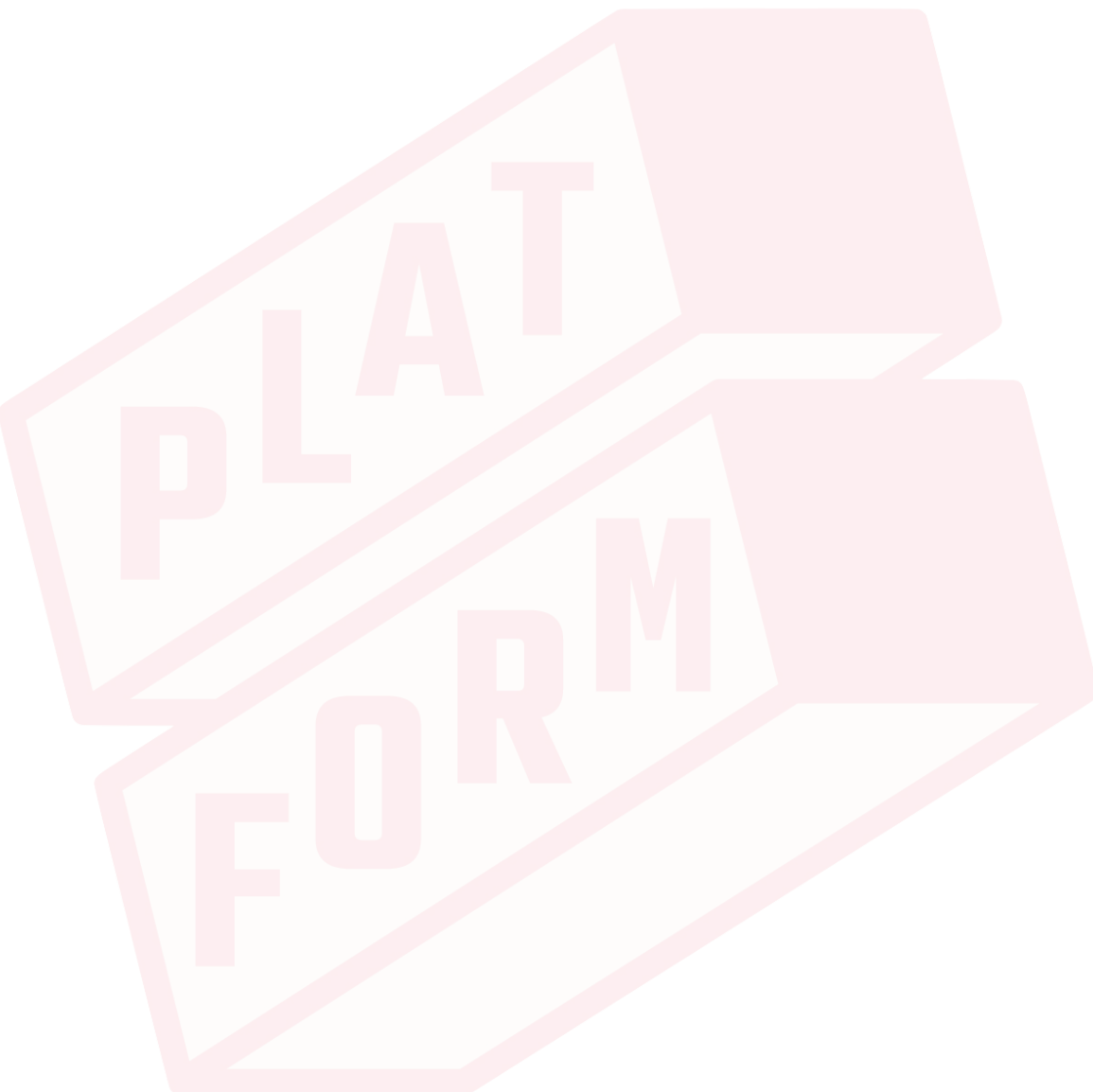




Policy Pack II.V

# JUSTICE-INVOLVED WOMEN & GIRLS

March, 2019





# JUSTICE-INVOLVED WOMEN & GIRLS

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# JUSTICE-INVOLVED WOMEN & GIRLS

## Letter from Platform

Dear Platform Community,

It's been 18 months since we first attempted writing a policy pack on mass incarceration and the justice system. In fact, it was supposed to be our very first policy pack. Yet we held off, month after month, feeling unsure of how to properly engage on this topic in this manner. Mass incarceration and the failures of our justice system are the products of historical oppression and institutions designed to perpetuate white supremacy. They are the products of countless policies deeply rooted in a political web. As a result, every time we sat down to write this Pack, we were caught on where to begin.

We decided, therefore, to start in the middle. To discuss where we are now in the painful midst of a wholly unjust justice system. To look forward and work toward an undoing of the policies that were written to dehumanize in order to control.

In starting at the middle, we do not provide the full historical lens deserving of this topic. Yet, in every page of this Policy Pack, we wrote with an appreciation of and an effort to grasp the weight of what we are discussing. We wrote from an understanding of the ways slavery was reframed as Jim Crow was reframed as the prison industrial complex. We wrote from an understanding that the deinstitutionalization of people with disabilities from mental hospitals was met with people with disabilities being institutionalized instead in prisons. We wrote from an understanding that we are navigating a system built on land that was colonized. We wrote from an understanding that the institutions we discuss were imbued with homophobia and transphobia at the onset.

We wrote from an understanding that we are just scratching the surface of the entanglements of the justice system. We, therefore, encourage you to spend time learning from the organizations listed in the "Think On It" section. These are all organizations at the helm of this work, organizations we, Platform, have had a great privilege of learning from.

Among the organizations listed are our friends at Rights4Girls. We thank Rights4Girls for allowing us to learn from their research and brilliance as we wrote this Policy Pack. We extend our deepest gratitude to their entire team for their leadership in this space and their generosity to us always. We are lucky to work in community with them.

This policy pack comes 18 months later, but with a commitment to *real* justice that will never waiver.

In sisterhood and progress,  
The Platform Team



# JUSTICE-INVOLVED WOMEN & GIRLS

## Letter from Rights4Girls

To our fellow advocates, dreamers and change-makers:

We are thrilled that you desire to engage in juvenile justice reform by centering and lifting up the experiences of our most vulnerable young women and girls. Our girls are brilliant, beautiful, thoughtful, talented and so much more. Unfortunately, some of our girls, particularly girls of color and LBT girls, face myriad forms of oppression that push them to the margins of our society. Like all girls, marginalized girls are forced to navigate a rape culture that threatens them with violence from an early age, however, when girls of color and LBT girls experience violence they are more likely to be criminalized for their own victimization.

Nationally, 73 percent of justice-involved girls have experienced some form of abuse. In fact, girls are typically arrested for behaviors that are common responses to trauma (e.g., running away or missing school). At Rights4Girls, we call this the Abuse to Prison Pipeline. As a result of the Abuse to Prison Pipeline, girls are deprived of the supports and services they need to heal. To make matters worse, inside the system girls are subjected to harmful conditions of confinement that can cause additional trauma.

For many years, juvenile justice reform efforts didn't contemplate girls. Consequently, for decades girls' shares of the justice system grew—with girls of color primarily accounting for this increase. Today, Black girls are the fastest growing segment of the juvenile justice system.

It is critical that juvenile justice reform efforts center the voices and experiences of girls of color and include their input on solutions to the problems they face. The girls and survivors we work with and for, have made clear to us that they just want to be kids and for the burden of accountability to shift from their shoulders onto those who harm them.

We have made progress, like the recent reauthorization of the *Juvenile Justice and Delinquency Prevention Act* (which includes some of our recommendations on protections for girls), but there is still more to be done. And our girls must be at the center of it all.

In Solidarity!  
The Rights4Girls team





# JUSTICE-INVOLVED WOMEN & GIRLS

## Lingo

**Adjudication:** “Youth are not “convicted,” they are “adjudicated.” The youth does not have the right to a trial by jury. The judge may review evidence relevant to the case. At the conclusion of the hearing, the judge will determine if the youth should be adjudicated delinquent or FINS [Families in Need of Services], based on the evidence presented.” <sup>1</sup>

**Delinquency:** Since youth are not supposed to be held responsible for crimes the way an adult is, their acts in violation of the law are considered “delinquent” rather than criminal. <sup>2</sup>

**Detention vs. Arrest:** In order to detain someone, police only need to have reasonable suspicion. The expectation is that a reasonable person who is detained would feel as though they could leave after a short period. In order to arrest someone, police need probable cause. The reasonable person who is arrested would not feel free to leave in a short period of time. <sup>3</sup> In a juvenile justice context, detention is when a youth is kept in a facility. For example, they may be kept in a facility while awaiting adjudication.

**Family Court:** These courts only have jurisdiction over family law, primarily divorce, child custody, and domestic abuse. Also known as domestic courts. <sup>4</sup>

**Gender-Responsive:** Efforts, initiatives, and program designs that reflect and respond to the realities different genders experience. <sup>5</sup>

**Mass Incarceration:** Though the United States is home to just 5 percent of the world’s population, it incarcerates 25 percent of the world’s prisoners. “Mass incarceration refers to the comparatively and historically extreme rates of imprisonment, and by the concentration of imprisonment of people of color living in disadvantaged neighborhoods.” <sup>6</sup>

**Justice-Involved:** In 2016, the Department of Justice began shifting towards use of the phrase “justice-involved” and away from using “criminals” when referring to youth.

**Juvenile Justice:** Refers to criminal law that governs those not old enough to be held responsible or tried as an adult for criminal acts. In most states, this covers individuals under the age of 18. <sup>7</sup>

**LGBTQ/GNC:** This acronym, used in reports, stands for Lesbian, Gay, Bisexual, Transgender, Questioning, Queer/ Gender Nonconforming. We use this acronym throughout the Policy Pack, not to homogenize communities, but to most accurately convey the information from the reports through which we gathered data and information.

**Mandatory-Arrest:** These policies stipulate that if officers have probable cause that there was aggression in a domestic battery or family-based assault case, they are to make an arrest. This can end up criminalizing the victims who fight back against their abuser. <sup>8</sup> These laws were originally intended to address adult intimate partner violence, not situations involving minors. There are 23 states with mandatory arrest policies. Only 5 states have domestic violence laws that make at least small exceptions for minors. <sup>9</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## Lingo (cont'd)

**Miller v. Alabama:** At the age of 14, Evan Miller was tried as an adult for capital murder and was handed a guilty verdict. He was then sentenced to life in prison without possibility of parole. Upon appeal, his case raised the question of whether it violated the Fourteenth Amendment and the Eighth Amendment's protection against cruel and unusual punishment to sentence a 14-year-old to life without the possibility of parole. The Supreme Court ruled that children are different from adults when it comes to sentencing and while this punishment, life without possibility of parole, is not unconstitutional for an adult, it is for a child.<sup>10</sup>

**People-Centered Language:** In an effort to address the stigma surrounding individuals who have committed, or been found to have committed crimes, language has shifted to humanize the individuals rather than define them by the crime. Examples include:<sup>11</sup>

Rather than "felons," use people convicted of felonies

Rather than "criminals, convicts," use people convicted of crimes

Rather than "inmates," use people in prison or jail

Rather than "offenders," use people who have committed offenses

Rather than "worst of the worst," use people who have committed serious offenses

**PINS Cases:** The acronym refers to Persons In Need of Supervision, PINS Cases are heard in family court. "A child under the age of 18 who does not attend school, or behaves in a way that is dangerous or out of control, or often disobeys his or her parents, guardians or other authorities, may be found to be a Persons In Need of Supervision."<sup>12</sup>

**Prison Industrial Complex:** "A term used to describe the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems."<sup>13</sup>

**Prison Rape Elimination Act:** The Prison Rape Elimination Act (PREA) was passed unanimously in 2003, with the intent to "provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape."<sup>14</sup> The law allocated funding to support changes at the state level; however, states were able to opt out. In 2009, the National Prison Rape Elimination Commission published draft standards to reduce prison rape and these standards turned into a Department of Justice rule in 2012.<sup>15</sup> One standard calls for transgender and intersex youth to be involved in determining their placement for their safety. With states' ability to opt out, these standards have not been wholly implemented.<sup>16</sup>

**Pro-Arrest Policy:** If officers have probable cause that there was aggression in a domestic battery or family-based assault case, the legal preference is that they make an arrest. This is the case in 19 states.<sup>17</sup>

**Push-Out Policies:** This phrase, coined by Dr. Monique Morris, co-founder of the National Black Women's Justice Institute, underscores the impact of zero tolerance policies: that while these policies were said to be created to end school violence, they are pushing students out of school and into the justice system.



# JUSTICE-INVOLVED WOMEN & GIRLS

## Lingo (cont'd)

**Reasonable Person:** This is a legal standard by which one's actions are judged. "The standard requires one to act with the same degree of care, knowledge, experience, fair-mindedness, and awareness of the law that the community would expect of a hypothetical reasonable person."<sup>18</sup>

**Safe Harbor Law:** In its full form, this law prevents the prosecution of children under 18 for prostitution. It also directs youth who have been sexually exploited to "non-punitive specialized services."<sup>19</sup>

**School-to-Prison Pipeline:** The process through which students are pushed out of school, due to zero-tolerance policies, and into the justice system.

**Sexual Abuse-to-Prison Pipeline:** Many of the young women in the juvenile justice system have experienced sexual violence and other trauma. In response to their trauma, they reacted in ways that are often consistent with the actions of those suffering from Post-Traumatic Stress Disorder (PTSD). However, those reactions have been criminalized and the young women are in turn treated as criminals rather than victims and survivors deserving of care and support.<sup>20</sup>

**Status Offenses:** A noncriminal act that is regarded as a violation of the law due to the individual being a minor. This may include truancy, running away, curfew violations, or consuming alcohol.<sup>21</sup>

**"Tough on Crime:"** Policies, movement, and rhetoric that deems punishment as the only appropriate response to crime.

**Trafficking Victims Protection Act:** Originally passed in 2000 and last reauthorized in 2013, this became landmark legislation in the federal effort to address human trafficking. It includes provisions to prosecute traffickers, prevent trafficking, as well as support victims and survivors.<sup>22</sup>

**Trauma-Informed:** Trauma-informed practices in prisons focused on "accurate identification of trauma and related symptoms, training all staff to be aware of the impact of trauma, minimizing retraumatization, and a fundamental 'do no harm' approach that is sensitive to how institutions may inadvertently reenact traumatic dynamics."<sup>23</sup>

**Truancy:** School absence without an approved reason.

**Valid Court Order Exception:** While the Juvenile Justice and Delinquency Prevention Act (JJDPDA) prohibits youth from being incarcerated for status offenses, Congress instituted a Valid Court Order (VCO) exception. This means if a child violates a VCO, such as a mandate to go to school, they can be detained.<sup>24</sup>

**Zero-Tolerance Policy:** While recent usage of the phrase typically recalls conversations around family separation, these policies have a wide range of impact. In school settings, such policies require "specific, consistent, and harsh punishment" upon violation of certain rules. These policies explicitly do not account for circumstances or reasons behind the violation.<sup>25</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Rundown

From Senator Booker to the Koch Brothers to the Kardashians, justice reform is gaining momentum in the public discourse. In fact, while the 115th Congress could not prevent a government shutdown before leaving office, it did pass The First Step Act and reauthorize the Juvenile Justice and Delinquency Act for the first time in nearly two decades. This coincides with decarceration efforts at the state level. Before we get too excited, it's important to reckon with how much further we have to push, understand that recent reforms only reform the system for a relatively privileged few, and address the reality that many of the changes fail to account for the unique experiences of justice-involved women and girls.

### *The Trends*

Since 2009, the number of people in state prisons has declined, a result of dedicated activists' leadership. However, the reductions have mainly decreased the number of men behind bars.<sup>26</sup> While, the number of girls in prison may have dropped, it has not been at the same rate as boys; thus, the share of girls in the juvenile justice has increased. In 35 states, the prison population for women has "fared worse" than that of men. In some cases, the increasing rate of women behind bars has eliminated the net benefits of the decreasing men's population.<sup>27</sup>

To understand this trend, let's look at the reasons why women and girls are arrested. First, much like men, the increase in prison population is rooted in the "tough on crime" narrative that dominated the political landscape for decades. Starting in the 1960s, the "War on Crime" became a favored campaign slogan with candidates trying to prove themselves to be tougher than their opponents. Wrapped up in this War on Crime movement, was its sister, War on Drugs. Women have historically been a small percentage of those arrested and incarcerated for violent crimes, but as the War on Drugs waged on with the 1986 creation of mandatory minimums,<sup>28</sup> "drug offenders came to represent a rapidly growing share of the incarcerated population, with the proportion of women in prison for drug crimes exceeding that of men."<sup>29</sup> To paint a picture, in 1986 (the year mandatory minimums were enacted), 12 percent of women and 8 percent of men were in state prisons for drug-related offenses. By 2009, 25.6 percent of women and 17.2 percent of men were in state prisons for drug-related offenses.<sup>30</sup> And in 2016, 34.6 percent of women in federal prison were there for drug-related offenses.<sup>31</sup>

Yet drug offenses are not the only ones subject to mandatory punishments.<sup>32</sup> In cases of domestic violence, mandatory dual arrest is standard practice.<sup>33</sup> Dual arrest means that police arrest both the abuser as well as the victim of domestic violence who fought back against the abuse. On top of criminalizing victims for trying to survive, dual arrests can leave victims with a record, saddled with legal costs, and the possibility of losing custody of their children, to name a few.<sup>34</sup>





# JUSTICE-INVOLVED WOMEN & GIRLS

## The Rundown (cont'd)

### *“The Crimes”*

The increasing rates of women behind bars is aligned with an overall paternalistic approach to women and girls' treatment in the criminal justice system. “Historically, the offenses that have led to girls' justice involvement have been inextricably linked to girls' engagement in behaviors that violate social norms about gender, race, and femininity.” While boys are arrested for matters of “public safety” reasons, women and girls are criminalized for their sexuality, are policed for acting outside of social norms, and as a means of “protecting” them from victimization.<sup>35</sup> In fact, many judges quip the common refrain of, “what am I supposed to do, when she's out there and could be hurt?” as they detain girls who runaway, break curfew, or violate probation.<sup>36</sup>

What these judges and the system fail to do, though, is address the root causes that lead to truancy and crimes among women, girls, nonbinary, and gender non-conforming folx. Rather than seeing a women-identified individual's “criminal” action as a product of a pressurized environment and then providing support to counteract the pain or trauma they are carrying, the system doles out punishment.<sup>37</sup>

And the punishment certainly does not match the “crime” as girls are often detained for status offenses (i.e. running away), technical violations of probation, misdemeanors, and other minor offenses “that pose no threat to the public and would be more effectively addressed in their communities.”<sup>38</sup> In 2013, “37 percent of detained girls were locked up for status offenses or technical violations,” compared to 25 percent of boys.<sup>39</sup> While a judge cannot sentence a youth to prison for a status offense alone, they can sentence a youth if they violate a valid court order, including mandates to go to school or abide by curfew.<sup>40</sup>

Again, these court orders do not address the underlying circumstances leading to the offense and can force girls into an impossible choice between returning to unsafe environments or going to prison. Research has found that girls who runaway often do so in an effort to avoid abusive homes or Foster Care placements or harassment at school.<sup>41</sup> Research found Black and Latina girls who identify as LGBTQ/GNC report skipping school because they feel unsafe.<sup>42</sup> This could be due to bullying by their peers or lack of support coming from adults, and a resulting fear of physical danger.<sup>43</sup>

Still other times, the girls do not even have that impossible choice, as they may be missing school because they are being trafficked.<sup>44</sup> Those in positions of authority, who could lift the curtain and attempt to understand underlying circumstances, instead cater to their biases, whether implicit or explicit. Studies have found that probation officers may cite personality flaws as the reason why Black youth commit crimes, whereas those same probation officers are more likely to cite external problems (a broken home) to the reasons why white youth commit crimes.<sup>45</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Rundown (cont'd)

As a result of this approach to penalizing girls, particularly girls of color and LGBTQ/GNC youth, for their trauma and pain, schools have become a pipeline into prison. Black girls are suspended six times more often than white girls, while expulsion comparisons are difficult as white girls are almost never expelled for the same offenses that lead to girls of color's expulsion. In addition to school-related punishments, Black girls are 43 percent of girls arrested at school, though they are just 17 percent of the girls school population.<sup>46</sup>

Though it should not have to be stated, the higher punishment rates are not because Black girls are more likely to cause offenses. The higher rates are very much linked to a policing of girls of color acting outside the "approved" standards of "white, middle-class femininity—for using profanity or being loud, wearing revealing clothing and being perceived to be promiscuous, or being defiant and challenging those in authority."<sup>47</sup> The higher rates are also very much linked back to that assumption that when white girls act out, there is an external cause, whereas girls of color act out because they, themselves, are a problem.

### *Who Is Being Punished*

While LGBTQ/GNC and people of color are clearly subject to racism and bigotry in the system, let's breakdown the backgrounds of who gets arrested. Justice-involved girls typically experience poverty, broken homes, academic disconnection, histories of sexual, physical, or emotional abuse, neglect, self-harm, substance abuse, and mental health challenges.<sup>48</sup> These shared experiences have been connected to "delinquency and later crime, particularly later aggression."<sup>49</sup> This is mixed in with increased rates of post-traumatic stress disorder, depression, anxiety, and substance use, all of which further the cycle of trauma and incarceration. When looking at the prison population, the connection between the trauma women and girls experience and their incarceration is reflected. The Bureau of Justice Statistics found that over two-thirds of women in custody in the United States have reported a history of mental health problems, which far exceeds the rate of men in custody with a past of mental health problems.<sup>50</sup>

Criminalizing mental health is related to the criminalization of disabilities. People in prison are four times as likely to report a cognitive disability (Down syndrome, autism, dementia, intellectual disabilities, and learning disorders) than the general population. This, in part, may be attributed to the fact that undiagnosed learning disabilities can also lead to pushout which can lead to status offenses.<sup>51</sup> Another contributing factor is that while people with disabilities were deinstitutionalized (moving people with disabilities from isolated institutions and into communities) they were provided insufficient support and many ended up homeless. This is a minor infraction yet can lead to an individual with a disability to be brought into the criminal justice system. As a result, people with disabilities are overrepresented in jails and prisons.<sup>52</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Rundown (cont'd)

Criminalizing people for not having adequate resources also explains the representation of women, girls, non-binary, and gender nonconforming individuals wrapped into the system. “Girls living in poverty are at higher risk of substance use, pregnancy, dropping out of school, emotional and social challenges, acute and chronic stress, deficits in cognitive development, poor physical health, and safety issues. Poverty has been shown to put girls at risk for involvement with the juvenile justice system, and girls from more impoverished neighborhoods are more likely to be charged with delinquency.”<sup>53</sup> This is the reality for far too many LGBTQ/GNC girls, who are more likely to experience abuse and homelessness, and represent 40 percent of girls in the juvenile justice system.<sup>54</sup>

Poverty is also one of several factors—including sexual abuse, being a runaway or homeless youth, child welfare involvement and dislocation from school—that increases a child’s vulnerability to being trafficked for sex.<sup>55</sup> Child sex trafficking occurs whenever a person under 18 exchanges sex for something of value.<sup>56</sup> Though minors are legally incapable of consenting to sex, in some states they are arrested on prostitution charges or other offenses directly related to their being trafficked.<sup>57</sup> Most women in the sex trade were trafficked as children and likewise experienced homelessness, sexual abuse and other traumatic experiences with impacts that carry over from childhood into adulthood. Black and Native women and girls are disproportionately impacted. For example, in Louisiana Black girls are 19 percent of the youth population but 49 percent of child sex trafficking survivors.<sup>58</sup> Nationally, Black children account for 53 percent of all juvenile prostitution arrests.<sup>59</sup> In Hennepin County, Minnesota, American Indian women are about a quarter of all women arrested for prostitution though American Indians are only 2 percent of the population.<sup>60</sup>

Some Indigenous individuals also face greater penalties for committing the same crimes as non-Native individuals. When an indigenous person commits a serious offense on a reservation, they are usually prosecuted under federal law, which often carries more severe punishments for an offense.<sup>61</sup>

### ***The Process In Motion***

While girls are engaged in the court system, there are far too many instances where they lack proper legal representation that accounts for their full experience—from education, to trauma, to mental health, to family violence. It is important to acknowledge that there are countless dedicated attorneys committed to serving their clients. However, there are many instances where siloed systems and extreme caseloads mean girls are not receiving the representation they need. In those instances, the girls might be saddled between cases and between attorneys who may not be able to work together to paint a full truth of the girls’ experiences and life story.<sup>62</sup> Without the full story, it becomes easier for the court to view the girls as criminals, especially since 30 states have no limitations on shackling youth in court.<sup>63</sup> In too many cases youth are automatically shackled in court, though the same automatic treatment is not used for adults.<sup>64</sup> The shackles further contribute to the criminalization of the girls, and can cause retraumatization.



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Rundown (cont'd)

### *In Prison*

Retraumatization can easily happen in in prison, especially given the lack of gender-specific policies. This was made clear in 2013 when Logan Correctional Center in Lincoln, Illinois changed from a men's to women's prison. Not once during the transition were corrections officers provided with training on handling the differences between men and women in prison.<sup>65</sup> Because there are few prisons created for women, women and girls are often sent out-of-state in order to be in gender-specific facilities. This means they are even farther from their families, a consistent problem for all individuals in prison, and their conditions are difficult to monitor.<sup>66</sup> The lack of women and girls facilities, also means girls are placed in adult facilities, though kept separate, where they do not have access to the rehabilitative and educational programs that would be available in other juvenile centers. The girls placed in adult facilities encounter a more punitive atmosphere that increases the girls' risk of suicide, physical and sexual abuse, and isolation.<sup>67</sup>

The punitive lens through which the girls are viewed, is extended to the women as well. Women who are incarcerated are at least two to three times more likely to face disciplinary action and severe sanctions than the men who display similar behaviors and actions.<sup>68</sup> One incarcerated woman was disciplined for "reckless eyeballing," after making a face in response to an officer's order, and was placed in solitary confinement as a result.<sup>69</sup> When one faces a disciplinary action, the consequences can range from losing the right to purchase food or supplies (including menstrual products), to losing phone and visitation access, to inhibiting their ability to earn time off a sentence or to be eligible for parole.<sup>70</sup>

And while these women are more severely disciplined than men who act similarly, the reasons behind the women's actions are also ignored. Eighty to 90 percent of women in prison have been victims of sexual or physical violence. So when a corrections officer barks an order, they may respond in a way that they would respond to prior trauma—yelling back, shutting down, or ignoring the order.<sup>71</sup> Every day, women and girls in prison have to relive their trauma in an environment that forces them to remember. This may explain why LGBTQ/GNC girls in the juvenile justice system report higher levels of self-harm. They may be forced to relive their trauma as they experience violence, sexual victimization, or heightened discrimination against LGBTQ/GNC girls while prison. They may be forced to relive trauma as they undergo forced conversion-therapy or sex-offender counseling, mandated solely because of their sexual orientation or gender identity.<sup>72</sup>

They may be forced to relive their trauma as they are isolated at increased rates. While LGBTQ/GNC youth face high rates of isolation and solitary confinement, so do individuals with disabilities. Agencies claim the solitary confinement of individuals with disabilities is for their own safety, but study after study has found that even short stints in solitary confinement can have particularly severe impacts on individuals with disabilities.<sup>73</sup> Black women are also subject to heightened isolation: while Black women are 24 percent of the total women in prison population, they are 41 percent of the women in restricted housing.<sup>74</sup> The same systemic racism and bias that causes LGBTQ/GNC, women with disabilities, and women of color—particularly those living at the intersection of these identities—to be overrepresented in the justice system in the first place, is also at play inside the prison walls; thus, leading to increased isolation.



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Rundown (cont'd)

Still, isolation only accounts for some of the abuse women and girls experience behind bars. A study of state systems in 2011, found that while girls were only 10 percent of youth in custody, they were 38 percent of the youth who experienced sexual violence at the hands of the staff.<sup>75</sup>

### *Pregnant and Parenting Behind Bars*

Research indicates that over 60 percent of women in state prisons have children who are minors.<sup>76</sup> This makes the increased distance separating individuals in prisons from their families, particularly devastating. The separation between parent and child is further heightened if the child is placed in Foster Care while the parent is incarcerated.<sup>77</sup>

What's more is that when a child is placed in Foster Care, they too will face circumstances that put them at heightened risk of entering the justice system themselves. In fact, a quarter of those who were in foster care will be involved in the justice system within two years of leaving foster care.<sup>78</sup>

The experience of pregnant individuals in prison comes with its own burdens and pains. There continues to be a practice of shackling women while pregnant, while in labor, and while in the post-partum period. Fortunately, the recently passed Juvenile Justice and Delinquency Prevention Act and First Step Act will restrict this practice at the federal level, but in too many states shackling during this time is still allowed. This can increase trauma among the pregnant and post-partum individuals. Other health effects include increased chance of falling, blocked access for treatment during an emergency, shearing of the placental attachments, and heightened chance of placental abruption, according to American Congress of Obstetricians and Gynecologists (ACOG), District IX (California) Vice Chair Philip Diamond, MD.<sup>79</sup>

### *Health*

Health risks and denial of proper healthcare is commonplace throughout the system. This is particularly true given that prisons fail to account for the health needs of girls and women, including reproductive healthcare, menopause needs, as well as nutritional needs.<sup>80</sup> Failure to meet the health needs is evidenced by the restrictions and costs associated with accessing tampons and pads.<sup>81</sup> Because the prisons fail to provide adequate menstrual products, individuals in prison are forced to spend the very little money they make during their prison jobs or the money their family is sending to them, on acquiring products. As one daughter of a woman in prison recalls, when she used to send her mom money to buy basic necessities, it meant she could not afford to travel to see her mom.<sup>82</sup>

The denial of basic necessities also includes denial of HIV medicine, which happens frequently in jails.<sup>83</sup> Denial to healthcare also means transgender youth might need a court order, with the aid of legal counsel, to receive hormones or hormone-blockers, which are critical components of their medical care.<sup>84</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Rundown (cont'd)

### *Additional Injustices Transgender Individuals Face*

The egregious denial of medical care, is still only part of the discrimination transgender individuals experience while in custody. While the Prison Rape Elimination Act set standards of determining placement for transgender, intersex, and gender non-conforming individuals, the reality is that placement seldom accounts for gender identity or expression. Commonly, placement is determined by the sex on the birth certificate or based on the individual's genitalia. As a result, transgender girls are often housed with boys. This heightens their risk of harassment, violence, and sexual assault by fellow youth and by staff members. The dangerous placement further extends to the increased use of solitary confinement or isolated units for transgender individuals. The denial of gender identity and expression is furthered in 40 states, which do not have juvenile justice system standards protecting youths' right to dress and express themselves in accordance with their gender identity.<sup>85</sup>

### *Probation*

Like the corrections officers, probation officers seldom receive gender-responsive training, which is particularly concerning given that most justice-involved youth experience probation in the post-adjudication period.

The probationary period is also particularly difficult for girls who did not have access to rehabilitation and educational programming in prison, i.e. the girls sent to adult facilities. Indigenous individuals in particular lack access to programming. One study found that while treatment programs for substance abuse and mental health conditions are quite necessary for success, Indigenous people rarely have easy access to the programs. As one tribal policymaker pointed out, her reservation neither has treatment services nor the transportation system to get to treatment services.<sup>86</sup>

From risk-factors to the court process to the experience behind prison walls, the justice system is wholly unjust; particularly for women and girls already underserved and disenfranchised.



# JUSTICE-INVOLVED WOMEN & GIRLS

## Numbers You Need to Know

As you read these numbers, please note that statistics are not facts. Statistics are evidence of problems, trends, etc. Furthermore, the identity and demographic language in each point below mirrors the language used in the reports, but do not necessarily reflect the language used by Platform. For example, a study may have only allowed respondents to identify as “man” or “woman,” “male” or “female,” rather than cisgender, transgender, genderqueer, nonbinary, or woman-identified. Other studies may have only provided racial identifiers such as Hispanic rather than Latinx, African American rather than Black, American Indian rather than Indigenous, and have homogenized Asian and Pacific Islander communities into one identity. In each instance, the language used in the study could have inhibited respondents from being able to accurately identify as well as perpetuated harmful categorization that misrepresents reality. It is also important to understand that while Minoritized communities experience higher rates of incarceration it is not because Minoritized demographic groups are more violent or criminal, but very much because the activities of Minoritized demographic groups have been criminalized as means of social control. Finally, every justice-involved person’s story is unique and important and cannot be properly summed up through a number.

### Trends

- On average, the prison population is declining, but if we look more closely, it’s clear the decrease is gendered. For example, in Michigan, the number of men in the state’s prisons dropped by 8 percent between 2009-2015. During that same period, the number of women in the state’s prisons increased by 30 percent. This was not a unique case. In Texas, the men’s prison population was cut by 6,000 people while an additional 1,100 women were incarcerated.<sup>87</sup>
- Every day, 50,000 youth are incarcerated in the United States through the juvenile justice system. While a moral dilemma deserving attention for that reason alone, it is also worth noting that states are spending \$5 billion every year on youth prisons. Youth prisons are the biggest expense in the juvenile justice system.<sup>88</sup>
- In 2016, African American women were imprisoned at a rate of 96 per 100,000; Hispanic women were imprisoned at a rate of 67 per 100,000; and white women were imprisoned at a rate of 49 per 100,000. African American women were 2 times and Hispanic women were 1.4 times more likely than white women to be imprisoned.<sup>89</sup>
- In the last five years, the rate of incarceration of Native Americans in federal prisons increased by 27 percent.<sup>90</sup>
- Nearly three out of four, 73 percent, “of girls in the juvenile justice system have experienced physical or sexual abuse.”<sup>91</sup>
- “Black girls are the fastest growing segment in the juvenile justice system.”<sup>92</sup>

### Risk Factors

- Estimates project that about half of LGBTQ youth in the United States are “‘at risk’ of being arrested or entering juvenile and criminal justice systems.”<sup>93</sup>
- Between 60 and 87 percent of justice-involved girls need substance abuse treatment.<sup>94</sup>
- Nearly two-thirds of justice-involved girls have experienced PTSD. Justice-involved girls are also twice as likely to have major depression than justice-involved boys are.<sup>95</sup>
- Studies show that homelessness is a major risk factor of the juvenile justice system. This is particularly concerning because of the rate at which LGBTQ/GNC youth experience homelessness. Among those involved in California’s juvenile justice system, 49 percent of LGBTQ/GNC girls had been homeless, while 30 percent of their straight and gender-conforming peers had been.<sup>96</sup>
- Also in California’s juvenile justice system, “38 percent of [LGBTQ/GNC] girls had been removed from their homes because someone was hurting them, compared with 25 percent of their straight and gender-conforming peers.”<sup>97</sup>
- The same analysis of California’s juvenile justice system found 90 percent of LGBTQ/GNC girls had been suspended or expelled prior to juvenile incarceration.<sup>98</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## Numbers You Need to Know (cont'd)

### The Demographics

It is critical to again emphasize that the increased rates at which communities of color, Native communities, people with disabilities, and LGBT/GNC folk are involved in the justice system is not a reflection on the characteristics of the communities, but very much of policies that are designed to further control historically underserved and disenfranchised communities.

- On average, girls (ages 12 to 17) are incarcerated at a rate of 47 per 100,000 girls.<sup>99</sup>
- Breaking that down, the incarceration rate for white girls is 32 per 100,000; for Latina girls is 44 per 100,000; for Black girls is 110 per 100,000; for Native girls is 134 per 100,000.<sup>100</sup>
- This means Latina girls are 38 percent, Black girls are 3.5 times, and Native girls are 4 times more likely than white girls to be incarcerated.<sup>101</sup>
- “For nonviolent, ‘public order’ offenses such as gambling and prostitution, Latinx youth were more likely than white youth to be admitted to state public facilities, and were incarcerated more than 50 percent longer than white youth (220 days vs. 147 days).”<sup>102</sup>  
*As a note, while the Latinx youth were charged for prostitution offenses, when it involves youth, this is actually sex trafficking. As a result, they were arrested for their own victimization.*
- Black girls are just 14 percent of the United States population, but 33 percent of girls who are detained and committed. Native girls are 1 percent of the youth population but 3.5 percent of girls who are detained and committed.<sup>103</sup>
- Incarceration is not the only way in which individuals come in contact with the justice system, but in every case Native girls and Black girls are criminalized to a greater extent than white girls. Black girls and American Indian/Alaska Native girls were 20 percent more likely than white girls to be formally petitioned. Black girls and American Indian/Alaska Native are 20 percent and 50 percent more likely than white girls to be detained, respectively.<sup>104</sup>
- While Native Americans make up 8.5 percent of the population in South Dakota, Native American residents make up 60 percent of the federal caseload.<sup>105</sup>
- Though LGBTQ+ youth are just 5 to 7 percent of the general population, 13 to 15 percent of youth who come into contact with the juvenile justice system identify as LGBTQ+.<sup>106</sup>
- Among girls in the juvenile justice system, 40 percent identify as LGBTQ+, whereas among boys in the juvenile justice system, 14 percent identify as LGBTQ+.<sup>107</sup>
- About 32 percent of people in prison and 40 percent of people in jail report having at least one disability.<sup>108</sup>
- People in prison were about 3 times more likely, and people in jail were about 4 times more likely than the general population to report having at least one disability.<sup>109</sup>
- Women in prison were more likely than men in prison to report having a cognitive disability.<sup>110</sup>
- “Black girls who are incarcerated are twice as likely to have a diagnosed disability under the Individuals with Disabilities Act than white girls.” Black girls who are incarcerated compose about half of all girls with diagnosed disabilities who are incarcerated.<sup>111</sup>





# JUSTICE-INVOLVED WOMEN & GIRLS

## Numbers You Need to Know (cont'd)

### **The "Crimes"**

- There is a gender divide in the types of offenses youth are found to have committed. Running away and prostitution are the only two offenses for which girls comprise a majority of youth arrests or petitions: In 2012, girls were 76 percent of prostitution arrests, 42 percent of larceny arrests, 40 percent of arrests for liquor law violations, 35 percent of disorderly conduct arrests, 10 percent of robbery arrests, and 9 percent of murder arrests.<sup>112</sup> This shows that girls are often arrested for their responses to trauma or experiences of victimization.
- Among girls arrested in DC, eighty-six percent are arrested for non-violent, non-weapons related offenses.<sup>113</sup>
- American Indians are just 2 percent of the population in Hennepin County, Minnesota. However, American Indian women are a quarter of the women who are arrested for prostitution.<sup>114</sup>
- Of the women entering federal prison in 2016, 34.6 percent were serving sentences for drug offenses.<sup>115</sup>

### **Parents**

- About 60 percent of women in state prisons have children under 18.<sup>116</sup>
- 9 percent of girls in custody had children, compared to 6 percent of among the general populations. Additionally, 5 percent of girls in custody were pregnant.<sup>117</sup>

### **School-to-Prison Pipeline**

- American-Indian and Alaskan Native girls are three times more likely to be suspended than white girls, and Latina girls are almost two times more likely to be suspended than white girls.<sup>118</sup>
- In 2011-2012 New York City, ninety percent of all the girls expelled from school were Black and none were white. If one imagined a single white girl was expelled, the ratio of Black to white girls expelled would be 53:1.<sup>119</sup>
- In the 1970s, there were fewer than 100 school resource officers (SROs), but between 2013-2014, there were 14,380 full-time and 16,330 part-time SROs in public schools.<sup>120</sup>
- 77 percent of SROs in a poll reported that they "sometimes arrested students simply to calm them down."<sup>121</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## Who's Saying What

"I think we need to learn from the mistakes that we have made. We have increased the incarceration numbers in this country for four decades now. That's long enough for us to realize that it's not the solution. The solution needs to come from within the communities that have been most directly affected. We need investments, not in more prison and prison building and investing in those prisons. We need to invest in the communities where folks are coming from, where they are disproportionately represented in the prisons. And that includes social and economic resources that currently are vastly lacking in many marginalized communities."- **Andrea James, attorney and founder of the National Council for Incarcerated and Formerly Incarcerated Women and Girls. She served two years in a federal prison.**

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"The mass incarceration policies in this country that award and incentivize detaining individuals has been detrimental to communities of color and severely tainted our judicial system. To continue to detain and incarcerate men, women, and children in masses simply because doing so increases the profit margins for the already overly-inflated prison industry goes against our basic principles. Private prisons have consistently been found to be more costly and less humane... It is time to close this chapter of our immoral and corrupt prison system."- **Congressman Raúl M. Grijalva (D-AZ-3)**

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"We believe that in addition to not reaching far enough to ensure our peoples' freedom from all forms of incarceration, The First Step Act is an intentionally divisive bill that authors a dangerous future for all of our families and communities... A true first step would decrease rather than increase opportunities for more profiteering. It would reduce the number of people incarcerated without entrenching racial disparities and it would shift significant investments away from law enforcement and prisons and into our communities."- **The Movement for Black Lives on the First Step Act, which was enacted at the end of the 115th Congress**

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"I'm joined by the majority of women serving in Congress today on both sides of the aisle in introducing this bill to make sure that we are mindful and responsible for the health and wellness of pregnant women in prison. That means an appropriate diet, it means access to appropriate medical assistance, and it certainly means stopping the shackling of pregnant inmates. I hope that we can move this conversation forward in a bipartisan manner and look forward to participating in the continuing conversation about ways to reform our criminal justice system."- **Rep Karen Bass (D-CA-37) on the introduction of the Bipartisan Pregnant Women in Custody Act**

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## JUSTICE-INVOLVED WOMEN & GIRLS

### Who's Saying What (cont'd)

“An effective criminal justice system is an essential part of a safe and just society. We must hold those who break the law accountable, but we must also pursue justice in a way that is compassionate, sensible, and fair. If we focus on improving our criminal justice system, we will make our country safer for law enforcement and communities while saving taxpayer money, helping offenders turn their lives around, and reducing the number of future victims. Ninety-five percent of individuals incarcerated in prisons will be released at some point. These individuals will rejoin our communities, yet our current criminal justice system does little to help them reintegrate in a way that protects neighborhoods and restores individuals.”- **Rep. Doug Collins (R-GA-9)**, co-author of the **First Step Act, Prison Reform and Redemption Act, and more.**

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“By treating incarcerated women with dignity and giving them basic support, we not only improve public safety and reduce recidivism, we live out our values, making our criminal justice system more just... There is a growing consensus among Americans that our criminal justice system is deeply broken and in need of real, drastic change. State governments in red, blue and purple states have led the way in the reform effort, showing that it's possible to reduce crime and prison rates simultaneously. It's time for the federal government to do the same. Basic dignity for incarcerated women is a good place to start.”- **Senators Elizabeth Warren (D-MA) and Cory Booker (D-NJ)**

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## JUSTICE-INVOLVED WOMEN & GIRLS

### Stories

“When I was sentenced to 78 months in federal prison I was six weeks pregnant at the time of my arrest. When I was released, I came home without my baby. I had miscarried. I tripped while shackled and did not receive medical care. Not a day goes by that I don’t think about the life that could have been. A twist of fate did not take my child. A blatant disregard for my humanity stole the life that was growing inside of me.”<sup>128</sup>

Pamela Winn’s, Founder of RESTORE HER, story is tragic, but far from unique. In addition to shackling, Winn cites the lack of information regarding pregnant justice-involved women as a threat to their well-being. That is one of the reasons she supports The Pregnant Women in Custody Act, which would mandate data collection on women’s mental and physical health, with emphasis on pregnant and postpartum women, in federal, state, tribal, and local corrections.

“My daughter was sick for five months and she couldn’t go to daycare and then my mom was sick and couldn’t help me with [my baby] so I got pulled and put back in jail because I couldn’t make it to treatment.”

This Indigenous mother’s story, while uniquely her own in many ways, is all too common across Montana. While Indigenous people represent about 6.5 percent of Montana’s state population, they compose 20 percent and 34 percent of the men’s and women’s state prison populations, respectively. Indigenous people are also “27 percent of the state’s arrests for failures to appear in court or for probation or parole violations.” The inability to be present in court or to comply with probation or parole requirements, can (in part) be attributed to the fact that reservations may neither have the treatment services nor the transit to take people to urban areas for treatment.<sup>129</sup>

“When the officer found out, he attempted to induce an abortion by making me take quinine and turpentine. He threatened my life and told me that I had to point the finger at another guard who had also been sexually harassing me. I did, but eventually the true identity of my rapist was revealed; he took an extended leave for back problems but continued to call me by phone and tell me what to say and do. He continued to be employed at the prison for another year, at which time he was terminated not for my assault but for an unrelated infraction: bringing drugs into the facility. Meanwhile, the prison staff tried to force me to terminate the pregnancy, claiming that as a ward of the state, I had no choice. But I refused, and was put into solitary confinement for lying about who had fathered the child, and for having had ‘consensual’ sex with an officer. In solitary, I had no mattress and was fed only bologna sandwiches.”<sup>130</sup>

The carceral system is designed to retraumatize victims and survivors of trauma. Somewhere between 80 and 90 percent of women in prison experienced sexual or physical violence before entering the system.<sup>131</sup> Then, while incarcerated, the power dynamics and structure allow those in positions of authority to prey on the vulnerability of the women behind bars.



## JUSTICE-INVOLVED WOMEN & GIRLS

### Stories (cont'd)

**"My hope is to help other young girls avoid ending up where I have been."**<sup>132</sup>

When she was a teenager, Cyntoia Brown ran away from her adoptive family and made her way to a motel where she was raped and trafficked. When she was 16 and scared for her life, she shot her abuser, Johnny Allen, a 43-year-old. She was tried as an adult and given a life sentence for first-degree murder and aggravated robbery. While her sentence was recently commuted, by the time she is released, she will have spent 15 years in prison and she is being released to supervised parole. Brown's case has highlighted how frequently women of color are disregarded as victims, despite the violence they have endured, and instead are treated as criminals for trying to survive.

**"I admit that I have acted out and got into fights, many DCF kids fight with staff and other kids while in placement. I am not saying it was Ok to do this but I have a lot of stuff built up inside me and don't know how to deal with it at times. They tell me that trauma changes people and makes them act out. Believe me, it does."**<sup>133</sup>

"In 2014, the Connecticut Department of Children and Families (DCF), through a little used law, petitioned the juvenile court to place Jane, a 16-year-old transgender girl of color, in Connecticut's adult women's prison. Connecticut does not have a separate facility for girls under age 18 in the adult system (it does have such a facility for boys); all transferred girls are sent to the one state prison for women, a maximum-security facility that houses women convicted of the most serious crimes. Between December 2006 and July 2008, nearly 250 girls were placed in the prison, many of them for violations of probation, running away, or fighting. Jane, however, had never been charged with an adult crime, had an open child welfare case, and had been charged with delinquency. She had a long history of being abused and sexually trafficked, including abuse that Jane says she experienced at the hands of employees of DCF. Citing concerns with Jane's aggressive behavior—which was clearly tied to her traumatic past—and DCF's inability to meet her particular needs, DCF sent her to the women's prison, where she was isolated in order to comply with federal laws mandating the separation of youth and adults. Finally, Jane was moved to a treatment facility in a neighboring state and then to isolation in a secure facility for boys, in denial of her gender expression as a girl."<sup>134</sup>

**"They couldn't decide if they [should] put me in with the women or the men, so they put me in a pod called 'mental health' where they put transgender [women]. While I was there, I got disrespected a lot by the police officers because they would call me 'sir' instead of 'miss.' But it only got worse... They cut all my hair off, and they locked me away in a cell for 90 days by myself because they didn't want to put me with the men and they couldn't put me with the women."**<sup>135</sup>

Like Jane Doe, Lesley Webster was repeatedly abused and punished for her gender identity.



## JUSTICE-INVOLVED WOMEN & GIRLS

### Stories (cont'd)

“When I was around fifth grade. My mom put me in a placement because I was running away. I kept running away. I was a chronic runaway. They’d put me somewhere and I’d run away from it. I had, uh, problems at home (softly) ... and um, out of sheer boredom I guess. Mostly neglect. Well, I’d been molested for years. Finally I told my grandmother about it. That it was my stepfather. She called the cops and I ran away and right before he was supposed to go to court he shot himself in the head. My sister had a brain tumor and my mom was always busy at the hospital. We had to move into this tiny duplex and I was by myself all day... One day I’d just go out to have fun and I wouldn’t go home the next day. It kept on escalating. I’d spend a day in jail and keep on going. My mom had a boyfriend, and he used to physically abuse my sister. I tried to intervene one day and he grabbed me by my neck. I started talking s— outside the house, just yelling at him and he came out with a knife. So I really had to run. This lady called the cops and what did they do? They arrested me. They arrested me on a runaway charge. Nothing happened to him. My mom made me seem like this bad kid. I just wanna go and have some fun. My mom didn’t have very much money, and if you don’t have clothes, you’re an outcast [at school]. I had good grades, all A’s and stuff like that, but I just couldn’t take being in school so I dropped out.” <sup>136</sup>

Far too many of the young people behind bars have endured horrible abuse- mental, physical, and emotional. And for those same kids and young adults, they are arrested for charges related to their survival. These young people, do the only thing they can think of to save themselves—whether that’s act in self defense or runaway. And rather than addressing the abuse, rather than asking about the pain, rather than providing the support they need to heal, the system penalizes them.

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# JUSTICE-INVOLVED WOMEN & GIRLS

## Recent Legislation

### **[ENACTED] Juvenile Justice and Delinquency Act (JJDA)**

In December, JJDA was reauthorized for the first time since 2002. Sponsored by Sen. Chuck Grassley (R-IA) and Rep. Jason Lewis (R-MN-2), the law sets core safety standards for juvenile offenders that states must follow in order to qualify for federal grants. It also aims to prevent delinquency and curb racial and ethnic disparities in juvenile justice systems. In regards to the specific experience of women and girls, JJDA mandates data collection on pregnant youth in custody; elimination of shackling pregnant youth; the creation of “alternatives to detention for survivors of commercial sexual exploitation;” and expanding program opportunities for at-risk girls.<sup>137</sup>

### **[ENACTED] First Step Act**

Authored by Sen. Chuck Grassley (R-IA), this law reduces mandatory minimum sentences for some crimes, allows greater discretion in sentencing nonviolent drug offenders, funds recidivism-reduction programs for low-risk inmates, enable 2,600 drug offenders to petition for reduced sentences, and require more research on criminal justice. It outlaws shackling of pregnant individuals but it neither restricts use of solitary confinement of pregnant individuals nor does not increase access to gynecologists. It increases “good time credits” that inmates can earn. Inmates who avoid a disciplinary record can currently get credits of up to 47 days per year incarcerated. The bill increases the cap to 54. It is important to note the system has an algorithm to determine who can actually redeem the credits. Those considered a higher risk—undocumented immigrants, and people convicted of high-level offenses—cannot cash them in. There is a big concern that the algorithm will perpetuate the racism inherent in the system because “previous criminal history may overlook that black and poor people are more likely to be incarcerated for crimes even when they’re not more likely to actually commit those crimes.”<sup>138</sup> The Movement for Black Lives, a coalition of more than 150 black-led organizations, opposes The First Step Act.<sup>139</sup>

### **[Just introduced in the 116th Congress] The Next Step Act**

To continue beyond the limited scope of the First Step Act, Sen. Cory Booker (D-NJ) and Rep. Bonnie Watson Coleman (D-NJ-12), introduced this legislation. The bill would slash mandatory minimum sentences in half for nonviolent drug offenders, making the longest mandatory sentence 10 years instead of 20 years. It would reduce the mandatory minimum sentences for repeat offenders, but not for first-time offenders. The bill also includes initiatives to make it easier for those with criminal records to find jobs and obtain professional licenses. The bill would also reinstate voting rights to former felons nationwide. Additionally, the Next Step Act calls for legalizing the marijuana nationwide, expunging criminal records for those charged with marijuana possession and investing money into communities harmed by drugs.



## JUSTICE-INVOLVED WOMEN & GIRLS

### Recent Legislation (cont'd)

#### **[From the 115th Congress, just reintroduced in the 116th] Violence Against Women Reauthorization Act (VAWA)**

Among its many provisions, VAWA—introduced by Rep. Sheila Jackson Lee (D-TX-18) in the last Congress and Rep. Karen Bass (D-CA-37) this year—would place parents who are incarcerated in prisons as close as possible to their child; consider a transgender persons safety (including their own perspective on safety) in determining placement and determine their sex based on how they identify; prohibit placing pregnant or postpartum individuals in a separate housing unit, in most cases; eliminate use of shackles on a pregnant individual; provide parenting classes to primary caretakers in prison; train staff and correctional officers on trauma-informed care; ensure adequate healthcare access and access to a gynecologist; make hygienic products free of charge in prisons; ensure all primary caretakers in prison have access to residential substance abuse treatment; and collect data on pregnant women and mothers.

#### **[From the 115th Congress, Passed in the House] Put Trafficking Victims First**

Among its provisions, this legislation—introduced by Senator Kirsten Gillibrand and Rep. Ann Wagner (R-MO-2)—called on states not to criminalize child trafficking victims.

#### **[From the 115th Congress] Justice Is Not For Sale**

Rep. Raul Grijalva (D-AZ-3) introduced this piece of legislation, in part, to establish parole for eligible offenders after The Sentencing Reform Act of 1984 stripped offenders of federal crimes of access to parole. It would require financial service providers at prisons and detention centers impose reasonable and proportional fees and charges for money transfers as well as cap prison phone call rates and connection charges. The bill prohibits family detention, removes requirements for ICE to maintain a certain number of beds, and mandates the creation of alternatives to detention. It also establishes a private right of action for individuals impacted by a violation of the bill.

#### **[From the 115th Congress] Prison Reform and Redemption Act**

Rep. Doug Collins (R-GA-9) introduced this bill, which would (among its provisions) prohibit use of restraints, in most cases, on pregnant or postpartum individuals in federal prisons.

#### **[From the 115th Congress] Pregnant Women in Custody Act**

Authored by Rep. Karen Bass (D-CA-37) and Sen. Rand Paul (R-KY), this bill would prohibit use of restraints on pregnant, in labor, and postpartum individuals. It would also collect data on pregnant women who are incarcerated.

#### **[From the 115th Congress] Stop Infant Mortality And Recidivism Reduction Act (SIMARRA)**

SIMARRA, introduced by Rep. Sheila Jackson Lee (D-TX-18), would compel the Bureau of Prisons to create a pilot program allowing women who give birth while incarcerated the opportunity to reside with their baby in a designated prison housing unit.





# JUSTICE-INVOLVED WOMEN & GIRLS

## Recent Legislation (cont'd)

### **[From the 115th Congress] Dignity Act**

This bill, sponsored by Sen. Cory Booker (D-NJ), instructs the Bureau of Prisons to place parents who are incarcerated in prisons as close as possible to their child, provide free video conferencing, provide trauma-informed care to individuals with diagnosed trauma, and make some health products free of charge. This bill would also lead to the creation of parenting classes for individuals who are the primary caretakers, allow visitations, and allow overnight visits from family. The bill also allows a prisoner who is pregnant or a primary caretaker parent to participate in a residential substance abuse treatment program, even if they did not disclose a substance abuse problem.

### **[From the 115th Congress] Mandatory Minimum Reform Act**

Introduced by Rep. Maxine Waters, (D-CA-43), this legislation would eliminate mandatory minimums for all drug offenses.

### **[From the 115th Congress] Pathway to Parenting Act**

Rep. Scott Taylor (R-VA-2) introduced this bill—with the support of Reps. Bonnie Watson Coleman (D-NJ-12), Frederica S. Wilson (D-FL-24), and Eleanor Holmes Norton (D-DC)—to ensure parents who are incarcerated in prisons are placed as close as possible to their child; secure the right of primary caretakers to receive visits at least 6 days a week; require visitation hours are at least 8 hours long each day; allow up to 3 adult visitors and unlimited number of child visitors per visit; allow physical contact except in certain cases; prohibit shackling of pregnant and postpartum individuals; restrict use of separate housing for pregnant individuals; provide parenting classes to primary caretakers in prison; establish trauma-informed care and access to a gynecologist; create mentoring systems by formerly incarcerated mentors; prohibit strip-searches to be conducted by officers of a different sex; ensure all primary caretakers in prison have access to residential substance abuse treatment; launch both overnight visit and prenatal care pilot programs.

### **[From the 115th Congress] Stop AIDS in Prison Act**

Introduced by Rep. Maxine Waters (D-CA-43), this bill would direct the Bureau of Prisons to develop a policy to provide HIV testing, treatment, and prevention in federal prisons. It would require HIV testing for all individuals in federal prisons, make HIV testing a part of routine health screenings upon entry, and provide a pre-release HIV test.



# JUSTICE-INVOLVED WOMEN & GIRLS

## What States Are Doing (Or Not)

This is not an exhaustive list of state-level policy change. This section is intended to lay out the different types of legislation and laws that are at play on a more localized scale.

### Multi-State

A 2011 survey revealed that only two states' police trainings cover youth development, eight states' trainings provide tips on how to best engage with adolescents, and eight states' training examine reducing racial disparities.<sup>140</sup>

In regards to mandatory arrest policies in the case of domestic violence, Arizona, Idaho, Nevada, South Dakota, Washington, and Wisconsin have set minimum age requirements for arrest or they require law enforcement to offer families services before arrest or detention.

A growing number of states have passed safe harbor laws. Connecticut, DC, Illinois, Kentucky, Michigan, Minnesota, Mississippi, and Nebraska passed laws to ensure minors cannot be criminalized for prostitution and direct youth who have been sex trafficked, to specialized services. Montana, New Hampshire, North Carolina, North Dakota, South Carolina, Tennessee, and Vermont have also prevented the criminalization of juvenile sex trafficking victims. Arkansas, California, Delaware, Florida, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Missouri, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, and Texas direct juvenile sex trafficking victims to specialized services. It is important to note, though, that not all of these states have implemented the laws.<sup>141</sup>

### Arizona

A recent report found an increase in incarceration for women in Arizona, almost doubling between 2000 and 2018. This is due to the states continued harsh drug laws, probation violations, and shoplifting. Contributing to the drug-crackdown is a 2006 ballot-measure, which permits judges to sentence individuals who are found with methamphetamine to prison for a first offense.<sup>142</sup>

### Arkansas

Following the Supreme Court *Miller v. Alabama* ruling, Arkansas passed a law mandating juveniles sentenced to life without parole should be eligible for parole hearings after 30 years. Circuit Judge Wendell Griffen, however, said this law was unconstitutional on the grounds that it gave too much power to the executive branch, which heads the parole board process. Instead, he called for resentencing hearings. The state tried to take the case to the Supreme Court, which refused to hear it. The Supreme Court's refusal allowed the resentencing hearings to prevail.<sup>143</sup>

### California

In 2011, the Supreme Court's *Brown v. Plata* ruling determined the overcrowding in California's prisons yielded "unconstitutional conditions of health care." The prompted a statewide decarceration effort to reduce prisons by 30,000 people in two years. The state passed legislation to have "lower-level offenders serve their sentences either in local jails or under local probation supervision."<sup>144</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## What States Are Doing (Or Not) (cont'd)

### California (cont'd)

In 2014, the state banned the practice of taking “truant” youth into custody, even if they failed to attend after a valid court order mandated their school attendance.<sup>145</sup>

In 2016, thanks to the advocacy of Rights4Girls, California passed the No Such Thing law, which banned prosecution of minors on prostitution offenses.

More recently, Los Angeles County officials called for greater attention to the needs of young pregnant women in custody while also pushing for eligible individuals to be “diverted” into community-based programs.<sup>146</sup>

### Colorado

In 2012, Colorado ended the state’s practice of zero tolerance and mandatory expulsion. This move also included requirements that school discipline policies incorporate “interventions that reduce suspensions, expulsions, and referrals to the justice system and law enforcement, with a focus on prevention, intervention, restorative justice, peer mediation, or counseling.”<sup>147</sup>

A year later, Colorado moved to restrict the practice of taking youth into custody for missing school. If a student fails to comply with a court order to attend, they cannot be held for more than five days.<sup>148</sup>

### Connecticut

In 2011, the state’s courts started “rejecting referrals involving youth arrested for minor misbehavior.” Of the rejected cases, over half were related to school arrest. Of the first 221 cases the courts refused to prosecute, more than half involved school arrests. This move put the responsibility back on the schools to handle non-criminal behavior.<sup>149</sup>

A new law took effect at the start of 2019 aimed at reducing dual arrests. In part the law will mandate police identify a primary aggressor in a domestic-violence incident.<sup>150</sup>

### Delaware

In 2012, Delaware moved to allow greater discretion in mandatory reporting to law enforcement for students’ minor offenses; though, “serious offenses” must still be reported.<sup>151</sup>

### Georgia

In 2013, Georgia undertook a reform of its juvenile justice system. It restricted which offenses could result in detention, instituted early-intervention programs, created alternatives to detention, and emphasized community-based programs that help with managing family problems, anger, and substance abuse.<sup>152</sup>

### Illinois

At the end of 2017 and early 2018, laws requiring “specific programming for women in prison” and mandating officer training on best practices to “handle” female prisoners were enacted. This led to “gender-responsive” trainings in the state. Doing so, according to a prison warden in the state, enabled them to recognize the humanity of the individuals in prison as well as the trauma many women in prison carry.<sup>153</sup>



# JUSTICE-INVOLVED WOMEN & GIRLS

## What States Are Doing (Or Not) (cont'd)

### Kentucky

In 2014, the state passed “comprehensive juvenile justice legislation.” This legislation included efforts to stop juveniles with low-level offenses from entering the formal justice system. It also advanced efforts to divert status offenders and those with minor offenses away from the courtroom. <sup>154</sup>

### Maryland

In 2013, Maryland ended the practice of detaining youth “whose most serious offense is possession of marijuana, disorderly conduct, prostitution, drug possession or theft, except in very rare circumstances.” <sup>155</sup>

### Massachusetts

In 2017, the Massachusetts legislature introduced S.770, Primary Caretakers Bill, drafted by formerly incarcerated women, which would provide, “community-based sentencing alternatives for primary caretakers of dependent children and have been convicted of non-violent crimes.” <sup>156</sup>

Around the same time, a bill to decriminalize verbally disruptive behavior in schools came under consideration. This bill would require two written warnings within a school year before it met the threshold allowing for behavioral interventions. However, a state senator introduced removing this provision from the criminal justice reform package. <sup>157</sup>

### Nebraska

In 2013, the state allocated \$14.5 million for two years for juvenile justice reform. This was done, in large part, to assist counties with the development and expansion of community-based alternatives. <sup>158</sup>

### Nevada

Youth who violate curfews or loitering ordinances “can no longer be adjudicated as delinquent, but must instead be treated as children in need of supervision.” <sup>159</sup>

### New York

In October 2018, the first part of the state’s Raise the Age campaign took effect. The first part ended the practice of automatically trying 16 year-olds as adults. Its other provisions include sending misdemeanors, non-violent felonies, and some violent felonies to Family Court; notifying parents when a child is arrested; questioning youth in “age-appropriate” settings; prohibiting the detaining or sentencing of 16 and 17 year-olds to Rikers or facilities that house adults; and many more. <sup>160</sup>

### North Carolina

The state introduced “telehealth to provide access to psychiatric care for juveniles to effectively and efficiently serve committed youth.” <sup>161</sup>



## JUSTICE-INVOLVED WOMEN & GIRLS

### What States Are Doing (Or Not) (cont'd)

#### Oklahoma

Via a ballot measure in 2016, Oklahomans voted to reclassify “simple drug possession as a misdemeanor” as well as end prison as a punishment for those whose “most serious crime was having a controlled substance for personal use.” After the law took effect, the state noticed a 26 percent drop in number of state felony cases and a small uptick in misdemeanor cases. This change is especially noteworthy given that before the ballot measure passed, the number of felonies was on the rise in Oklahoma. <sup>162</sup>

#### South Dakota

In 2015, two years after the state passed adult criminal justice reforms, South Dakota passed an overhaul to its juvenile justice system. The reform encourages “the use of diversion strategies, expand access to evidence-based interventions, prioritize residential placements for youth who pose a public safety risk, and create an oversight council to monitor the reforms.” <sup>163</sup>

#### Texas

In 2013, the state legislature passed a bill requiring all juvenile probation and supervision officers receive Trauma Informed Care training ahead of certification or renewal. <sup>164</sup>

PLAT  
FORM



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Change We Need

### ***Rights4 Girls Recommends:***

Directly From their "Beyond The Walls" Report <sup>165</sup>

- All agencies that serve justice-involved girls should collect and publicly share data that is disaggregated by race, gender, sexual orientation, and gender identity.
- Stakeholders should engage in a comprehensive, qualitative assessment of girls in the juvenile justice system to better understand their experiences in their own words.
- Stakeholders should engage in mapping the programming available both to girls at-risk for justice involvement and girls already involved in the juvenile justice system. Once this mapping is complete, stakeholders can identify service gaps for justice-involved youth.
- System stakeholders, including impacted youth, impacted families, the Family Court, probation officers, social workers, attorneys, content-knowledge experts, providers, and advocates, should convene to identify policies and practices that will expand community-based responses, reduce using law enforcement as a response to minor behavior, reduce girls' justice involvement, and improve services for girls at all stages of the juvenile justice system.

Directly From their "Sexual Abuse to Prison Pipeline" Report <sup>166</sup>

- End the arrest and detention of youth for prostitution.
- Enact effective and universal safe harbor laws.
- Close the valid court order loophole.
- Provide law enforcement training on gender bias and gender stereotyping.
- Implement screenings upon entry into the child welfare system to identify a history of trauma.
- Develop cross-system collaboration between the juvenile justice and child welfare systems.
- Implement a gender-responsive approach to victims of abuse.
- Develop and implement high-quality trainings for staff on how to prevent, identify, assess, and respond to children who enter the system with a history of sexual abuse, including commercial sexual exploitation.
- Extensively train foster parents and kinship caregivers on the risks of sex trafficking and how to mitigate them.
- Implement system-wide gender-responsive protocols for trauma screening and assessment of girls to identify urgent needs relating to violence and abuse.
- Administer an immediate and thorough assessment when abuse is identified by a qualified mental health professional.
- Implement mechanisms to ensure that all caregivers receive updated results of mental health assessments to ensure appropriate treatment.
- Use culturally appropriate, evidence-based assessment tools and treatment plans to address traumatic stress and associated mental health symptoms.
- Increase federal child welfare funding to support the most effective strategies for girls and their families and create federal standards for gender-specific child welfare practices. The two primary sources of federal financing for child welfare services, Title IV-E and Title IV-B of the Social Security Act,<sup>175</sup> are significantly underfunded.
- Use medicaid funds to improve quality care and trauma-related services for girls in child welfare.



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Change We Need (cont'd)

### **Prison Policy Initiative Recommends:** <sup>167</sup>

Directly From their "The Gender Divide: Tracking Women's State Prison Growth" Report

- Prison Policy Initiative recognizes “the way to better serve women in prison is not to build better prisons — but to ensure women are included in reforms that move people away from prisons and towards better solutions. The most effective changes will reverse the growth of all incarcerated populations, without leaving women behind.” However, they also recognize that changes must be made within the prisons including criminal justice agencies taking a gender-responsive approach to meet the needs of justice-involved women and correctional agency programming and staff training be trauma-informed.
- State and local governments expand the use of diversion strategies, directing individuals towards rehabilitation treatment and services rather than the criminal justice system and programs at each possible stage, from pre-arrest to re-arrest.
- States reclassify criminal offenses and change responses to low-level offenses to avoid the overcriminalization of misdeeds that pose little threat to public safety.
- Federal, state, and local governments fully fund indigent criminal defense to ensure criminal defendants who cannot afford an attorney are not paired with an under-resourced and overworked public defense attorney.
- States change policies that criminalize poverty or that create financial incentives for unnecessarily punitive sentences.
- States reform sentencing policies (i.e. repealing mandatory minimums and “three strikes” laws) to restore judicial discretion, avoid over-sentencing, and encourage earlier release for low-risk individuals.
- State and local governments limit the frequency, conditions, and length of community supervision to avoid unnecessarily widening the net of correctional control.
- States encourage earlier release from prison by expanding the use of incentives to reward compliance and paroling people who are unlikely to reoffend.
- State and local governments implement and fund gender-responsive strategies to support women’s reentry.
- States eliminate collateral consequences (i.e. denying voting rates and access to public benefits as well as penalizing the inability to pay criminal justice debts) of criminal convictions that present barriers to successful reentry.

### **The Sentencing Project Recommends:** <sup>168</sup>

Directly From their "The Changing Racial Dynamics of Women's Incarceration" Report

- Conducting state-based analyses of changes in racial disparity to identify “causal factors of either rising or declining incarceration by race and gender.”
- Establish statewide racial disparity task forces as was done in Connecticut in 2000 with the “Commission on Racial and Ethnic Disparity in the Criminal Justice System” and Illinois in 2009 with the “Illinois Disproportionate Justice Impact Study Commission.” These commissions are intended to draw focus and attention to the policy needs.
- Adopt proactive racial disparity assessments—Similar to fiscal impact statements, the goal of projecting the racial effects of proposed sentencing policies is to anticipate any unwarranted changes in racial disparity that might be produced through legislative change, and to provide lawmakers with the opportunity to meet the goals of public safety without exacerbating existing disparities.
- Providing technical assistance to aid jurisdictions in addressing disparities.



# JUSTICE-INVOLVED WOMEN & GIRLS

## The Change We Need (cont'd)

### **Center for American Progress, Movement Advancement Project, and Youth First Recommend:** <sup>169</sup>

Directly From their "Unjust: LGBTQ Youth Incarcerated in the Juvenile Justice System" Report

- Closing youth prisons and create community-based alternatives to youth incarceration.
- Increase funding for the expansion of community-based alternatives to incarceration, including drug treatment programs and mental health programs.
- Reducing the use of pre-adjudication detention.
- Reducing the number of youth held in juvenile facilities and limit their use to the small number of youth who pose a serious risk to public safety and may need secure care.
- Reducing discrimination in the juvenile justice system.
- Federal and state governments fund and provide cultural competency training for judges, public defenders, district attorneys, probation officers, and other justice stakeholders.
- Cultural competency training to potentially help reduce discrimination and stigma in the youth court.
- Intake procedures be individualized and compliant with PREA's requirements for addressing safety for LGBTQ youth.
- Intake staff should receive training in how to talk with youth about sexual orientation and gender identity, and to work with youth to assess safety concerns.
- Implement PREA requirements for placement of LGBTQ youth based on an individual's concerns about safety.
- LGBTQ individuals be consulted about their needs and safety concerns in determining the most appropriate housing assignments.
- Transgender youth be housed based on the gender identity they express rather than based on anatomical sex or the sex on their birth certificate.
- LGBTQ youth not be placed in solitary confinement based solely on their sexual orientation and/or gender identity.
- Improving training for staff to proactively address safety concerns to reduce instances of sexual assault.
- Educating youth about their rights to safety and procedures for reporting misconduct and sexual assault by staff and fellow youth; and allow youth to quickly and easily file complaints and do so without fear of retribution or punishment.
- Developing and implementing nondiscrimination policies with education and ongoing training for staff.
- Medical personnel in confinement facilities provide consistent, research-based medical care according to approved standards of care, including prompt access to HIV and other sexually transmitted infection treatment and prevention services, transition-related health care for transgender youth, and mental health care.
- Facility policies, including staff training, reflect the need for LGBTQ-affirming services.
- Ensuring confidentiality for all youth by protecting medical records and allowing only necessary information to be shared with non-medical staff.
- Providing access to appropriate clothing and grooming products for transgender youth.
- Improving visitation policies to help youth remain connected to loved ones. This includes permitting individuals who may not be legally related to youth, but who have a family-like relationship, to visit.
- Youth have access to community-based programming based on their gender identity rather than birth sex.





# JUSTICE-INVOLVED WOMEN & GIRLS

## Think On It

We provided you with the information we found most relevant, but there's always more to the story. Here are some sources to help you continue learning in order to develop your own conclusions.



**rights4girls**

**Rights4Girls** is a human rights organization working to end gender-based violence in the U.S. Rights4Girls advocates for the dignity and rights of young women and girls—so that every girl can be safe and live a life free of violence and exploitation. Based in Washington, D.C., Rights4Girls works to make the lives of young women and girls a human rights priority. [rights4girls.org](http://rights4girls.org)

**The Sentencing Project** works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration. [sentencingproject.org](http://sentencingproject.org)



**THE SENTENCING PROJECT**



The National **Crittenton** Foundation

**National Crittenton Foundation** catalyzes social and systems change for girls and young women impacted by chronic adversity, violence, and injustice. [nationalcrittenton.org](http://nationalcrittenton.org)

**The Marshall Project** is a nonpartisan, nonprofit news organization that seeks to create and sustain a sense of national urgency about the U.S. criminal justice system. We achieve this through award-winning journalism, partnerships with other news outlets and public forums. In all of our work we strive to educate and enlarge the audience of people who care about the state of criminal justice. [themarshallproject.org](http://themarshallproject.org)

**The Marshall Project**

**eliminating racism  
empowering women  
ywca**

**YWCA USA** has been at the forefront of the most pressing social movements for more than 160 years. Today, they combine programming and advocacy in order to generate institutional change in three key areas: racial justice and civil rights, empowerment and economic advancement of women and girls, and health and safety of women and girls. [ywca.org](http://ywca.org)



# JUSTICE-INVOLVED WOMEN & GIRLS

## On the Table

When we surround ourselves with passionate women-identified folk, our knowledge grows. Get together with your organization, a few friends, or your peers and talk about your process in learning or reexamining this topic. These questions are meant to aide your conversation, but feel free to explore ideas and questions of your own. Step outside your comfort zone. None of us have all the answers, that's why we need to work together. You are sure to bring something to the table that no one else considered. Your voice is meant to be heard. Let's hear what ideas you have on the table. Share only what you feel comfortable sharing, but be sure to share the space.

- 1. Do you have any lingering questions about the topic?**
- 2. What were your initial reactions to the statistics or the information presented?**
- 3. How did you feel learning about/working through this topic?**
- 4. What do you think is the most common misconception about the topic?**
- 5. Of the many institutional barriers justice-involved women and girls face, both before entering and while engaged in the system, which stands out to you the most?**
- 6. What was one policy change mentioned throughout the document that you want to discuss more?**
- 7. What do you wish people knew about this topic?**
- 8. What does your campus/community do to address the experiences of justice-involved women and girls?**
- 9. What can you do at the local level to address this topic?**
- 10. What policy would you like to see advocated for by Platform?**



# JUSTICE-INVOLVED WOMEN & GIRLS

## Do Something

Take a stand and make your thoughts heard. We ask that in your outreach you do not state that your opinion is the official stance of Platform, unless it is taken from our Platform Pledge. But you can certainly give us a shoutout for having the conversation.

### Blog It

*We know you have something to say!*

Walk us through your perspective and rally people to your cause. Your posts will be featured on our website and social media.

Email your blog to: [media@platformwomen.org](mailto:media@platformwomen.org), include "Blog Post" and a title in the subject line

### Get On Social Media

*This isn't "slacktivism!"*

According to a report from the Congressional Management Foundation, which surveyed Congressional Staff, "71 [percent of respondents] said social media comments directed to the Member/Senator by 'multiple constituents affiliated with a specific group or cause' would have 'some' or 'a lot' of influence on an undecided lawmaker." There you have it—tweet, Instagram, and post away on Facebook. #GiveMeAPlatform.



@PlatformWomen



facebook.com/PlatformWomen



@PlatformWomen

### Contact Your Reps

*You have a right to be heard!*

Head over to All In Together's Action Center\* and once you sign up they will provide you with the names and portals to contact your elected officials. You can write/say whatever comes to mind, but feel free to use the prompt below.

\*All In Together is nonpartisan and does not take a stance on this issue but gives you the tools to make your input known\*.

Dear \_\_\_\_\_,  
This month, I, along with young women across the nation, worked with Platform to advance the conversations on on the rights of justice-involved women and girls. As your constituent, you should know that I believe \_\_\_\_\_ because \_\_\_\_\_ . We need to further conversations and advance policies that will \_\_\_\_\_. I ask that you \_\_\_\_\_. I plan on using my voice and staying active until change is realized. You should know that I certainly exercise my right to vote.

Go to: [aitogether.org/actioncenter](http://aitogether.org/actioncenter)



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