkeley J. Crim. L. 261 (2018). Available at: [https://scholarship.law.columbia.edu/faculty\\_scholarship/2509](https://scholarship.law.columbia.edu/faculty_scholarship/2509).

<sup>32</sup> Alyxaundria Sanford, *The Injustice of Death Row: The Profound Tragedy of Marcellus Williams and the Fight to Save Robert Robertson*, INNOCENCE PROJECT (Oct. 9, 2024), <https://innocenceproject.org/news/the-injustice-of-death-row-the-profound-tragedy-of-marcellus-williams-and-the-fight-to-save-robert-roberston/>.

<sup>33</sup> *Race and the Death Penalty*, NAT’L ASS’N OF CRIM. DEF. LAW. (Dec. 7, 2022), <https://www.nacdl.org/Content/Race-and-the-Death-Penalty>.

<sup>34</sup> Kailey Morgan, *Even on death row, Black women can’t escape racism and discrimination*, North Carolina Policy Watch. (February 2021), <http://www.ncpolicywatch.com/2021/02/11/even-on-death-row-theres-no-escape-from-racism-and-discrimination-for-black-women/>.

<sup>35</sup> University of California Irvine Newkirk Center for Science and Society, University of Michigan Law School, & Michigan State University Law School. (2022). *Race and wrongful convictions in the United States* (S. R. Gross, Ed.) p.12. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4245863](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4245863)

<sup>36</sup> Jeffrey Fagan, Garth Davies, and Raymond Paternoster, *Getting to Death: Race and the Paths of Capital Cases After Furman*, 107 Cornell Law Review 1565 – 1620 (2022). Available at: [https://scholarship.law.columbia.edu/faculty\\_scholarship/3891/](https://scholarship.law.columbia.edu/faculty_scholarship/3891/).

<sup>37</sup> Scott Phillips & Justin Marceau, *Whom the State Kills*, 55 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 585, 603 (2020).

<sup>38</sup> Michael Mello, *Ivon Stanley and James Adams’ America: Vectors of Racism in Capital Punishment*, 43 CRIM. L. BULL. (2007).

sentencing is not sufficient to raise an Equal Protection claim.<sup>39</sup> This leaves a significant hurdle for defendants to prevail when challenging a death sentence on appeal: “When racism is obvious on the face of the trial transcript, appellate courts might eventually act. But most racism is not so obvious, and much of it isn’t even conscious. Challenges to systemic racism have not been taken seriously since McCleskey.”<sup>40</sup>

22. A Philadelphia study found that the odds that a capital trial would result in a death sentence were 3.1 times greater if the defendant was African American; and those odds became 9.3 times greater if the jury found the defendant guilty and the case advanced to the penalty phase, and 29.0 times greater if a jury found both aggravating and mitigating circumstances and had to make the discretionary choice between life or death.<sup>41</sup> Another study found that in cases involving a white victim, certain physical characteristics stereotypically associated with people of African descent made an African American defendant twice as likely to be sentenced to death as an African American without those features.<sup>42</sup>

#### IV. Wrongful convictions and exonerations

23. Innocent African Americans are 7.5 times more likely to be convicted of murder than innocent white Americans.<sup>43</sup> African Americans convicted of murder are about 80% more likely to be innocent than other people convicted of murder.<sup>44</sup> African Americans make up 13.6% of the U.S. population, but 53% of the 3,200 exonerations. These figures show that African Americans are seven times more likely than their white counterparts to be falsely convicted of serious crimes.<sup>45</sup> 55% of all murder exonerees are African Americans.<sup>46</sup>
24. A comprehensive study by the Death Penalty Information Center puts it bluntly: “Wrongful capital convictions are not race neutral.”<sup>47</sup> Since 1973, at least 200 people have been exonerated from death row <sup>48</sup> That figure amounts to one person exonerated for every 8.2

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<sup>39</sup> *McCleskey v. Kemp*, 481 U.S. 279, 297 (1987) (holding that statistical evidence of racism “is clearly insufficient to support an inference that any of the decisionmakers in *McCleskey*’s case acted with discriminatory purpose”).

<sup>40</sup> Mello, *supra* note 38. Note, however, that beyond the judicial branch, there have been attempts to legislatively prohibit the death penalty. *See, e.g.*, THE ADVOC. FOR HUM. RTS. ET AL., STAKEHOLDER REPORT FOR THE UNITED NATIONS PERIODIC REVIEW: THE DEATH PENALTY 3 (2025), <https://www.theadvocatesforhumanrights.org/Res/UPR%20USA%20DP%20TAHR%20WCADP%20CCDPW%20AUWCLIHRLC%202.pdf> (stating that President Biden supported legislation that would abolish the use of the death penalty).

<sup>41</sup> Robert Dunham, *Racial composition of death row in the seventy most populous counties in states with the death penalty*, July 16, 2001.

<sup>42</sup> Jennifer L. Eberhardt et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, *Psychological Science* 383 – 86, Vol. 17, No. 5 (2006). <https://pubmed.ncbi.nlm.nih.gov/16683924/>

<sup>43</sup> University of California Irvine Newkirk Center for Science and Society, University of Michigan Law School, & Michigan State University Law School. (2022). *Race and wrongful convictions in the United States* (S. R. Gross, Ed.) p.3. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4245863](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4245863).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Id.* at 10.

<sup>46</sup> *Ibid.*

<sup>47</sup> Death Penalty Information Center, *DPIC Special Report: The Innocence Epidemic*, 2021, at 19, <https://dpic-cdn.org/production/documents/pdf/The-Innocence-Epidemic.pdf?dm=1683576587>.

<sup>48</sup> *Innocence and the Death Penalty*, INNOCENCE PROJECT, <https://innocenceproject.org/innocence-and-the-death-penalty/> (last visited Mar. 30, 2025); *see also* THE ADVOC. FOR HUM. RTS. ET AL., RESPONSE TO CALL FOR INPUT: OHCHR COMPREHENSIVE STUDY ON HUMAN RIGHTS AND THE SOCIAL REINTEGRATION OF PERSONS RELEASED FROM DETENTION AND PERSONS SUBJECTED TO NON-CUSTODIAL MEASURES, PURSUANT TO HUMAN RIGHTS

people executed.<sup>49</sup> Black people are more likely to be wrongfully convicted and sentenced to death than their white counterparts, and authorities are significantly more likely to engage in official misconduct to secure wrongful convictions of Black defendants (78.8%) than white defendants (58.2%).<sup>50</sup> False accusations or perjury contributed to wrongful death sentences of 70.7% of Black exonerees, compared with 67.6% of exonerees overall.<sup>51</sup> Exonerations for Black people on death row took an average of 4.3 years longer than exonerations for their white counterparts.<sup>52</sup>

## V. Clemency

25. Clemency for individuals on death row is rare.<sup>53</sup> Due to public opinion, governors are unlikely to grant clemency in capital cases.<sup>54</sup> Further, courts are highly reluctant to review clemency determinations, citing separation of powers.<sup>55</sup> African Americans generally receive more favorable clemency outcomes, which could suggest that they are more likely to have experienced egregious over-policing and official misconduct.<sup>56</sup>

## VI. Race and gender in the criminal justice system

26. In the United States, women's incarceration rates have been increasing dramatically, especially for African American women. Women's incarceration rates increased 108% from 1981 to 2000, with men's incarceration rates increasing 78% over the same period.<sup>57</sup>

27. The "war on drugs" has contributed to this disproportionate increase in women's incarceration rates, as women are most likely to be incarcerated for a drug-related crime. In 2000 about 35% of incarcerated women were serving a sentence for a drug-related crime, including 80% of women incarcerated in the federal system.<sup>58</sup>

28. As discussed above, African Americans are disproportionately likely to be incarcerated, as compared to overall incarceration rates. African American women are likewise disproportionately likely to be incarcerated as compared to white women; 1 out of every

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COUNCIL RESOLUTION 57/9 3 (2025),

<https://www.theadvocatesforhumanrights.org/Res/Call%20for%20inputs%20OHCHR%20study%20human%20rights%20&%20reintegration%20of%20persons%20released%20HRC%2057-9%20TAHR%20WTI%20WCADP.pdf> (discussing exonerations in recent decades in the United States).

<sup>49</sup> *Death Penalty Census: Key Findings*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/facts-and-research/data/death-penalty-census/key-findings> (last visited Mar. 30, 2025).

<sup>50</sup> *Id.* at 4, 19.

<sup>51</sup> *Id.* at 4.

<sup>52</sup> *Id.* at 5.

<sup>53</sup> See, e.g., Michael Heise, *The Death of Death Row Clemency and the Evolving Politics of Unequal Grace*, 66 ALA. L. REV. 949, 951 (2015) (stating that "individualized clemency for death row inmates, while never particularly robust, has functionally disappeared").

<sup>54</sup> *Id.* (describing a governor's decision to commute a death sentence as "tantamount to committing political suicide").

<sup>55</sup> *Id.* at 949-50 (2015).

<sup>56</sup> *Id.* (discussing the racial disparities in clemency processes).

<sup>57</sup> Walt, L., Jason, L., *Predicting Pathways into Criminal Behavior: The Intersection of Race, Gender, Poverty, Psychological Factors*. ARC J. Addict. 2017:2(1).

<sup>58</sup> Liddell M, Martinovic M. Women's offending: Trends, issues and theoretical explanations. *International Journal of Social Inquiry*. 2013;6(1):127-142.

18 African American women are incarcerated during their lifetimes, compared to only 1 out of every 111 white women.<sup>59</sup>

29. As of 2021, Black people (of all genders) made up 13.4% of the population,<sup>60</sup> but Black women accounted for more than 25% of women sentenced to death.<sup>61</sup> In some states, this percentage is even higher. In North Carolina, of the 39 women sentenced to death, 61% were Black.<sup>62</sup>
30. Women in detention are more likely to experience mental health problems than their male counterparts. The Bureau of Justice Statistics reported that 73% of women in state prisons experienced a mental health problem compared to 55% of men.<sup>63</sup> Women in detention are more likely to have been diagnosed with a serious mental illness by a mental health professional than men, 23% to 8%.<sup>64</sup> Women in detention are also more likely to be prescribed psychotropic medication than men, 39% to 16%.<sup>65</sup>
31. Professor Sandra Babcock of the Cornell Center on the Death Penalty Worldwide at Cornell University Law School, along with colleague Nathalie Greenfield, has highlighted the relevance of the intersection of gender-based violence and marginalized identities.<sup>66</sup> She describes a complex set of factors that “increase the likelihood that Black girls and women receive criminal convictions, which consequently increases their risk of receiving harsher sentences than comparable women in other racial groups.”<sup>67</sup>
32. Professor Babcock summarizes the implications of the intersection of race and gender affecting pathways to incarceration: “in the cases of women of color, . . . race- and gender-based discrimination are inseparable. Each amplifies the effects of the other to place women of color at a heightened risk of harm, a heightened risk that state authorities will minimize and disbelieve this harm, and a heightened risk of being criminalized for their response to harm. The result is a system that underprotects Black women as victims and overpenalizes them as perpetrators.”<sup>68</sup>

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<sup>59</sup> Walt, L., Jason, L., *Predicting Pathways into Criminal Behavior: The Intersection of Race, Gender, Poverty, Psychological Factors*. ARC J. Addict. 2017:2(1).

<sup>60</sup> United States Census. Available at: <https://www.census.gov/quickfacts/fact/table/US/LFE046219>.

<sup>61</sup> Kailey Morgan, *Even on death row, Black women can't escape racism and discrimination*, North Carolina Policy Watch, February 2021. Available at: <http://www.ncpolicywatch.com/2021/02/11/even-on-death-row-theres-no-escape-from-racism-and-discrimination-for-black-women/>.

<sup>62</sup> *Ibid.*

<sup>63</sup> Enos S., *Mass incarceration: Triple jeopardy for women in a “color-blind” and gender neutral justice system*, Journal of Interdisciplinary Feminist Thought. 2012;6 Iss 1, Art 2.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> Sandra Babcock & Nathalie Greenfield, *Gender, Violence and the Death Penalty*, 53 California Western International Law Journal 327, 344 (2023), available at <https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=2044&context=cwilj>.

<sup>67</sup> *Id.* at 346. For further discussion, see The Advocates for Human Rights, the Cornell Center on the Death Penalty Worldwide, and the World Coalition Against the Death Penalty, *Response to the Call for Inputs for the Report of the Special Rapporteur on contemporary forms of racism on intersectionality from a racial justice perspective*, 31 Mar. 2025, <https://www.theadvocatesforhumanrights.org/Res/Call%20for%20inputs%20intersectionality%20and%20racial%20justice%20TAHR%20WCADP%20CCDPW.pdf>

<sup>68</sup> The Advocates for Human Rights et al., *supra* note 67, ¶ 10.