

I. INTRODUCTION

Women In The United States, Particularly Women From Historically Marginalized Communities, Are Being Criminalized At Staggering Rates, And Often As A Result Of Violence Or Abuse They Have Experienced.

1. **The rates of women being incarcerated are rapidly increasing, and at disproportionate rates to men.** Women are an increasing segment of the U.S. prison population, representing 10% of those incarcerated—"making the U.S. 'one of the top incarcerators of women in the world.'" ¹ Between 1980 and 2022, incarceration rates for women increased by 585%, twice the rate of increase for men during the same time period.²
2. **Women from historically marginalized communities are disproportionately represented in increased incarceration rates.** Black, Indigenous, and women of color are overly represented in the criminal legal system and incarceration rates.³ For example, Black women are incarcerated at almost two times the rate of white women.⁴ *The Sexual Abuse to Prison Pipeline: The Girls' Story*, reports that "African American girls constitute 14% of the general population nationally but 33.2% of girls detained and committed."⁵ Race is not the only factor that contributes to disparities among incarcerated women. For example, lesbian and transgender women are also disproportionately impacted. The Sentencing Project reports that "one in five (21%) transgender women have experienced incarceration at some point in their lives."⁶
3. **Criminalized women experience gender-based violence (GBV) at overwhelming rates.** According to available data from a wide range of studies, a vast majority of incarcerated women have experienced significant GBV, with at least one study citing that 99% of people in the surveyed women's prisons and 84% of girls in the surveyed juvenile detention centers have experienced domestic and/or sexual violence.⁷ In interviews with 62 Native American women in Minnesota's women's prison, 97% of the interview participants experienced sexual and/or intimate partner violence⁸ (IPV) prior to their prison incarceration.⁹ The pattern exists in jails as well, which are facilities where many people are held pre-trial without any conviction. Research documents that among women in applicable jails, 86% have experienced sexual violence and 77% have experienced partner violence.¹⁰ These statistics align with patterns observed in The Advocates for Human Rights' research under the WATCH court monitoring program from 2024-2025, which found evidence in court records that high rates of system-involved women experience abuse.¹¹
4. **Women and girls' criminal legal-system involvement is often a direct or indirect result of victimization.** For many women, abuse, including sexual violence and IPV are the underlying factors behind their criminal legal-system involvement.¹² The dynamics of abuse can lead to the criminalization of a survivor in many different ways. A survivor may be arrested for physically defending themselves or their children from an abusive partner; an abusive partner may force or coerce them to commit an unlawful act or take credit for an unlawful act; an abusive partner may falsely accuse them of an unlawful act; they may commit an offense as a result of financial abuse or while facing financial crisis while fleeing abuse; or they may commit an offense as the result of trauma or trauma coping mechanisms, like self-medicating through substance use.¹³

5. **The criminalization of survivors exacerbates harm, diminishes safety, and creates lasting consequences for survivors, their families, and communities.** The criminalization of survival creates a second layer of victimization for survivors. Survivors face the dehumanization, and related trauma, of arrest, prosecution, and incarceration.¹⁴ Additionally, criminal legal system-involved women are also disproportionately represented as homicide victims of IPV in Minnesota.¹⁵ The process of criminalization can create many other collateral consequences as well.¹⁶ Survivors may face additional financial strains, such as bail, attorney costs, court fines and fees, probation related expenses, or lost wages from mixed work or job loss.¹⁷ They may face separation from children, involvement with child protective services, loss of custody, or negative impacts in the family court context.¹⁸ Based on their criminal record they may face hurdles with securing work, licensure, loans, or housing.¹⁹ They may also face violence, including sexual violence while incarcerated.²⁰ The myriad of consequences connected to criminalization can lead to homelessness, familial instability, loss of trust or access to support services - all factors that perpetuate individual trauma and impede collective public safety.
6. This report focuses on policies and practices within the criminal legal system that directly result in or perpetuate the criminalization of survivors of gender-based violence. The report builds on desk research on the documented prevalence and consequences of such policies and practices, interviews with survivors who have experienced gender-based violence and criminalization, observational data from criminal court monitoring, and analysis of legal system case records.

II. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Gender-Based Violence, Administration of Justice and Fair Trial

Status of Implementation: Supported, Partially Implemented.

Discriminatory Practice And Bias By System Actors Increases The Risk Of Survivors Being Criminalized

1. In the third-cycle UPR, the United States (U.S.) supported nineteen recommendations regarding addressing structural discrimination based on race, gender, among others, in relation to law enforcement and access to justice and remedy.²¹ The U.S. also supported four recommendations related to preventing and responding to gender-based violence against women.²² All of these recommendations are highly relevant to the lived experiences of survivors of gender-based violence who have been criminalized as a consequence or in relation to the abuse they have experienced. The recommendations, however, did not specifically emphasize gender-responsive measures on access to justice and reparation.
7. Survivors from historically marginalized communities, including among others, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual (LGBTQAI+), noncitizen,

non-English speaking, Black, and Indigenous survivors often face bias, judgement, or misconduct from criminal legal system actors.²³ Harmful stereotypes lead to incomplete and inappropriate case handling for survivors.²⁴

8. Survivors often face barriers to contacting and openly communicating with law enforcement. Many factors impact survivors' willingness and ability to advocate for themselves during investigation and prosecution, including, but not limited to: a lack of trust in the criminal legal system based on historical trauma rooted in colonialism, slavery, and histories of systemic racism; and current police misconduct, practices, and policies that negatively impact marginalized communities and erode their relationships with police and legal systems.²⁵ For example, one study found that most LGBTQAI+ "survivors of IPV who had contact with police reported encountering police misconduct."²⁶ Patterns of racism, traumatic experiences with police, and the vulnerability of Black men to police brutality and incarceration can deter Black women from contacting and openly communicating with police.²⁷ Furthermore, many jurisdictions have policies that make noncitizen survivors fearful of police interactions due to concern about immigration consequences, such as Immigrant Customs & Enforcement (ICE) action.²⁸ This creates a chilling effect on reporting and sharing of victimization for many noncitizen survivors.²⁹
9. Non-English-speaking survivors, including users of American Sign Language (ASL), are not always provided interpreters during interactions with law enforcement or courts, or the interpreter used is a family member or other inappropriate third-party.³⁰ In these instances, the ability of a survivor to fully explain their circumstances or case is compromised.³¹
10. Research has also shown that police practices for gathering evidence related to self-defense injuries is racially biased. First responders may not be sufficiently trained to look for bruising and strangulation marks on survivors with brown or black skin tones.³² When the ways in which injuries present on different skin tones is not considered by police and/or first responders, the evidence supporting arrest and prosecution can be compromised or incorrect.³³
11. Some systems may also rely on generalizations about victims and their behavior that are embedded in racial or cultural stereotypes and harmful to marginalized survivors, particularly Black women.³⁴ For example, the criminal legal system perpetuates false victim-offender binaries that paint the behavior of a "true" victim as passive, meek, and someone who does not fight back.³⁵ Victims who fight back are discounted as "bad" and survivors who assert themselves with system actors are treated as hostile, aggressive, and combative.³⁶ As one interviewee noted, "it's like you have to be this 'poster child' for [abuse]".³⁷ "True" victim stereotypes are often rooted in societal perceptions of "white, cisgender, heterosexual woman survivors" and used against survivors such as Black

women who are stereotyped as angry and aggressive.³⁸ Racial bias and discrimination result in serious consequences for survivors of color. For example, research shows that police are more likely to arrest Black women who fight back against abusive partners.³⁹

Failures By System Actors To Understand And Document The Dynamics Of IPV And Trauma Increase The Risk Of Survivors Being Criminalized

12. The dynamics of IPV can greatly impact how a survivor presents themselves and information about their circumstances to system actors.⁴⁰ System actors who are not properly trained to understand these dynamics can misinterpret or miss cues in their investigation and potentially mislabel a victim as a harm doer.⁴¹ For instance, victims may be hesitant to provide statements to police due to fear of retaliation from an abusive partner.⁴² When encountering law enforcement, victims minimize the abuse, blame themselves, or attempt in other ways to protect their partner from arrest/prosecution.⁴³ A survivor may also not be aware that what they are experiencing is abuse or may not identify with labels like “victim,” “beaten,” or “intimate partner violence.”⁴⁴ As one interviewee explained, a serious issue with identifying victims of abuse is that “sometimes people don’t even know they’re in that cycle [of abuse].”⁴⁵ Any of these dynamics, if not identified and accounted for, can lead to an unjust arrest of a survivor.⁴⁶
13. The manifestations of trauma also significantly impact how a survivor presents to system actors. When police, prosecutors, judges, or other system actors incorrectly interpret trauma responses, it can lead to improper arrest, charging, and sentencing of survivor-defendants. For example, trauma-induced dysregulation or flight response can be misinterpreted as signs of aggression, violent disposition, or guilt.⁴⁷ Disassociation can be misinterpreted as absence of fear or passive consent by judicial and non-judicial actors.⁴⁸ Authorities can also interpret inconsistent memories as lying.⁴⁹ Interviewees relayed instances of themselves and other survivors being discounted as victims and arrested if they were intoxicated (often due to self-medicating resulting from trauma), outwardly angry, or exhibiting other classic trauma responses.⁵⁰
14. Legal-system actors often fail to properly and holistically explore abuse and trauma in cases or fully record abuse and trauma dynamics in police reports. As one interviewee described it, “[m]y mental health or my emotional wellbeing or my circumstances- the whole picture I felt was never looked at, it was always the immediate situation and the next crime that I was going to commit was the only thing that we ever spoke about.” Incomplete assessments of abuse/trauma and police reports that do not provide context for an incident that is under investigation can have serious consequences for survivors.⁵¹ Case assessments that exclude the full context, including any history of abuse, present an inaccurate portrait of the individual and their circumstances.⁵² This misrepresentation influences subsequent system actors and sets the case on a trajectory that is biased against them.⁵³ One survivor shared that in her experience, she felt like if the initial story is not

written properly, then it does not matter what else happens procedurally in the case (i.e. judge assignment, etc.) because a finding of guilt feels pre-determined.⁵⁴ In contrast, one interviewee expressed how positive it is when a report incorporates broader context. She explained, that “reports mean a lot” and when they are done with a trauma-informed lens, they can show you as a “whole person” and “more than just a suspect.”⁵⁵

15. When police do not properly understand dynamics of IPV or document the context for a survivor’s use of violence, it negatively impacts individual cases and also has cascading consequences on how survivors interact with law enforcement more generally. When survivors have negative experiences with law enforcement, it creates a lack of trust and faith in the system and decreases the likelihood that a survivor will contact law enforcement in the future, making survivors further vulnerable in future instances of abuse.⁵⁶ One study involving focus groups and interviews with criminalized survivors found that “nearly 75% of the women specifically stated they will not call police again in the future, even when they needed help themselves, because of their experience with their own arrest, prosecution, or conviction.”⁵⁷

System Actors Do Not Sufficiently Screen For Issues Of Abuse And Coercive Control In Criminal Matters

16. Survivors’ arrests and prosecutions can result from system actors’ failure to thoroughly inquire with parties about abuse as part of case investigations.⁵⁸ Individuals with lived experience consistently noted that police either did not ask them about a history of abuse or openly disregarded the information they shared about abuse or coercion.⁵⁹ One interviewee, who was arrested for trespassing after facing homelessness as a result of leaving an abusive situation, reported, “I was homeless...I was running from a bad situation and trying to be safe...[The police] didn’t even ask me questions, they just arrested me, they didn’t know why I was there, where I was at, they didn’t ask me why are you in here, even though I had bruises and scratches all over me.”⁶⁰
17. The issue of insufficient screening for abuse and coercion is not unique to police and is an issue at intervention points throughout the criminal legal system. Interviewees noted that they did not receive proper screening related to abuse during their bail evaluation process or during their time in pre-trial detention.⁶¹ Survivors also cite issues with a lack of inquiry about abuse by defense counsel and prosecutors.⁶² Interviewees expressed that having system actors take time to connect with system-involved women about abuse would have been extremely helpful (“a blessing” in one interviewee’s words), particularly if conducted by a trained advocate.⁶³ Yet, none of the interviewees had encountered government offices where substantive and trauma-informed screening for abuse was built into policy or carried out as practice. When reflecting on whether anyone in the criminal legal system ever inquired about her past abuse or the context for her circumstances on the night of her arrest, one interviewee stated, “It’s like what I went

through never happened. It's like my abuse, what I encountered and who I was, didn't exist to them and they didn't care."⁶⁴

18. Many system actors fail to use resources such as record searches and outreach to community partners to identify potential indicators that abuse may be connected to a case.⁶⁵ Tools such as records can be helpful in supplementing the direct screening of parties in a case to flag potential issues of abuse that can prevent unjust charges, uninformed prosecution, or inappropriate sentencing.⁶⁶ Such records are also readily available. For example, WATCH volunteers recently conducted court record searches relating to 350 women and gender-diverse defendants whose cases WATCH observed from June 2024 to February 2025. Volunteers used Minnesota Court Records Online, which is a public database containing court records in Minnesota. In the record searches, volunteers identified direct references to, or potential indicators of, IPV or sex trafficking for approximately 48% of the defendants.⁶⁷ The fact that such a high percentage of references to abuse were identified using public databases – which are more limited than the sources available to system actors – not only reiterates the need for screening but also highlights the ability of system actors to conduct utilize sources such as records.

System Actors Fail to Properly Address Issues of Abuse When Raised by Defendants

19. Many survivor-defendants express that even when issues of abuse are raised to system actors, including defense counsel, the system actors fail to respond properly. This deficiency perpetuates the likelihood of further criminalization. Multiple interviewees disclosed that when they raised issues relating to abuse to their public defenders, they were discouraged or not believed.⁶⁸ One interviewee noted, "The lawyer didn't want to hear the details."⁶⁹ Another survivor expressed that she "instantly regretted" telling her public defender about the abuse she experienced and how it related to her case because the attorney assumed she was lying and did not provide even basic information like a pamphlet on abuse or referrals.⁷⁰ The survivor noted it felt like a "slap in the face" that the person who was supposed to be representing her didn't believe her.⁷¹ In some instances, defense counsel may even advise a survivor not to disclose their trauma during their criminal proceedings to avoid collateral legal consequences.⁷²
20. Prosecutors routinely overlook or decline opportunities to use prosecutorial discretion in cases involving defendants with known histories of abuse. Many high-profile cases of criminalized survivors across the United States highlight the lack of action taken by prosecutors to exercise their discretion in the charging of cases and the dismissal of cases when abuse is raised.⁷³ Studies of court cases across the country also draw serious concerns about the underutilization of prosecutorial discretion in cases involving criminalized survivors.⁷⁴ A recent investigation by the Marshall Project found nearly "100 cases where prosecutors charged a person (almost always a woman) for supporting,

taking part in, or failing to stop a crime by an alleged offender. The cases include a woman who is in prison because her boyfriend severely beat her child, even though she wasn't home at the time. In another instance, a woman helped her abuser sell stolen goods after a murder because, she said, she was afraid he would kill her.”⁷⁵

21. WATCH staff and volunteers also observed inadequate responses by judges when victims share traumatic instances of abuse in court.⁷⁶ In several cases, court monitors observed defendants raise issues of abuse at first appearance and omnibus hearings, some containing serious allegations of sexual violence, IPV, and self-defense.⁷⁷ The responses by judges often appeared to discount or traumatize the defendant.⁷⁸ In some of the observed cases, the defendants' admissions appeared to be ignored by the judge as if the defendant had not spoken at all.⁷⁹ In other cases, the judge acknowledged the defendant's statement but noted that it was not the appropriate time to discuss the matter. Then, the judges abruptly moved on, cutting off any further discussion on the record to support a self-defense claim or other protection for the defendant.⁸⁰ In only one of the observed cases, did a volunteer record a judge taking affirmative steps to address safety issues for a potential survivor-defendant, requesting that she be given information regarding victim services.⁸¹

The Nature of the Criminal Legal System Exacerbates the Criminalization of Survival, Results in Unjust Sentencing and Re-Traumatizes Survivors

22. **The criminal legal system is structured in a manner that inherently disadvantages survivor-defendants and often replicates the dynamics of power, control, and limited agency that are the foundation of IPV.** As one survivor noted, “In my abusive relationship, I didn't have a voice. It was the same in court. They took away my voice just the same.”⁸² Another survivor explained how systems that are meant to protect you can sometimes mimic or exacerbate patterns of abuse. In her words, “[w]hat is an abuser if not a fear monger? Like a big authority. Like this person that you feel is above you that has more power physically or financially. This person that is towering over your life. And then you get into this system that is supposed to be helping you, but you feel like it is this even bigger monster. What is the justice system going to do to me when I feel like it's an even bigger monster than my original abuser?”⁸³
23. **The complexity and logistical hurdles of the criminal legal system make it challenging for survivors-defendants to navigate their case and advocate for themselves.** Individuals with lived experience navigating the legal system identify it as complex, intimidating, and challenging for defendants.⁸⁴ According to interviewees, logistical barriers can prevent them from asserting their rights in court and leave them feeling powerless.⁸⁵ This is increased for survivors facing financial, literacy, language, cultural and other barriers. For example, in the local jurisdiction where WATCH observes court, the court rules and courtroom assignments are inconsistent and are generally

posted only in English.⁸⁶ Moreover, hearings often do not start on time, forcing defendants to sometimes wait hours without updates or direction before being called. Additionally, no childcare is provided at the court.⁸⁷

24. Court proceedings generally involve complex legal terminology and practices that are rarely explained in plain language or clarified for those involved. As one interviewee explained, “unless you...live that lifestyle, are an agent of the court, or something like that, then you don't understand what's going on. It takes years of getting in trouble and being in those rooms and learning the terminology before you’re like ‘oh, okay I know what this means now.’”⁸⁸ Additionally, court hearings are fast-paced and brief, often requiring serious and life-altering decisions to be made quickly. In a sample of 238 hearings observed by WATCH court monitors in criminal court from late January 2025-March 2025, approximately 74% of the hearings lasted 10 minutes or less, with approximately 24% being less than 5 minutes in length.⁸⁹
25. **Lack of funding and resources for public defender offices limit survivor-defendants’ access to counsel and can negatively impact their cases and rights.** System-involved survivors often express frustrations with under-resourced and understaffed public defender offices.⁹⁰ One interviewee noted, “the public defenders...they're just trying to get you in and get you out. Sometimes their caseloads are so loaded, you're just another case, you're not a person.”⁹¹
26. WATCH volunteers also consistently point to issues relating to attorney access and representation that they observe in court. For instance, before first appearance hearings, which involve serious matters of consequence for a defendant, such as bail arguments, a defendant generally only has a very brief meeting right before the hearing to meet a public defender and discuss their case. Observers also record that it is not uncommon for public defenders representing defendants in court to be substitutes or relatively new to the file and unfamiliar with the matter.⁹² Volunteers observe that defendants often meet with their defense counsel to discuss private and sensitive matters in the public hallways outside of the courtroom prior to a hearing.⁹³
27. **Court rules, even when intended to protect defendants, can lead survivor-defendants to feel silenced or unable to properly raise issues in their defense.** For example, WATCH observers witness many instances where judges cut off defendants who are trying to express concerns about their abuse or other matters related to their cases.⁹⁴ In many instances, observers have documented that the judge states the interruption is for the defendant’s protection.⁹⁵ However, in such observed cases, rarely are defendants then given time to talk with their counsel to see if, in fact, they can share the information without harm or given guidance about how they can ensure they are heard.⁹⁶

28. **Many survivors face pressure to plead guilty in cases where they are innocent or where their actions were done in self-defense or were the result of abuse.** Survivors can feel pressured by circumstances to accept a plea offer.⁹⁷ Interviewees noted that women may take a plea offer to avoid unintended consequences in family court or with child protective services, or because of lack of awareness about their rights.⁹⁸ They also noted that the legal safeguards intended to protect defendants, such as plea hearings where judges inquire about coercion and walk through their waiver of rights, fail because the proceedings feel cursory and pro forma to survivors, only happening after the decision has been finalized for all intents and purposes.⁹⁹ WATCH court observers have noted in various cases that women defendants verbally expressed hesitation with accepting a plea offer.¹⁰⁰ WATCH observers also have recorded that they witnessed women defendants in several cases project body language or other mannerisms that the observer interpreted as the defendant seeming uncomfortable, hesitant, or acting out of defeatism while pleading guilty.¹⁰¹
29. **The current criminal legal system perpetuates unjust prosecutions for survivor-defendants due to challenges associated with raising an affirmative defense related to abuse or having abuse factored into the adjudication of one's case as a mitigating factor.** Affirmative defenses, such as self-defense, duress, coercion, and necessity, have challenging requirements and narrow applications that preclude them from being applicable in most cases.¹⁰² These types of defenses can also be resource-intensive, require costly evidence like expert testimony, and require lengthy and traumatic trials. Additionally, only a handful of states have enacted laws that require courts to consider evidence of abuse as a potential mitigating factor at sentencing or allow for re-sentencing in cases where someone was convicted of offenses where GBV experienced by the defendant contributed to the offense.¹⁰³ Furthermore, clemency and pardon standards are extremely high and not attainable for most criminalized survivors.¹⁰⁴
30. **The punitive focus of the criminal legal system fails to adjudicate matters from a holistic perspective, account for the complexities of abuse and survival, and address root causes and healing.** Interviewees expressed the negative consequences of such a narrow carceral framework, particularly for survivors of abuse. As one interview explained, “the goal should always be resolution and healing, and it shouldn’t be so punitive... [the system] it’s not about what’s just, it’s not about what’s right. It’s about - I suffer so you suffer worse.”¹⁰⁵
31. An interviewee went on to share an example that illustrated how the carceral paradigm is counterproductive for survivors, defendants, and effective problem-solving. She disclosed an anecdote about a friend of hers who was being sex trafficked and committed a robbery and assault. The victim in the case wanted leniency and for the defendant’s victimization to be taken into account during the case, but instead the court sentenced her to a lengthy incarceration. She described: “[T]he [robbery victim] wanted [the defendant]

to go to inpatient treatment and get support for survivors of trafficking... she wanted her to get some help. And I remember thinking...what... is going on that the person who has been affected the most, and the greatest, is the only one in this room that is seeing this person as a victim and asking for them to have like help instead of being further punished and sent to a prison where they're probably not going to learn how to be a productive person in society and only gonna learn how to better be a perpetrator if anything else....No one got out of that situation feeling better. The victim or the victim/perpetrator."¹⁰⁶

32. **The criminal legal system often fails to provide victim services or appropriate Domestic Violence Intervention programming (DVIP) for criminalized survivors.**¹⁰⁷ Survivor-defendants face challenges obtaining services and support from community-based advocates due to barriers such as conflict of interest policies and agency misinterpretation of funding requirements as not allowing them to work with individuals who are being charged as “perpetrators.” Furthermore, unlike victims in a criminal case, survivor-defendants are not provided support through government-based victim-witness advocates.¹⁰⁸ For survivors who are incarcerated in jails and prisons, survivor-centered programming is limited or absent in most areas.¹⁰⁹
33. Convicted survivors are routinely required to attend court-ordered DVIP. Historically, those curriculums have been based on the needs of men who use violence against women and are “designed to address the sociocultural underpinnings of the power and control that abusive men leverage against their female partners.”¹¹⁰ For criminalized survivors, who are predominantly women and have suffered abuse themselves, this type of programming is counter-productive, traumatizing, and fails to address the unique needs and circumstances of women and gender expansive individuals. Gender responsive, culturally responsive, and trauma-informed DVIP models have been designed in response to this need.¹¹¹ Nevertheless, these developed DVIP models are not readily utilized in all jurisdictions, and even in areas where they are available, there is not always enough programming available or ample assistance from the court or probation staff to link survivors with the most appropriate programming.¹¹²

III. RECOMMENDATIONS

34. This stakeholder report suggests the following recommendations for the Government of the United States of America to direct, incentivize and financially support:
- Law enforcement departments should cease the use of mandatory arrest policies and adopt policies that incorporate self-defense and predominant aggressor assessments that are trauma-informed, culturally responsive, and consider the dynamics of IPV as an ongoing situation and not a single incident.
 - Law enforcement departments should create policies and implement training to improve practices related to police report drafting, particularly regarding context

building, IPV dynamics, and trauma.

- Trainings on the dynamics of IPV (including IPV dynamics among LGBTQAI+ couples), trauma and trauma responses, victim stereotyping, gender bias, racial bias, and cultural responsiveness for criminal legal system actors, including police, public defenders, prosecutors, probation and pre-trial officers, and judges.
- Prosecutors should adopt policies and procedures to formalize the practice of assessing cases for potential IPV-related concerns. Procedures should incorporate resources such as record searches, witness interviewing, and outreach to coordinated community response partners, if available.
- Training curriculums for criminal legal system actors should be created in conjunction with, or with guidance from, compensated system-impacted survivors and local domestic violence agencies, including staff from culturally specific victim service providers.
- Prosecutors should create policies addressing cases where the suspect or defendant's behavior is related to underlying abuse. Discretion should be encouraged at stages throughout a case, including but not limited to decisions related to charging (including dismissal), diversion, bail and other conditions of release, plea offers, and sentencing.
- Trauma-informed screening for abuse should be incorporated into pre-trial intervention points including, but not limited to, bail evaluations, pre-sentence investigations, and public defender case assessments.
- System actors, including but not limited to police, bail evaluators, pre-trial supervision staff, prosecutors, defense counsel, and judges, should provide information regarding victim services to defendants if concerns about abuse or safety are raised by a survivor or otherwise flagged as a potential issue through records or other means.
- Funding for public defender offices should be increased to support staffing – attorneys and dispositional advisors - and training to help public defenders identify issues relating to abuse and litigate for cases involving survivor-defendants.
- Funding must be increased for gender-responsive, trauma-informed, and culturally responsive DVIP options, and such programming must be made available to survivor-defendants who are ordered to complete domestic violence programming.
- Specialty court models should be explored for cases involving survivor-defendants.

- Funding for restorative justice practices must be made available and results evaluated. Restorative practices should be made more widely available in communities and, where appropriate, in connection with criminal legal system pathways.
- Create statutory protections that require issues related to abuse to be assessed prior to sentencing, considered as mitigating factors during sentencing or clemency, and recognized as grounds for a pardon request.
- Create statutory mechanisms for survivors currently under correctional control whose victimization was not considered at the time of their sentencing, to obtain legal remedies to rectify those omissions.

¹ Feminist Inquiry in Social Work, *Beyond the victim-offender Binary: Legal and Anti-Violence Intervention Considerations with Women Who Have Used Force in the U.S. and Australia*, Feminist Inquiry in Social Work (2021), by Lisa Young Larance, et. al, 470-471, accessed on June 25, 2023, <https://www.innovatingjustice.org/sites/default/files/media/document/2023/Beyond%20the%20Victim-offender%20Binary.pdf>

² National Clearinghouse for the Defense of Battered Women, *The Criminal Legal System response to Domestic Violence: Questions and Debate*, National Clearinghouse for the Defense of Battered Women (2020), by Jane Sadusky, 17-21, accessed Feb. 2020, https://bwjp.org/wp-content/uploads/2023/11/CLS-Response-to-DV_FINAL_Feb-2020.pdf

³ National Clearinghouse for the Defense of Battered Women, *The Criminal Legal System response to Domestic Violence: Questions and Debate*, National Clearinghouse for the Defense of Battered Women (2020), by Jane Sadusky, 18-19, accessed Feb. 2020, https://bwjp.org/wp-content/uploads/2023/11/CLS-Response-to-DV_FINAL_Feb-2020.pdf

⁴ National Black Women's Justice Institute, *Black Women & Girls, Gender-based Violence, and Pathways to Criminalization & Incarceration* (2022), 1, accessed Feb. 15, 2025, <https://www.nbwji.org/post/black-women-girls-gender-based-violence-pathways-criminalization-incarceration>

⁵ Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, & Ms. Foundation for Women, *The Sexual Abuse to Prison Pipeline: The Girl's Story* (2015), 7, accessed Feb. 6, 2023, <https://genderjusticeandopportunity.georgetown.edu/report/the-sexual-abuse-to-prison-pipeline-the-girls-story/>

⁶ The Sentencing Project, *Incarcerated LGBTQ+ Adults and Youth*, by Nazgol Ghandnoosh and Emma Stammen, (2022), 4, accessed Feb. 15, 2025, <https://www.sentencingproject.org/policy-brief/incarcerated-lgbtq-adults-and-youth/>.

⁷ UCLA Center for the Study of Women & Survived and Punished, *Defending Self-Defense: A Call for Action by Survived & Punished*, by Alissa Bierria and Colby Lenz (2022), 10, accessed June 25, 2024, <https://csw.ucla.edu/wp-content/uploads/2022/03/DSD-Report-Mar-21-final.pdf>; See also, The Sentencing Project, *Sentencing Reform for Criminalized Survivors: Learning from New York's Domestic Violence Survivor's Justice Act* (2023), 5, accessed Feb. 13, 2025, <https://www.sentencingproject.org/reports/sentencing-reform-for-criminalized-survivors-learning-from-new-yorks-domestic-violence-survivors-justice-act/>; See also, Women & Justice Project, *Women & Incarceration: Domestic Violence and Trauma* (2024), 1, accessed Feb. 15, 2025, <https://womenandjusticeproject.org/incarcerated-women-domestic-violence-trauma-and-incarceration/>.

⁸ Throughout this report we will use the term intimate partner violence (IPV). However, in certain contexts we will use the terms “domestic violence” or “domestic abuse” if we are citing a source that uses that terminology, a law that uses that terminology, or we are referring to familial violence that goes beyond IPV.

⁹ Violence Free Minnesota, *Native Women and Incarceration in Minnesota* (2021), 1&5, https://www.vfmmn.org/_files/ugd/f4bdb8_15e146e352924cb3abdca109e1c46b5b.pdf.

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- ¹⁰ National Black Women's Justice Institute, *Black Women & Girls, Gender-Based Violence, and Pathways to Criminalization & Incarceration*, 2, accessed Oct. 12, 2022, <https://www.nbwji.org/post/black-women-girls-gender-based-violence-pathways-criminalization-incarceration>
- ¹¹ WATCH Project Records 2024-2025 on file with author.
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America (15 Dec. 2020), U.N. Doc. A/HRC/46/15, ¶ 26.114 Resolutely combat all forms of discrimination by guaranteeing equitable access to justice, medical care and quality education [...] (Switzerland); ¶ 26.143 Take the necessary measures to eliminate all forms of racial, gender, religious and other forms of discrimination (Kenya); ¶ 26.227 Prevent racially discriminatory and violent practices perpetrated by law enforcement agencies against people of African descent (Azerbaijan); ¶ 26.262 Redouble efforts in addressing issues of racial disparities in the criminal justice system (South Sudan); ¶ 26.264 Adopt legislation that aims to reduce incidents of profiling by law enforcement (Namibia); ¶ 26.284 End the criminalization of poverty, which disproportionately affects African Americans (Cuba); ¶ 26.102 Carry out additional anti-discrimination training for government officials at all levels and systematically (Cambodia); ¶ 26.113 Take effective measures to eliminate discrimination on the basis of race, ethnicity, religion and sex and to stop racial profiling by law enforcement agencies (Russian Federation); ¶ 26.114 Resolutely combat all forms of discrimination by guaranteeing equitable access to justice, medical care and quality education [...] (Switzerland); ¶ 26.115 Continue to pay attention to issues related to racial discrimination (Republic of Korea); ¶ 26.124 Develop an action plan to address structural discrimination with clear timelines and milestones (Pakistan); ¶ 26.139 Take steps to ensure the full implementation of domestic and international laws to end all forms of discrimination, including discrimination on the basis of race, sex and religion, and bring the perpetrators to justice (Ghana); ¶ 26.163 Take further and more targeted measures to address the disproportionate impact of violence on the poor, minorities and immigrant women [...] (Botswana); ¶ 26.248 Train the personnel of law enforcement agencies on human rights principles in arrest, detention, investigation and decent treatment (Iraq); ¶ 26.249 Provide appropriate training to law enforcement officers, enhance accountability and prevent impunity in order to eliminate racial profiling and excessive use of force by police officers (Qatar); ¶ 26.250 Take further measures to realize its commitment to eliminating racial discrimination, including by providing human rights education to law enforcement officers (Japan); ¶ 26.251 Undertake the necessary law enforcement reforms (Kazakhstan); see Report of the Working Group on the Universal Periodic Review, Addendum, (Mar. 4, 2021), U.N. Doc. A/HRC/46/15/Add.1 ¶ 10.

²² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America* (15 Dec. 2020), U.N. Doc. A/HRC/46/15 ¶ 26.321 Eliminate the wage gap and gender-based violence and guarantee access to justice and reparation for victims (Bolivarian Republic of Venezuela); ¶ 26.322 Prioritize services for preventing and responding to gender-based violence, including in institutional settings such as the penitentiary system (Greece); ¶ 26.323 Vigorously continue measures directed at the elimination of violence against women and girls (Georgia); ¶ 26.324 Continue efforts made and measures taken to ensure the protection of women's and children's rights (Bahrain). see Report of the Working Group on the Universal Periodic Review, Addendum, (Mar. 4, 2021), U.N. Doc. A/HRC/46/15/Add.1 ¶ 10

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