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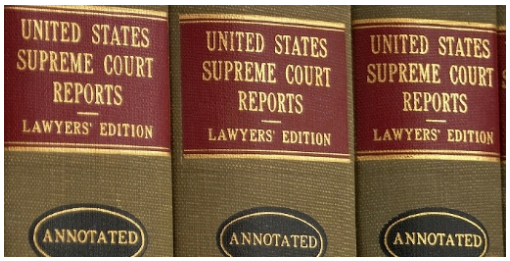

NAVIGATING THE COMPLEXITIES OF DOMESTIC VIOLENCE

Domestic Violence Justice Survivors (JSA)

FACULTY

Kate Mogulescu, Esq.
Director of the Survivors Justice Project

Melissa Mahabir, MSW
Project Coordinator of the Survivors Justice Project

Patrice Smith
One of the first Women to be released from prison under the Domestic Violence Survivors Justice Act

Program Coordinator & Moderator: Elizabeth Justesen, Esq.

October 5, 2021
Suffolk County Bar Association, New York

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Domestic Violence Justice Survivors Act
Tuesday, October 5, 2021

Agenda

1:00 – 1:05 p.m.	Welcome and Introductions – Elizbeth Justesen
1:05 – 1:30 p.m.	**The History and Scope of DVSJA – Kate Mogulescu** • History of DVSJA • Scope of the program • Intent and outcomes to date • Sentencing and resentencing eligibility
1:30 – 1:55 p.m.	**Working with Survivors in Prison – Melissa Mahabir** • Support and additional resources • Tips for working with someone seeking relief
1:55–2:15 p.m.	**The experience of a survivor-defendant in the criminal justice system – Patrice Smith** • What lawyers should know

Elizabeth A. Justesen, Esq.
Elizabeth graduated magna cum laude from the dual degree MSW/JD program between Stony Brook School of Social Welfare and Touro Law Center in 2006. Elizabeth is currently the Community Outreach Director of the Legal Aid Society of Suffolk County, a non-profit law firm representing indigent clients in Suffolk County navigate the family and criminal courts. Prior to that, Elizabeth was a practicing attorney at the Legal Aid Society of Suffolk County for ten years, having spent four years in Family Court representing children and then parents; and then six years in criminal court representing persons alleged to have committed criminal acts. Due to the Master's in Social Work, for the last three years she helped to develop and oversee the Social Work Bureau within the organization.

Elizabeth conducts numerous free, legal, community outreach programs educating community members in the various issues they confront in the court system including understanding CPS cases, custody, domestic violence, and knowing your criminal rights. She is the chair of the Resources sub-committee for the Suffolk County Re-Entry Task Force which works to improve the lives of parolees re-entering the community. Elizabeth is also the Secretary on the board for New Hour Women and Children Long Island, a non- profit organization assisting incarcerated women with various programming and support while in custody and as they transition back into the community and re-unite with their families. Together with other members of the Legal Aid Society of Suffolk County and many numerous providers, Elizabeth participates in Suffolk County's endeavor "Access to Justice" – which will seek to make access to court and legal information easier for Suffolk County residents, a model that will then be duplicated throughout the state. She is the supervising attorney for Breaking Barriers, a pro bono project at Touro Law School assisting persons with criminal convictions overcome barriers to employment and educational licenses through the application of certificates of relief from civil disabilities and certificates of good conduct, as well as helping with the new sealing legislation.

In conjunction with several other Legal Aid colleagues, she attended a training to begin "Restorative Justice Circles" with Hope for Youth and Touro for young people involved with criminal activity to prevent their need to enter the juvenile justice system. Elizabeth is currently working with Touro Law School to develop a formal externship program for students, coordinating with St. Joseph's college for undergraduate students to intern with the organization, and consulting with Stony Brook University School of Social Welfare in developing their Forensic Social Work program.

Kate Mogulescu, Esq.
Kate Mogulescu serves as the Director of the Survivors Justice Project. She is also currently an Associate Professor of Clinical Law at Brooklyn Law School and directs the Criminal Defense & Advocacy Clinic. Her work and scholarship focus largely on gender and reentry issues in the criminal legal system, with special attention to human trafficking and sex work. The Criminal Defense & Advocacy Clinic represents survivors of human trafficking and other criminalized victims of gender-based violence seeking post-conviction relief. Prior to joining Brooklyn Law School, Kate spent 14 years as a public defender with The Legal Aid Society's

Criminal Defense Practice. Kate has founded several projects that attempt to address the criminalization of vulnerable and exploited people, including the Exploitation Intervention Project (2011), the Survivor Reentry Project (2016), the Human Trafficking Clemency Initiative (2017).

Kate regularly trains public defenders, prosecutors, and other members of the criminal legal community in best practices, and advocates extensively against the criminalization of vulnerable and exploited people. She has also testified before the New York City Council, the New York State Legislature, and the United Nations Human Rights Committee. Her critical analysis of the criminal legal system and human trafficking discourse has been published in the Florida Law Review, the CUNY Law Review, and the Anti-Trafficking Review and she has also been widely featured in popular media, including The New York Times, The Guardian and National Public Radio. Kate received her J.D. from Yale Law School and B.A. from the State University of New York at Binghamton.

Melissa Mahabir, MSW

Melissa Mahabir serves as the Project Coordinator of the Survivors Justice Project. Melissa has been a social worker for close to 20 years. Her passion for working with families who have experienced violence began when she became an AmeriCorps member mentoring youth involved in the juvenile justice system. Melissa then spent five years in Miami, FL as a case manager and as special projects coordinator advocating for youth in foster care. In New York City, Melissa was a domestic violence counselor / advocate at STEPS to End Family Violence where she worked closely with justice-involved women, including facilitating groups at Rikers Island Jail, and as a forensic social worker at Legal Aid Society.

She is deeply committed to advocating on behalf of women in the criminal justice system, and her research on the impact of domestic violence on women's criminal justice involvement has been published in *The Journal of Interpersonal Violence* and *Social Work*. Melissa holds a B.A. from The College of William and Mary and a Masters in Social Work from Columbia University.

Patrice Smith was one of the first women to be released from prison under the Domestic Violence Survivors Justice Act. Patrice was released in September 2020 after serving nearly 22 years in prison. She had been incarcerated since she was 16 years old. While in prison, Patrice earned her Associate of Arts in Social Sciences and her Bachelor of Arts in Sociology from Marymount Manhattan College. Patrice now draws on her experience as a survivor of abuse and as someone who was given a potential life sentence as a teenager to develop her advocacy, which focuses on young people, the accessibility of higher education for people in prison and the successful implementation and application of the Domestic Violence Survivors Justice Act.

McKinney's Consolidated Laws of New York Annotated
Criminal Procedure Law (Refs & Annos)
Chapter 11-a. Of the Consolidated Laws (Refs & Annos)
Part Two. The Principal Proceedings
Title M. Proceedings After Judgment (Refs & Annos)
Article 440. Post-Judgment Motions (Refs & Annos)

McKinney's CPL § 440.47

§ 440.47 Motion for resentence; domestic violence cases

Effective: August 12, 2019
Currentness

1. (a) Notwithstanding any contrary provision of law, any person confined in an institution operated by the department of correction [1] and community supervision serving a sentence with a minimum or determinate term of eight years or more for an offense committed prior to the effective date of this section and eligible for an alternative sentence pursuant to section 60.12 of the penal law may, on or after such effective date, submit to the judge or justice who imposed the original sentence upon such person a request to apply for resentencing in accordance with section 60.12 of the penal law. Such person must include in his or her request documentation proving that she or he is confined in an institution operated by the department of corrections and community supervision serving a sentence with a minimum or determinate term of eight years or more for an offense committed prior to the effective date of this section and that she or he is serving such sentence for any offense eligible for an alternative sentence under section 60.12 of the penal law.

(b) If, at the time of such person's request to apply for resentencing pursuant to this section, the original sentencing judge or justice is a judge or justice of a court of competent jurisdiction, but such court is not the court in which the original sentence was imposed, then the request shall be randomly assigned to another judge or justice of the court in which the original sentence was imposed. If the original sentencing judge is no longer a judge or justice of a court of competent jurisdiction, then the request shall be randomly assigned to another judge or justice of the court.

(c) If the court finds that such person has met the requirements to apply for resentencing in paragraph (a) of this subdivision, the court shall notify such person that he or she may submit an application for resentencing. Upon such notification, the person may request that the court assign him or her an attorney for the preparation of and proceedings on the application for resentencing pursuant to this section. The attorney shall be assigned in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-two of the county law and the related provisions of article eighteen-A of such law.

(d) If the court finds that such person has not met the requirements to apply for resentencing in paragraph (a) of subdivision one of this section, the court shall notify such person and dismiss his or her request without prejudice.

2. (a) Upon the court's receipt of an application for resentencing, the court shall promptly notify the appropriate district attorney and provide such district attorney with a copy of the application.

(b) If the judge or justice that received the application is not the original sentencing judge or justice, the application may be referred to the original sentencing judge or justice provided that he or she is a judge or justice of a court of competent jurisdiction and that the applicant and the district attorney agree that the application should be referred.

(c) An application for resentencing pursuant to this section must include at least two pieces of evidence corroborating the applicant's claim that he or she was, at the time of the offense, a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the applicant as such term is defined in subdivision one of section 530.11 of this chapter.

At least one piece of evidence must be either a court record, presentence report, social services record, hospital record, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection. Other evidence may include, but shall not be limited to, local and state department of corrections records, a showing based in part on documentation prepared at or near the time of the commission of the offense or the prosecution thereof tending to support the person's claim, or when there is verification of consultation with a licensed medical or mental health care provider, employee of a court acting within the scope of his or her employment, member of the clergy, attorney, social worker, or rape crisis counselor as defined in section forty-five hundred ten of the civil practice law and rules, or other advocate acting on behalf of an agency that assists victims of domestic violence for the purpose of assisting such person with domestic violence victim counseling or support.

(d) If the court finds that the applicant has not complied with the provisions of paragraph (c) of this subdivision, the court shall dismiss the application without prejudice.

(e) If the court finds that the applicant has complied with the provisions of paragraph (c) of this subdivision, the court shall conduct a hearing to aid in making its determination of whether the applicant should be resentenced in accordance with section 60.12 of the penal law. At such hearing the court shall determine any controverted issue of fact relevant to the issue of sentencing. Reliable hearsay shall be admissible at such hearings.

The court may consider any fact or circumstances relevant to the imposition of a new sentence which are submitted by the applicant or the district attorney and may, in addition, consider the institutional record of confinement of such person, but shall not order a new pre-sentence investigation and report or entertain any matter challenging the underlying basis of the subject conviction. The court's consideration of the institutional record of confinement of such applicant shall include, but not be limited to, such applicant's participation in or willingness to participate in programming such as domestic violence, parenting and substance abuse treatment while incarcerated and such applicant's disciplinary history. The fact that the applicant may have been unable to participate in treatment or other programming while incarcerated despite such applicant's willingness to do so shall not be considered a negative factor in determining a motion pursuant to this section.

(f) If the court determines that the applicant should not be resentenced in accordance with section 60.12 of the penal law, the court shall inform such applicant of its decision and shall enter an order to that effect. Any order issued by a court pursuant to this section must include written findings of fact and the reasons for such order.

(g) If the court determines that the applicant should be resentenced in accordance with section 60.12 of the penal law, the court shall notify the applicant that, unless he or she withdraws the application or appeals from such order, the court will enter an order vacating the sentence originally imposed and imposing the new sentence to be imposed as authorized by section 60.12 of the penal law. Any order issued by a court pursuant to this section must include written findings of fact and the reasons for such order.

3. An appeal may be taken as of right in accordance with applicable provisions of this chapter: (a) from an order denying resentencing; or (b) from a new sentence imposed under this provision and may be based on the grounds that (i) the term of the new sentence is harsh or excessive; or (ii) that the term of the new sentence is unauthorized as a matter of law. An appeal in accordance with the applicable provisions of this chapter may also be taken as of right by the applicant from an order specifying and informing such applicant of the term of the determinate sentence the court would impose upon resentencing on the ground that the term of the proposed sentence is harsh or excessive; upon remand to the sentencing court following such appeal the applicant shall be given an opportunity to withdraw an application for resentencing before any resentence is imposed. The applicant may request that the court assign him or her an attorney for the preparation of and proceedings on any appeals regarding his or her application for resentencing pursuant to this section. The attorney shall be assigned in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-two of the county law and the related provisions of article eighteen-A of such law.

4. In calculating the new term to be served by the applicant pursuant to section 60.12 of the penal law, such applicant shall be credited for any jail time credited towards the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.

Credits
(Added L.2019, c. 31, § 3, eff. Aug. 12, 2019.)

Footnotes

1 So in original. (“correction” should be “corrections”)

McKinney's CPL § 440.47, NY CRIM PRO § 440.47
Current through L.2019, chapter 758 & L.2020, chapter 21. Some statute sections may be more current, see credits for details.

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Two. Sentences
Title E. Sentences
Article 60. Authorized Dispositions of Offenders (Refs & Annos)

McKinney's Penal Law § 60.12

§ 60.12 Authorized disposition; alternative sentence; domestic violence cases

Effective: May 14, 2019
Currentness

1. Notwithstanding any other provision of law, where a court is imposing sentence upon a person pursuant to section 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 of this title, other than for an offense defined in section 125.26, 125.27, subdivision five of section 125.25, or article 490 of this chapter, or for an offense which would require such person to register as a sex offender pursuant to article six-C of the correction law, an attempt or conspiracy to commit any such offense, and is authorized or required pursuant to sections 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 of this title to impose a sentence of imprisonment, the court, upon a determination following a hearing that (a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the defendant as such term is defined in subdivision one of section 530.11 of the criminal procedure law; (b) such abuse was a significant contributing factor to the defendant's criminal behavior; (c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to section 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 of this title would be unduly harsh may instead impose a sentence in accordance with this section.

A court may determine that such abuse constitutes a significant contributing factor pursuant to paragraph (b) of this subdivision regardless of whether the defendant raised a defense pursuant to article thirty-five, article forty, or subdivision one of section 125.25 of this chapter.

At the hearing to determine whether the defendant should be sentenced pursuant to this section, the court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination. Reliable hearsay shall be admissible at such hearings.

2. Where a court would otherwise be required to impose a sentence pursuant to section 70.02 of this title, the court may impose a definite sentence of imprisonment of one year or less, or probation in accordance with the provisions of section 65.00 of this title, or may fix a determinate term of imprisonment as follows:

(a) For a class B felony, the term must be at least one year and must not exceed five years;

(b) For a class C felony, the term must be at least one year and must not exceed three and one-half years;

(c) For a class D felony, the term must be at least one year and must not exceed two years; and

(d) For a class E felony, the term must be one year and must not exceed one and one-half years.

3. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to section 70.00 of this title, the court may fix a determinate term of imprisonment of at least five years and not to exceed fifteen years.

4. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to subparagraph (i) of paragraph (b) of subdivision two of section 70.71 of this title, the court may fix a determinate term of imprisonment of at least five years and not to exceed eight years.

5. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to subparagraph (i) of paragraph (b) of subdivision three of section 70.71 of this title, the court may fix a determinate term of imprisonment of at least five years and not to exceed twelve years.

6. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to subparagraph (ii) of paragraph (b) of subdivision two of section 70.71 of this title, the court may fix a determinate term of imprisonment of at least one year and not to exceed three years.

7. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to subparagraph (ii) of paragraph (b) of subdivision three of section 70.71 of this title, the court may fix a determinate term of imprisonment of at least three years and not to exceed six years.

8. Where a court would otherwise be required to impose a sentence pursuant to subdivision six of section 70.06 of this title, the court may fix a term of imprisonment as follows:

(a) For a class B felony, the term must be at least three years and must not exceed eight years;

(b) For a class C felony, the term must be at least two and one-half years and must not exceed five years;

(c) For a class D felony, the term must be at least two years and must not exceed three years;

(d) For a class E felony, the term must be at least one and one-half years and must not exceed two years.

9. Where a court would otherwise be required to impose a sentence for a class B, C, D or E felony offense pursuant to section 70.00 of this title, the court may impose a sentence in accordance with the provisions of subdivision two of section 70.70 of this title.

10. Except as provided in subdivision seven of this section, where a court would otherwise be required to impose a sentence pursuant to subdivision three of section 70.06 of this title, the court may impose a sentence in accordance with the provisions of subdivision three of section 70.70 of this title.

11. Where a court would otherwise be required to impose a sentence pursuant to subdivision three of section 70.06 of this title, where the prior felony conviction was for a felony offense defined in section 70.02 of this title, the court may impose a sentence in accordance with the provisions of subdivision four of section 70.70 of this title.

Credits

(Added L.1998, c. 1, § 1, eff. Aug. 6, 1998. Amended L. 2019, c. 31, § 1, eff. May 14, 2019; L.2019, c. 55, pt. WW, § 1, eff. May 14, 2019.)

McKinney's Penal Law § 60.12, NY PENAL § 60.12
Current through L.2019, chapter 758 & L.2020, chapter 21. Some statute sections may be more current, see credits for details.

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2020 N.Y. Slip Op. 20240

132 N.Y.S.3d 251
County Court, New York,
Erie County.

The PEOPLE of the State of New York
v.
Patrice SMITH, Defendant

98-3053-001
|
Decided September 2, 2020

Synopsis

Background: Defendant was convicted at the age of 16 of second-degree murder and first-degree robbery, and sentenced to 25 years to life for murder and 10 years for robbery, arising out of her participation in the death of 71-year-old man with whom she had a sexual relationship. Following affirmance of defendant's conviction by the Supreme Court, Appellate Division, 299 A.D.2d 941, 750 N.Y.S.2d 730, and the Court of Appeals, 1 N.Y.3d 610, 776 N.Y.S.2d 198, 808 N.E.2d 333, and denial of defendant's petition for writ of habeas corpus, 722 F.Supp.2d 356, Victor E. Bianchini, J., defendant moved for vacating original sentence and resentencing pursuant to the Domestic Violence Survivors Justice Act.

Holdings: The County Court, Sheila A. DiTullio, J., held that:

defendant was a victim of domestic violence subjected to substantial physical, sexual, or psychological abuse;

given compelling evidence, defendant was not required to provide expert testimony based on her circumstances regarding the manner and degree that the abuse she experienced contributed to her criminal conduct;

abuse of defendant was a significant contributing factor to her criminal behavior; and

resentencing was warranted under the Domestic Violence Survivors Justice Act.

Motion granted.

Procedural Posture(s): Sentencing or Penalty Phase Motion or Objection.

Attorneys and Law Firms

***253** JOHN J. FLYNN, District Attorney of Erie County, (Michael J. Hillery, Esq., Assistant District Attorney, of counsel), Appearing for the People

KATE MOGULESCU, ESQ., Brooklyn Law School Legal Services Corp., (Julie Kempner, Esq., of counsel), Appearing for Defendant

Opinion

Sheila A. DiTullio, J.

Defendant moves pursuant to Criminal Procedure Law § 440.47 for an order vacating the sentence originally imposed in the matter and resentencing defendant pursuant to Penal Law § 60.12 on the grounds that: (1) at the time of the commission of the offense she was a victim of domestic violence subjected to substantial physical, sexual and psychological abuse; (2) such abuse was a significant contributing factor to her commission of the offense and (3) the original sentence imposed in this matter is unduly harsh. In opposition to defendant's motion, the People contend that defendant's belated claims of sexual abuse received little record corroboration, but even if the corroboration were considered adequate, defendant's motion fails to establish that the abuse she claims to have suffered was a significant contributing factor to her criminal behavior.

Relevant Background And Procedural History

Defendant was indicted on three counts of murder in the second degree (Penal Law §§ 125.25[1], [2], [3], 20.00) and one count of robbery in the first degree (Penal Law § 160.15[1], 20.00) arising out of defendant's participation in the fatal strangulation and robbery of 71-year-old Robert Robinson. Defendant was convicted after jury trial of two counts of murder in the second degree (Penal Law §§ 125.25[1], [3], 20.00) and robbery in the first degree (Penal Law § 160.15[1], 20.00). On December 1, 1999,

defendant was sentenced to concurrent indeterminate terms of 25 years to life on the murder counts and to a determinate term of imprisonment of ten years on the robbery count. Defendant was ***254** resentenced pursuant to Correction Law § 601(d) on November 7, 2011, at which time a five-year period of post-release supervision was imposed on the robbery conviction.

Defendant's conviction was unanimously affirmed by the Appellate Division, Fourth Department (*People v. Smith*, 1 N.Y.3d 610, 776 N.Y.S.2d 198, 808 N.E.2d 333 [2004]). Defendant's subsequent CPL 440.10 motion and writ of error *coram nobis* also were denied, as was defendant's application for federal *habeas corpus* relief (*Smith v. Perez*, 722 F. Supp. 2d 356 [W.D.N.Y. 2010]).

Defendant was 16 years old at the time sentence originally was imposed. She is now 37 years old and has served nearly 21 years on her sentence.

Legislative History And Relevant Statutory Provision

On May 14, 2019, the Domestic Violence Survivors Justice Act ("DVSJA") was signed into law, amending Penal Law § 60.12 by authorizing the imposition of alternative sentences for survivors of domestic violence, and enacting Criminal Procedure Law § 440.47, providing a procedure by which these same survivors of domestic violence who are currently serving their sentences may apply to be resentenced. The legislation was born of the realization that "domestic violence and women's incarceration are inextricably linked" and that:

> "All too often, when a survivor defends herself or her children, our criminal justice system responds with harsh punishment instead of with compassion and assistance. Much of this punishment is the result of our state's current sentencing structure which does not allow judges discretion to fully consider the impact of domestic violence when determining sentence lengths. This leads to long, unfair prison sentences for many survivors."

(NY Senate Assemb. Memorandum in Support of Bill A3110 [Jan. 26, 2017]).

The DVSJA was intended to give the courts discretion to ameliorate the harsh effects of lengthy, mandatory sentences for victims of domestic violence where that violence was a significant contributing factor to their criminal behavior. The legislation neither exonerates a defendant nor excuses her criminal conduct. It simply permits a court to impose, or in cases where a defendant already has been sentenced, to reduce a sentence in consideration of that defendant's status as a domestic violence victim.

Penal Law § 60.12 states in pertinent part:

> "... the court, upon a determination following a hearing that (a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the defendant as such term in defined in subdivision one of section 530.11 of the criminal procedure law; (b) such abuse was a significant contributing factor to the defendant's criminal behavior; (c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to section 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 [of the Penal Law] would be unduly harsh may instead impose a sentence in accordance with this section.
>
> A court may determine that such abuse constitutes a significant contributing factor pursuant to [the provisions herein] regardless of whether the defendant raised a defense pursuant to article thirty-five, ***255** article forty, or subdivision one of section 125.25 [of the Penal Law].
>
> At the hearing to determine whether the defendant should be sentenced pursuant to this section, the court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination. Reliable hearsay shall be admissible at such hearing." [1]

(Penal Law § 60.12[1]).

Criminal Procedure Law § 440.47 provides that a defendant currently confined in an institution operated by the Department of Corrections and Community Supervision ("DOCCS"), and serving a sentence with a minimum determinate term of eight years or more for an offense

committed before August 12, 2019, who would have been eligible for an alternative sentence under revised Penal Law § 60.12, may apply for resentencing to the judge who imposed the original sentence. Defendant currently is confined at the Albion Correctional Facility, an institution operated by DOCCS, serving a prison sentence of 25 years to life, for eligible offenses committed on December 15, 1998, and thus is eligible to apply for resentencing (*see* CPL 440.47 [1][a]).

The Underlying Crime

On the night in question, defendant, accompanied by co-defendant Theoplish Mitchell and Mitchell's four-month-old child, took the bus to Robinson's house because the friends who had been at home with them had left, and they were bored.[2] After watching T.V. for about half an hour, Robinson began demanding sex from defendant, and told her to go into his bedroom in the back of the house so they could "do it." When defendant refused to have sex with him, Robinson reminded defendant of all the things he had bought her. After defendant again told him she did not want to have sex, Robinson became enraged, demanding that defendant repay him for everything he had bought. He slapped defendant across the face and directed her to go to his room. Defendant resisted and tried to get to the front of the house but Robinson "kept pushing" her back toward the bedroom, threatening to kill her with the gun he kept in the house and previously had shown her. A physical fight ensued in the hallway as Robinson and defendant fell to the floor, struggling. Fearing Robinson was going to get his gun, defendant reached for a telephone cord and pulled it around his neck.[3] Mitchell became involved in the melee, placing a pillow over Robinson's head. When defendant let go of the cord, Mitchell grabbed it and continued to pull it around Robinson's neck. Defendant and Mitchell left the scene in Robinson's car once the struggle ***256** was over. Later that same night, Robinson's daughter found him dead and items strewn about the house.

Findings And Analysis

The evidence adduced at the hearing conducted in this matter pursuant to CPL 440.47(2)(e) establishes that defendant meets the eligibility requirements for resentencing and that resentencing pursuant to Penal Law § 60.12 is warranted.[4]

Defendant Is A Victim Of Domestic Violence Subjected To Substantial Physical, Sexual Or Psychological Abuse

The record establishes that beginning when defendant was 15 years old, she was subjected to abuse, coercion and exploitation at the hands of the decedent, Robert Robinson, a 71-year-old man with whom she had an eight-month sexual relationship. The trial record is replete with evidence of Robinson's abuse and exploitation of defendant, who testified that shortly after they had met, Robinson began taking her shopping and out to eat, remarking that defendant was "tender" because she was so young. They first engaged in sexual conduct while in Robinson's car while parked outside an abandoned train station; he offered defendant $50.00 to let him touch her. He touched her, masturbated and then gave defendant the money. As the months went on, Robinson continued to request sex acts from defendant in exchange for money; he gave her $100 to perform oral sex on him and asked her to "strut [her] stuff" and strip for him. Robinson also asked defendant to engage in sex with other adult males with whom he was friends, and asked defendant to bring other young girls to him for sex and to perform "sex shows". Robinson bought defendant food, school clothes, shoes, boots, marijuana and alcohol, and encouraged her to drink before having sex.[5] Robinson promised to give defendant a car if she obtained her driver license, and to buy her a house if she "could have his baby." Robinson also coerced defendant by threatening to disclose the nature of their relationship[6] to defendant's father, who did not approve of Robinson's spending time with defendant and previously had warned Robinson not to see her.

Eight days after the crime, defendant, a high school freshman, was interviewed by a homicide detective at Buffalo Police headquarters. She described how she had met Robinson at a gas station months earlier when she and Mitchell were having car trouble; how Robinson had helped them start their car, given her his phone number and encouraged her to call, and how she had called him shortly thereafter, when she was "having trouble" with her father. She recounted how they began calling each other nearly every day, and when the weather started getting colder Robinson ***257** bought her a winter coat and boots. He also bought her a gold chain with an eagle on it and gave her the watch off his wrist when he realized she did not have one. The first time defendant went to Robinson's house was after she had called him, told him

she "didn't have anything to eat and asked him if he would give [her] some food."

Approximately two hours later, while still at police headquarters, defendant was reinterviewed by homicide detectives and provided a second sworn statement in which she admitted to being at Robinson's house and participating in the altercation that led to his death.

Defendant's allegations of abuse are not without record support and corroboration. In affirming defendant's conviction, the Appellate Division, Fourth Department noted:

> "The victim was a 71-year-old man with whom defendant had an eight-month relationship that began when she was 15. The evidence presented by the People included defendant's statement that the victim gave defendant money and gifts in return for sexual favors, and defendant gave similar testimony at trial."

(*People v. Smith*, 299 A.D.2d 941, 750 N.Y.S.2d 730 [4th Dept. 2002]). The federal district court also acknowledged defendant's sexual relationship with the victim, observing that they "had been involved in an eight-month sexual relationship that began when she was 15 years old" (*Smith v. Perez,* 722 F. Supp.2d 356, 362 [W.D.N.Y. 2010]). The trial testimony of People's witnesses Norma Williams and Matricia Gaskin provided corroborative proof of the sexual relationship. Williams, who had been incarcerated with defendant while she was awaiting trial, testified that defendant referred to Robinson as a "guy she used to date." Gaskin, a friend of defendant's who also had been asked out by Robinson, testified that she knew defendant had been having sex with him.

Finally, the People themselves have not contested, either at trial or on the instant motion, that a sexual relationship existed. [7]

Defendant's Abuse Was A Significant Contributing Factor To Her Criminal Behavior

In order to obtain relief under the DVSJA, a defendant need not establish that the abuse she suffered was the exclusive, or even the overriding factor to her criminal conduct. That it was a significant contributing factor will suffice. It is therefore entirely possible for a defendant to be motivated by any number of factors, including, as the People contend here, a desire to rob the victim, but to be entitled to the relief afforded by CPL 440.47 nonetheless. Neither is it required that a defendant be in the throes of an attack or that one be imminent. Instead, a court must evaluate a defendant's conduct in light of the cumulative effect of her abuse. A plain reading of the statute and consideration of its legislative history permits no other interpretation.

In support of her contention that her abuse was a significant contributing factor to her criminal conduct, defendant ***258** cites numerous reports, including those by the United States Department of Justice, the Centers For Disease Control and the United States Department of Health & Human Services, as well as various law review and journal articles that detail the ravaging effects of domestic violence on its victims and the effects of that trauma on victims' thought processes and behaviors. [8] In the intervening decades since defendant's conviction, tremendous progress has been made with respect to our collective understanding of the impact domestic violence has on its victims and the way in which we view victims' conduct in the context of a criminal prosecution. What we know now, but did not in 1999, is how profoundly the trauma of sexual abuse and exploitation affects a victim's behavior and choices, and how that trauma informs us and provides us with a new lens through which to view and assess a defendant's criminal conduct.

A court's evaluation with regard to whether the abuse a defendant suffered constitutes a significant contributing factor to her criminal behavior is not transactional. It is cumulative, requiring the court to consider the cumulative effect of the abuse together with the events immediately surrounding the crime, paying particular attention to the circumstances under which defendant was living and adopting a "full picture" approach in its review (*see* NY Senate, Regular Session, March 12, 2019, at 1569-1572). The "full picture" here is one of a 16-year-old female who had been raped, abused and coerced by a man 55 years her senior, who had exploited and coerced her through escalating offers of money and gifts for sex and by threatening to expose the relationship to her father.

The repeated abuse defendant endured cannot be compartmentalized or separated from her actions on the night of the crime. They are inextricably interlinked. It is

indisputable that had it not been for the illicit and abusive relationship Robinson cultivated, defendant would not have gone to his home and reacted the way she did. It is for this reason, as defendant notes in her papers, that it is of no consequence what exactly took pace that night - - a robbery gone awry. Robinson's refusal to give defendant the money she needed to hire a lawyer, or defendant's refusal to engage in sex—defendant would not have gone there and would not have reacted to the conflict in the manner she did were it not for the months of abuse she had endured. Research has shown that domestic violence exacts a heavy psychological toll on its victims, impacting their states of mind, making them "hypervigilent to cues of impending danger" that would go unrecognized by someone who had not suffered abuse, increasing their perception of danger and causing them to act impulsively (*see* Lenore E.A. Walker, *Battered Women Syndrome and Self-Defense*, 6 Notre Dame J.L. Ethics & Pub. Pol'y 321, 328 [1992]).

Whatever the immediate cause of the conflict that resulted in Robinson's death, defendant's repeated abuse was a significant contributing factor to her behavior, warranting resentencing for her crime.

Having Regard For The Nature And Circumstances Of The Crime And The History, Character And Condition Of The Defendant, The Sentence Originally Imposed Is Unduly Harsh And Excessive

The fatal strangulation of Robert Robinson was a brutal crime—a crime for ***259** which defendant has been held accountable, and rightfully so. Yet, because of the circumstances present here, it is not a crime for which defendant should remain incarcerated for the rest of her natural life. Defendant's age at the time of the offense,[9] the sexual abuse and exploitation she suffered, and her exemplary record while incarcerated compel her resentencing to a term that more effectively, and more justly, considers her circumstances and status as a victim of violence and abuse.

Defendant's achievements while incarcerated are nothing short of impressive and demonstrate to this court substantial personal growth and strong evidence of rehabilitation. Defendant has earned both her associate and bachelor's degrees, achieving Dean's List honors; successfully completed anger management and other counseling programs; volunteered in the Alternatives to Violence Project at the Bedford Hills Correctional Facility and was selected for and successfully completed an advanced course in conflict resolution. She has been trained as a sighted guide for the visually impaired; has worked as a nursery attendant and porter, and completed a training program for HIV/AIDS Peer Educators and HIV Test Counselors. She has made the best of her circumstances and the most of her opportunities.

Defendant also enjoys the support of her family and members of the community, many of whom wrote letters of support with respect to her 2011 clemency application, and have first-hand knowledge of defendant's history, character and maturation while incarcerated. Defendant's plans, if she is released, are to use her experience, training and education to assist youth who are vulnerable to exploitation. Defendant certainly possesses the knowledge and personal experience to do so.

In light of the foregoing, it is this court's firm opinion that the sentence originally imposed is unduly harsh.

Conclusion

The DVSJA was never intended to hold a defendant blameless for her actions or excuse her criminal conduct. It instead both recognizes the severity of an offense while also affording some measure of mercy for the offender. Patrice Smith stands convicted of robbery and murder. Nothing in this decision changes that. What is changed, however, is the court's understanding of all the circumstances that impacted the decision defendant made on the night of the murder. A court must never be so rigid as to be unwilling to revisit a decision. This is especially so where, as here, new information is brought to light and a new perspective is in order.

What we have learned in the two decades since defendant's sentencing is that victims of domestic violence should be viewed by our criminal justice system in a manner that recognizes not only their status as offenders but as their status as survivors.

The serious nature of the crime and the pain caused the Robinson family are not ***260** lost on the court. Our system of justice requires that someone convicted of such a crime be held accountable and punished for her actions. But our system also allows for mercy—mercy where defendant herself is

a victim, and where her victimization fueled the crime for which she was convicted.

Accordingly, for the foregoing reasons, and in consideration of the record and evidence before this court, it is hereby

ORDERED, that defendant should be resentenced in accordance with Penal Law § 60.12; and it is further

ORDERED, that upon resentencing, a determinate sentence of 12 years' imprisonment together with a five-year period of post-release supervision would be imposed on each of defendant's convictions for murder in the second degree (Penal Law §§ 125.25[1], [3], 20.00), and a determinate sentence of 5 years' imprisonment together with a five-year period of post-release supervision on defendant's conviction for robbery in the first degree (Penal Law §§ 160.15[1], 20.00), all such sentences to run concurrently with each other; and it is further

ORDERED, that defendant has ten days from the date of the within decision and order to inform the court whether she wishes to withdraw her application or appeal said decision and order; and it is further

ORDERED, that unless defendant so advises the court within said ten-day period, the matter will be set down for sentencing on September 17, 2020 at 10:00 A.M., at which time the court will vacate the sentence originally imposed and impose a determinate sentence of 12 years' imprisonment together with a five-year period of post-release supervision with respect to each of defendant's convictions for murder in the second degree (Penal Law §§ 125.25,[1], [3], 20.00), and a determinate term of 5 years' imprisonment together with a five-year period of post-release supervision on defendant's conviction for robbery in the first degree (Penal Law §§ 160.15[1], 20.00), all such sentences to run concurrently with each other; and it is further

ORDERED, that defendant shall appear with counsel on September 17, 2020 at 10:00 A.M. for the purpose of resentencing.

This constitutes notice to defendant pursuant to Criminal Procedure Law § 440.47 (2)(g), and the decision and order of the court.

All Citations

132 N.Y.S.3d 251, 2020 N.Y. Slip Op. 20240

Footnotes

1 A “victim of domestic violence” is defined in Social Services Law § 459-a as someone who is subjected to acts of violence, coercion or abuse by a member of the same family or household where such acts “have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person.” “Member of the same family or household” is defined in Criminal Procedure Law § 530.11, and includes “persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at anytime” (CPL 530.11[1][e]).

2 The People contend that defendant went to Robinson's home to rob him because she needed money to retain an attorney on an unrelated matter.

3 Robinson's daughter testified at trial that once the crime scene had been released by the police and she returned to the house to clean up, she discovered a .38 caliber handgun in a closet in Robinson's bedroom. She also confirmed that her father had a collection of phone cords stored in a dresser drawer.

4 With respect to the evidence presented at the hearing, all such evidence was documentary in nature, the parties having elected to call no witnesses.

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5 During defendant's trial testimony, she recounted how on one occasion she went to Robinson's house after drinking alcohol and becoming intoxicated. Robinson requested sex but defendant told him she was too sick from drinking, and passed out. Defendant woke up to find Robinson on top of her, engaging in intercourse. Defendant became sick, ran to the bathroom and vomited.

6 Robinson's "relationship" with defendant consisted of repeated criminal acts constituting rape in the third degree (Penal Law § 130.25) and aggravated patronizing a minor for prostitution in the third degree (Penal Law § 230.11). In addition to being a victim of these crimes, defendant also was a "sexually exploited child" under New York's Safe Harbour For Exploited Children Act (Social Services Law § 447-a) and a victim of sex trafficking under the Federal Trafficking Victims Protection Act (*see* 22 U.S.C.§ 7102).

7 It can hardly be said that the People contest the existence of a sexual relationship between Robinson and defendant when two of their own trial witnesses confirmed its existence. Additionally, in their responding papers, the People note: "[We] concede that defendant meets certain of CPL 440.47's criteria, namely that she is serving a prison sentence of at least eight years—a twenty-five year to life sentence—for eligible offenses, and, if her testimony is believed, she was the victim of domestic violence by a person unrelated to her and with whom she was intimately involved ..." (People's Opposing Affidavit, ¶19).

8 Defendant offered no expert testimony or opinion based specifically on her circumstances, regarding whether, in what manner and to what degree the abuse she suffered affected and contributed to her criminal conduct. While such expert opinion likely would have assisted the court in evaluating defendant's claims and reaching a determination, in light of the compelling evidence here, its absence is not fatal to defendant's motion.

9 While not determinative of the motion, defendant's age at the time of the abuse and the commission of the crime cannot be ignored. In the decades since defendant's conviction and sentencing, both our federal and state courts have recognized juveniles' "diminished culpability and greater prospects for reform" (*Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) [prohibiting sentences of life without the possibility of parole]), requiring that they be viewed differently than other criminal offenders (*see*, *e.g.* *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) [prohibiting death sentences for defendants under age 18]; New York's "Raise The Age" law (CPL article 722) [increasing the age of criminal responsibility from 16 to 18 years old]).

72 Misc.3d 809
County Court, New York,
Erie County.

The PEOPLE of the State of New York, Plaintiff,
v.
S.M., Defendant.

01001-2012
|
Decided on July 9, 2021

Synopsis

Background: Defendant, who was convicted of one count of robbery in the first degree, upon her plea of guilty, and sentenced to a minimum or determinate term of eight years or more, filed motion for resentencing under Domestic Violence Survivors Justice Act.

Holdings: The County Court, Susan M. Eagan, J., held that:

defendant was victim of domestic violence at time of offense;

domestic abuse was a significant contributing factor to defendant's criminal behavior;

sentence imposed was unduly harsh and excessive; and

requiring defendant to spend five years on post-release supervision would not have served purpose of justice system.

Ordered accordingly.

Procedural Posture(s): Sentencing or Penalty Phase Motion or Objection.

Attorneys and Law Firms

Appearing for the People: JOHN J. FLYNN, District Attorney of Erie County, By: David A. Heraty, Esq., Assistant District Attorney

Appearing for the Defendant: Alexandra Harrington, Esq.

Opinion

Susan M. Eagan, J.

***1** The defendant (S.M.) filed a request pursuant to Criminal Procedure Law (CPL) § 440.47 to apply for resentencing in accordance with § 60.12 of the Penal Law (PL) and this Court granted the request by order dated December 3, 2020. This Court found S. M. eligible for resentencing since at the time of the request she was confined in an institution operated by the Department of Correction and Community Supervision (DOCCS) serving a sentence with a minimum or determinate term of eight years or more for an offense committed prior to the effective date of CPL § 440.47 and eligible for an alternative sentence pursuant to PL § 60.12.

S.M. then filed an application for resentencing pursuant to CPL § 440.47 dated February 9, 2021 alleging that she is eligible for resentencing because (1) at the time of the instant offense she was a victim of domestic abuse subjected to substantial physical, sexual and psychological abuse; (2) such abuse was a significant contributing factor to her commission of the offense, and; (3) the original sentence imposed in this matter was unduly harsh. In opposition to S.M.'s motion, the People contend that since S.M.'s application she is no longer confined in a correctional facility or serving a sentence of incarceration and therefore is not eligible for resentencing. The People also contend in their opposition that S.M. fails to establish that the abuse was a significant contributing factor to her criminal behavior or that her sentence was unduly harsh. It should be noted that following the hearing the People submitted written correspondence to the Court withdrawing their opposition to S.M.'s application for resentencing. However, this Court must still make written findings of fact and state the reasons for granting the application and issuing the resentencing order pursuant to CPL § 440.47(2)(g).

S.M. pleaded guilty to one count of robbery in the first degree under Superior Court Information Number 37736 in connection with events which occurred on May 9, 2012. S.M. was sentenced to nine and one-half years imprisonment followed by five years post-release supervision on November 18, 2013. She appealed her conviction to the Appellate Division, Fourth Department, and it was unanimously

affirmed. S.M. completed her sentence on February 11, 2021 and was released to post-release supervision.

The Domestic Violence Survivors Justice Act (DVSJA) was signed into law on May 14, 2019 permitting survivors of domestic violence to apply for resentencing and authorizing the imposition of alternative sentences provided these survivors of domestic violence meet the requirements of CPL § 440.47. The intent of the DVSJA was to give courts discretion to reduce lengthy sentences for victims of domestic violence where that violence was a significant contributing factor to their criminal behavior. PL § 60.12 requires the court to conduct a hearing and following that hearing may impose an alternate sentence after a determination that (a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the defendant; (b) such abuse was a significant contributing factor to the defendant's criminal behavior; (c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that the sentence was unduly harsh. A court may determine that the abuse was a significant contributing factor to the defendant's criminal behavior whether or not the defendant raised a defense pursuant to article thirty-five, article forty, or subdivision one of § 125.25 of the Penal Law. At the hearing the court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination, including the admission of reliable hearsay. (PL § 60.12[1]).

***2** Under CPL§ 440.47 (1)(a) defendants that are currently incarcerated may submit a request to apply for resentencing. When S.M. made her request to apply for resentencing she was incarcerated and when her application for resentencing was received she was still incarcerated. She was released while the application was pending, which the People originally contended affects her eligibility for resentencing pursuant to CPL § 440.47, then subsequent to the hearing withdrew their opposition to S.M.'s application for resentencing.

UNDERLYING CRIME

On May 9, 2012 S.M. drove Mr. S. and a third individual around the city. Mr. S. instructed her to pull over at which time he robbed a pedestrian on the street, taking money and other valuables. Mr. S. and the other individual robbed several people during the course of the day, demanding S.M. pull the car over when they identified someone they wanted to rob. S.M. pleaded with Mr. S. to let her stay at his sister's house with her child but he grabbed her by the hair and dragged her back to the vehicle, insisting she drive because she was the one with a driver license. S.M. did not want to drive so she got into the passenger seat, at which time Mr. S. headbutted her and struck her in the face, causing her to bleed. S.M. then complied with his demands to drive. At some point during the commission of several robberies, they encountered the victim at which time Mr. S. shot him and instructed S.M. to drive off. S.M. pleaded guilty to Robbery in the First Degree (PL § 160.15[4]) and testified against Mr. S. in the murder trial.

FINDINGS OF FACT

In consideration of the testimony offered at the hearing along with voluminous exhibits stipulated into evidence on consent by both parties, the court makes the following findings of fact:

1. S.M. was physically abused as a child by her mother and other adults charged with her care while in alternative placements after being abandoned by her mother by the age of five.

2. S.M. met Mr. S. when she was thirty years old and he moved into her apartment after only dating a few weeks. While their relationship was initially positive, it quickly turned abusive and continued to be abusive, including on and after the date of the crime in question.

3. S.M. did not initially know Mr. S. was involved in a gang but learned that he was a high-ranking gang member and once she learned this information she noticed a change in Mr. S.'s behavior. He became cold, abusive, controlling. He would get drunk, call her names and physically abuse her on a daily basis.

4. One specific instance of violence occurred on New Years Eve of 2010 while at a family party. S.M. loaned one of her vehicles to Mr. S.'s brother which caused Mr. S. to become angry, hit her in the face and order her not to let anyone borrow her car without his permission. When she was struck by Mr. S., he split her lip and caused her nose

to bleed. Mr. S. dragged her by the hair into the bathroom and demanded she clean the blood from her face.

5. Mr. S. beat S.M. after she caught him cheating on her with another woman. An argument resulted when S.M. attempted to confront Mr. S. about his infidelity wherein he pinned her down on the floor and head butted her. The next day her eyes and forehead were so swollen she could not see properly.

6. In 2011, Mr. S. was drinking and became angry and violent. S.M. walked to a nearby store and called the police. When she returned home to wait for the police, he grabbed her at the top of the stairs, continued to assault her and dragged her out to the front lawn. The police arrived and Mr. S. was charged with a parole violation.

***3** 7. S.M. attempted to separate herself and her child from Mr. S. and she was threatened by Mr. S.'s brothers and fellow gang members not to testify against Mr. S., forced to visit him in jail and send money to his prison account.

8. On August 6, 2012, S.M. ended up in the hospital after he pointed a pistol at her, demanding she return his child to him and when she refused out of fear for the child's safety, he hit her on the head with the pistol. She fell to the floor disoriented and bleeding and Mr. S. left with his child. The police came, she was taken to the hospital and a domestic violence report was taken. S.M. was discharged from the hospital to a domestic violence shelter. After this incident she obtained an order of protection against Mr. S.

9. S.M. was also subjected to abuse by Mr. S.'s fellow gang members at his direction.

CONCLUSIONS OF LAW

A. Defendant is a victim of domestic violence subjected to substantial physical, sexual or psychological abuse at the time of the offense.

The record establishes that S.M.'s allegations of abuse are supported by records and corroboration. S.M. testified credibly regarding instances of abuse she suffered at the hands of Mr. S. prior to and on the date of the crime in question. S.M. submitted several pieces of evidence of the abuse, including at least one piece of evidence required by CPL § 440.47 being either a court record, presentence report, social services record, hospital record, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection. The People have not contested that S.M. was a victim of domestic violence at the hands of Mr. S.

B. Defendant's abuse was a significant contributing factor to her criminal behavior

S.M. need not establish that the abuse was the exclusive or even the overriding factor for her criminal conduct to be eligible for a reduced sentence under the DVSJA. It is sufficient to show that the abuse was a significant contributing factor to the crime. Significant contributing factor does not mean the trauma has to be the causal factor of the crime as the language of Penal Law § 60.12 was changed in 2019 to change the standard from one of causation to one of contributing factor. This lowered the standard to include a broader array of offenses, including conduct toward non-abusing third parties. In support of her contention that the abuse she sustained was a significant contributing factor to her criminal conduct, S.M. filed a memorandum of law citing the New York City Bar in support of the DVSJA and the New York State Coalition Against Domestic Violence that detail the ways in which abusers use fear and control to manipulate their victims into committing criminal activity to protect themselves from further violence. “A Court's evaluation with regard to whether the abuse a defendant suffered constitutes a significant contributing factor to her criminal behavior is not transactional. It is cumulative, requiring the court to consider the cumulative effect of the abuse together with the events immediately surrounding the crime, paying particular attention to the circumstances under which defendant was living and adopting a “full picture” approach in its review. (*People v. Smith.*, 69 Misc. 3d 1030, 132 N.Y.S.3d 251[Erie County Court, 2020]). In considering the full picture here, S.M. was repeatedly abused physically and psychologically by Mr. S. up to and including the date of the crime in question and such abuse was clearly a significant contributing factor to her criminal conduct on the date in question. The People do not dispute that the domestic violence played a role in her commission of the crime. The abuse S.M. suffered cannot be separated from her actions on the day in question as that trauma affected S.M.'s functioning and behavior and is therefore a significant contributing factor to her criminal behavior.

***4 C. Having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, the sentence originally imposed is unduly harsh and excessive.**

While S.M. was not charged with the murder of the victim, the robbery that she pleaded guilty to occurred on the same day under similar circumstances and that was likely taken into consideration when the original sentence was imposed. However, in support of her request for resentencing, S.M. presented several pieces of evidence that were not available at the time of sentencing regarding her history, character and condition. This Court has taken this evidence into consideration in determining the present application and is impressed by her institutional record as well as her post release plan. S.M. completed a high school equivalency course while incarcerated and received her Associates Degree in 2020 from Medaille College. S.M. worked for Chaplain Services as an administrative clerk and also held positions of porter, greenhouse laborer, recreation aide, and hospital porter. S.M. completed several programs including the Phase III program designed to assist with transition into the community, the Inmate Program Associate training, Pathstone Peer Facilitator Training, Basic Skills parenting program, Alternatives to Violence Facilitators workshop, courses in nonviolent conflict resolution, additional parenting workshops, the Family Violence Program's Child Victim Group and Phase 1 of the ACE program. S.M. also presented a number of positive Inmate Progress Reports from DOCCS. With respect to her post release plan, S.M. has a full-time job, volunteers, and has reunited with her son, who is now 16 years old. She has also secured appropriate housing for herself and her child. All within a few short months of being released from prison. She also has the support of her family as well as friends she has made through her volunteering. S.M. testified that she wished for the Court to resentence her so that she can live a normal life with her child.

It is well documented that post release supervision is a burden, especially for women who are domestic violence survivors. The strict constraints of post-release supervision can mimic the abusive relationships that domestic violence survivors experienced in their relationships prior to incarceration. The risk of reincarceration for a technical violation is inconsistent with the intent of the DVSJA. Statistically, S.M. is unlikely to reoffend and most recidivism occurs within the first few months of re-entry. While the People originally opposed S.M.'s request, contending that the sentence was not harsh or excessive, following the hearing the People withdrew their opposition and conceded that S.M. gave truthful testimony against Mr. S. at his trial, served just short of eight years in prison with an impeccable record, and is now leading a productive law abiding life.

The purpose of the justice system is to deliver justice for all which means protecting the innocent, convicting criminals and keeping citizens safe. Requiring S.M. to spend an additional five years on post release supervision does not serve any of those purposes. In considering S.M.'s history, condition and character, while having regard for the nature and circumstances of the crime, this court believes the original sentence imposed is unduly harsh.

***5 CONCLUSION**

The purpose of sentencing under the Penal Law is to "insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, the promotion of their successful and productive reentry and reintegration into society, and their confinement when required in the interests of public protection" (PL § 1.05[6]). Based upon all the evidence presented at the hearing, a determinate sentence of four (4) years plus two and one half (2.5) years post-release supervision is a more appropriate sentence than the nine and one half (9.5) years plus five (5) years post-release supervision that was imposed on her in 2013. S.M.'s release from prison prior to the hearing on her application does not affect her eligibility for resentencing as this Court is of the opinion that the post release supervision is a required portion of the sentence that makes her eligible for resentencing under the DVSJA. Post release supervision is a mandatory period that is included in calculating the expiration date of a determinate sentence of imprisonment, therefore if the legislature intended post release supervision to be distinct from the determinate sentence, it would not have described a determinate sentence to include, as a part thereof, a period of post release supervision. (PL § 70.45[1]). Additionally, when a defendant is released on post release supervision, the remaining portion of any maximum or aggregate maximum term is held in abeyance until the successful completion of the period of post-release supervision (PL § 70.45[5][a]). Here, S.M. was confined in an institution operated by DOCCS in excess of seven (7) years, therefore she has more than

satisfied the maximum determinate sentence under this order of four (4) years. Based upon the foregoing, S.M. shall no longer be subject to post release supervision as she completed the maximum term of the new sentence to be imposed. Furthermore, the time she remained in custody after serving the maximum term of the sentence of imprisonment shall be credited to the period of post release supervision pursuant to PL § 70.45(5)(d).

Accordingly, for the foregoing reasons and in consideration of the evidence and record before this court, it is hereby,

ORDERED, that the defendant should be resentenced in accordance with Penal Law § 60.12; and it is further

ORDERED, that upon sentencing, a determinate sentence of four (4) years imprisonment plus a period of two and one half (2.5) years of post-release supervision would be imposed on defendant's conviction of robbery in the first degree in violation of Penal Law § 160.15(4); and it is further

ORDERED, that in calculating the new term to be served by the applicant pursuant to PL § 60.12, S.M. should receive credit for all jail time credited towards the subject conviction, all periods of incarceration credited toward the sentence originally imposed, and all time served on post-release supervision. As S.M. served in excess of seven (7) years imprisonment, she has completed the maximum term of the new sentence to be imposed and the additional time she remained in custody after serving the maximum term of the sentence of imprisonment shall be credited to the period of post release supervision pursuant to PL § 70.45(5)(d). S.M. is thereby no longer subject to post-release supervision; and it is further

***6** ORDERED, that the defendant has ten days from the date of the within decision and order to inform the court whether she wishes to withdraw her application or appeal said decision and order; and it is further

ORDERED, that unless defendant so advises the court within said ten-day period, the matter will be set down for sentencing on July 29, 2021 at 2:00 PM, at which time the court will vacate the sentence originally imposed and impose a determinate sentence of four (4) years imprisonment together with a two and one half (2 ½) year period of post-release supervision with respect to defendant's conviction for robbery in the first degree in violation of PL § 160.15 (4); and it is further

ORDERED, that defendant shall appear with counsel on July 29, 2021 at 2:00 PM for the purpose of resentencing.

This decision shall constitute the order in this matter for appeal purposes and no other or further order shall be required. Pursuant to CPL § 440.47 (3) "an appeal may be taken as of right in accordance with applicable provisions of this chapter: (a) from an order denying resentencing; (b) or from a new sentence imposed under this provision and may be based on the grounds that (i) the term of the new sentence is harsh or excessive; or (ii) that the term of the new sentence is unauthorized as a matter of law. An appeal in accordance with the applicable provisions of this chapter may also be taken as of right by the appellant from an order specifying and informing such applicant of the term of the determinate sentence the court would impose on resentencing on the ground that the term of the proposed sentence is harsh or excessive; upon remand to the sentencing court following such appeal the applicant shall be given an opportunity to withdraw an application for resentencing before any resentence is imposed. The applicant may request that the court assign him or her an attorney for the preparation of and proceedings on any appeals regarding his or her application for resentencing pursuant to this section. The attorney shall be assigned in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-two of the county law and related provisions of article eighteen-A of such law.

All Citations

--- N.Y.S.3d ----, 72 Misc.3d 809, 2021 WL 2880507, 2021 N.Y. Slip Op. 21180

Domestic Violence Survivor-Defendants: New Hope for Humane and Just Outcomes

By Cynthia Feathers

Cynthia Feathers is the Director of Quality Enhancement for Appellate and Post-Conviction Representation at the New York State Office of Indigent Legal Services. Previously, she clerked at the Appellate Division – Third Department and thereafter handled civil appeals at the State Attorney General's Office in Albany, criminal appeals at the Center for Appellate Litigation in New York City, criminal and Family Court appeals at the Rural Law Center of New York in Castleton, and a range of appeals as a solo practitioner. Feathers has co-chaired the NYSBA Committee on Courts of Appellate Jurisdiction and served as Director of the NYSBA Pro Bono Affairs Department.

Over time, a community's sense of justice and fairness can shift, and such cultural changes can impact criminal sentencing laws. In New York, such a dynamic played out regarding drug crime sentencing laws. More than a decade ago, a movement coalesced to revamp Rockefeller Drug Laws, which required long prison terms for many people convicted of drug offenses and were ultimately deemed draconian and not in the best interests of society. A series of major changes included the elimination of mandatory prison sentences for some offenses; the reduction of minimum prison terms for others; and judicial discretion to offer treatment alternatives to people whose substance abuse was a contributing factor to their convictions for nonviolent crimes.

Now a critical shift is happening in the treatment of domestic violence victims who commit crimes due to their own victimization. The change is long overdue. The relevant numbers are staggering. Family violence is the number one cause of injury to women in the United States; attacks by abusers result in more injuries requiring medical treatment than rapes, muggings, and motor vehicle accidents combined.[1] Three out of four women serving sentences in New York prisons suffered severe physical violence at the hands of an intimate partner during adulthood.[2] Further, two out of three women serving time in a New York prison in 2005 for killing a person close to them were abused by the victim of the crime.[3]

TRAUMA AND SENTENCING

Criminal justice laws in New York have not kept up with the social sciences. In other realms, effective trauma-informed approaches have been developed. For example, in the past decade, to develop appropriate treatment models, the federal government has studied how trauma, substance abuse, and mental health interact; and trauma-informed practices have also been attempted in child welfare and juvenile justice contexts. When it comes to how to respond to domestic violence survivors who commit crimes, New York's Penal Law has not reflected a real recognition of the impact of such trauma. The new law takes an important step in that direction.

It is well-established that trauma – or an individual's response to events experienced as threatening, terrifying or overwhelming – reshapes that person's world view and affects all aspects of life, including health, self-worth, and behavior. People who experience the trauma of domestic violence often report self-blame, extreme fear, a sense of betrayal, and a view of the world as a dangerous place. Every thought and act is about survival – the victim's and her children's. New York laws are moving past outmoded notions that severely punish domestic violence victims who do protect themselves by acts against their abusers, or who commit crimes as a result of the coercion of the abuser. In other circumstances, survivors may turn to drugs or alcohol to cope with the effects of trauma and subsequently commit crimes connected to their substance abuse. An informed view is that, because these survivors' decisions and actions are driven by trauma, in appropriate cases, the emphasis should be on rehabilitation and treatment, not punitive imprisonment and prolonged separation from family and society.[4]

The first attempt by New York to show compassion and mercy for domestic violence victims who committed crimes was a failure, for numerous reasons.[5] An exception to Jenna's Law (the 1998 Sentencing Reform Act), codified in Penal Law § 60.12, was designed to provide sentencing relief to some survivor-defendants. But the exception was too narrowly drawn, applying only to certain homicides and assaults committed against the abuser, even though domestic violence victims commit a range of crimes due to abuse. The law also did not provide for meaningful sentence reductions, nor did not it permit alternatives to incarceration. After 12 years on the books, the exception had been applied to only one defendant.

COALITION'S CRUSADE

Last year, significant progress was finally achieved. A decade-long crusade by the Coalition for Women Prisoners – a broad group including legislators, judges, survivors, currently and formerly incarcerated persons, defense lawyers, and domestic violence advocates – resulted in the overhaul of sentencing laws for domestic violence survivors. Signed into law in May 2019, the Domestic Violence Survivors Justice Act (DVSJA) gives judges discretion to sentence certain survivors to much shorter prison terms, and in some cases, to community-based alternatives to incarceration.[6] The new law also makes resentencing available for some previously sentenced survivors. While covering people of all genders, the DVSJA is expected to benefit mainly women and transgender individuals, because of the highly disproportionate impact of domestic violence on them.

Like the drug law reforms, the DVSJA signifies a recognition that prior sentencing statutes were too harsh and inflexible. Shorter sentences and treatment options should be offered, and retroactive relief should be available. Unlike the drug law reforms, however, the DVSJA provides only for discretionary, not mandatory, relief.

While the new law holds significant potential to bring survivor-defendants home sooner to their families, discretionary relief cannot be granted unless a three-part test is met: (1) that at the time of the offense, the survivor was a victim of substantial physical, sexual or psychological abuse by an intimate partner or relative;

(2) that the abuse was a significant contributing factor to the crime; and (3) that a sentence under standard sentencing provisions would be unduly harsh. The test applies for both prospective sentencing and retroactive resentencing. Four categories of crimes are excluded: first-degree and aggravated murder, terrorism, and sexual offenses.

Individuals seeking resentencing must be currently incarcerated and serving a sentence of at least eight years. An important feature of the new law is that, where these applicants meet threshold eligibility requirements, they have the right to assigned counsel throughout the resentencing litigation.

As to the "unduly harsh" element, for both sentencing and resentencing, the re-traumatizing impact of lengthy incarceration may be one of the relevant factors, given the parallels between the conditions inherent in incarceration and domestic violence: for example, a lack of autonomy, a lack of privacy, punishment inflicted for minor infractions, and privileges earned through compliant behavior.

For resentencing candidates, the question appears to be whether the sentence originally imposed was excessive, in light of the abuse suffered and myriad other factors, which might include evidence of an applicant's good record achieved while in State prison. Finally, it may well be that our evolving standard regarding appropriate punishment for survivors, and our rising consciousness about the plight of criminalized survivors, will cause judges to find some original sentences to be "unduly harsh" and the result of outdated sentencing notions.

LEGISLATORS AND JUDGES

Three State legislators are widely lauded by advocates for their leadership in the passage of the legislation. Assembly Member Jeffrion Aubry (D-Queens) long championed and sponsored the Assembly bill, along with former State Senator Ruth Hassell-Thompson (D-Bronx), who fought for the Senate version from the early days. More recently, Senator Roxanne Persaud (D-Brooklyn) led the charge in the Senate in sponsoring the DVSJA.

The broad coalition seeking reform in the sentencing of domestic violence victims also included New York judges. One such judge was the Honorable Marcy L. Kahn, whose legal career has included nearly three decades as a judge in New York City Criminal Court and Supreme Court, and more recently, several years as an associate justice at the Appellate Division, First Department. She is now retired from the bench.

Judge Kahn became involved in the DVSJA as a result of her role as a chair and a member of the Women in Prison Committee of the New York Chapter of the National Association of Women Judges. In offering insights regarding the drafting of the DVSJA legislation, she drew upon her experience with drug law reform and in visiting many domestic violence survivors in prison. "The DVSJA is a good law in part because it is the product of the perspective of so many stakeholders, and it affords protection not only for crimes against abusers, but also for crimes committed at the behest of the abuser," she asserted. Judge Kahn opined that the law would not have passed if not for the leadership of the two women who led the Women in Prison Project of the Correctional Association of New York (CANY), a nonprofit advocacy organization.

ADVOCATES' ROLE

Those advocates, Jaya Vasandani and Tamar Kraft-Stolar – who in turn emphasize the invaluable leadership of many other individuals and groups – now serve as co-directors of the Women & Justice Project, a nonprofit that partners with women impacted by incarceration. Vasandani and Kraft-Stolar observed that a primary aim of the DVSJA was to broaden the narrow scope of the prior Penal Law § 60.12 exception, including by providing for relief where the defendant's crime was not against the abuser. They noted that this aspect of the DVSJA is one of many indications that the new law does not require the abuse to the simultaneous to the offense.

In 2012, prosecutors raised concerns that, by providing for relief as to crimes not committed against the abuser, the proposed law would not adequately consider the rights of innocent victims. There were two responses to such concerns. First, abusers often coerce or compel survivors to commit a range of crimes – through threats, violence, manipulation, and creating a culture of fear. Second, survivor-defendants are also victims. Both types of victims deserve compassion and justice. Further, some innocent victims might well support lenience toward perpetrators upon learning that their criminal acts flowed from abuse and coercion.

Prosecutors also expressed concerns in 2012 about the potential impact of the bill on public safety. The CANY explained that such fears are unfounded. The vast majority of survivors convicted of crimes directly related to their abuse have no prior felony convictions, no history of violent behavior, and extremely low recidivism rates.[7] As to the final factor, out of 38 women convicted for murder and released from 1985 to 2003, not a single one returned to prison for a new crime within three years of release.[8]

Advocates have noted that the criminal justice landscape has changed since the DVSJA was opposed in 2012. A deeper understanding about survivors by all participants in the criminal justice system could mean that humane treatment of these victims will not end when they com-

mit crimes because of their abuse. When appropriate, perhaps no charges or lesser charges will more often be brought. Surely, in some worthy cases (more than one in the first 12 years), severe abuse will be deemed an appropriate mitigating factor, and alternative sentences will be imposed on survivor-defendants.

SURVIVORS' STORIES

A striking feature of the Coalition's DVSJA efforts was the central role played by survivors of domestic violence who had been, or still were, in State prison for their crimes. Two survivors who were leaders in the DVSJA campaign testified before the State Senate in 2012. Both women were charged in the killing of their abuser, and both exemplified a truth set forth in the Assembly Memorandum in Support of the DVSJA: that survivors who have suffered abuse often become involved in the criminal justice system in part because of inadequate protection, intervention, and support.

One survivor, Kim Dadou Brown, who served 17 years in prison before she was paroled, detailed harrowing years of brutality she endured – and failures by police, the courts, and also defenders to take her accusations seriously. She declared that the DVSJA is essential so that the criminal justice system will protect victims of abuse, not turn against them, and will not condemn survivors who protect themselves, but will instead give them a real opportunity to rebuild their lives.

Another survivor, LadyKathryn Williams-Julien, also described years of severe abuse; the lack of protection from police and hospitals that treated her after beatings; and the lack of insight shown by a prosecutor who disparaged her for not leaving her abuser. Thanks to the intervention of domestic violence advocates, her case had a far more positive outcome than that of Ms. Brown. After the first jury could not reach a verdict, advocates persuaded prosecutors to reconsider their position.

The District Attorney reduced the charges, and the survivor was sentenced to five years of probation and an alternative-to-incarceration program. Such alternatives may include mental health treatment, drug and alcohol rehabilitation, and community service programs. The services this survivor received built her confidence and helped her find her voice and reclaim her life. She urged that courts should have the discretion to consider what led to survivors' crimes and give domestic violence victims a second chance.

A window into how women survivors have reacted to the DVSJA was provided by Juli Kempner, who has spent two years as part of a volunteer visiting project at Bedford Hills, New York's only maximum security prison for women. She has had contact with scores of domestic violence survivors, whose offenses stemmed from their histories of abuse, many of whom face sentences of 25 years to life. Some are in their 30s and have been behind bars since age 16, while others are in their 50s and will not be eligible for parole until they are in their 70s. Most of these women had no previous history of crime.

When the DVSJA was enacted, there was "a ripple of hope" in State prisons for women. Survivors who had lost hope suddenly changed their thinking. The new law quickly became the talk of survivors and their families. "Everyone I've been able to communicate with looks forward to the opportunity to come home and make meaningful contributions to their communities," Kempner reported.

DVSJA IMPLEMENTATION

Even before the DVSJA was enacted, four appellate defender offices in New York City took the lead in the implementation of the resentencing provisions. They reached out to the Mayor's Office of Criminal Justice about the role they could play and strategized together. Drawing upon lessons learned from implementation of drug law reforms, they developed a strategy for outreach to clients to inform them about the new law; prepared pro se packets of materials for other resentencing candidates; and developed protocols to connect incarcerated individuals with appropriate provider offices in the county of conviction. In addition, the New York City appellate providers have provided a training curriculum on sentencing and resentencing under the DVSJA.

The New York State Department of Corrections and Community Supervision (DOCCS) was helpful in providing lists of nearly 500 incarcerated women and 12,000 incarcerated men who met threshold eligibility requirements, and in allowing for the provision of pro se packets in prison libraries, according to Kate Skolnick, a Supervising Attorney at the Center for Appellate Litigation. She said that early implementation challenges have included obtaining prison, court, and police records, and dealing with differing procedures among the criminal courts.

One of the most proactive upstate legal communities has been Onondaga County, where the Assigned Counsel Program (ACP) of the county bar association and the Hiscock Legal Aid Society (HLAS) have collaborated to develop a DVSJA program to provide effective resentencing representation, according to Kathleen Dougherty and Linda Gehron, Executive Directors of the ACP and HLAS, respectively.

These Syracuse-based offices contacted all of the potentially eligible women in prison who had been convicted and sentenced in Onondaga County; and they made, or plan to make, in-person prison visits to all resentencing clients. Further, given the demanding nature of the

resentencing applications and hearings, the ACP will assign two private trial attorneys from its panel to every applicant, whereas HLAS has full-time attorneys available for such representation.

To achieve efficiency in representation, the ACP and HLAS collaborated to develop resources and protocols for the private attorneys involved. These attorneys had a special interest in the DVSJA, volunteered to serve, and agreed to undergo a DVSJA training regimen. Dougherty said that the county judges were supportive and understanding of the need for a first and second chair and the benefits of representation by a cadre of specially trained attorneys. In addition, investigators, experts, mitigation specialists, and social workers will be necessary for many resentencing applications.

Gehron noted that the HLAS resentencing representation process starts with an initial in-house legal and social work assessment regarding the merits of each claim and then proceeds to gathering necessary documentation and making a resentencing motion, followed by hearings and, if necessary, appeals.

Onondaga County is a "*Hurrell-Harring* county." When the state was sued for denying effective representation to criminal defendants in *Hurrell-Harring v. State of N.Y.*, Onondaga and four other counties were added to the suit. After the Court of Appeals allowed the lawsuit to go forward,[9] a settlement approved by Albany County Supreme Court in 2015 resulted in state funding to the five subject counties to improve the quality of representation to criminal defendants, with guidance by the State Office of Indigent Legal Services. Because the state has fully funded Settlement implementation, the aforementioned DVSJA resources are available to private attorneys who take these cases on an assigned basis. More recently, state funding has been provided to all other counties to supplement local funding for the mandated defense of criminal defendants unable to afford counsel.[10]

Both New York City and upstate providers have focused initially on incarcerated women, in part because of the far more manageable numbers; and they are developing strategies for advising incarcerated men of their rights and providing resentencing representation where needed. Syracuse attorney Alan Rosenthal, who has four decades of criminal defense experience, developed the Onondaga County training materials. He opined that the biggest implementation hurdle will not be addressing certain thorny phrases or silences in the DVSJA, but in shifting the consciousness of prosecutors, defense attorneys, and judges about victims, trauma, and sentencing.

STATEWIDE AND PRO BONO EFFORTS

To coordinate and support statewide efforts, a 19-member DVSJA Statewide Defender Task Force was established by the New York State criminal defense bar in January 2020. Co-chairs Skolnick and Rosenthal plan to focus on analyzing DVSJA challenges for sentencing and resentencing and developing strategies to meet those challenges; drafting legal memoranda regarding relevant issues; staying abreast of DVSJA trial and appellate-level litigation around the State; developing and sharing practice materials statewide on relevant websites[11] and listservs; and establishing a DVSJA training program for criminal defense attorneys. Pro bono programs have been launched to support this effort.

Defender agencies and pro bono groups are supporting resentencing applicants in a variety of ways, including in helping to prepare the required initial request for permission to make a resentencing motion and to be assigned counsel. The resentencing applicants must meet threshold eligibility criteria for permission to apply and be assigned counsel. To clear this hurdle, many incarcerated survivors need assistance. Working with Kate Mogulescu, Assistant Professor of Clinical Law at Brooklyn Law School, the New York City law firm of Cleary Gottlieb launched a pro bono project to provide the needed assistance.

Lawyers visit the Bedford Hills Correctional Facility to assist women with determining eligibility for resentencing and complete the necessary paperwork, and then they file the documents with the sentencing court. Cleary lawyers have met with numerous survivor-defendants since the December 2019 launch of the project, according to Jennifer Kroman, Cleary's Director of Pro Bono Practice and leader of the project.

TRAINING JUDGES AND LAWYERS

As an essential element of effective DVSJA implementation, Judge Kahn highlighted the need for training judges about the DVSJA. "Trauma-informed sentencing is not a familiar concept to many criminal judges. There needs to be a greater understanding about the effects of abuse over a long period of time and what the impact of trauma looks like." She noted that sometimes a male defendant will receive a far more lenient sentence than a female defendant who committed the same crime – perhaps because the crime by the woman who protects herself may provoke greater outrage and offend our sensibilities. Moreover, sometimes not enough consideration is paid to the low risk of recidivism by survivor-defendants and to the fact that the criminal acts were an aberration, committed due to abuse, Judge Kahn observed.

A former prosecutor herself, the judge asserted that training is also needed for prosecutors in domestic vio-

lence and the DVSJA. Prosecutors should not be too quick to seek lengthy sentences for survivors and should instead consider whether justice and society would be better served by lenience, rehabilitation, and reintegration of the survivors into society, she reflected.

Rosenthal noted that many victims do not recognize their own victimization. "They are so traumatized that they do not know how wrong the abuse is and don't pursue relevant defenses." He emphasized the importance of DVSJA training for criminal defense attorneys, many of whom do not have extensive experience in representing domestic violence victims or others suffering from trauma, including how to sensitively conduct interviews to elicit salient information.

TWO EARLY CASES

To date, few applications for sentencing or resentencing have been decided under the DVSJA. The Legal Aid Society of New York City has reported that in January 2020, upon the consent of the prosecutor, a defendant was resentenced under the DVSJA in a Brooklyn case. For her conviction for first-degree manslaughter, this defendant had originally been sentenced to 10 years of imprisonment, followed by five years of post-release supervision. She was resentenced to time served, or five years of imprisonment, followed by three years of post-release supervision. This resulted in the survivor, who had been released to community supervision, being discharged from her sentence.

In a Poughkeepsie case, *People v. Addimando,* the defense presented extensive evidence regarding the abuse of the defendant by her partner – the homicide victim. In April 2019, the jury rejected a justification defense and convicted the defendant of second-degree murder. A mother of two young children, the defendant had no prior record of crime or violence. While the proof of abuse was not deemed to constitute self-defense, it was relevant as sentencing mitigation. At a September 2019 hearing to determine the defendant's eligibility for a DVSJA sentence, defense attorneys John Ingrassia and Ben Ostrer relied upon the trial proof of abuse, as well as additional testimony presented.

A domestic violence expert was called to address many myths, including that abusers have an anger management problem and should be easily identifiable, or that it is inexplicable that a victim does not leave her abuser. The expert explained that domestic violence is complicated, abusers act out of a need for control, and victims often feel conflicted. Despite the abuse, they may still love the abuser, do not want to break up the family, and want the abuse to stop, but not to lock up the abuser. Further, trying to leave can be very dangerous, and in fact often proves fatal, the expert explained. The defendant's treating therapist also testified and detailed the injuries she observed, the defendant's contemporaneous reports about the abuse by her partner, her fears, and her many attempts to leave him.

In a decision rendered February 5, the trial court held that the defendant would not be sentenced under the DVSJA, because there was insufficient proof that abuse allegedly perpetrated by the victim against the defendant was a significant contributing factor to the crime.

NATIONAL MODEL

The DVSJA is unique and can inform advocacy efforts nationwide, according to Andrea Yacka-Bible, a Supervising Attorney at the Legal Aid Society in New York City, who previously served as a legal advocate at the National Clearinghouse for the Defense of Battered Women, a nonprofit based on Philadelphia. She also noted that, in the past decade, there has been a growing acknowledgement that incarceration can be re-traumatizing to survivor-defendants.

"It is enormous progress that the New York State Legislature and the Governor have recognized that, if you show that substantial abuse was a significant contributing factor in committing the crime, there should be the possibility of a lesser sentence, and that there is a right to counsel for resentencing motions," she observed. In sum, the DVSJA represents an important step forward in achieving justice for victims of domestic violence. The new law places New York in the lead nationwide in recognizing the role abuse can play in crime, Yacka-Bible concluded.

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1. Stark and Flitcraft, *Violence among Inmates, an Epidemiological Review,* Handbook on Family Violence (1988); Uniform Crime Reports, Special Report: Violence among Family Members and Intimate Partners, FBI (2003, rev. Jan. 2005).

2. Browne, Miller, and Maguin, *Prevalence and Severity of Lifetime Physical and Sexual Victimization among Incarcerated Women,* Int'l. J. of Law & Psychiatry 22 (3–4) (1999).

3. New York State Department of Correctional Services, *Female Homicide Commitments: 1986 vs. 2005*, 14 (July 2007).

4. This more informed view is consistent with an amendment to Penal Law § 1.05 (6) (2006 N.Y. Laws, ch. 98), which states that the purpose of sentencing statutes includes: "To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, *the promotion of their successful and productive reentry and reintegration into society,* and their confinement when required in the interests of public protection" [emphasis added].

5. Kraft-Stolar et al., *From Protection to Punishment: Post-Conviction Barriers to Justice for Domestic Violence Survivor-Defendants in New York State*, Cornell Legal Studies Research Paper No. 11-21, June 1, 2011, at 11–13.

6. 2019 N.Y. Laws, ch. 31.

7. Canestrini, *Follow-up Study on Bedford Hills Family Violence Program*, NYS DOCS Research Unit (1994), at 4.

8. Kraft-Stolar, *From Protection to Punishment*, *supra*, at n.22.

9. 15 N.Y.3d 8.

10. *See* Executive Law § 832 (4). NYSBA strongly supported state funding for mandated representation of criminal defendants throughout New York State.

11. One website containing DVSJA resources for resentencing applicants and criminal defense attorneys is found at https://www.ils.ny.gov/content/domestic-violence-survivors-justice-act.

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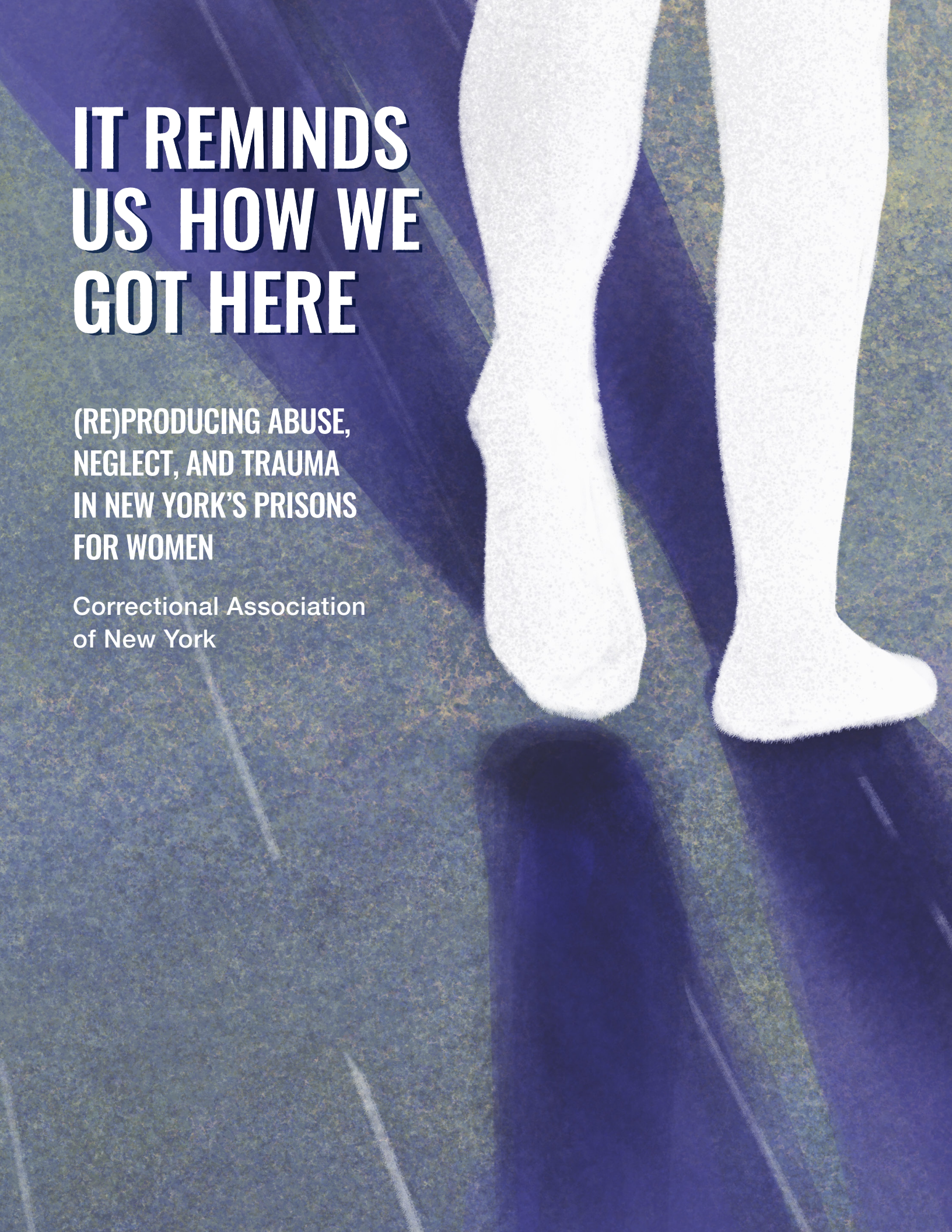
IT REMINDS US HOW WE GOT HERE

(RE)PRODUCING ABUSE, NEGLECT, AND TRAUMA IN NEW YORK'S PRISONS FOR WOMEN

Correctional Association of New York



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New Hour for Women & Children – LI

Survivors Justice Project

Women's Community Justice Association (WCJA)

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EXECUTIVE SUMMARY

For decades, the Correctional Association of New York (CANY) has been advocating on behalf of incarcerated and formerly incarcerated women alongside other community based and grassroots organizations and directly impacted individuals and their families. While the experiences of incarcerated women have been largely obscured by the dominating narratives of incarcerated men's needs and experiences, system-involved women often experience their own unique challenges and marginalization. Women's pathways into and out of the criminal legal system reflect their stratified places within society.[1, 2] Furthermore, despite their smaller population when compared to men, the United States incarcerates more women than any other country on earth, with 231,000 women incarcerated across the United States and 1,899 women incarcerated in New York state alone.[3, 4, 5]

CANY seeks to recognize this issue by centering the voices of women and individuals incarcerated in prisons for women.[6] This report provides information about the current state of people incarcerated in prisons for women, and in particular, those who have been impacted by domestic and gender-based violence, as up to 95% of women who go to prison—disproportionately Black and brown, low-income, immigrant and LGBTQ—bring with them histories as survivors of domestic and gender-based violence.[7, 8]

In the following report, CANY will present findings that discuss how incarceration fails to prioritize the needs of those incarcerated in prisons for women. The Correctional Association of New York utilized three forms of data collection and analysis in preparing this report: in-person monitoring conducted at Bedford Hills Correctional Facility by CANY's staff, board members, and volunteers, and two surveys, each containing quantitative and qualitative components. Our findings are compelling. One of the most salient issues among respondents was the issue of violence, retraumatization, and abuse in their prisons. For many incarcerated people, particularly those in prisons for women, violent abuse and the trauma that follows are emblematic of the experience of incarceration. While many women in prison have extensive histories of sexual abuse, violence, behavioral health issues, and physical health issues that pre-date their incarceration, the abusive dynamics and trauma that they experienced in these situations are often reproduced within prisons themselves.

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1 Barbara Bloom, Barbara Owen, and Stephanie Covington, "Women Offenders and the Gendered Effects of Public Policy," Review of Policy Research 21, no. 1 (2004): pp. 31-48, https://doi.org/10.1111/j.1541-1338.2004.00056.x

2 Meda Chesney-Lind, "Women and the Criminal Justice System: Gender Matters," Topics in Community Corrections, Annual Issue (2000): 7-10, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.216.5308&rep=rep1&type=pdf

3 Alex Kajstura, "States of Women's Incarceration: The Global Context 2018," Prison Policy Initiative, 2018. https://www.prisonpolicy.org/global/women/2018.html

4 Alex Kajstura, "Women's mass incarceration: The whole pie 2019," Prison Policy Initiative, 2019. https://www.prisonpolicy.org/reports/pie2019women.html

5 According to DOCCS "under custody" data from January 2020 obtained through FOIA.

6 While data from DOCCS identifies every person incarcerated in a women's prison as "female", it is important to note that not everyone incarcerated in prisons for women are women or identify within the gender binary. Throughout this report, we make reference to "individuals incarcerated in prisons for women" rather than incarcerated women when applicable.

7 Melissa Dichter, "Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update," National Online Resource Center on Violence Against Women. 2015, https://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration-research-update.

8 Survived and Punished, "Research Across the Walls," Survived and Punished, 2019, https://survivedandpunished.org/wp-content/uploads/2019/02/SP_ResearchAcrossWalls_FINAL-compressedfordigital.pdf

In the survey to Bedford Hills Correctional Facility, 74% of 110 respondents identified that they had witnessed some form of violence or abuse by staff, including physical, sexual, and verbal abuse, while 53% of respondents reported experiencing these acts of violence by staff themselves. One respondent reflected that:

> *"Some officers like to abuse their power as an office[r]. In some cases, it reminds us of our abusers and how we got here."*

Another major finding was dissatisfaction with prison policies, particularly the grievance process, reflecting a system riddled with abuses and contradictions, a lack of accountability for these actions, and an overall lack of consistent, uniform application of procedures. Despite the general view that the grievance program is failing, the grievance process is still widely used, with 71% of 110 respondents at Bedford Hills stating they filed a grievance in the past year. This speaks to how important this process is for incarcerated people, as it is often their only pathway forward in combating abuse.

The above highlights from our findings demonstrate that as we work to improve conditions for incarcerated people, we must concurrently push for efficient mechanisms that allow for greater transparency, critiques, accountability, and changes to the criminal legal system. Our recommendations — which include undertaking a massive reexamination of all cases where domestic and gender-based violence was a factor leading to incarceration and increasing the effectiveness and legitimacy of the grievance process – advocate for decarceration as a means to counter mass incarceration by promoting the release of those incarcerated, aiming for less people to be incarcerated in the first place, and supporting shorter sentences for those to be incarcerated. Decarceration as a policy solution is critical in this endeavor, as the goals of punishment and confinement will often supersede and contradict the objectives of rehabilitation for individuals in prisons; accordingly, the most effective strategy of meeting the needs of survivors of domestic and gender-based violence is to both release incarcerated survivors and to retire incarceration as a path to justice for survivors.

BACKGROUND

The United States incarcerates more women than any other country on earth, with 231,000 women incarcerated across the United States and 1,899 women incarcerated in New York state alone.[1, 2, 3] Though the population of incarcerated women is small compared to that of men, their increasing rates of incarceration make them a rapidly growing population behind bars.[4] Black and brown women are overrepresented in prisons and jails compared to their population, as are those who are LGBTQ.[5, 6] Women's pathways into and out of the criminal legal system reflect their stratified places within society, with women living in poverty facing disproportionately higher rates of incarceration.[7, 8] Upon release, these women typically encounter the same challenges they faced pre-incarceration— lack of employment and/or education, relapse and recidivism, caring for children, difficulty attaining food, clothing and shelter, and community acceptance.[9, 10] Additionally, their social networks are often limited, and many women in prison have partners and/or family members who are also involved in the criminal legal system.[11] Often, women who eventually go through the criminal legal system are subjected to injurious climates long before they are ever incarcerated. These women are impacted by violence on both an individual and institutional level. Up to 95% of women who go to prison—disproportionately Black and brown, low-income, immigrant and LGBTQ—bring with them histories as survivors of domestic and gender-based violence.[12, 13] This report seeks to provide information about the current state of people incarcerated in prisons for women in New York, and in particular, those who have been impacted by domestic and gender-based violence.

1 Alex Kajstura, "States of Women's Incarceration: The Global Context 2018," Prison Policy Initiative, 2018. https://www.prisonpolicy.org/global/women/2018.html

2 Alex Kajstura, "Women's mass incarceration: The whole pie 2019," Prison Policy Initiative, 2019. https://www.prisonpolicy.org/reports/pie2019women.html

3 According to DOCCS "under custody" data from January 2020 obtained through FOIA.

4 Wendy Sawyer, "The gender divide: Tracking women's state prison growth," Prison Policy Initiative, 2019. https://www.prisonpolicy.org/reports/women_overtime.html

5 The Sentencing Project. "Incarcerated Women and Girls," The Sentencing Project, 2019. https://www.sentencingproject.org/publications/incarcerated-women-and-girls/

6 Ilan H. Meyer et al., "Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012," American Journal of Public Health 107, no. 2 (2017): pp. 267-273, https://doi.org/10.2105/ajph.2016.303576.

7 Barbara Bloom, Barbara Owen, and Stephanie Covington, "Women Offenders and the Gendered Effects of Public Policy," Review of Policy Research 21, no. 1 (2004): pp. 31-48, https://doi.org/10.1111/j.1541-1338.2004.00056.x

8 Meda Chesney-Lind, "Women and the Criminal Justice System: Gender Matters," Topics in Community Corrections, Annual Issue (2000): 7-10, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.216.5308&rep=rep1&type=pdf

9 Brenda Clubine, Mary Heinen, and Antoinette Johnson. "Three Formerly Incarcerated Women Talk about Reentry." National Clearinghouse for the Defense of Battered Women, 2016.

10 Courtney Cross, "Victimized Again: How the Reentry Process Perpetuates Violence Against Survivors of Domestic Violence," National Clearinghouse for the Defense of Battered Women, 2013.

11 Cayse C. Hughes, "From the long arm of the state to eyes on the street: How poor African American mothers navigate surveillance in the social safety net," Journal of Contemporary Ethnography, 48(3), 339-376. doi:10.1177/0891241618784151

12 Melissa Dichter, "Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update," National Online Resource Center on Violence Against Women. 2015, https://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration-research-update.

13 Survived and Punished, "Research Across the Walls," Survived and Punished, 2019, https://survivedandpunished.org/wp-content/uploads/2019/02/SP_ResearchAcrossWalls_FINAL-compressedfordigital.pdf

WOMEN'S PATHWAYS INTO THE CRIMINAL LEGAL SYSTEM

The issues surrounding women's pathways into and out of the system are far from novel. This report comes on the heels of decades of work by the Correctional Association of New York (CANY), community organizations, coalitions, and advocates, especially incarcerated and formerly incarcerated individuals. One historic example of this legacy is the Second Report of the Prison Association of New York (later renamed the Correctional Association of New York), which discusses the Female Department of the organization in 1846.[14] The Female Department (later to become the Women's Prison Association) was created under the Prison Association's constitution to "…have charge of the interest and welfare of prisoners of their sex…"[15] Significantly, many of the women incarcerated at that time were committed for "crimes" that went against social norms for women, like drunkenness, indicating a precedent for a significant proportion of women to be needlessly involved in the criminal legal system. This led the Female Department to advocate against "…the injurious consequences of being subjected to the contamination of our prisons".[16]

More recent literature on women's pathways into prison discuss how survivors of domestic and gender-based violence, including sexual assault and intimate partner violence, can find their way into the criminal legal system after instances of self-defense and survival.[17] Across intersections of race, class, gender, and sexuality, women are often forced into a continuum of state violence when incidents of interpersonal violence precipitate involvement in the criminal legal system. Put differently, survivors of domestic and gender-based violence are routinely criminalized and then re-traumatized by incarceration. Consequently, system-involved women are often enshrouded by violence before, during, and after their incarceration. This exacerbation of violence reduces and, in some cases, altogether denies women the ability to advocate on their own behalf. Fortunately, there has been a proliferation of organizations and coalitions dedicated to fighting for the rights of those impacted by domestic and gender-based violence, including transgender women and gender non-conforming individuals. Many of these organizations and coalitions have called for the decarceration and release of women, focusing particularly on those who have been impacted by domestic and gender-based violence.

DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT (DVSJA)

One outcome of these collective advocacy efforts led to the passing of the Domestic Violence Survivors Justice Act. The Domestic Violence Survivors Justice Act or DVSJA (S.1077/A.3974)—a New York resentencing law enacted in spring 2019—allows judges to sentence and resentence domestic violence survivors to shorter prison sentences or alternative-to-incarceration programs if abuse was directly related to the person's crime. The passing of DVSJA follows decades of advocacy concerning the criminalization of survivors, including by survivors themselves. An example of this previous advocacy is the 1985 Bedford Hills Correctional Facility (BHCF) Hearing and subsequent Battered Women and the Criminal Justice System report of the Committee on Domestic Violence and Incarcerated Women.

14 Prison Association of New York, "Second Report of the Prison Association of New York", 1846, Retrieved from https://hdl.handle.net/2027/hvd.32044055087316

15 Prison Association of New York, "Second Report of the Prison Association of New York", 1846.

16 Prison Association of New York, "Second Report of the Prison Association of New York", 1846.

17 Katherine Lorenz and Rebecca M Hayes, "Intersectional Pathways: The Role Victimization Plays in Women's Offending and in Prisons," in Women and Prison (Springer, 2020), pp. 97-129, https://doi.org/https://doi.org/10.1007/978-3-030-46172-0_8#ESM.

Incarcerated survivors of domestic violence testified during the hearing, sharing their personal stories of victimization and trauma, as well as identifying strategies for effective change. Advocates validated that these experiences were a result of repeated failures of the legal system to address women's needs. One section of the report illustratively explains the relationship between survivors and the criminal legal system:

> *"The battered woman is victimized by her mate and despite attempts to extricate herself she may be victimized again by the legal system which responds ineffectively to her plight. Those who commit crimes of violence against their mates or others may then be even further victimized by our justice system. There is a lack of responsiveness from the police, court officers, district attorneys and judges who 'often deny the existence, prevalence and seriousness of the violence. Consequently, even when legal remedies may be theoretically available to women, they may be inadequate.'"* [18]

Incarcerated women testified about the failure of other legal system actors to intervene in the cycle of violence before their incarceration. These women also testified about the mental impact of their abuse—survivors bear the emotional scars of domestic violence long after the physical experience is over. Many women also talked about the importance of peer-led programming by individuals who were also survivors of domestic and gender-based violence. They shared the power of gathering with other women who experienced domestic violence and working towards healing in a collaborative way. What was most underscored by the report was how survivors could be criminalized by the very system that was supposed to help them, further removing them from the help they so critically needed.

Advocates understood that legal remedies don't always provide immediate relief, and that is still true today— while the passing of DVSJA was historic, there are intense legal obstacles that remain in order to actually release incarcerated women using the very mechanism that was designed to release them. Thus is the complex reality of survivors in the criminal legal system. Even with well-documented examples of domestic and gender-based violence and state violence, pathways for reducing the number of women incarcerated and the length of their incarceration are limited. Apparent victories such as the DVSJA can obscure what often still remains the status quo of a system that fails to serve the needs of survivors. Take the case of Nikki Addimando, who was sentenced to 19 years to life for the murder of her abuser. Like many system-involved women, Nikki had an extensive history of abuse and trauma and was considered by many to be a strong candidate for sentencing under the DVSJA—however, the court denied her.[19, 20] Narratives about her traumatic past were used as a tool to shame her during her trial, and ultimately, instead of being helped by the passing of the DVSJA, she is currently incarcerated in Bedford Hills Correctional Facility. Or, consider the case of Darlene "Lulu" Benson-Seay, another woman incarcerated at Bedford Hills who had a vast traumatic

18 Committee on Domestic Violence and Incarcerated Women, "A Report of the Committee on Domestic Violence and Incarcerated Women: Battered Women and Criminal Justice", 1987, https://www.ncjrs.gov/pdffiles1/Digitization/107516NCJRS.pdf

19 Rachel Louise Snyder, Rachel Aviv, and Katy Waldman, "When Can a Woman Who Kills Her Abuser Claim Self-Defense?," The New Yorker, December 20, 2019, https://www.newyorker.com/news/dispatch/when-can-a-woman-who-kills-her-abuser-claim-self-defense.

20 Justine van der Leun, "She Had Proof She'd Been Abused. But Was It Enough?," Medium (GEN, May 28, 2020), https://gen.medium.com/nikki-had-proof-shed-been-abused-but-was-it-enough-for-self-defense-bd9f196396eb.

history and was also considered to be a candidate for DVSJA re-sentencing.[21] Lulu, who was 61 years old, died after contracting COVID-19 in April 2020, even though there were a variety of options to release her, including resentencing under DVSJA and executive clemency. Both of these stories demonstrate how incarceration fails to prioritize the needs of those incarcerated in prisons for women. Their histories of abuse were not properly addressed in their sentencing or upon their incarceration, underscoring how interpersonal violence interacts with state violence, leaving survivors caught in the middle.

THE CURRENT U.S. CLIMATE

As we set this backdrop of women's involvement in the criminal legal system, we must also point to the current political climate of the United States. At the time of this report, we are dealing with circumstances that have been characterized as two pandemics—COVID-19 and systemic racism. COVID-19, a novel coronavirus, has been ravaging the globe, responsible for over 25,000,000 infections and 846,000 deaths across the world, and over 6,000,000 positive cases and 183,000 deaths within the U.S. alone at the time of this writing.[22] Impoverished communities of color in the United States have been among those hit the hardest by the pandemic, with disproportionate rates of infection and death for Black and brown individuals.[23] Earlier this year, New York state saw one of the worst outbreaks of COVID-19 in the world, with over 400,000 confirmed cases and over 32,000 deaths in just a few months.[24] Those incarcerated in New York state prisons have been especially affected, with infection rates in New York state prisons being on the rise across the state.[25,26] In fact, prisons and jails have become leading hotspots of COVID-19 transmission[27]; with infection rates relatively stable across the country, prisons and jails show a striking opposing picture.

At the same time, the murders of George Floyd, Breonna Taylor, and Ahmaud Arbery, mostly captured by cellphone footage and communicated through social media, have captivated the attention of the nation and the globe, sparking the largest social protest in U.S. history—spurring calls for systemic change and abolition against state violence.[28] While the data and first-hand accounts discussed in this report were collected prior to the onset of COVID-19 and the current social climate, they are not removed from them. COVID-19 and police violence are connected in that they reveal the unequal experiences of the most marginalized in our society. These individuals are historically, institutionally and systemically oppressed, and disproportionately affected by systems of inequity, and thus are most affected in moments

21 Justine van der Leun, "Death of a Survivor," The New Republic, May 3, 2020, https://newrepublic.com/article/157589/death-survivor.

22 The New York Times, "Coronavirus Map: Tracking the Global Outbreak," August 17, 2020, https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html

23 Jill Cowan, "Why Covid-19 Is Deadlier for Black and Latino Californians," The New York Times, April 28, 2020, https://www.nytimes.com/2020/04/28/us/coronavirus-california-black-latinos.html

24 The New York Times, "New York Coronavirus Map and Case Count," August 17, 2020, https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html.

25 Timothy Williams, Libby Seline, and Rebecca Griesbach, "Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide," The New York Times, June 16, 2020, https://www.nytimes.com/2020/06/16/us/coronavirus-inmates-prisons-jails.html.

26 Victoria Law, "The Pandemic Hits New York's 'Prison Nursing Home,'" Gothamist, July 17, 2020, https://gothamist.com/news/covid-19-pandemic-hits-new-yorks-prison-nursing-home.

27 The Marshall Project. (2020, August 27). A State-by-State Look at Coronavirus in Prisons. The Marshall Project. https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons

28 Larry Buchanan, Quoctrung Bui, & Jugal Patel, "Black Lives Matter May Be the Largest Movement in U.S. History," The New York Times, July 24, 2020, https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html

of national crisis. As calls for equitable public health responses and demands for reform and abolition of policing across the U.S. rise, it is important to recognize the necessity of including incarcerated people within those discussions. Many of the aforementioned calls fail to identify how the two pandemics are compounded for individuals who are incarcerated, and to point out that their invisibility puts them at greater risk for disproportionate negative effects. In other words, there can be no conversation about state violence and health inequity in the U.S. without also including those who are behind bars.

CANY'S PRISON OVERSIGHT MODEL

At CANY we seek to recognize compounded vulnerability by centering the voices of women and individuals incarcerated in prisons for women.[29] This is just one part, though a crucial one, of a larger strategy for decarceration. The larger goals of effective monitoring and system reform cannot be accomplished without incorporating the unique experiences of these individuals, as they give context to the ways that policies, legislation, and practices can disproportionately impact a population, and inversely, how specific attention to incarcerated, marginalized populations can make a tremendous difference to their treatment and experiences.

Prison oversight provides an avenue for advocacy in a system that does not prioritize the dignity, health, and personhood of those incarcerated. CANY's authority as an independent party that monitors New York state prisons, reports to the legislature and the public, and advocates for system-wide change creates a platform for people inside prison to participate in and shape the public debate. Through this report, CANY builds on the past work of advocates who have fought for system-involved individuals while using new reports and data collected from incarcerated people to shed light on the current situation for those incarcerated in New York's prisons for women.

29 While data from DOCCS identifies every person incarcerated in a women's prison as "female", it is important to note that not everyone incarcerated in prisons for women are women or identify within the gender binary. Throughout this report, we make reference to "individuals incarcerated in prisons for women" rather than incarcerated women when applicable.

METHODOLOGY

The Correctional Association of New York utilized three forms of data collection and analysis in preparing this report: one method was in-person monitoring conducted at Bedford Hills Correctional Facility by CANY's staff, board members, and volunteers. The second and third methods of data collection were the use of two surveys, each containing quantitative and qualitative components, which were mailed to respondents. For insight on the limitations of our methodology, see Appendix A.

IN-PERSON MONITORING

On October 11, 2019, CANY representatives conducted a monitoring visit at Bedford Hills Correctional Facility, a prison for women in Bedford, New York. The CANY delegation is typically comprised of 12 representatives who meet with each prison's executive staff, incarcerated individuals who serve as representatives from the Inmate Liaison Committee (ILC) and the Inmate Grievance Review Committee (IGRC), medical staff, mental health staff, and academic and vocational staff. During these meetings, CANY staff and volunteers ask targeted questions and take notes to document experiences and issues identified at each prison. Visual observation by CANY representatives, in addition to input from the Department of Corrections and Community Supervision (DOCCS) staff, are used to corroborate reports made by incarcerated people, with the aim of ensuring that findings presented in CANY reports are sufficiently verified.

When not meeting in the groups described above, CANY representatives walk throughout each prison and speak with incarcerated people who are either inside cells or in their program areas. During interviews with incarcerated people, CANY representatives utilize an intake form for each person interviewed, which captures basic identifying information as well as issues any incarcerated person reports. Other individuals in attendance during the meetings and interviews include DOCCS Central Office staff, the prison's Executive Team staff, and security staff. At the conclusion of each monitoring visit, CANY representatives compile data, review notes made during the monitoring visit, and compare them to relevant historical data. The information is then synthesized to develop high level, preliminary findings about each prison. Using this information, CANY staff prepare a memo detailing these preliminary findings for the Commissioner of DOCCS and relevant staff, and then request follow-up conference calls to discuss the findings and recommendations. CANY then sends a summary of that same memo, along with a post-visit follow-up survey, to each of the incarcerated people with whom CANY representatives spoke during the monitoring visit.

SURVEY RESEARCH

Two paper surveys were administered to respondents at two different stages: The DVSJA survey was distributed first to better understand which issues were most prominent for incarcerated people affected by domestic and gender-based violence. This survey was sent to a group of people incarcerated in prisons for women across New York state in September 2019. The other survey was a post-visit monitoring survey administered to the incarcerated people that CANY representatives met during the Bedford Hills monitoring visit. This survey was mailed out in October 2019. Note

that although the two surveys were separate, some respondents received and responded to both surveys.

DVSJA SURVEY

The first survey, which we will refer to as the DVSJA Survey, was sent to 487 respondents across New York state prisons for women and girls. These respondents were identified beforehand as being possibly eligible for resentencing under the DVSJA, and this short survey on issues surrounding the experience of survivors in prison was sent to them along with information and resources about eligibility, legal assistance, and a timeline for resentencing related to the DVSJA prepared by CANY's partner advocacy organizations.

While the DVSJA survey was not about experiences of domestic violence explicitly, it was an important and relevant theme throughout the responses. It is also important to note that the context in which the survey was sent (i.e., enclosed with "know your rights" legal materials for domestic violence survivors) likely contributed to the way questions were interpreted and answered.

The DVSJA survey was comprised of two separate questionnaires. The first questionnaire (Q1) contained multiple-choice items that asked respondents to rate how important each named issue was to them on a 5-point scale; this survey provided quantitative data. The second questionnaire (Q2) consisted of narrative response items that asked respondents to further explain their ratings of issues from the first questionnaire. This questionnaire also gave respondents the opportunity to share any relevant, significant experiences they have had in prison, as well as expectations for re-entry upon release. Responses from Q2 provided both qualitative and quantitative data; qualitative data from their narrative responses and quantitative data once the data were analyzed and sorted into particular themes. Throughout this report, first-hand accounts have been excerpted from these forms to reiterate the salient themes from monitoring findings.

There were 103 respondents to the DVSJA survey (a 21% response rate) who came from four prisons across New York state: three prisons for women—Bedford Hills Correctional Facility (n=82), Taconic Correctional Facility (n=11), and Albion Correctional Facility (n=9); and one youth prison—Hudson Correctional Facility (n=1). The age range of participants was between 17 and 75 years old, with a median age of 39 years old. Respondents to this survey were also more likely to be people of color when compared to the general population of individuals incarcerated in prisons for women. While the majority of people incarcerated in New York's prisons for women are White, most of the respondents to this survey were Black (54.4%), followed by White (35.9%), Other or Unknown (6.8%), Asian (1.9%), and Native American (1.0%). In terms of ethnicity, Hispanic respondents of any race were slightly more represented in the survey than in DOCCS' prisons for women overall, at 20.6% of respondents.

POST-VISIT MONITORING SURVEY

The second survey administered was a post-visit monitoring survey sent to respondents at Bedford Hills Correctional Facility after CANY's in-person visit there. Post-visit surveys are provided to a sample of incarcerated people after each in-person monitoring visit in

order to provide an additional opportunity to share information about living conditions and other issues. While most of the survey is comprised of general survey questions that all respondents answer across facilities, each survey also had a small number of prison-specific questions, focused on issues that were reported at a given prison during in-person monitoring visits. These surveys also included an additional narrative response form for collecting qualitative data from incarcerated people and giving them the opportunity to use their own words to describe their experiences. Similar to the post-visit surveys, these narrative response forms are mostly uniform across facilities but also include a small number of additional prison-specific questions.

There were 110 respondents to the Bedford Hills post-monitoring survey (a 24% response rate), of which 106 had demographic data available. Participants ranged in age from 19 years old to 80 years old, with a median age of 39 years old. In contrast to the DVSJA survey, where Black respondents were more represented, White respondents were the most represented in the post-visit survey to Bedford Hills (45.3%), followed by Black (40.6%), Other or Unknown (11.3%), and Asian (2.8%) respondents. When looking at ethnicity, Hispanic respondents of any race made up 16.0% of respondents.

OVERLAPPING PARTICIPATION

Bedford Hills was the most represented prison in the DVSJA survey with 82 of the 103 participants. Because Bedford Hills is a maximum-security prison, it follows that individuals charged with crimes of harm and eligible for the DVSJA are disproportionately incarcerated there due to the nature of their charges. With this in mind, there was some overlapping participation across the two surveys, where 28 respondents incarcerated at Bedford Hills responded to both the DVSJA survey and post-visit monitoring survey.

While our findings represent the experiences of people incarcerated in prisons for women in fall 2019, it is crucial to acknowledge how the COVID-19 pandemic has overtaken and changed life for most people living in the United States—including those incarcerated in state prisons. Thus, while our findings speak to the issues that were happening at that moment in time, they are unable to capture the complex and multifaceted challenges that COVID-19 has brought upon incarcerated people.

RETRAUMATIZATION AND THE (RE)PRODUCTION OF ABUSIVE SETTINGS

Research indicates that between 71% and 95% of incarcerated women report histories of domestic and gender-based violence in adulthood.[30] Additionally, survivors of such violence who are women of color, living in poverty, immigrants, or LGBTQ, experience heightened risk of criminalization, prosecution, and incarceration due to their experiences of disproportionate policing, bias, and profiling.[31, 32] Thus, many women have extensive histories of trauma before they are even incarcerated. For many incarcerated people, particularly those in prisons for women, violent abuse and the trauma that follows are emblematic of the experience of incarceration. Women with histories of trauma are often punished for their response to these experiences—in particular, survivors of chronic domestic and gender-based violence face criminal convictions and incarceration, even when their offense was directly tied to their survival.[33]

The pain and experience that come with past trauma was a prevalent issue discussed throughout the data. Responses to the DVSJA survey indicate that for respondents, issues involving their past traumatic experiences were among the most significant issues experienced in prisons, with 78.6% of respondents (n= 77) citing it as a "most important" issue—more than any other issue in the survey. One DVSJA respondent, when asked why she identified past trauma as one of the most important issues she faces in prison, stated:

> *"...we tend to carry the demons that were created from such trauma and mental health throughout the rest of our lives. It is very hard and you never forget what happened to you. You can only learn through techniques and medicine to treat such traumas."*

While many women in prison have extensive histories of sexual abuse, violence, behavioral health issues, and physical health issues that pre-date their incarceration, the abusive dynamics and trauma that they experienced in these situations are often reproduced within prisons themselves. Women with histories of abuse have indicated

30 Melissa Dichter, "Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update," National Online Resource Center on Violence Against Women. 2015, https://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration-research-update.

31 Survived and Punished, "Research Across the Walls," Survived and Punished, 2019, https://survivedandpunished.org/wp-content/uploads/2019/02/SP_ResearchAcrossWalls_FINAL-compressedfordigital.pdf

32 National Center for Transgender Equality, "Standing with LGBT prisoners: an advocate's guide to ending abuse and combating imprisonment," National Center for Transgender Equality, 2014, http://www.transequality.org/issues/resources/standing-lgbt-prisoners-advocate-s-guide-ending-abuse-and-combating-imprisonment.

33 Meda Chesney-Lind, "Women and the Criminal Justice System: Gender Matters," Topics in Community Corrections, Annual Issue (2000): 7-10, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.216.5308&rep=rep1&type=pdf

that experiencing or witnessing subsequent abuse inflicted by correctional officers and staff can often retraumatize them and resurface prior incidences of abuse.[34] Responses from the DVSJA survey suggest that the primary triggers of survivors' trauma-related distress are correctional officers' interactions with incarcerated people and some operational practices. For one respondent, "trauma issues are constantly resurfacing because of the nature of the setting," including, "body cameras on male and female officers entering showers [and] the yelling and tone officers use against us." Another respondent shared that, as a domestic violence survivor, she has "problems seeing male officers take down females during fights." Other reported triggers included loud noises (e.g., keys clanging) and yelling or screaming. One respondent stated,

> *"Some officers like to abuse their power as an office[r]. In some cases, it reminds us of our abusers and how we got here."*

Another respondent commented on how these incidences can resurface experiences of abuse from their past:

> *"The condescending and abusive manner that we are treated by security staff is retraumatizing."*

Many of the DSVJA survey respondents who shared their experiences of retraumatization in prison commented on correctional staff's insensitivity to their histories of trauma. As one respondent noted,

> *"Officers will scream, yell at us not knowing and understanding that 90% of inmates in Bedford Hills ha[ve] been raped, abused, traumatize[d] by men in our lifetime before."*

While incarcerated, respondents report being harassed, humiliated, threatened, intimidated, and verbally degraded by correctional officers. Respondents also reported concerns about excessive use of force and threats of force. Respondents have been "hit," "beat up," "slammed," "punched," "stomped out," and threatened with force by correctional officers. Other reported abuses include correctional staff's neglect and indifference to incarcerated people's needs. Multiple respondents from the DVSJA survey also complained about sexual misconduct by prison staff; respondents reported sexual assault and harassment, rape, and voyeurism—including male officers watching incarcerated individuals while they shower and use the toilet. In many ways, these triggers and experiences of assault can replicate elements

34 Office of the Inspector General, "The Department of Justice's Efforts to Prevent Staff Sexual Abuse of Federal Inmates," U.S. Department of Justice, 2009, https://oig.justice.gov/reports/plus/e0904.pdf

of survivors' former interpersonal violence. The power, control, and surveillance that survivors undergo during their incarceration can mirror the power, control, and surveillance of their past abusive interpersonal relationships, underscoring the continuum of violence that survivors face. This illuminates why the experience of incarceration itself can be traumatic for survivors of domestic and gender-based violence. These experiences are particularly exacerbated for women of color in prison, as respondents also report that correctional officers use racist obscenities to refer to individuals, regardless of ethnicity/race. One respondent expressed her daily fear of interacting with officers and other individuals because of the prevalent racism in their interactions.

The reports from CANY's in-person monitoring visits and from the respondents' qualitative survey responses are also confirmed throughout the quantitative results from the post-visit monitoring survey to Bedford Hills. In this survey, 74% of 110 respondents identified that they had witnessed some form of violence or abuse by staff, including physical, sexual, and verbal abuse, while 53% of respondents reported experiencing these acts of violence by staff themselves. Additionally, 51% of respondents reported experiencing or witnessing racist behavior from prison staff, including the use of racial slurs and remarks.

Figure 1. Questions from the Post-Visit Monitoring Survey on Abuse

These issues become even more exacerbated alongside reports of inadequate avenues to seek redress and protection from custodial abuse. Respondents' reports suggest that an ineffective grievance system facilitates staff's misconduct and abuse. For example, one respondent wrote:

> *"Writing Albany for help with brutality we never hear nothing back, it feels like we're on Devil's Island. We're the forgotten, so that makes correctional officer[s] feel like they can rape us, beat us, degrade us, and deprive us of our rights."*

Respondents stated that their reports to prison officials are often ignored and uninvestigated, with major delays in administrative responses to grievances, and staff retaliation for using the grievance system. Thus, those incarcerated in prisons for women are often stuck in a cycle of past abuse and traumatization that occurred before their incarceration which resurfaces, is magnified, and becomes seemingly inescapable.

THE PHYSICAL CONDITIONS OF INCARCERATION AND THE IMPACTS ON HEALTH

While it is important to consider how trauma and harmful mental health dynamics can be reproduced in prisons for women, it is also important to consider the impact of the physical conditions of incarceration. Just as interactions with correctional staff contribute to the culture of a prison and the potential for rehabilitation, how incarcerated people interact with their physical environment is also important to this end. Among the issues reported during the monitoring trip to Bedford Hills, in addition to the two surveys distributed, some of the most salient topics discussed were related to the living conditions for those incarcerated. Included in these reports were issues surrounding policies and practices that contribute to disrupted sleeping and concerns around the cleanliness and maintenance of the prison.

DISRUPTIVE SLEEPING CONDITIONS

Perhaps the most salient issue discussed by the IGRC and other incarcerated individuals during the monitoring visit to Bedford Hills was the issue of disrupted sleeping. Many women reported not being able to get adequate sleep due to two recent shifts in policy and practices at the prison: a policy requiring individuals to stand while being counted, and the recent shift in practices that allowed individuals to sleep with only a single mattress.

As reported by the IGRC, the new standing count policy requires that every incarcerated person at Bedford Hills must stand while they wait to be counted, during a count that occurs four times a day. The first standing count begins at 5:30 AM, but those incarcerated are woken by a loud, disruptive countdown at 5:15 AM to signal them to stand in their cells. Two more counts occur during the day before the final standing count of the day at 10:15 PM. Individuals reported to us that, due to the nature of the standing count, it is virtually impossible for any person to sleep for more than seven hours at a time, and many reported even less sleep than that, as the security rounds conducted throughout the night wake them. While this policy is troubling because of the way it deprives incarcerated people of sleep and rest, the punitive measures that follow if someone misses a standing count are even more concerning. If an incarcerated person misses a standing count, CANY representatives were told that they are given a 30-day Keeplock—a sanction that restricts people to their cells and restricts their access to phones, programs, visits, and jobs. This can greatly impact a person's experience in prison, causing them to lose progress in their educational or college programs as well as lose the jobs many have worked hard to receive. Because of this, some of the women from the ILC and IGRC described sleeping at Bedford Hills as a constant state of frenzy and panic, where the anxiety of potential consequences inhibits their ability to get a proper night's sleep during an already restricted sleeping schedule.
The IGRC stated that as of fall 2019, they believe over 100 people have already been placed under Keeplock conditions because of this policy, and that they have received hundreds of

grievances about this issue since it was instituted earlier that year. When talking about the standing count, one respondent to the DVSJA survey stated:

> *...right now the standing count has us all lacking sleep. The times I used to be able to catch up on sleep I cannot because I must stand on each master count. I don't get to sleep enough, it keeps me nervous and I don't think as clearly as I did with enough rest.*

Another issue that was reported by both the IGRC and by individuals in housing areas is the new practice of only allowing a single mattress. While many of the people at Bedford Hills had historically been granted a second mattress for medical reasons or reasons surrounding personal well-being, CANY representatives were told that this practice has stopped, and the administration at Bedford Hills has confiscated all additional mattresses. As reported by representatives at Bedford Hills, through this policy, people who had been sleeping with double mattresses for years, even those with previous medical permission, had their second mattress taken away and now sleep on a single mattress. While the deputy superintendent for security and primary care providers can issue approvals for double mattresses, Bedford Hills' IGRC stated that they are not doing so, even after this issue has been raised by many in the prison. This issue, coupled with the new standing count policy, provides insight into how the conditions at Bedford Hills are impacting the health and well-being of those incarcerated—specifically, the ability to sleep and rest. When asked about these issues in the post-visit survey, 71% of 100 respondents at Bedford Hills stated that their health had been negatively impacted by the withdrawal of the second mattress. In addition to this, 92% of those with an allowance for a second mattress said that they were not able to receive one.

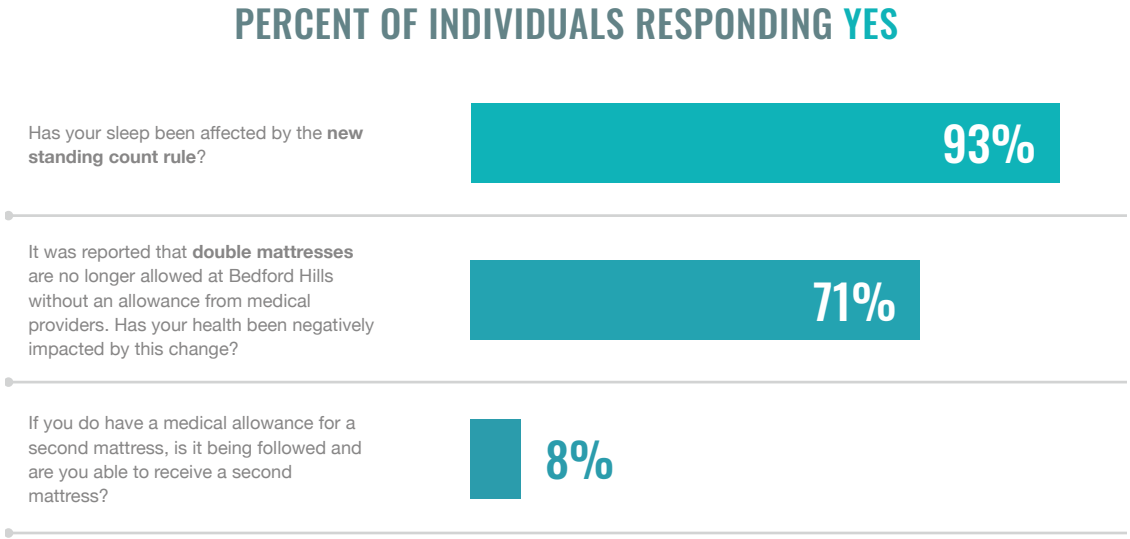

Figure 2. Questions from the Post-Visit Monitoring Survey on Disruptive Sleeping Conditions

Issues surrounding adequate sleep and rest are of particular importance to the health and well-being of incarcerated people, given that many of those incarcerated are already facing health issues. At Bedford Hills, the population of those over 50 years old makes up 19% of the total population (n=123). While these individuals are already impacted by vast trauma histories, many of them are also aging and elderly, and facing additional serious physical health issues.

FACILITY MAINTENANCE AND LIVABILITY

At Bedford Hills, incarcerated people reported that it was the prison's policy to wait until October 15 before turning on the heating system for the winter season. One respondent stated she was ticketed for a disciplinary infraction after wearing a hat indoors to keep herself warm due to "freezing" temperatures inside the prison. This was backed up by data from the Bedford Hills post-visit survey, where 66% of 105 respondents reported that the prison is not heated appropriately in the winter months.

The issue of cleanliness and overall maintenance of prison spaces was also discussed throughout reports from incarcerated people. During CANY's meeting with the ILC, the ILC discussed how their request to have the shower rooms power washed once a month was not granted.

The staff proposed instead to adopt a shower schedule that would allow time for the showers to be properly cleaned and allowed to dry completely between use. One respondent to the DVSJA Survey who is incarcerated at Bedford Hills commented specifically on the issue of cleanliness in showers, citing it as a major issue at the prison:

> *"Something that is disturbing that I have experienced while being incarcerated is the fact that every day there are women showering in showers where black mold is growing and you have worms and maggots coming up from the drain."*

To further validate these reports, when asked about the cleanliness of shower areas, a startling 92% of respondents to the Bedford Hills post-visit survey stated they had seen mold, mildew, worms, or flies in the shower areas. To add to this problem of maintaining the general cleanliness of the prison, when asked if they would categorize their living areas as hospitable, 60% of respondents stated that their current facilities were inhospitable according to the DOCCS definition of basic living standards, which includes proper lighting, bedding, storage and a functioning toilet, sink, and shower.

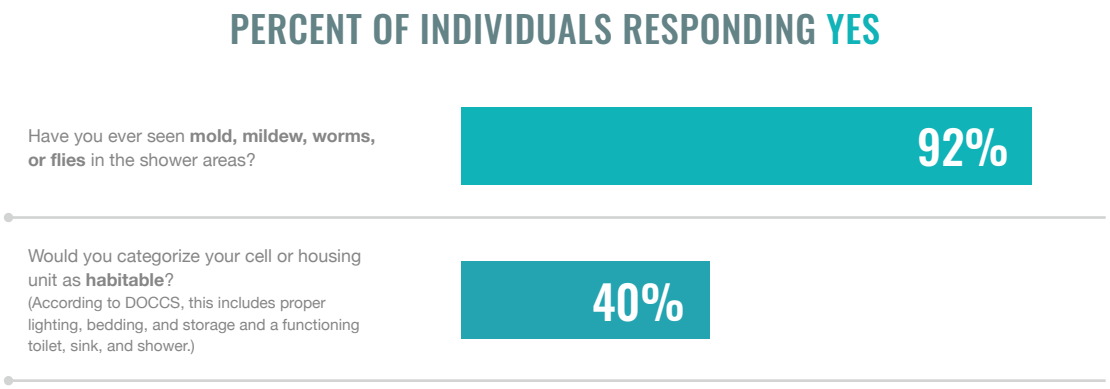

Figure 3. Questions from the Post-Visit Monitoring Survey on Cleanliness and Livability

The calls for a hygienic and sanitary environment in which to wash themselves are particularly concerning given the current state of the COVID-19 spread throughout New York and inside prisons. While these concerns were expressed before the global pandemic, they provide insight into how sanitation practices were being upheld in the months before the pandemic. If prisons are unable to sufficiently provide the appropriate, basic sanitation measures during typical, day-to-day operations, it is hard to grasp how they would be able to undertake them in the midst of a pandemic.

THE LACK OF TRAUMA-INFORMED REHABILITATION AND PROGRAMMING IN WOMEN'S PRISONS

Throughout the data, the need for comprehensive, trauma-informed programming was discussed. As it stands, prisons for women do not have the resources and were not designed to address the complex programming and rehabilitation needs of survivors of domestic and gender-based violence. From programming on education and healing, to accessing trauma-informed mental health services, re-entry resources, and safety planning, these programs are rarely designed with such survivors in mind, a fact that is quite concerning considering the high prevalence of incarcerated women who are survivors and the potential for the harmful conditions of incarceration to retraumatize survivors.[35] In addition, the few programs that women report to be helpful are rarely available, meaning many are stuck serving their sentences without meaningful programming, and thus denied meaningful mechanisms of growth and rehabilitation.

35 Katherine Lorenz and Rebecca M Hayes, "Intersectional Pathways: The Role Victimization Plays in Women's Offending and in Prisons," in Women and Prison, ed. Jada Hector (Springer, 2020) 97-129, https://doi.org/https://doi.org/10.1007/978-3-030-46172-0_8#ESM.

HEALTHCARE

Addressing the healthcare needs of women and individuals incarcerated in prisons for women is essential, as many of them faced disproportionate health challenges prior to incarceration. However, incarceration often exacerbates pre-existing conditions and exposes individuals to further healthcare issues. This is an urgent point because many chronic health issues lead to acute emergencies that could be prevented with thorough preventive care.

While respondents to both of the surveys and those interviewed during the in-person monitoring visits mentioned issues with healthcare, many of the chief complaints from those at Bedford Hills focused on the disjointed approach to care by medical professionals, as demonstrated by the responses to the post-visit survey. While 85% of 110 respondents to the survey stated that they are not satisfied with the medical care they receive, perhaps even more troubling was the lack of professionalism that was reported. Only 34% of respondents reported that medical providers were respectful and professional when treating them. Further, 71% of the 110 respondents stated that they have avoided seeking medical attention to avoid being treated in an inappropriate manner—demonstrating how the lack of professionalism among medical staff can have adverse health outcomes for incarcerated people. Dental and mental health care were also reported to be inaccessible throughout the post-visit survey responses, with 45% of respondents reporting not having access to a dentist when needed, and 43% of respondents not having access to a mental health professional when needed. The lack of available mental health outlets for many of the respondents is especially concerning given that so many are survivors of violence with extensive trauma histories.

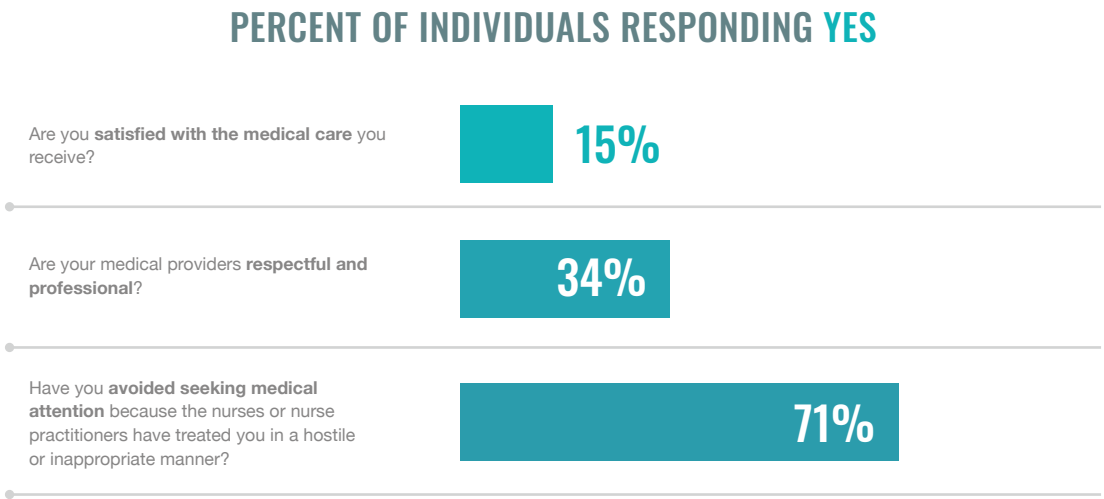

Figure 4. Questions from the Post-Visit Monitoring Survey on Healthcare Access

In the narrative responses to the DVSJA survey, one woman defined the prison healthcare system as “horrible,” with tendency to neglect many medical needs. Respondents reported that diagnoses take a very long time to report, and may be inaccurate, or minimized. This type of response was confirmed through the post-visit monitoring survey questions (see Figure 5), in which 70% of respondents stated they were unable to see a doctor or medical professional when requested. Of the 30% of respondents that were able to see a physician,

69% of respondents stated their medical issue was left untreated. Respondents complained of multiple barriers that patients have to navigate to receive a response to emergencies, reluctance to run further medical tests, and episodes of nurses administering the wrong medicine for an ailment. Respondents also reported that often, physicians do not explain the medications they prescribe, and it is only after persistent follow-ups that an individual can see a specialist or even schedule a surgery.

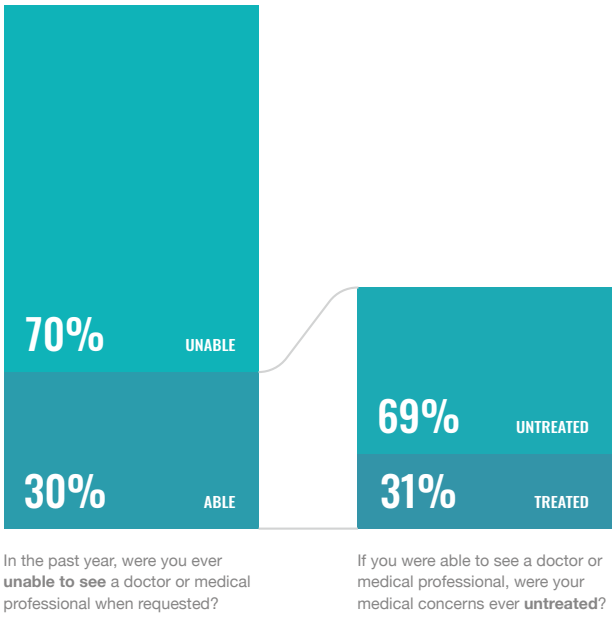

Figure 5. Questions from the Post-Visit Monitoring Survey on Healthcare Access

A succinct description by one respondent summarized the general mentality this way: they were treated "like an inmate, not like a patient." Medical providers in prison become, in this respondent's view, arbiters of punitive justice instead of healthcare practitioners whose job it is to care for incarcerated people.

PROGRAMMING AND EDUCATION

Throughout the reports to CANY, there were several concerns raised related to programming and education. Respondents to the DVSJA survey and Bedford Hills monitoring survey, as well as the incarcerated individuals who spoke to CANY representatives during the in-person monitoring visit, shared their feedback about access to programming, lack of appropriate programming, issues with program duration and availability, and the potential for programs to address issues of trauma, mental health and recidivism.

Educational and Vocational Programming

Respondents to the DVSJA survey talked extensively about educational and vocational programming. This discussion surfaced larger themes of restricted access to education pre-incarceration, consistent with the limited educational and economic attainment of incarcerated women.

Many of the respondents expressed their view of the power of education as a rehabilitative force for their time in prison. Their responses included:

"...many women didn't finished their education and can't read or write"

"These women are already at a disadvantage. Give them some skills! Some value!"

"Education is the foundation for rehabilitation... this is the way to keep people out of prison."

> *"...education gives us the tools we need to be successful in the world and it reduces the likelihood of people returning to prison."*

However, respondents shared that their experiences with the educational programs were not always positive. Some respondents were unable to enroll in the educational programs because they lacked a high school diploma or GED, while some were unable to enroll because they still had too much time remaining on their sentences. For those who were able to enroll, inconsistent teaching and unclear guidelines kept them from successfully advancing. Concerns about vocational programming echoed those of educational programming. Respondents to the DVSJA survey believed that vocational programming could assist them with better opportunities during and after their incarceration, but long waiting lists, scarcity of available programs, and selective participation keep those opportunities out of reach. Respondents also mentioned other forms of programming, like visitation, family, and recreational programming, and the challenges associated with them. Issues with distance from the prison prevented participation from the families of the incarcerated individuals in certain programs. Respondents also mentioned that non-educational and non-vocational programming was limited and did not mirror programmatic opportunities they had received at other facilities. In line with the findings outlined in *Connection With the Outside World: Prison Monitoring Findings and Recommendations*,[36] CANY's July-September 2019 monitoring report, many of the respondents to the Bedford Hills post-visit survey said that they would like to be involved with aggression replacement training ("ART") and other programs, but are barred because only incarcerated people within three months of their release date can be accommodated in the program.

36 Correctional Association of New York, "Connection with the outside world: Prison Monitoring Findings and Recommendations," Correctional Association of New York, 2020, https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5e65f1009369fa095333ef23/1583739189727/Connection-to-the-Outside-World_CANYReport-03092020.pdf

Throughout their responses, respondents to the DVSJA survey talked about their desire for a focus on rehabilitation instead of punishment, and indicated that incarcerated women should be viewed through the lens of care. Respondents wanted programs that provided strategies to deal with mental health, trauma, and addiction, and reported that mental health and psychological challenges served as barriers to program participation. Respondents included examples of individuals who would benefit from trauma-informed educational and vocational programming but were instead subjected to disciplinary measures that restricted their access to the programming. One respondent shared this about a friend:

> *"She is into hairstyling and cosmetology, but has not been put into vocational yet, she has addiction issues and mental health issues which result in disciplining issues... this facility does not have enough to help someone like her. She's a really good person with a big heart but she needs more care and more positive and constructive attention inside, not just disciplinary."*

Specialized Programming

Peer-Led Programs

At Bedford Hills, the diminishing and restriction of peer-led programs is an issue that was discussed by many of the individuals incarcerated there, and is also an area of concern that has been growing amongst prisons state-wide. During the in-person monitoring visit, it was reported by the IGRC and ILC that much of the programming that had existed historically has been restricted, changed, or outright eliminated. For decades, incarcerated people in the state of New York have worked to organize, develop, and improve programming for themselves and for other people who were incarcerated. One such program was the Family Violence Program, originally started by incarcerated women at Bedford Hills in the 1980s. This peer-led initiative provided educational programming, individual counseling, and support groups for survivors of violence.

Peer-led programs are critical for giving incarcerated people a sense of ownership, purpose, and pride in an environment that provides little autonomy or dignity. In addition to being important because they provide meaning to people who are serving time, these programs are also important for building communities and social networks and acquiring new skills and knowledge that can mitigate the difficulty of the re-entry process. Additionally, it was reported that no rationale was provided for why these programs are disappearing or why it has become more restricted and difficult to organize these groups. Even further, people at Bedford Hills and at other prisons have stated that increased peer programming reduces violence and other negative incidents by providing incarcerated people with more options to pass the time.

Program-treatment needs of survivors

In New York state prisons for women, DOCCS provides two programs for trauma survivors: The Alternative to Violence Project and the Female Trauma Recovery Program (See Table 1).

PROGRAM	FACILITY	DETAILS
ALTERNATIVE TO VIOLENCE PROJECT	ALBION, BEDFORD HILLS	The Alternative to Violence Project provides participants with skills and communication strategies for de-escalation and conflict resolution.
FEMALE TRAUMA RECOVERY PROGRAM	ALBION, TACONIC	The Female Trauma Recovery program is a specialized treatment program for incarcerated people with histories of sexual abuse and trauma. Upon completion, participants with ongoing treatment needs receive an aftercare plan developed by staff.[37]

Table 1. NYDOCCS Programming for Trauma Survivors in Women's Prisons

However, these programs—which serve only 3% of the population in prisons for women as of 2015—do not address domestic and gender-based violence.[38] The inaccessibility of mental health services, as discussed in the preceding healthcare section, coupled with the lack of domestic and gender-based violence counseling and support programs mean that there are few, if any, therapeutic options for survivors to address their personal histories. CANY learned that programs directed toward safety and recovery are among incarcerated survivors' most important programming needs. Respondents to the DVSJA survey reported their dissatisfaction with the programming in prisons for women, citing the need for domestic violence treatment, education, and prevention programs. However, respondents spoke highly of the Family Violence Program previously offered at Bedford Hills. This 6-month program provided counseling, education, and support groups for survivors of domestic and family violence; respondents who completed the program said it provided information about destructive relationship patterns while simultaneously helping them recover from past trauma and abuse.[39] As one respondent shared:

> *"[The Family Violence Program] helped [women like myself] open up about...child abuse &/or domestic violence. With this program being taken away now there is no program for women like myself to utilize to conquer those past issues/trauma."*

Research suggests that programs like the Family Violence Program help survivors with short- and long-term recovery. For example, a 1999 study on the Family Violence Program found that women who completed the program had a significantly lower recidivism rate than

37 Correctional Association of New York, "Reproductive Injustice: The State of Reproductive Health Care for Women in New York State Prisons," Correctional Association of New York, 2015, https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c4f5d01758d466ad39b0a97/1548705033102/2015+Reproductve+Injustice+in+New+Yorks+Prisons.pdf

38 Correctional Association of New York, "HIV Services for Women in New York State Prisons," Correctional Association of New York, 2015, https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5cba29110852293456f994ee/1555704087045/2015+HIV+Services+for+Women+in+NY+Prisons.pdf.

39 Correctional Association of New York, "Fact Sheet: Women's Incarceration: The Experience in New York's Prisons," Correctional Association of New York, 2019, https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5cc08885fa0d60251a568084/1556121734338/2019+Women%27s+Incarceration+Fact+Sheet.pdf.

women who did not.[40] Respondents who had not participated in the Family Violence Program indicated interest in learning about domestic violence and how to avoid re-victimization post-incarceration—including descriptions of the signs and types of abuse and information on the risk factors and consequences of domestic violence

RE-ENTRY AND SAFETY PLANNING FOR DOMESTIC AND GENDER-BASED VIOLENCE SURVIVORS

Inadequate resources and attention allocated to survivors' re-entry needs undermine their reintegration prospects. DVSJA respondents report having received minimal guidance on how to prepare for re-entry and access resources upon release. There are few programs and services available in prisons for women to help individuals acquire knowledge and skills in critical areas of their lives before re-entry. Respondents' complaints included the lack of re-entry programs and resources informing people about their options. Concerns about the direct and collateral consequences of their convictions—e.g., employer discrimination, stigmatization, child custody, deportation, and access to affordable housing options—were frequently cited as well. For example, more than 20% of respondents reported concerns about facing discrimination and social stigma (due to their conviction) upon their release.
System-involved survivors often receive fewer and lower quality services than survivors without histories of system involvement due to the shortage and eligibility restrictions of domestic violence shelters and specialized services. For survivors who are women of color, low-income, immigrants or LGBTQ, access to domestic and gender-based violence services and treatment will be limited by the same structural factors that made violence and incarceration more likely in the first place. Because survivors do not receive adequate trauma-related treatment in prison, it is especially important to connect those re-entering to domestic and gender-based violence services in the community in order to begin or continue recovery work post-incarceration.

Although securing safe, affordable housing is hard for all re-entering people, there may be additional violence-based challenges or risks involved for survivors of domestic and gender-based violence. A lack of economic resources and opportunities constrains re-entering survivors' options for safety and increases their vulnerability to violence in the community. When respondents answered questions about why programming for survivors was important to them, they brought up concerns about post-release victimization:

> *"[Addressing] issues involving past traumatic experiences is crucial to becoming a stronger [woman] to avoid people and situations where we were previously victims or [learn how to] handle such situations better in the future."*

> *"I believe that [issues about past abuses are] very important because there [are] people like myself that don't fully or didn't understand the domestic [violence] cycle or what 'red flags' to look for in...starting to date."*

> *"Issues with references to the woman's state of mind since the last encounter of the abuser. How she copes with knowing the results of repeated abusive behaviors due to poor choices in mates...How she may feel with re-entering a society that has not changed. Doing what's best for herself to avoid entering this situation again while moving forward with life."*

40 Correctional Association of New York, "Survivors of Abuse in Prison Fact Sheet," National Center on Domestic and Sexual Violence, 2009, http://www.ncdsv.org/images/WIPP_Suvivors_of_Abuse_Fact_Sheet_4-1-2009.pdf.

Nearly 17% of respondents reported concerns about returning either to places where they had endured trauma or to communities where their abusers or their abusers' families live. Some of the survivors included in this report indicated plans to relocate but have not received assistance with transfers and release planning. Survivors released to unfamiliar areas may require additional guidance since many reported not having social networks to rely on for financial assistance and other supports post-release. The community-level barriers to safety and security that reentering survivors encounter, especially when coupled with the inadequate social and institutional supports they receive inside, highlight the failure of incarceration to meet survivors' short- and long-term needs for healing and recovery.

THE FAILURE OF CURRENT PATHWAYS TO ACCOUNTABILITY AND CHANGE

While the current policies and procedures upheld by DOCCS in prisons for women are often framed as protecting the safety and well-being of those incarcerated, far too often these policies become weaponized against the people they claim to protect. In the reports from incarcerated people received from the DVSJA survey and the Bedford Hills post-visit survey, much of the discussion around prison policies, particularly the grievance process, reflects a system riddled with abuses of power by correctional officers, a lack of accountability for these actions, and an overall lack of consistent, uniform application of procedures.

DISCIPLINE AND SANCTIONS

While incarceration is a punishment in and of itself, many incarcerated people have additional disciplinary action taken against them in prisons. Some of these disciplinary practices, such as the use of solitary confinement in Special Housing Units (SHU), cell confinement (Keeplock), and restriction of programming, are regular, approved disciplinary methods used by DOCCS. Other forms of discipline in the form of informal sanctions, known colloquially among incarcerated people and prison staff as "the burn," are informal disciplinary practices widely reported by incarcerated people across New York state prisons. These sanctions or "burns" typically involve depriving an incarcerated person of an essential need or service such as meals, access to showers, access to phones, and recreational time.

While the use of solitary confinement in SHU and Keeplock are practices that are recorded and reported by DOCCS, the extent to which "burns" are utilized is harder to ascertain because they are unsanctioned and thus, not formally recorded. That said, CANY regularly receives reports about the widespread use of such sanctions across prisons—at Bedford Hills, respondents reported that they more regularly experienced "the burn" than other approved disciplinary methods. While 17% of 110 respondents to the Bedford Hills post-visit survey reported being placed in solitary confinement (SHU) in the last year, 42% of 110 respondents reported being placed in Keeplock in the past year. In contrast with those sanctioned forms of punishment, 50% of respondents stated they were deprived of a basic need or "burned" in the past year and 40% of respondents stated that they are "burned" more than once a month.

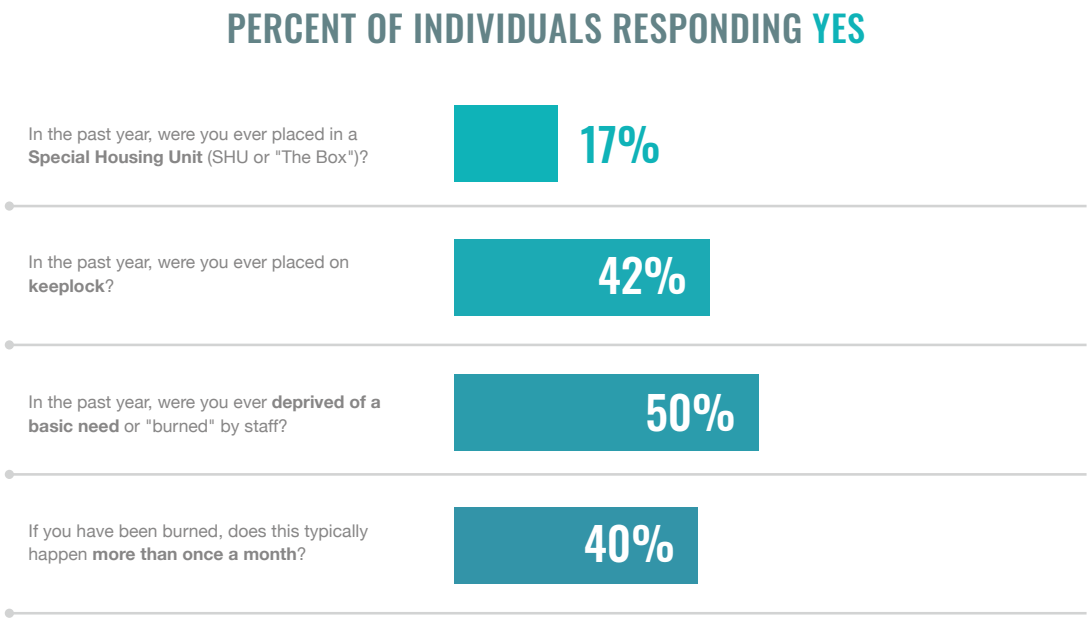

Figure 6. Questions from the Post-Visit Monitoring Survey on Discipline and Sanctions

THE GRIEVANCE PROCESS AND ACCOUNTABILITY

Many of the issues reported to CANY are also made known to DOCCS staff through a formal grievance process. The grievance process, which, according to DOCCS Directive 4040, "provides each incarcerated person an orderly, fair, simple, and expeditious method for resolving grievances, pursuant to Section 139 of the Correction Law, and allegations of discriminatory treatment," should function as an essential measure to resolve problems and reduce tension. However, at prisons for women across New York state, the grievance process was frequently cited by incarcerated individuals as failing in its purpose as a meaningful pathway to resolve issues. Reports of issues with the grievance process include ignored grievances, delays in grievances, lack of access to CCTV and body camera footage, and staff retaliation as the key concerns.

The IGRC stated that the same grievances are continuously filed by the bulk of the incarcerated population: inadequate access to medical care, interpersonal issues with correctional officers, failures in the programs and services provided, and grievances about the grievance process itself. The IGRC also stated that the same grievances continue to be filed because they are rarely thoroughly investigated, and the resolutions to the grievances from prison administration are insignificant. Of the respondents to the Bedford Hills post-visit survey who filed a grievance in the past year, 61% of respondents received a response to their grievance, while only 24% stated the grievance was resolved in their favor. In terms of having a meaningful, productive outcome from the grievance process, the results were unfavorable, with 81% of respondents stating that they did not feel as though an adequate investigation of their grievances was ever conducted.

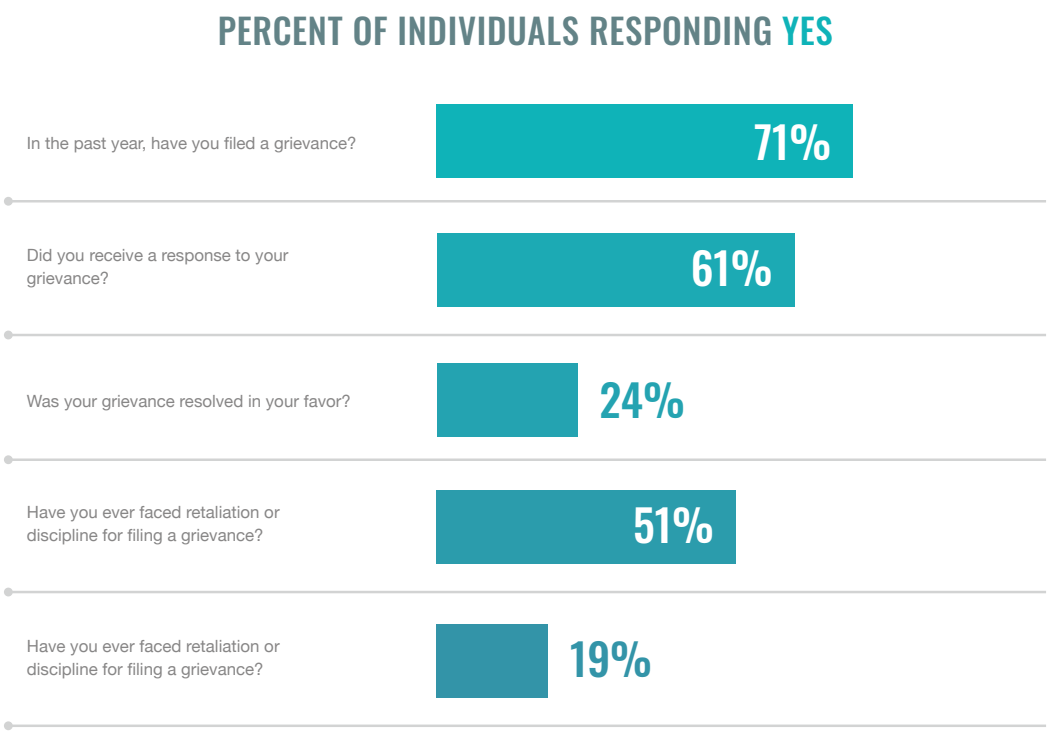

Figure 7. Questions from the Post-Visit Monitoring Survey on Grievances

Perhaps the most problematic factor in the grievance process is the retaliation experienced by incarcerated people who speak out against issues and abuses. Fifty one percent of respondents to the post-visit survey at Bedford Hills reported they had faced retaliation or discipline for filing a grievance in the past. Issues around retaliation for speaking out are discussed throughout the two surveys, with sexual violence against individuals incarcerated in prisons for women being a major issue. When asked which issues were most important, one respondent to the DVSJA survey stated the following:

> *"PREA-related41 issues with correctional officer including: civilian staff, adult education, teachers, college professors, and administration. It is very important that these people of authority be properly trained and monitored in terms of interaction and using their authority with inmates...retaliation due to not complying to sexual inappropriate behavior or for confronting person of authority for any kind of abuse/misuse of authority. Inmates with history of PTSD due to abuse from family relationship and authority abusing are easy targets."*

Statements like these point to failures in the grievance process and how incarcerated people filing grievances are treated. Despite the general view that the grievance program is failing, the grievance process is still widely used, with 71% of 110 respondents at Bedford Hills stating they filed a grievance in the past year.

41 "PREA" refers to the Prison Rape Elimination Act, defined further in the following paragraphs.

This speaks to how important this process is for incarcerated people, as it is often their only pathway forward in combatting abuse. One respondent to the DVSJA survey from Bedford Hills described her experience with the prison policies and the grievance process with frustration:

> *"It is difficult to live in an institution that is governed by specific rules and regulations that security staff nor administration honor. I find myself having to stress over writing grievance after grievance in regards to security staff and administration disregarding directives and forms and it is frustrating."*

As mentioned before, the implementation of procedures and policies inside of prisons is up to the discretion of prison staff and often not uniformly practiced. Another way in which this manifests is through the implementation of PREA-related policy and issues. Enacted by the United States Congress in 2003, The Prison Rape Elimination Act (PREA) is a federal law written to protect incarcerated people from sexual harassment and abuse during their incarceration. While initially designed to help people experiencing sexual violence, how PREA is implemented in many prisons can often leave survivors of sexual assault even more frustrated and further delay pathways to justice. Critics of PREA have discussed these issues, stating that while it is a policy in name, it does little more than provide resources to study the prevalence of prison rape through research, information gathering and grantmaking. One critique outlines the way in which PREA fails incarcerated survivors, while giving additional mechanisms of control to the state.[42] This often happens when courts presume irrelevance to the claims of incarcerated plaintiffs while presuming relevance for the defendants—providing the state with a provision to legitimize their complaints in the name of PREA while not providing incarcerated people with the same provisions.

In one case cited in the study, an incarcerated person sued a prison for the improper handling of their sexual assault case. Defendants from the prison in question then argued that, "PREA merely 'authorizes grant money, and creates a commission to study the [prison rape]

42 Gabriel Arkles, "Prison Rape Elimination Act Litigation and the Perpetuation of Sexual Harm," New York University Journal of Legislation and Public Policy 17, no. 4 (2014): 801-834, https://ssrn.com/abstract=2599544

issue...The statute does not grant prisoners any specific rights.'"[43] Conversely, there are a wide range of cases cited in which state prison defendants have used PREA as a method of defense in justifying their own violations, from denying incarcerated transgender people proper hormones to forcing incarcerated survivors to undergo rape kit exams against their will.[44, 45] The way PREA is implemented can also mean that there are additional avenues that incarcerated people must exhaust before any serious avenues of change can be attempted. For instance, in order to pursue legal action against incidences of sexual assault under PREA, incarcerated people must first exhaust the limits of the grievance system—a problematic system in and of itself.[46]

These critiques fall in line with many of the reports received through the DVSJA survey, in which some respondents identified PREA-related concerns as a main issue in their prison experience. One incarcerated person stated, "[When] you report PREA nothing is done, [the accused correctional officers] still work and you see them every day". Thus, while PREA was instituted to curb incidences of sexual assault and condemn it through zero-tolerance declarations, the way in which sexual assault reporting manifests can often further isolate survivors and provide them with little to no meaningful pathway forward in practice. Faced with the seemingly endless cycle of unaddressed grievances as their only path forward, many respondents discuss the frustration of filing grievance after grievance only to remain unheard.

43 W. Virginia Reg'l Jail & Corr. Facility Auth. v. A.B., No. 13-0037, 2014 WL 5507522 (W. Va. Oct. 31, 2014).

44 Battista v. Clarke, 645 F.3d 449, 452 (1st Cir. 2011)

45 Lowry v. Honeycutt, 05-3241-SAC, 2005 WL 1993460, at *1 (D. Kan. Aug. 17, 2005).

46 Gabriel Arkles, "Prison Rape Elimination Act Litigation and the Perpetuation of Sexual Harm," New York University Journal of Legislation and Public Policy 17, no. 4 (2014): 801-834, https://ssrn.com/abstract=2599544

CONCLUSION

The existing pathways to justice and accountability embedded into our criminal legal system were never designed to address the traumatic experiences of those impacted by violence. The goals of punishment and confinement often supersede the objectives of rehabilitation for individuals in prisons. If prisons, and the criminal legal system generally, are responsible for reforming themselves (e.g., through the use of grievances) but little meaningful change happens, an effective path forward can no longer depend on internal mechanisms. A prison should not be relied upon to reform itself in a manner that respects survivors of domestic and gender-based violence, as the inherent nature of prisons in the U.S. criminal legal system is one that creates punitive rather than rehabilitative conditions.

Thus, while working to improve the conditions for incarcerated people, we must concurrently push for efficient mechanisms that allow for greater transparency, critiques, accountability, and changes to the criminal legal system. It is also important to simultaneously advocate for decarceration as a means to counter mass incarceration, by promoting the release of those incarcerated, aiming for less people to be incarcerated in the first place, and supporting shorter sentences for those to be incarcerated. While this report demonstrates the compounded and complex issues that incarcerated survivors of violence experience, it also offers a significant opportunity for actionable change to occur on a meaningful level. At this moment, calls for decarceration and large-scale changes have galvanized New Yorkers to stand behind these issues at unprecedented levels. From the recent repeal of 50-A, which establishes transparency of law enforcement misconduct, to the ongoing calls to defund police departments and invest in other mechanisms of public safety, the conversation around prisons and policing is shifting.This report, in turn, demonstrates the many ways the criminal legal system fails the most vulnerable and seeks to offer actionable recommendations for the future.

RECOMMENDATIONS

By understanding how prisons fail to serve survivors, even as correctional law is rewritten to include them, we gain further insight into how policies centering decarceration are critical for the safety of survivors at large, particularly in the midst of a global pandemic. It is with these factors in mind that CANY makes the following recommendations:

Recommendations to The Governor

- Cuomo should undertake a mass effort to re-examine all cases where domestic and gender-based violence was a factor leading to incarceration, and resentence or commute the sentences of those individuals impacted by domestic and gender-based violence.
- The Governor should use clemency power to commute the sentences of anyone who has a heightened vulnerability to COVID-19, including the elderly (50+), pregnant women, people with serious illnesses, and people with otherwise compromised immune systems, including people who have applied for medical parole, regardless of whether their convictions are for violent felony offenses.

Recommendations to the State Legislature

- CANY recommends that the legislature further explore creating an independent correctional ombuds to investigate complaints related to incarcerated persons' health, safety, welfare, and rights.
- CANY recommends that the legislature reintroduce a bill to establish oversight of DOCCS healthcare services by the State Department of Health.

Recommendations to DOCCS

- CANY recommends that, in an effort to increase the effectiveness and legitimacy of the grievance process, DOCCS expedite the planned implementation of an electronic grievance process using tablets.
- In order to better understand trends and outcomes of grievances filed, DOCCS should commission a comprehensive review of the current grievance processes, with particular attention given to grievances whose subject involves abuse by state employee(s). CANY further recommends that, in addition to publishing information about types of grievances filed on a semi-annual basis, DOCCS should publish information about the rates at which grievances are resolved in favor of the incarcerated individual.
- In line with the recent repeal of 50-A, DOCCS should make the personnel records of correctional officers publicly available. DOCCS should proceed to take urgent and appropriate action toward investigating these matters and disciplining correctional officers with past histories of violence and abuse.
- Reallocate funding and facility space to programming that specifically addresses trauma, including abuse, mental health, and addiction, grounded in trauma-informed care and conducted by certified facilitators from community-based organizations.
- Reinstitute and expand the peer-led Family Violence Program and other peer-led programming across all prisons for women.
- Create and implement protocols for meaningful discharge planning in DOCCS, with specific attention to safety planning for survivors of domestic and gender-based violence.
- CANY recommends that DOCCS alleviate some of the gaps in the quality of medical services by improving preventative care through routine screenings, education, and outreach.
- CANY recommends DOCCS develop an electronic system for tracking requests for medical care and responses.
- CANY recommends that DOCCS develop criteria for the repair of key maintenance problems across DOCCS facilities, ensuring that improvements which would have a significant impact on the health and safety of incarcerated people and staff are prioritized. These criteria should be published, along with annual progress reports toward completing the planned improvements.

RECOMMENDATIONS

Recommendations to Officials at Bedford Hills Correctional Facility

- In line with the previous recommendation to DOCCS about facility maintenance, CANY also has recommendations for Bedford Hills:
    - Ensure that the basic living conditions guaranteed to incarcerated people are met, including intensive cleaning or power washing showering and living facilities.
    - Ensure that facilities and incarcerated people are kept appropriately warm in the winter months.

APPENDIX A: METHODOLOGICAL LIMITATIONS

CANY recognizes that there are various approaches to oversight, each with their own strengths and challenges. Some methodological limitations that should be acknowledged for this report include the logistical coordination of monitoring visits, the reliability of the demographic information reported by DOCCS, and the usual considerations surrounding self-reported survey data. CANY has limited control over which dates are selected as monitoring dates. While CANY is required to provide DOCCS with a 30-day notice for an anticipated visit, it is ultimately at DOCCS' discretion to confirm the proposed dates or suggest alternate times. These variables influence how and when our monitoring work is completed. The reliability of the demographic data provided by DOCCS presents another methodological concern. While the data collected by CANY are largely self-reported, DOCCS demographic data are assigned upon intake. In assigning demographic factors to incarcerated people rather than asking them to self-report their demographics, the accuracy of racial, ethnic, and sex categorizations becomes a matter of perceived phenotype rather than identity.

A final challenge involves the typical considerations present when working with survey data. Because the items in the DVSJA and post-visit surveys rely exclusively on self-reported data, they are vulnerable to response biases, as with most surveys of this nature. Response biases occur when respondents answer survey items inaccurately. While this can happen for a variety of reasons, such as the physical environment where they take the survey or as a matter of social desirability (i.e., answering questions to describe oneself in a favorable light), one factor that incarcerated people report to CANY is the belief that DOCCS staff will read outgoing correspondence and seek retribution. Fear of surveillance may therefore play an important role in response biases.

IT REMINDS US HOW WE GOT HERE

(RE)PRODUCING ABUSE, NEGLECT, AND TRAUMA IN NEW YORK'S PRISONS FOR WOMEN

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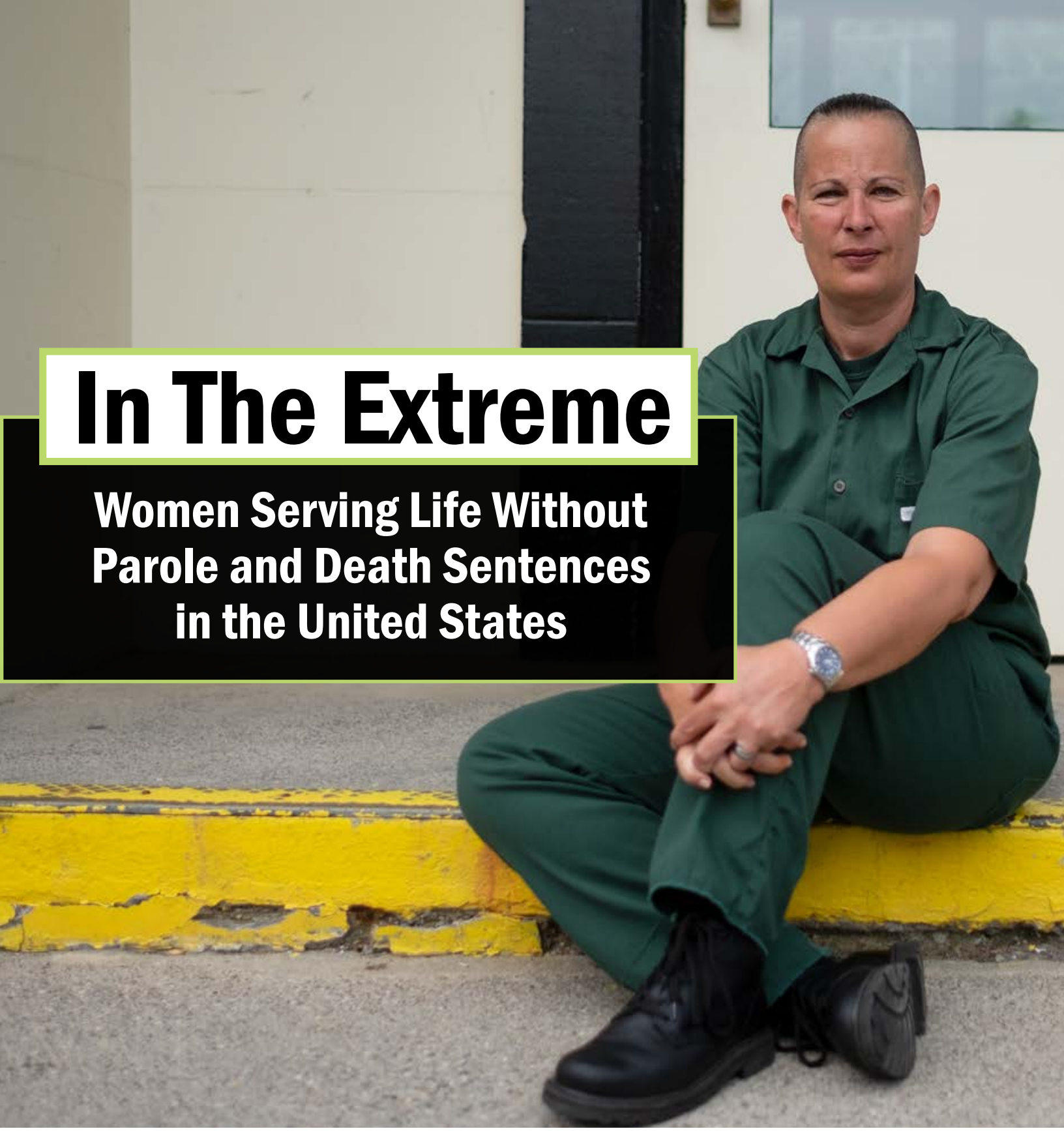

In The Extreme

Women Serving Life Without Parole and Death Sentences in the United States

THE SENTENCING PROJECT
RESEARCH AND ADVOCACY FOR REFORM

National Black Women's Justice Institute

Cornell Law School
Cornell Center on the Death Penalty Worldwide

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In the Extreme: Women Serving Life without Parole and Death Sentences in the United States is authored by Ashley Nellis, Ph.D., Senior Research Analyst at The Sentencing Project. Research assistance was provided by Skye Liston and Savannah En, Research Fellows at The Sentencing Project. The report is a joint publication of The Sentencing Project, National Black Women's Justice Institute and the Cornell University Center on the Death Penalty Worldwide who together in 2020 formed the Alice Project. The collaboration seeks to highlight the experiences of incarcerated women and girls, to eliminate extreme sentences, and to reduce the influence of racial and gender bias in the criminal legal system.

We are deeply grateful for the contributions of Sara Bennett, whose professional photography focuses on dozens of women serving life sentences in New York. Her online exhibit, including the cover image, is available to the public.

The Sentencing Project promotes effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.

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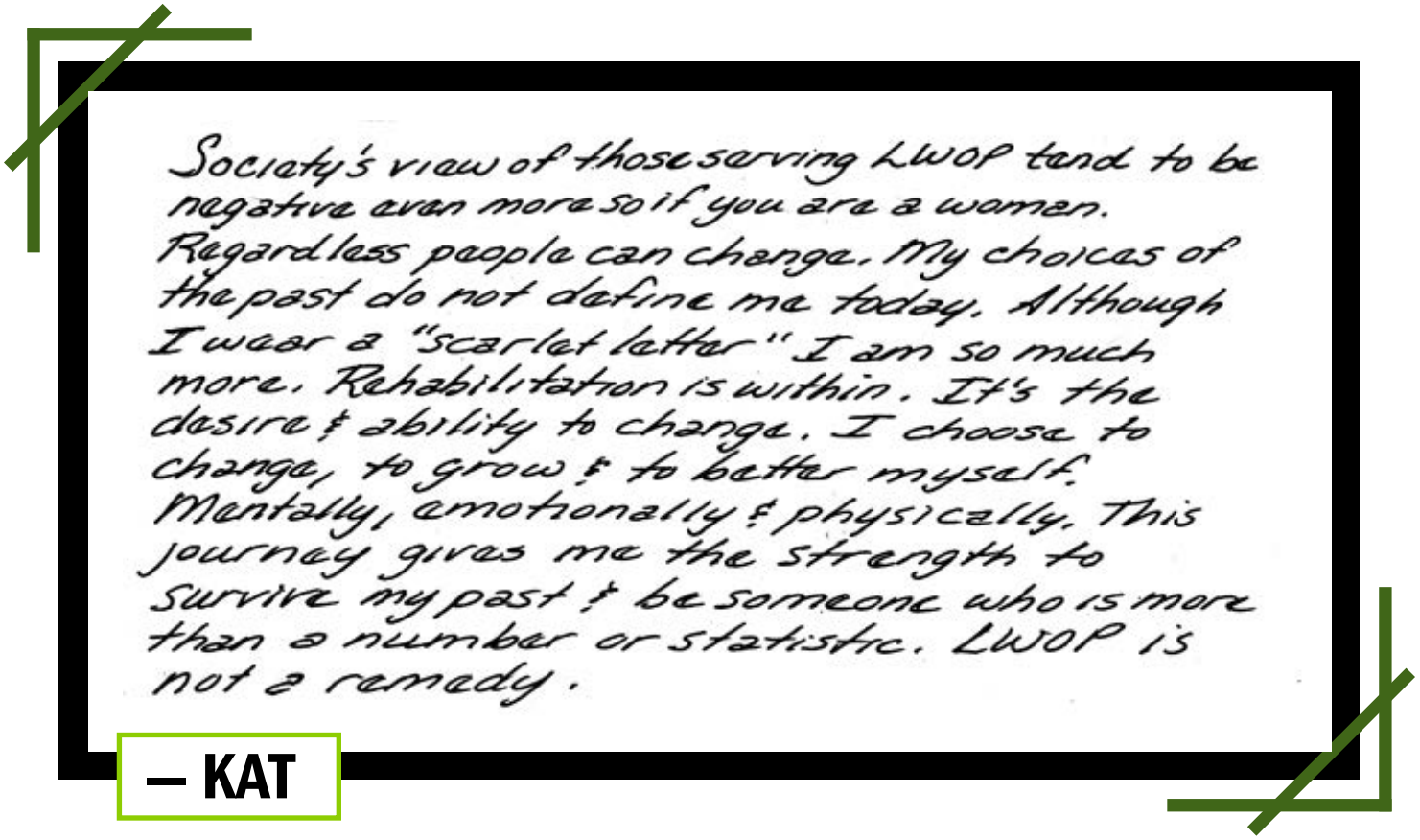


Sentenced to life without parole and incarcerated at the age of 34 in 2009. Her image is featured on the cover of this report outside her housing unit at Bedford Hills Correctional Facility in 2019. Photo courtesty of Sara Bennett.

PREVALENCE OF EXTREME SENTENCES SERVED BY WOMEN

Extreme punishments, including the death penalty and life imprisonment, are a hallmark of the United States' harsh criminal legal system. Nationwide one of every 15 women in prison — over 6,600 women — are serving a sentence of life with parole, life without parole, or a virtual life sentence of 50 years or more. The nearly 2,000 women serving life-without-parole (LWOP) sentences[1] can expect to die in prison. Death sentences are permitted by 27 states and the federal government, and currently 52 women sit on death row.[2] This report presents new data on the prevalence of both of these extreme sentences imposed on women.[3]

Across the U.S. there are nearly 2,000 women serving life-without-parole (LWOP) sentences and another 52 women who have been sentenced to death. The majority have been convicted of homicide. Regarding capital punishment, women are sitting on death row in 15 states (Table 1). As shown in Figure 1, women are serving LWOP sentences in all but six states.[4] Three quarters of life sentences are concentrated in 12 states and the federal system. It is notable that in all states with a high count of women serving LWOP, there is at least one woman on death row as well. Two exceptions to the overlap are Colorado and Michigan which do not have anyone serving a death sentence because it is not statutorily allowed.

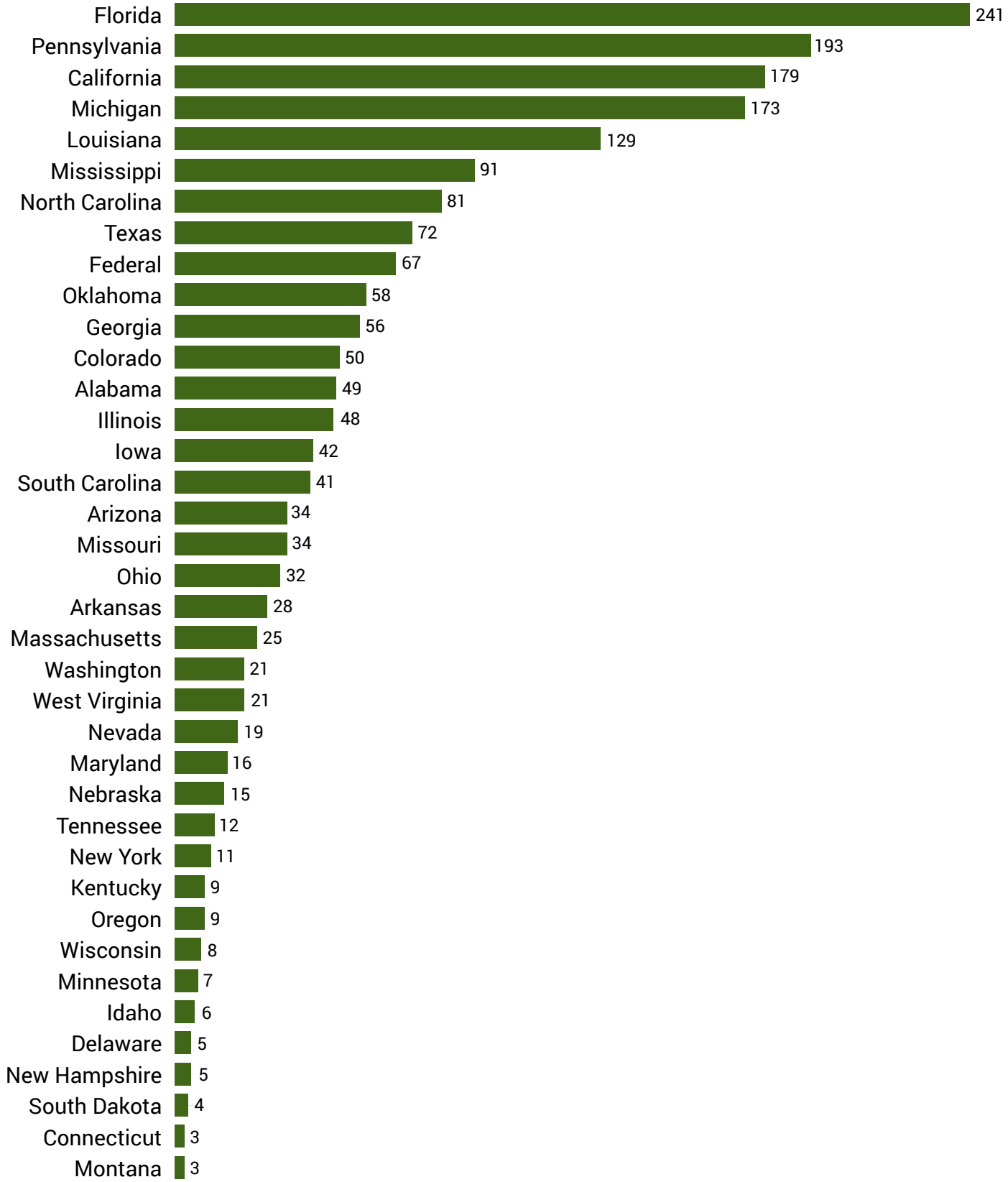
Table 1. Women Serving Death Sentences

State	Women on Death Row
California	21
Texas	6
Alabama	5
Florida	4
Arizona	3
North Carolina	3
Ohio	2
Georgia	1
Idaho	1
Kentucky	1
Louisiana	1
Mississippi	1
Oklahoma	1
Pennsylvania	1
Tennessee	1

Source: Cornell Center on the Death Penalty Worldwide, 2021.

The nearly 2,000 women serving life-without-parole sentences can expect to die in prison.

Figure 1. Women Serving Life without Parole in the United States



Source: Nellis, A. (2021). *No end in sight: America's enduring reliance on life imprisonment*. The Sentencing Project.

CHARACTERISTICS OF WOMEN SERVING EXTREME SENTENCES

RACE AND ETHNICITY

Women of color are disproportionately subjected to extreme sentences compared to their white peers. Nationally, one of every 39 Black women in prison is serving life without parole compared with one of every 59 imprisoned white women.[5] In Pennsylvania, one in 9 Black women in prison is serving LWOP; in Michigan it's one in 11, in Mississippi it's one in 12, and in Louisiana one in 14 Black women in prison have an LWOP sentence.

Latinx women comprise 6% of the total number of LWOP sentences being served by women. States with substantial proportions of Latinx women serving LWOP sentences are New York (36%), Texas (26%), California (20%), and Arizona (15%). Among the 52 women serving death sentences, 58% are white, 25% are Black, and 11% are Latinx.[6] Forty-two percent of women on death row are women of color.

The Federal Bureau of Investigation's Supplemental Homicide Report provides incident-based details regarding the race of persons arrested for homicide. According to this data source, Black women account for 49% of reported homicides committed by women and white women account for 48%.[7] Therefore while Black women serving extreme sentences are overrepresented in relation to the general population (13%), they appear to be underrepresented in relation to the representation in homicides reported to law enforcement. Black women also represent a declining proportion of women in prison in recent years because of an increase in imprisonment among white women.[8] However, there is evidence of disproportionately longer prison sentences being served by Black people.[9]

AGE AT OFFENSE

Analysis of homicide arrest data finds that women who commit homicide do so somewhat later in life than men. Whereas 48% of men who reportedly commit homicide are under age 25 at the time of their offense, nearly two thirds of women are at least 25 years old when they commit homicide.[10]

The Sentencing Project received individual-level data on persons serving life sentences, including LWOP, from 16 states and conducted a separate analysis of women serving LWOP using this information. The states included in the sample include 75% of the women serving LWOP nationwide.[11] States included in the sample are Arizona, Colorado, Florida, Georgia, Illinois, Louisiana, Massachusetts, Mississippi, Montana, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, and Wisconsin.

Our analysis shows that on average women commit offenses that result in extreme sentences of LWOP or the death penalty in their early to mid thirties. The average age at offense for people on death row was 36 years old[12] and the average age at offense among women serving LWOP sentences is 33 years old.

Thirty-two women serving LWOP sentences were under 18 at the time of their crime.[13] One woman is serving an LWOP sentence for a murder she committed at 14 years old. While the U.S. Supreme Court ruled the death penalty unconstitutional in 2005 for people who committed their offense under 18,[14] two women - Christa Pike in Tennessee and Maria Alfaro in California are awaiting execution for offenses they committed when they were 18.

Our sample of more than 1,000 women's detailed demographic and offense data reveals that 20% were under 25 at the time of the crime.[15] This age delineation is important because science on adolescent development commonly identifies 25 as the point at which the brain is fully developed. Before this point, individuals are less able to regulate their behaviors and foresee consequences from their actions.[16] Though a series of United States Supreme Court rulings has distinguished youth under 18 as categorically different in terms of culpability for violent crime, emerging science suggests a more accurate age for this cutoff should be 25.[17]

One third of the women serving LWOP are Black. Among women in our sample of over 1,000 women across 16 states we find that Black women were on average 4.5 years younger at sentencing compared to white women.[18] Recent research on misperceptions of the age and culpability of Black people may shed light on this disparity. For example, using a college-age sample of survey respondents, researcher Phillip Goff and colleagues tested his theory that young people are not all afforded a level of leniency by the legal system and that Black youth specifically are excluded from this leniency. They hypothesized that Black youth would be perceived as both older than their chronological age and more culpable for crimes than similarly situated white youth. Their findings revealed strong empirical support for both of these claims.[19] Though restricted to analyzing males, it is possible based on the data trends we observe that Black women are perceived as more culpable and older as well.

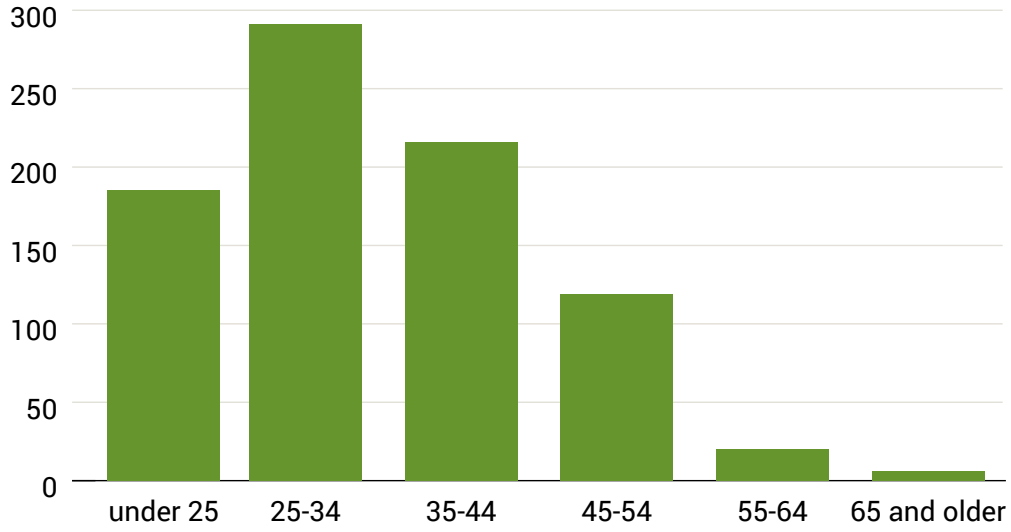
AGING IN PRISON

The average current age of women serving LWOP is 52. Alice Green, 91, is the oldest female lifer. She has been imprisoned for 45 years in Pennsylvania for her role in a 1977 murder. The oldest woman on death row is Blanche Moore in North Carolina, who is 88 years old.

The number of people in prison today who are age 55 or older has tripled since 2000.[20] The tough-on-crime policies that expanded life sentencing, prolonged the time to review cases for possible parole releases, or abolished parole altogether, have accelerated the build-up of elderly people in prison.[21] The Sentencing Project's national census of people serving life sentences found that 27% of people serving LWOP are at least 55 years old, part of a growing trend of elderly imprisoned Americans. Among the sample of women we analyzed, a shocking 44% are currently at least 55 years old.

Preeminent scholars on the worldwide use of life imprisonment Dirk van zyl Smit and Catherine Appleton argue that the United States' general acceptance of sentencing people to die in prison contradicts international human rights standards and practices.[22] Indeed, several countries prohibit life sentences for elderly persons and most countries place limits on elderly persons being sentenced to prison.[23]

Figure 2. Age at Offense among Women Serving Life without Parole Sentences



CRIME OF CONVICTION

All women on death row have been convicted of a first degree or capital murder. Though a high standard of involvement must be met before a death sentence is imposed, several women have been sentenced to death for crimes in which they did not personally kill the victim.[24] This circumstance is even more common among women sentenced to LWOP. The number of cases for which a defendant pled guilty to a lesser crime in order to receive LWOP instead of a death sentence is unknown at this time.

Within the sample of women serving LWOP, we find that three quarters of the women have been convicted of first degree murder and 95% have been convicted of some type of murder (Table 2). One in 5 women serving LWOP has been convicted of a homicide category below the most egregious one available in the state's criminal statutes. Detailed homicide data show that approximately half of victims killed by women between 2000 and 2015 were family members or intimate partners. By way of comparison, 20% of homicides by men involve family members or intimate partners.[25]

Table 2. Crime of Conviction among Sample of Women Serving Life Without Parole

Offense	Frequency	Percent of Total
First Degree Murder/Capital Murder	828	76%
Second Degree Murder	181	17%
Murder (Other, Non-Negligent)	35	3%
Sexual Assault	23	2%
Aggravated Assault	13	1%
Drug Offense	4	0%
Robbery/Aggravated Robbery	2	0%
Property Offense	1	0%
Kidnapping	1	0%

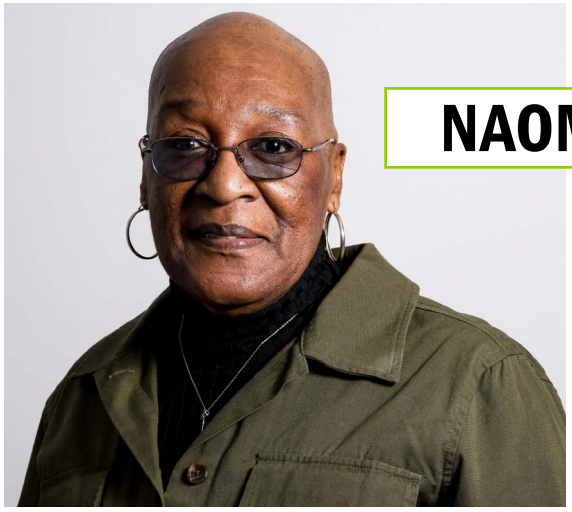


Photo Credit: Joshua Vaughn

NAOMI BLOUNT WILSON

Naomi Blount Wilson is a Commutations Specialist for the Pennsylvania Board of Pardons, the arm of the state that hears clemency pleas. She served 37 years of an LWOP sentence for a 1982 homicide. In 2019 she was commuted by Governor Tom Wolf after forensic evidence revealed that the victim had been killed by someone else.[26]

Allegedly gender-neutral sentencing policies, such as mandatory minimums that do not account for differential involvement in crime between major participants and minor participants place women at an extreme legal disadvantage.[27] For instance, sentencing laws require the same punishment regardless of a defendant's role in the crime, but women are frequently responsible for a comparatively smaller role in certain violent crime scenarios such as being a getaway driver.[28] Because they are sometimes coerced into involvement in such crimes by romantic partners or husbands, they are also often disproportionately punished where laws require identical punishments for all defendants regardless of their role in the crime.

Consider so-called "felony murder" laws, which account for situations where a death occurs during the commission of a felony and as a result, all persons involved in the underlying felony can be convicted of homicide regardless of their role or even presence at the crime.

In Michigan, 57 of the 203 women serving LWOP - over one-quarter - have been convicted under the state's statute requiring this sentence for felony murder in the first degree statute. In Pennsylvania, 40 of the 201 women reported to be serving LWOP have been convicted of felony murder, amounting to one of every five women serving LWOP.

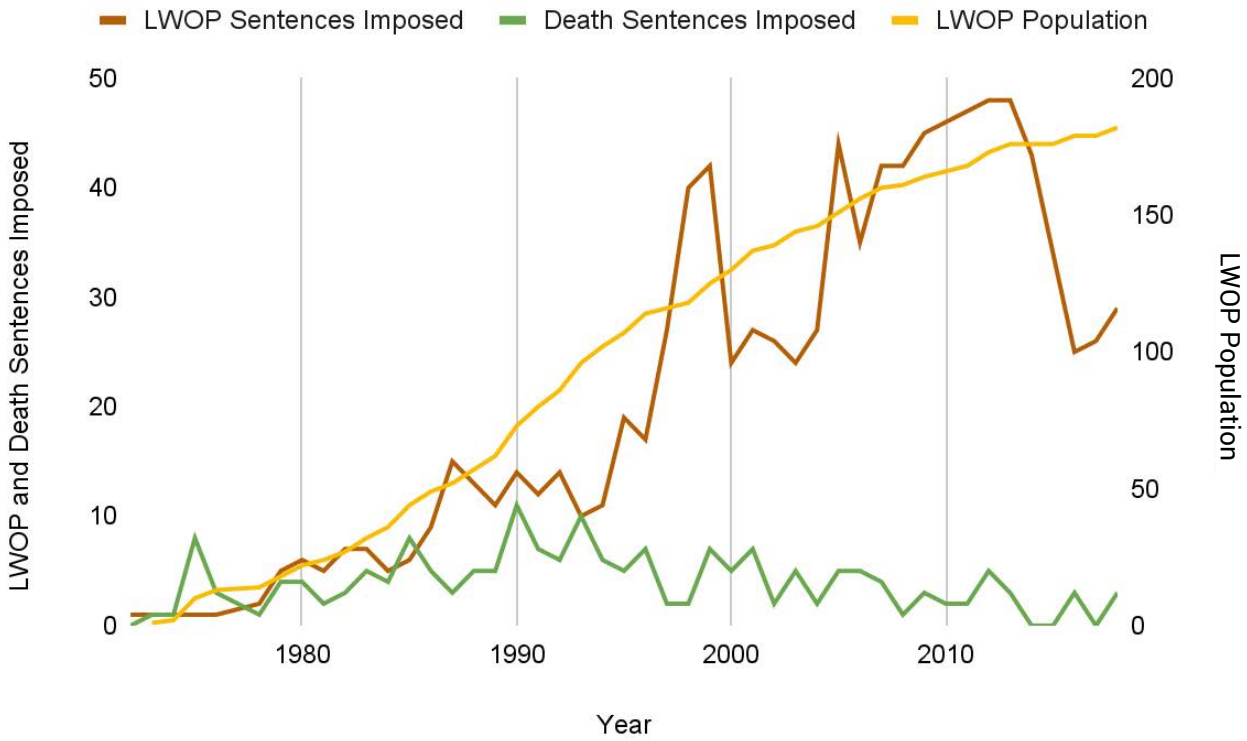
SENTENCING TRENDS

Between 2008 and 2020 there was a 2% increase in the number of women imprisoned for a violent crime, and a 19% increase in the number of women serving a life sentence. This includes a 10% increase in the life with parole (LWP) population and a staggering 43% rise in the number of women serving LWOP sentences.[29]

Death sentences imposed on women reached their highest level to date in 1990 and have declined since.[30] Today 52 women sit on death row awaiting execution. In January 2021 federal death row prisoner Lisa Montgomery was executed despite pleas worldwide to stop her execution on the grounds of well-documented evidence of severe mental health issues related to a long history of trauma and abuse.[31]

LWOP sentences reached their peak in 2013, the year in which 48 new LWOP sentences were imposed on women.[32] Yet even though new LWOP sentences imposed on women have declined since 2013, the cumulative nature of these death-in-prison sentences means there were more women serving LWOP in 2020 than ever recorded. Some states, like Florida, have imposed LWOP on women at an alarming annual average of 11 per year since 2007. In 2018 alone Florida sentenced 15 women to LWOP.

Figure 3. Extreme Sentences Imposed on Women, 1972-2018



Note: The LWOP sentences included in this figure represent 15 states and 75% of the national population of women serving LWOP. Readers should note that California, which accounts for 20% of the national population, is not included here because data were not obtained from this state.

TRAUMA PLAYS A PIVOTAL ROLE

The circumstances that lead women to commit violent crimes are often complicated by a history of sexual and/or physical trauma.[33] Women serving life sentences report high levels of psychiatric disorders, histories of physical and sexual violence, and previous suicide attempts. One study finds that more than one third of women serving life sentences have attempted suicide.[34]

> "Every prosecutor describes women convicted of murder as cunning, diabolical, monster, and evil," [Kwaneta Harris] wrote. "I've yet to encounter these 'monsters,' although I've met plenty of women with mental illness, untreated and undiagnosed."[35]

Some women commit violence in response to intimate partner victimization. A seminal study of 42 survivors of intimate partner abuse convicted of murder in California found that all but two had received life sentences: six were sentenced to life without parole, and the remaining 34 received life sentences with minimums that ranged from seven to 15 years, but at the time of the study all these women had already served 25 years.[36] Additionally, interview data from 99 women serving life sentences showed that 17% had been convicted of killing their former or current intimate partner.

Today we know more about the short- and long-term impact of physical, sexual, and verbal abuse on criminal conduct. We know, for instance, that almost all who commit violence have first experienced it.[37]

Yet allowance for trauma as a mitigating factor in culpability and punishment is still rarely recognized in court. Lawmakers in New York have attempted to correct for this omission with the 2019 passage of its Domestic Violence Survivors Justice Act (DVSJA), Penal Law Section 60.12. The law allows relief for defendants and currently incarcerated persons who have been sentenced to at least eight years in prison for a crime in which domestic abuse was a significant contributing factor to the crime. Some crimes are excluded, including first-degree murder, certain forms of second-degree murder,[38] aggravated murder, terrorism, or any attempt or conspiracy to commit these offenses. People who are required to be on the state's sex offense registry are also excluded from applying for review. Though the law is flawed in its restrictions, it is a first step in the legal acknowledgement that trauma and abuse correlate with violent crime, a fact which has been demonstrated clearly by many government and academic reports.

Scholar Beth Richie documents the higher incidence of abuse endured by Black women and comments that some of the unique vulnerabilities of being both Black and female include reduced access to crisis intervention programs, a greater likelihood that a weapon will be used in an assault, and legitimate distrust in police to respond effectively to violence by an intimate partner.[39] The well-documented outcomes of the domestic violence movement, including pressing for law enforcement solutions such as mandatory arrest and sentencing enhancement policies,[40] also extend to extreme punishments imposed on individuals who commit homicide to escape domestic violence. These limited approaches have likely contributed to a disproportionate share of women of color receiving extreme punishments in response to homicides committed in order to escape domestic violence.

Richie also asserts that Black women's arrest and incarceration is often the result of gender entrapment, a concept she uses to theorize how Black women's experiences of intimate partner violence, racism, sexism, economic marginalization, and stigma led them to participate in illegal activities. Black women's circumstances heighten their risk of contact with the criminal legal system.[41]

All women who encounter the criminal legal system face institutions that are designed principally by men and for men. Stephanie Covington, an internationally-recognized clinician on trauma-informed responses to violence, writes the following with Professor Emeritus Barbara Bloom in their research on women who commit violence: "Women offenders are being swept up in a system that appears to be eager to treat women equally, which actually means as if they were men. Since this orientation does not change the role of gender in prison life or corrections, female prisoners receive the worst of both worlds."[42]

Erica Sheppard (right) pictured here at age 24 with long-time death penalty abolitionist Sister Helen Prejean (left).

ERICA SHEPPARD

Erica Sheppard is facing execution in Texas. Like many women embroiled in the criminal legal system, her past consists of child abuse, domestic violence, rape, and chronic neglect.

Erica's childhood was characterized by unrelenting poverty and savage violence. Her father was an alcoholic who beat her mother in front of the children. Her mother physically assaulted the children as well. Sheppard's teenage pregnancy was a result of a rape and forced her to drop out of high school. A series of romantic relationships followed that were dominated by emotional, sexual, and physical abuse.

In 1993, at the age of 19, she was coerced by a friend of her brother's to take part in a burglary in which a woman was killed. At the time of Erica's prosecution, the Harris County, Texas prosecutor's office was imbued with racism, and had a well-documented history of seeking the death penalty more frequently in cases involving a Black defendant and white victim. As a Black teenager accused of killing a white woman, her death sentence appeared to be a forgone conclusion. Her lawyer was inexperienced and unprepared. He declined to present evidence about Erica's extensive history of rape and domestic violence, and failed to explain the effects of trauma on her mental health.

Sheppard is now 47 years old and has been on death row for 26 years. She is physically disabled and needs a walker to move around her cell. A grandmother now, she maintains connection to her children as well as she can. Her death sentence serves no purpose but to perpetuate the cycle of trauma and discrimination that led to her involvement in the criminal legal system.

CONCLUSION

Women represent a small but growing portion of the prison population facing extreme sentences. Reforms advanced to end the use of extreme sentences will need to pay attention to the nuanced life experiences of women serving life in prison, as these have shaped their behaviors as well as their prison experiences.

A wealth of evidence suggests that women encounter gender-based stigma and bias that negatively affects their court outcomes. Their experience of violence--both as victims and as perpetrators--are distinct from the experiences of men, but women are subjected to a criminal legal system that does not acknowledge these important differences.

MONICA SZLEKOVICS

Monica in the college office at Bedford Hills Correctional Facility in 2018. Photo courtesy of Sara Bennett.

Monica Szlekovics arrived at Bedford Correctional Center in New York when she was 20 years old to serve a life sentence for contributing to crimes for which she had been forced to participate by her abusive husband.

In her two decades of imprisonment, she committed a life of purpose and underwent a profound internal transformation. Her accomplishments include earning her college degree (with honors), immersing herself in counseling, and maintaining a near spotless disciplinary record. Former New York Governor Andrew Cuomo commuted her sentence in 2019 and she was released.

ENDNOTES

1. Nellis, A. (2021). *No end in sight: America's enduring reliance on life imprisonment.* The Sentencing Project.
2. Cornell Center on the Death Penalty Worldwide (2021). *Country reports*. Cornell University; Death Penalty Information Center (n.d.) *State by state: States with and without the death penalty-2021*. DPIC.
3. Data used in this report include data collection by The Sentencing Project from state departments of corrections as part of its quadrennial census of people serving life sentences. In addition, The Sentencing Project has obtained detailed data from departments of corrections in 16 states on 1,098 women serving life without parole. Combined these data represent 75% of the total population of women serving LWOP but do not include California which is 20% alone. Data on the number of women serving death sentences was obtained through the Death Penalty Information Center as well as the Cornell Center on the Death Penalty Worldwide.
4. The six states where there are no women currently serving LWOP are Alaska, Hawaii, New Jersey, New Mexico, Rhode Island, and Wyoming. Virginia did not provide data on its life-sentenced population but is known to have women serving LWOP. LWOP is not authorized in Alaska.
5. The federal system, Bureau of Prisons, did not provide race or ethnicity data disaggregated by sex for its life-sentenced population. Virginia did not provide data for this report.
6. Four percent are Asian American and 2% are American Indian.
7. Puzzanchera, C., Chamberlin, G., & Kang, W. (2020). *Easy access to the FBI's Supplementary Homicide Reports: 1980-2019*. National Center for Juvenile Justice. The FBI database does not track data according to ethnicity.
8. Sabol, W. J., Johnson, T. L., & Caccavale, A. (2019). *Trends in correctional control by race and sex*. Council on Criminal Justice
9. Johnson, B., Spohn, C. & Kimchi, A. (2021). Life lessons: Examining sources of racial and ethnic disparity in federal life without parole sentences. *Criminology*, 59, 4, 1-35; Sabol, W. J., Johnson, T. L., & Caccavale, A. (2019). *Trends in correctional control by race and sex*. Council on Criminal Justice
10. Fox, J. A. & Fridel, E. E. (2017). Gender differences in patterns and trends in U.S. homicide. *Violence and Gender, 4*(2), 37-43.
11. California, which accounts for 20% of the life-sentenced population, is not included in this sample because data were not obtained from this state.
12. To our knowledge age at offense for the women serving death sentences has not been published.
13. Nellis, A. (2021). *No end in sight: America's enduring reliance on life imprisonment.* The Sentencing Project.
14. The U.S. Supreme Court ruling in *Roper v Simmons*, 543 U.S. 551 (2005) invalidated all death sentences imposed on individuals who were under age 18 at the time of the crime.
15. When age at offense is not available we substitute age at sentencing with a 6-month extension to approximate the age at offense. This is a very conservative estimate of age considering that many trials or plea negotiations take upwards of one year to be finished.
16. Steinberg, L. Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science*, 21,2, 1-26.
17. Bersani, B., Western, B., & Laub, J. (2019). *Thinking about emerging adults and violent crime.* Columbia University Justice Lab.
18. To conduct this analysis, we used a representative sample of 1,908 women serving LWOP sentences. The average age at sentencing to LWOP for White women was 35 years old. The average age for Black women was 31 years old. An independent samples t-test was conducted and revealed these differences to be statistically significant at the p=.001 level (F=14318, t=6.007).
19. Goff, P. et al. (2014). The essence of innocence: Consequences of dehumanizing Black children. *Journal of Personality and Social Psychology*, 106, 4, 526-545.
20. Li, W. & Lewis, W. (2020, March 19). This chart shows why the prison population is so vulnerable to COVID-19. *The Marshall Project*.
21. Ghandnoosh, N. (2017). *Delaying a second chance: The declining prospects for parole on a life sentence.* Washington: DC: The Sentencing Project.
22. Van Zyl Smit, D. and Appleton, C. (2019). *Life imprisonment worldwide: A global human rights analysis*. Cambridge: Harvard University Press.
23. Van Zyl Smit, D. and Appleton, C. (2019). *Life imprisonment worldwide: A global human rights analysis*. Cambridge: Harvard University Press.
24. Death Penalty Information Center (n.d.) *Executions overview: Executed but did not directly kill victim.* DPIC.
25. Fox, J. A. & Fridel, E. E. (2017). Gender differences in patterns and trends in U.S. homicide. *Violence and Gender, 4*(2), 37-43.
26. Vaughn, J. (2020, December 7). Facing Life. *The Appeal*.
27. DeCourcy, E. (2020). The injustice of formal gender equality in sentencing. *Fordham Urban Law Journal, 47*(2), 395-430.
28. Fox, J. A. & Fridel, E. E. (2017). Gender differences in patterns and trends in U.S. homicide. *Violence and Gender, 4*(2), 37-43.
29. Nellis, A. (2021). *No end in sight: America's enduring reliance on life imprisonment*. The Sentencing Project
30. Death Penalty Information Center (n.d.) *Womens death sentences since 1973: number and geography*.
31. Winter, H. M. (2021). Lisa Montgomery suffered years of abuse and trauma. The United States killed her anyway. *Rolling Stone*.
32. Additional research is necessary to determine the cause(s) for this decline. With the exception of Florida, states reduced their LWOP sentences applied to women beginning in 2013.
33. Covington, S. and Bloom, B. (2003). *Gendered justice: Women in the criminal justice system. In Gendered Justice: Addressing Female Offenders.* 1. Richie, B. (2012). *Arrested justice: Black women, violence, and America's prison nation*. New York University Press.
34. Lempert, L. B. (2016). *Women doing life: Gender punishment, and the struggle for identity*. New York University

Press.
35. Van Der Leun, J. (June 29, 2020). "I hope our daughters will not be punished." *Dissent*.
36. Lempert, L. B. (2016). *Women doing life: Gender punishment, and the struggle for identity*. New York University Press
37. Nellis, A. (2013). *The lives of juvenile lifers: Findings from a national survey*. The Sentencing Project; Sered, D. (2019). *Until we reckon: Violence, mass incarceration, and a road to repair*. The New Press.
38. Those under P.L. Section 125.25(5).
39. Richie, B. (2012). *Arrested Justice: Black Women, Violence, and America's Prison Nation*. NYU Press.
40. Goodmark, L. (2018). *Decriminalizing domestic violence*. University of California Press; Kim, M. E. (2020). *The carceral creep: Gender-based violence, race, and the expansion of the punitive state, 1973-1983*. Social Problems, 67, 251-269. Goodmark, Kim, and others argue that law enforcement responses to domestic violence have not been without controversy. At the time of the passage of the Violence Against Women Act (VAWA), it was widely believed that mandatory arrest policies were an ideal solution for interrupting domestic violence and keeping victims safe. Later studies showed that arrests actually had no significant influence on helping victims in the long-term and in some instances they were even shown to increase future violence and sink low-income families into poverty. The laws also reduced victim reporting rates due to the fear of retaliation and caused the abusive relationships to last longer. Advocates warn against the "carceral creep" of a law enforcement response to domestic violence, favoring optional arrest policies combined with community-led responses that invest in social services to assist both victims and perpetrators.
41. Richie, B. (2006). *Compelled to crime: The gender entrapment of battered Black women*. Routledge.
42. Covington, S. & Bloom, B. (2003). *Gendered justice: Women in the criminal justice system*. In Gendered Justice: Addressing Female Offenders, 4.

In The Extreme: Women Serving Life Without Parole and Death Sentences in the United States

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National Black Women's Justice Institute

Cornell Law School
Cornell Center on the Death Penalty Worldwide

The report is a joint publication of The Sentencing Project, National Black Women's Justice Institute and the Cornell University Center on the Death Penalty Worldwide who together in 2020 formed the Alice Project. The collaboration seeks to highlight the experiences of incarcerated women and girls, to eliminate extreme sentences, and to reduce the influence of racial and gender bias in the criminal legal system.

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