



# THE RIGHTS OF THE CHILD

## in the United States



### All Children Have a Right to:

#### SAFETY AND SECURITY

The right to life, liberty, and the security of a person.<sup>10</sup> The right to live free from physical, mental, and sexual violence and exploitation,<sup>11</sup> including illicit drug use<sup>12</sup> and participation in armed hostilities.<sup>13</sup>

#### DEVELOPMENT

The right to healthy and normal physical, mental, moral, spiritual, and social development.<sup>1</sup> The right to rest and leisure, including the right to engage in play.<sup>2</sup>

#### DUE PROCESS AND LEGAL REPRESENTATION

Equality under the law, with laws and institutions specific to children. The right to prompt legal access and appropriate state assistance.<sup>3</sup>

#### EDUCATION

The right to safe, compulsory, and free primary education and accessible secondary and higher education.<sup>4</sup>

#### FAMILY

The right to a happy and loving family environment, the right to remain with family, and the right to special protection and assistance by the State when separation exists.<sup>5</sup>

#### HEALTH

The right to the highest attainable level of health through care and education for families, and State measures to combat disease, malnutrition, and child mortality.<sup>6</sup>

#### IDENTITY

The right to form<sup>7</sup> and preserve a name, nationality, and identity. The right to practice and enjoy personal culture, religion, and language.<sup>8</sup>

#### NON-DISCRIMINATION

The right to live free from discrimination of any kind based on the characteristics of the child or his or her parent or legal guardian.<sup>9</sup>

## WHAT ARE THE RIGHTS OF CHILDREN?

The basic rights of all human beings, including children, are established by the Universal Declaration of Human Rights (UDHR) and its two subsequent treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The United Nations (UN) also has documents and treaties specifically regarding rights of the child: Geneva Declaration of the Rights of the Child (1924),<sup>14</sup> Declaration of the Rights of the Child (1959), Convention on the Rights of the Child (1989) (CRC), with optional protocols. These documents declare that children need special safeguards and care,<sup>15</sup> including the rights to a healthy and normal development, safe and free compulsory primary education, a happy and loving family environment, the highest attainable level of health, a life free from every form of exploitation, and the right for adults to act on behalf of the child's best interest.

## DOES U.S. LAW RECOGNIZE THE RIGHTS OF CHILDREN?

The U.S. Constitution guarantees certain rights for all people in the U.S., including children. The 1967 Supreme Court decision *In re Gault* determined that children were also afforded the due process rights and other rights already afforded to adults, through the Due Process and Equal Protection clauses of the 14th Amendment. The U.S. is also bound by international treaties, including the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), both of which grant human rights to all people. Although the U.S. Senate unanimously agreed to sign and ratify both Optional Protocols to the CRC in 2002, the U.S. has not ratified the CRC itself, which is currently the preeminent child rights document.<sup>16</sup>

## IS THE U.S. FULFILLING THE RIGHTS OF CHILDREN?

Child rights in the U.S. have improved drastically over the last century; however, much improvement is still needed. Children in the U.S. are still subjected to adult criminal trials<sup>17</sup> child labor,<sup>18</sup> abuse, neglect, a lack of representation, unequal education, disparate health outcomes, and discrimination.

### Safety and Security

The U.S. has programs to help curb safety and security problems for children, including the Street Outreach Program,<sup>19</sup> but rights violations by the government continue. One in five children in the U.S. lives in poverty,<sup>20</sup> and over one in twelve in extreme poverty.<sup>21</sup> Children in the U.S. face many physical safety and security violations. Every year, more than 3 million reports of child abuse are made in the U.S. involving more than 6 million children, and more than four children die every day as a result of child abuse and neglect.<sup>22</sup> Even after they enter the protection of the child welfare system, many children remain at risk of maltreatment due to a lack of oversight within the child welfare agencies. Several studies indicate that children in foster care are much more likely to suffer from abuse than children in the general population.<sup>23</sup> One report showed that nearly one in five children who had been in state care for at least two years had suffered confirmed abuse or neglect.<sup>24</sup> Corporal punishment by parents and in schools is legal in many areas, despite research that it can have harmful long-term effects.<sup>25</sup> In 2010, 2,711 children were killed with guns, equivalent to one about every three hours.<sup>26</sup> An estimated 300,000 children are victims of domestic trafficking and commercial sexual exploitation in the U.S. every year.<sup>27</sup>

### Development

The U.S. is the only State Party in the UN that allows life imprisonment without parole (LWOP) for children,<sup>28</sup> which violates the international norms of rehabilitation and re-entry into society for juveniles.<sup>29</sup> However, the U.S. has recently taken the step of removing mandatory LWOP sentences for children.<sup>30</sup> Once convicted, however, U.S. children do not always receive their rights. Over 10,000 juveniles in 2009 were held for some period of time in adult prisons,<sup>31</sup> violating the ICCPR, which declares that convicted youth must be kept separate from adults.<sup>32</sup> Child farm work can also impede development and education.<sup>33</sup> There are many occupations in which children are allowed to work, agriculture is the most dangerous. Child farmworkers die at four times the rate of other child workers.<sup>34</sup> Their school dropout rate is also four times the national rate, and a third never graduate high school.<sup>35</sup> Children can begin work on any farm at age 12 with parental permission, and there is no age restriction to work on a small farm; they often must work long hours at well below minimum wage.<sup>36</sup>



### Due Process and Legal Representation

The U.S. Constitution guarantees due process and equal protection for children through the 5th and 14th Amendments.<sup>37</sup> Despite these protections, many youth do not receive representation because they do not understand or know their rights or are unable to speak with counsel after being referred to juvenile detention centers.<sup>38</sup> Representation

is also lacking in civil suits, such as immigration proceedings. Representation is allowed under the Immigration and Nationality Act,<sup>39</sup> but civil law does not afford the option for state-funded counsel. Most unaccompanied children go through immigration proceedings without a lawyer, with estimates reaching 90% unrepresented by counsel, 93% of which result in the denial of asylum.<sup>40</sup>

### Education

The educational system in the U.S. exhibits numerous positive characteristics. Participation in formal education is nearly universal among children ages 5-14, and the U.S. literacy rate is 99%.<sup>41</sup> Also, although there is no federal right to education, this right is established in all fifty state constitutions.<sup>42</sup> Nonetheless, problems persist in providing students with the quality education they deserve. Every day in the U.S., over 1,200 students receive corporal punishment, over 3,300 students drop out of high school, and almost 18,500 public school students are suspended.<sup>43</sup> Students who are minorities, low-income, or have a disability are consistently underserved and are the most likely to experience inferior educational opportunities and outcomes.<sup>44</sup>

Zero-tolerance policies common in U.S. schools are used to suspend and expel children for minor, non-violent offenses.<sup>45</sup> Black and Hispanic students are suspended and expelled at higher rates than white students and are more frequently referred for subjective offenses such as “disrespect.”<sup>46</sup> Students who are suspended fall behind academically and are rarely given alternative assignments or allowed to make up missed work.<sup>47</sup> Corporal punishment (“paddling”) is still legal in many states and is used disproportionately on African-American and disabled youth; paddling disenfranchises students and makes educational success more difficult.<sup>48</sup>

The lack of information available for students regarding HIV/AIDS and sexually transmitted diseases also constitutes a violation of the students’ right to seek and receive knowledge. The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, which the U.S. ratified in 2002, declares that children have the right to “information related to HIV/AIDS prevention...which is tailored appropriately to age level and enables them to deal positively with their sexuality.”<sup>49</sup> Limiting the scope of education to exclude this from curricula, such as in abstinence-only programs, is a violation of children’s rights to information.

### Expression and Association

The U.S. recognizes the right to freedom of expression and association in the 1st Amendment to the Constitution. However, the Supreme Court has also placed an exception for children’s expression in public schools, based on whether it is considered “socially appropriate.”<sup>50</sup> In many places, non-heterosexual lifestyles are seen as inappropriate, which could limit information pertaining to lesbian, gay, bisexual, transgender, or other non-heterosexual/gender-nonconforming (LGBT) identities and communities in public schools.

### Family

Despite budgetary and policy support for family preservation and reunification,<sup>51</sup> over 250,000 children were removed from their homes in 2012.<sup>52</sup> Detainment and deportation also separate many children from their parents. At least 5000 children are currently in foster care following the deportation of their parents, and the number is likely to triple by 2016.<sup>53</sup> This practice violates the child’s best interest as mandated by the UN, as separation from family, especially in the case of deportation, can cause serious trauma in a child’s life.<sup>54</sup>

### Health

The right to the highest attainable level of health is dependent on access to health care. Almost ten percent of all children in the U.S. were uninsured in 2010.<sup>55</sup> In addition, though nutrition is integral to a child’s health, a quarter of U.S. children live without consistent, secure access to healthy food.<sup>56</sup> Over 31 million students receive a free or low-priced lunch through the National School Lunch Program (NSLP) daily.<sup>57</sup> Although these programs have specific dietary guidelines which have recently been improved, they are not extremely stringent; pizza still counts for a vegetable if it has two tablespoons of tomato sauce.<sup>58</sup>

### Non-Discrimination

The U.S. faces discrimination challenges in schools, detention centers, and migration policy. Girls in juvenile detention centers are less likely to receive technical training than boys, and the education system in detention centers stresses obtaining a GED rather than facilitating re-entry into schools upon release.<sup>59</sup> Discrimination is also prevalent around rights such as health care. Black children and Hispanic children are both less likely than white children to be insured, Hispanic children less than half as likely, which leads to poorer health among these groups.<sup>60</sup> LGBT children also often face discrimination in schools, communities, or their families. Some children are rejected by their families or foster systems for their sexual orientation and resort to the streets.<sup>61</sup> LGBT identity is still not given protective status against discrimination under federal law.<sup>62</sup>

### U.S. Government Obligations<sup>63</sup>

To ensure the rights of children, the U.S. has the following obligations:

#### RESPECT:

Governments must not deprive any child of his or her rights under domestic and international law and must refrain from taking retrogressive measures that are incompatible with the rights of children.

#### PROTECT:

Governments must take measures to prevent individuals or third parties from interfering in any way with the realization of the rights of children.

#### FULFILL:

Governments must adopt necessary measures and create enabling environments such that all children can enjoy full realization of their rights.

#### MEET MINIMUM STANDARDS:

Governments must ensure the satisfaction of the minimal, but essential, standard laid out in the UDHR and immediately address extreme situations of abuse.

#### TREAT ALL EQUALLY:

Governments must work to prevent discriminatory outcomes due to class, race, gender, language, or other factors, in order to ensure equity in the fulfillment of the rights of children.

#### PROTECT MOST VULNERABLE:

Governments must actively reach out to the most frequently marginalized and excluded community, who face the greatest barriers in realizing their rights as children.

#### MONITOR AND REPORT:

Governments must monitor and report on their fulfillment of the rights of children and ensure accountability for their actions and inactions.

For citations and further information,  
[discoverhumanrights.org](http://discoverhumanrights.org)

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