



The Impact of Incarceration and Mandatory Minimums on Survivors

Exploring the Impact of Criminalizing Policies on African American Women and Girls

Summary Report from the Roundtable held September 21-22, 2015

January 2017

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The opinions, findings, and recommendations expressed by the presenters and participants in this report are those of the presenters and participants and do not necessarily reflect the views of OVW or the Department of Justice.

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Introduction

On September 21 and 22, 2015, the Office on Violence Against Women (OVW), United States Department of Justice, convened a meeting of survivors, scholars, advocates, and community activists who focus on sexual assault and intimate partner violence against women to examine how criminalization policies impact the lives of African American women and girls.¹ The discussion focused on Black women and girls,² as data indicate that they are disproportionately survivors of gender-based violence and also are over-represented among women in criminal³ and juvenile carceral facilities. By placing Black women and girls who have survived domestic and sexual abuse at the center of the discussion, OVW sought to provide an opportunity to consider how the intersection of multiple aspects of a person's identity (i.e., gender, race) shape their experience with criminalization policies, as well as discuss unintended and undesired consequences.

Goals

The roundtable had the following goals:

1. Review the impact of criminalization policies on African American women and girls who are survivors of domestic and sexual violence, including the impact of arrest, detention, incarceration, and mandatory minimums.
2. Review efforts to prevent and respond to domestic violence and sexual assault since the passage of the Violence Against Women Act (VAWA), and identify challenges and remaining gaps that impact African American women and girls.

¹See **Appendix 1** for a list of participants.

²The planning committee recommended using the term "African American" in the title of the Roundtable, since the term "Black" was considered to be a broader term that also would require addressing additional policy issues that impact more recent black immigrants from Africa and the Caribbean (such as immigration and refugee policies, language access, etc.). While those topics are also very important, the committee acknowledged that the limited time available in this Roundtable precluded delving deeper into those specific issues at this time, although they warrant additional discussion in future meetings. Nonetheless, in writing this report, the terms "Black" and "African American" are used interchangeably in referring to the African American community since Roundtable presenters and participants used the terms in that manner.

³Female prisoners ages 30 to 34 had the highest imprisonment rates among black (264 per 100,000 black females of the same age), white (163 per 100,000), and Hispanic inmates (174 per 100,000). Black females were between 1.6 and 4.1 times more likely to be imprisoned than white females of any age group. E. Ann Carson, "Prisoners in 2014," Bureau of Justice Statistics. Online. 2015, <https://www.bjs.gov/content/pub/pdf/p14.pdf>.

3. Discuss policy recommendations and new initiatives to reduce or eliminate the harm that domestic violence or sexual assault victims may experience in the criminal legal system, particularly survivors from African American communities.
4. Identify new initiatives, frameworks, promising practices, and policy recommendations to create a continuum of options for safety and well-being to better meet the needs of survivors from African American communities.

This report reflects a summary of the key points and recommendations from this Roundtable discussion. Additionally, this report highlights relevant action steps that OVW has taken in the year since the convening.

The Roundtable and Related Initiatives

Bea Hanson, Principal Deputy Director of OVW, opened the Roundtable by sharing an excerpt from the remarks by President Barack Obama during the Congressional Black Caucus Annual Awards Dinner, which took place the night before the Roundtable.

[W]e can't forget the impact that the system has on women, as well. The incarceration rate for black women is twice as high as the rate for white women. Many women in prison, you come to discover, have been victims of homelessness and domestic violence, and in some cases human trafficking. They've got high rates of mental illness and substance abuse. And many have been sexually assaulted, both before they got to prison and then after they go to prison. And we don't often talk about how society treats black women and girls before they end up in prison. They're suspended at higher rates than white boys and all other girls. And while boys face the school-to-prison pipeline, a lot of girls are facing a more sinister sexual abuse-to-prison pipeline. Victims of early sexual abuse are more likely to fail in school, which can lead to sexual exploitation, which can lead to prison. So we're focusing on boys, but we're also investing in ways to change the odds for at-risk girls — to make sure that they are loved and valued, to give them a chance.

And that's why we have to make a collective effort to address violence and abuse against women in all of our communities. In every community, on every campus, we've got to be very clear: Women who have been victims of rape or domestic abuse, who

*need help, should know that they can count on society and on law enforcement to treat them with love and care and sensitivity, and not skepticism.*⁴

The words of President Obama provided a valuable foundation for the Roundtable discussions. Furthermore, the Roundtable was convened by OVW in the context of other events and initiatives undertaken by the Administration and the Department of Justice to address the importance of criminal justice reform, improved community policing, and advancing equity and empowerment for women and girls of color. Among these initiatives:

- At the direction of the Attorney General, in 2013 the Department of Justice launched a comprehensive review of the criminal justice system to identify possible reforms. The Department studied all phases of the criminal justice system—including charging, sentencing, incarceration⁵ and reentry—to examine which practices are most successful at deterring crime and protecting the public, and which are not. The review also considered demographic disparities. “The preliminary results of this review suggest a need for a significant change in our approach to enforcing the nation’s laws. Today, a vicious cycle of poverty, criminality, and incarceration traps too many Americans and weakens too many communities. However, many aspects of our criminal justice system may actually exacerbate this problem, rather than alleviate it.” (*Smart on Crime: Reforming the Criminal Justice System for the 21st Century*).⁶
- President Obama signed an Executive Order in December of 2014 establishing the President’s Task Force on 21st Century Policing, as part of the Administration’s efforts to enhance community policing and strengthen trust among law enforcement officers and the communities they serve.⁷ The Task Force conducted listening sessions and gathered input from community stakeholders around the country. The Task Force final

⁴President Barack Obama, “Remarks by the President at the Congressional Black Caucus 45th Annual Phoenix Awards Dinner,” September 20, 2015. <https://www.whitehouse.gov/the-press-office/2015/09/21/remarks-president-congressional-black-caucus-45th-annual-phoenix-awards>.

⁵Department of Justice, “Smart on Crime: Reforming the Criminal Justice System for the 21st Century.” Online. 2013. <https://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>. In addressing the issue of incarceration, the report states: “The reality is, while the aggressive enforcement of federal criminal statutes remains necessary, we cannot prosecute our way to becoming a safer nation. To be effective, federal efforts must also focus on prevention and reentry. In addition, it is time to rethink the nation’s system of mass imprisonment. The United States today has the highest rate of incarceration of any nation in the world, and the nationwide cost to state and federal budgets was \$80 billion in 2010 alone. This pattern of incarceration is disruptive to families, expensive to the taxpayer, and may not serve the goal of reducing recidivism” (p. 2).

⁶Id. (p. 2).

⁷White House Office of the Press Secretary, “Fact Sheet: Task Force on 21st Century Policing.” Online. 2014. <https://www.whitehouse.gov/the-press-office/2014/12/18/fact-sheet-task-force-21st-century-policing>.

report, published in May 2015,⁸ provides a series of recommendations focused on six main topic areas or “pillars.”⁹

- Based on the findings of various civil rights cases that highlighted the need to address patterns and practices of gender bias in policing, the U.S. Department of Justice’s Civil Rights Division (CRT) and OVW partnered to draft guidance focused on identifying and preventing gender bias in the law enforcement response to sexual assault and domestic violence. On August 4, 2015, the Community Oriented Policing Services (COPS) Office of DOJ and the Police Executive Research Forum, in collaboration with CRT and OVW, held a roundtable discussion to discuss the draft of the guidance with law enforcement leaders, victim advocates, academics, subject matter experts, and other stakeholders.¹⁰
- The White House Council on Women and Girls convened a Working Group on Challenges and Opportunities for Women and Girls of Color. This Working Group—which brought together policy staff from the White House and across federal agencies, as well as experts, leaders and advocates from outside the government—focused on the impact of a range of issues on women and girls of color including education, economic security, health, criminal and juvenile justice, violence, and research and data collection. In November of 2014 the White House Council on Women and Girls released an initial report entitled, *Women and Girls of Color: Addressing Challenges and Expanding Opportunity*.¹¹ This report included a section focused on efforts to prevent and respond to sexual assault and domestic violence in communities of color.

It is in this context that OVW convened a Roundtable with stakeholders from the advocacy community to discuss the impact of the criminal justice system on survivors of domestic and sexual violence, with a particular focus on the undesired consequences and gaps that have

⁸President’s Task Force on 21st Century Policing; Office of Community Oriented Policing Services, “Final Report of the President’s Task Force on 21st Century Policing.” Online. 2015.

http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁹The pillars include (1) building trust and legitimacy, (2) policy and oversight, (3) technology and social media, (4) community policing and crime reduction, (5) training and education, and (6) officer wellness and safety.

Recommendation 2.13: “Law enforcement agencies should adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency” (p. 90).

¹⁰Office of Community Oriented Policing Services, “Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence: A Roundtable Discussion.” Online. 2016. <https://cops.usdoj.gov/RIC/Publications/cops-w0796-pub.pdf>.

¹¹White House Council on Women and Girls, “Women and Girls of Color: Addressing Challenges and Expanding Opportunity.” Online. 2014.

https://www.whitehouse.gov/sites/default/files/docs/cwg_women_and_girls_of_color_report_112014.pdf.

impacted African American women and girls.¹² Some of the participants were also invited ahead of time to prepare brief presentations on varied topics, followed by group discussion. While participants expressed a diversity of opinions, what follows is a summary of some common themes and key issues that emerged.

Centering the Discussion

Dr. Monique Morris, one of the Roundtable facilitators, provided a framework for the discussions. She emphasized that most research, policy decisions, and analyses about African Americans and the criminal justice system focus on Black men and boys, while little or no attention has been paid to the experiences of Black women and girls. Increasing numbers of women overall are being charged with crimes and incarcerated.¹³ The number of women in prison increased at nearly double the rate for men between 2000 and 2012. Women now comprise 18% of the total correctional population and 25% of the probation population.¹⁴ A disproportionate number are African American women.¹⁵ Black girls are similarly over-represented in the juvenile justice system, as the “swiftest growing group of girls referred to the juvenile courts and entering detention.”¹⁶

Roundtable presenters and participants emphasized that it was important to approach the work to reduce the criminalization and incarceration of African American women—particularly those who are victims of gender-based violence—with “collective intention.” In other words, we should examine how we engage in our anti-violence against women work and acknowledge that we need to work differently than we have in the past and “do things right this time.” They noted that this means examining how policies and practices impact Black women and girls and

¹²The Roundtable Agenda can be found in **Appendix 2**.

¹³The Sentencing Project, “Fact Sheet: Incarcerated Women and Girls.” Online. 2015.

<http://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>.

¹⁴Lauren E. Glaze and Danielle Kaeble, [Correctional Populations in the United States, 2013](#). At the close of 2013, 1,256,300 women were in the US correctional population (i.e., on probation or parole, in state or federal prison, or in local jail) – of those, 213,700 were incarcerated. Online. 2014.

<https://www.bjs.gov/content/pub/pdf/cpus13.pdf>.

¹⁵African American women are 13% of the total US female population but represent over 30% of incarcerated women. American Civil Liberties Union, “Facts About the Over-Incarceration of Women in the United States.” Online. 2016. <https://www.aclu.org/other/facts-about-over-incarceration-women-united-states>. Black females were between 1.6 and 4.1 times more likely to be imprisoned than white females of any age group. E. Ann Carson, Bureau of Justice Statistics, “Prisoners in 2014.” Online. 2015. <https://www.bjs.gov/content/pub/pdf/p14.pdf>.

¹⁶In 2008, Black girls made up 35% of girls referred to the juvenile courts. The proportion of black girls in the juvenile justice system is particularly dramatic because they make up only 8% of the U.S. population of youth aged ten to seventeen. Francine T. Sherman, “Justice for Girls: Are We Making Progress,” *UCLA Law Review*, 59, 15-84-1628 (2012), at 1617. <http://www.uclalawreview.org/justice-for-girls-are-we-making-progress-2/>.

other marginalized women. As one participant noted, in exploring safe ways to do this work it is important to remember one of the primary tenets of Gandhi's philosophy: to create justice, policies and practices should be focused on how they impact the *last girl*, the most marginalized girl.

Impact of Increasing Incarceration and the Need for Intersectional Analysis

Meeting participants emphasized the need to pay attention to what many see as an increased overreliance on incarceration in society, while not losing sight of the impact on girls and women, including Black girls and women. While women and girls confront unique issues in this area, these issues must not be excluded or considered as an afterthought in examining the impacts of increasing incarceration and criminalization. Additionally, the issues that affect Black girls and young women need to be embedded into the larger policy discussions and developments that address violence, including gender-based violence.

In addition, participants noted that efforts to end violence require a deeper analysis of the intersecting factors that shape an individual's identity. For example, it is important to take into consideration the additional barriers and risks experienced by lesbian, gay, bisexual, transgender and queer (LGBTQ) girls and women. Participants also highlighted the need to take into account the particular challenges and exploitation of transgender women and girls.¹⁷

Participants also emphasized that while women and girls may have experiences of violence and/or incarceration, they *are not* those experiences: i.e., a woman or girl's being and identity is not "victim" or "prisoner." The movement to end violence against women cannot separate people based on crime and experiences—all deserve the right to their human dignity and the opportunity to live lives free from violence.

Invited presenters helped frame these issues and the subsequent discussions.

¹⁷People who identify as lesbian, gay, bisexual, or transgender are incarcerated at twice the rate of American adults who do not identify as LGBTQ. Sixteen percent of transgender and gender non-conforming respondents to a national survey had spent time in jail or prison, in comparison to about 5% of all American adults, with higher rates for transgender women (21%) than transgender men (10%). Center for American Progress and Movement Advancement Project (MAP), *Unjust: How the Broken Criminal Justice System Fails LGBT People*. Online. 2016. <http://www.lgbtmap.org/criminal-justice>.

REMARKS BY DR. MIMI KIM

General incarceration rates in the United States were steady from 1920 to 1973, after which the rates of incarceration increased by 500 percent between 1973 and 2012.¹⁸ Whereas the feminist anti-violence movement began by initially contesting the actions of the state, it eventually evolved into working so closely with the criminal legal system as to undermine the movement's independence from the system. Although advocates may work with systems where it is helpful for survivors while also continuing to hold state systems accountable, it is important to maintain the autonomy of social movements and also advance responses to sexual and domestic violence that are alternatives to criminalization.

REMARKS BY DR. BETH RICHIE

Over-reliance on the criminal legal system to respond to the problem of violence against women has not served all women equally and it has been particularly harmful to some Black women. There are many reasons for this, including the tense relationship between law enforcement and Black communities and the sense that the legal system does not treat Black people fairly. That leaves Black women in a very precarious situation if the anti-violence movement does not create other ways of offering support to those who need it.¹⁹

The anti-violence movement—and society in general—need a new strategy to dismantle norms that have resulted in the disproportionate incarceration of African American women. Since the 1980s, the criminalization of certain behaviors and life circumstances has meant that drug use, mental illness, and poverty are treated as crimes. The efforts to criminalize these issues coincided with the criminalization of domestic violence and resulted in the increased incarceration of women who are survivors of sexual and domestic violence—with a disproportionate impact on Black women.²⁰ After the prison experience, women face many

¹⁸Data from Kathleen Maguire, ed., *Sourcebook of Criminal Justice Statistics*. Albany, NY: University at Albany, Hindelang Criminal Justice Research Center (2003), Table 6.28, p. 500. See also E. Ann Carson & William J. Sabol "Prisoners in 2011," Washington, D.C.: Bureau of Justice Statistics, Table 6, p. 6. Online. 2012. <https://www.bjs.gov/content/pub/pdf/p11.pdf>.

¹⁹See the report of the 2002 roundtable convened by the Ms. Foundation and the National Clearinghouse for the Defense of Battered Women. Patricia Eng, "Safety and Justice for All: Examining the Relationship Between the Women's Anti-Violence Movement and the Criminal Legal System." Online. 2003. http://www.ncdsv.org/images/Ms_SafetyJusticeForAll_2003.pdf.

²⁰Most incarcerated women have experienced abuse either as a child and/or as an adult. Estimates of incarcerated women who have experienced abuse range from 55% to as high as 95%. Surveys that ask limited questions and use unclear terms (e.g., being "abused") have generally reported lower rates of abuse; while studies asking a more comprehensive set of questions and using behavior-specific (e.g., being "hit" or "forced to have sexual contact") report that nearly all girls and women in prison samples have experienced physical and sexual abuse throughout their lives, much of it at the hands of intimate partners. Multiple studies indicate that between 71% and 95% of

additional barriers that get in the way of healing, including added barriers to access housing, employment, benefits, and supportive services.

Women began to express that they did not want to be part of the incarceration of more people and that a different way to respond to and prevent the violence in their lives needed to be established. In 2002 the Ms. Foundation convened a roundtable entitled “Safety and Justice for All: Examining the Relationship between the Women’s Anti-Violence Movement and the Criminal Legal System.”²¹ It was focused on the issue of over-reliance on the criminal legal system in responding to violence against women, and the disproportionate impact on the lives of Black women and members of other marginalized communities. The women’s anti-violence movement is still grappling with many of the issues discussed at that roundtable and, over a decade later, not enough progress has been made to address them. The movement, including victims of domestic and sexual violence, advocates, community members, and others, must begin to look at the gaps in responses to violence against women differently. For example, the movement needs to look at and reconsider practices such as mandatory minimum sentences for crimes. This broader analysis also needs to consider the victimization that occurs prior to adulthood that places many girls and young women on pathways to detention and incarceration, such as the heightened risks of commercial sexual exploitation.²²

REMARKS BY DR. MONIQUE MORRIS

Public policy has sought to respond to the violent victimization of women with interventions that included increased surveillance and punishment, including mandatory arrest and the increased use of pretrial detention. For many Black women, this has meant increasing arrest, charging, and confinement under the same laws that were ostensibly designed to protect them as victims of intimate partner violence (IPV). Legal scholar Kimberlé Crenshaw has written about the significance of an “intersectional” framework that considers how multiple aspects of a person’s identity shape their experiences with public policy, particularly on the issue of violence against women. The absence of an intersectional framework results in laws and policies that ignore the ways in which “the violence that many women experience is often

incarcerated women have experienced physical violence from an intimate partner. See Melissa E. Dichter with Sue Osthoff, “Women’s Experiences of Abuse as a Risk Factor for Incarceration: A Research Update.” Online. 2015. <http://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration-research-update>.

²¹ See Note 19.

²²Malika Saada Saar, Rebecca Epstein, Lindsay Rosenthal, and Yasmin Vafa, “The Sexual Abuse to Prison Pipeline: A Girl’s Story.” Center on Poverty and Inequality, Georgetown Law. Online. 2015, http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/upload/2015_COP_sexual-abuse_layout_web-2.pdf.

shaped by other dimensions of their identities, such as race and class.”²³ Further gaps related to expressions of gender identity and sexual orientation, while somewhat addressed in more recent iterations of the Violence Against Women Act,²⁴ remain under-explored for Black female-identified women and girls.

Narratives Describing the Impact of Mandatory Minimums on Black Women

Survivor narratives help provide a deeper understanding of the complex challenges and disproportionate vulnerabilities that African American women face in the criminal justice system. Two examples of compounding legal and policy considerations emerged from the Roundtable to illustrate how criminal legal system responses can increase their risk of incarceration, despite their status as survivors of intimate partner violence. The discussion in response to the stories also explored how racialized gender stereotypes can intersect to negatively impact Black women. Participants noted that Black women are often stereotyped as “angry” or “aggressive,” and their experiences as victims and survivors of domestic and sexual violence are often discounted. The criminal justice policies that are applied to their cases are at times more punitive than supportive.

Case Studies

KEMBA SMITH’S STORY

Kemba Smith, a participant in the Roundtable, shared her story.²⁵ In the fall of 1989, at the age of 18, Ms. Smith began her freshman year at a prestigious historically Black university. In her sophomore year, she began a relationship with a physically abusive man who was also a drug dealer. This tumultuous relationship interrupted her studies and she eventually became entangled in her partner’s criminal legal proceedings—even though she asserted that she had never sold drugs and carried them only under duress. Ms. Smith was sentenced to 24 years in

²³Kimberlé Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color.” Online. 1993.

http://socialdifference.columbia.edu/files/socialdiff/projects/Article_Mapping_the_Margins_by_Kimblere_Crenshaw.pdf.

²⁴ For the first time in a federal funding statute, VAWA 2013 explicitly bars discrimination based on actual or perceived gender identity or sexual orientation - as well as race, color, religion, national origin, sex or disability. This groundbreaking provision ensures that lesbian, gay, bisexual and transgender (LGBT) victims of domestic violence, sexual assault, dating violence and stalking are not denied, on the basis of sexual orientation or gender identity, access to the critical services that OVW supports. See 42 U.S.C. § 13925(b)(13). *See also* “Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013, Frequently Asked Questions.” Online. 2014. <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>.

²⁵Kemba Smith, “Poster Child: The Kemba Smith Story.” Online. 2016. <http://www.kembasmith.com/>.

federal prison under mandatory minimum drug sentencing laws, with no chance for parole despite being a first-time, non-violent offender. Neither the fact that Ms. Smith was a victim of severe intimate partner violence (including threats to her and her family by a man who had recently killed someone) nor the fact that Ms. Smith was pregnant at the time of sentencing made a difference in the length of her sentence. Ms. Smith was sent to prison before her son was born and gave birth while in prison. In prison, far from her family's home, her ability to see or develop a relationship with her son was very limited.

Ms. Smith's sentence received public attention, and advocacy on her behalf continued over the more than six years during which she was incarcerated until her sentence was ultimately commuted in 2000. While some of the national-level advocacy focused on the intimate partner violence that laid the foundation for Ms. Smith's arrest and made her vulnerable to incarceration, most of the attention went to the perceived draconian consequences of federal drug sentencing laws.

Ms. Smith was not alone. Between 77% and 90% of incarcerated women report extensive histories of emotional, physical, and sexual abuse.²⁶ While Ms. Smith was not a drug user, Roundtable participants noted that many other incarcerated women in abusive situations have used illegal drugs to cope with their violent victimization and sexual assault, rendering them vulnerable to multiple forms of entanglement with the criminal legal system.

MARISSA ALEXANDER'S STORY

Ms. Sumayya Coleman discussed the "Free Marissa Now! Campaign," an effort that began with volunteers and advocates who wanted to ensure that Marissa Alexander's case was not forgotten. Advocacy on behalf of Ms. Alexander has included a call for a ban on mandatory minimums for victims who use force to defend themselves. Ms. Coleman shared her hope that Roundtable participants find common goals and identify solutions to the violence inflicted upon Black women and girls, including the criminalization of survivors of domestic violence and sexual abuse.

In 2010, Marissa Alexander, a licensed and trained gun owner, asserted in court that she fired a single warning shot upwards into the wall to halt her abusive estranged husband after a life-threatening beating. Ms. Alexander, age 29, had given birth to her third child only nine days before this incident. Her husband had been arrested three times in the past on domestic

²⁶Nan Messina and Christine Grella, "Childhood Trauma and Women's Health Outcomes in a California Prison Population." Online. 2006. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1586137/pdf/0961842.pdf>. See also: Note 20, Dichter and Osthoff.

violence-related charges. Despite causing no injuries to him and the fact that Florida’s self-defense law includes the right to “Stand Your Ground,” Ms. Alexander was charged with aggravated armed assault. She was convicted and, even though she had no prior criminal record, sentenced to 20 years in prison under Florida’s mandatory minimum sentencing law for discharging a weapon during the commission of an aggravated assault.²⁷ The judge who presided over the trial said that any leniency in sentencing was “out of his hands” due to the state’s mandatory minimum laws.²⁸ The harshness of the sentence set off a national protest about the application of Florida’s Stand Your Ground law, the impact of minimum sentencing laws, the lack of attention to domestic violence as a mitigating factor, and, ultimately, race and the stereotype of the angry Black woman. An appellate court later ordered a new trial, finding that the jury instructions were flawed. When the prosecutor stated that she would press charges once again and add additional charges that could result in three consecutive 20-year sentences, Marissa Alexander ultimately accepted a plea bargain. She was placed on house arrest until 2017.

In a videotaped statement that Ms. Alexander asked Ms. Coleman to share with Roundtable participants, Ms. Alexander recounted how the argument used by the prosecutor that she was “angry” and not in fear made it seem as if these emotions are mutually exclusive. “*Why can’t I be both angry and in fear?*” Ms. Alexander stated.

Ms. Alexander explained that she had initially been offered a significantly reduced sentence in exchange for a plea, but she had decided to go to trial instead because she believed she was innocent since she was defending herself. However, she felt that she was penalized for exercising her right to go to trial when the prosecutor subjected her to the full range of available charges and the 20-year mandatory minimum sentence. Ms. Alexander emphasized how mandatory minimums give prosecutors a lot of power since they often result in forcing people to accept plea deals rather than take the high risk of going to trial and being locked into a mandatory minimum sentence if convicted.

Impact of Mandatory Minimums

Roundtable presenters and participants spoke of the marked increase in mandatory minimum sentencing laws in recent decades. They discussed the ways in which judicial discretion and

²⁷Jeannine Amber, “In Her Own Words: Marissa Alexander Tells Her Story.” Essence. 2015. <http://www.essence.com/2015/03/04/marissa-alexander-exclusive>.

²⁸ “Florida woman sentenced to 20 years in controversial warning shot case.” CNN. 2012. <http://www.cnn.com/2012/05/11/justice/florida-stand-ground-sentencing/>.

consideration of mitigating circumstances are limited significantly when a mandatory minimum sentence is attached to an offense. Mandatory minimums also shift a significant amount of decision-making power to the prosecutor through plea-bargaining. Those who refuse to accept a plea bargain and try to assert their innocence in court, as Marissa Alexander described, often face the risk of much more severe punishment.

Mandatory Minimum Sentencing for Non-Violent Drug Offenses

Roundtable presenters and participants emphasized that mandatory minimum sentences for non-violent drug offenses have had a marked impact on women in federal prisons. Approximately 59% of the women who are imprisoned in the federal system are serving time for drug offenses.²⁹ Presenters and participants discussed the ways in which drug sentencing laws, and higher sentences for crack cocaine in comparison to powder cocaine, have led to Black women's disproportionate representation among women incarcerated in the federal system.³⁰ Participants commented that many of the women convicted in drug cases had not sold the drug or had minimal involvement in the activities giving rise to criminal charges but were nonetheless subject to mandatory minimum sentences and conspiracy convictions attached to mandatory minimums. In many instances, the women were involved in relationships with these men for financial and familial reasons and were experiencing domestic violence.³¹ They noted that a history of abuse by a co-defendant would not necessarily have made them eligible for a lower sentence.

²⁹Ann E. Carson, Bureau of Justice Statistics, "Prisoners in 2014." Online. 2015.
<https://www.bjs.gov/content/pub/pdf/p14.pdf>.

³⁰The Fair Sentencing Act of 2010 (FSA) sets an 18:1 ratio between powder cocaine and cocaine base, or "crack." In other words, it takes 18 times the quantity of powder cocaine to trigger the same statutory punishment as crack cocaine. See Office of General Counsel, U.S. Sentencing Commission, "Drug Primer," p. 26. Online. 2013.
http://www.usc.gov/sites/default/files/pdf/training/primers/Primer_Drug.pdf. Prior to the FSA, the ratio was 100:1 (or 100 times the quantity of powder to trigger the same statutory punishment as crack). The pre-FSA ratio of 100:1 contributed to an increase of incarcerated Black men and women in federal prison due to conspiracy convictions attached to mandatory minimums. See U.S. Sentencing Commission, "Report to the Congress: Cocaine and Federal Sentencing Policy," pp. 2-3, 8, 14-17. Online. 2007.
http://www.usc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf.

³¹The U.S. Sentencing Commission has reported that the majority of federal cocaine offenders generally perform low-level functions, and their offenses do not involve aggravated conduct. U.S. Sentencing Commission, "Report to the Congress: Cocaine and Federal Sentencing Policy," p. 14. Online. 2007.
http://www.usc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf.

In the last several years, due to the burgeoning prison population that resulted from mandatory minimum sentencing for drug offenses, the federal government and some states have begun to change their laws to focus less on non-violent, low-level drug offenders.

Mandatory Minimum Sentencing as a Domestic Violence and Sexual Assault Issue

Roundtable presenters and participants addressed the relationship between domestic violence and sexual abuse and the incarceration of women through mandatory minimum sentencing. As emphasized throughout the Roundtable, most women who are in prison report being the survivors of abuse.³² For many, the experience of abuse began during their childhoods and was perpetrated by a family member, or someone the family trusted. In the instances when the abuse was reported to a family member or other caregiver, it was often denied or poorly dealt with for a variety of reasons. The abuse might have gone unacknowledged or with little response because of a family member's emotional or financial connection to the perpetrator; fear of the involvement of child protective services that could result in losing the child or children; fear of being deemed a non-protective parent; or fear of consequences related to immigration status.

During the discussion, Roundtable presenters and participants highlighted the circumstances of girls who are being sexually or otherwise abused and run away from home to escape the abuse. As minors, girls who leave an abusive home are often labelled status offenders (runaways) and are sent back or end up in the foster care or juvenile justice system. Many leave again, determined not to return, and end up trading sex for survival and self-medicating with alcohol or drugs. They often end up in unhealthy relationships with older men. Many of these survival tactics bring them into the criminal system, both as juveniles and later as young adults. Some of the conduct is criminalized and carries mandatory minimum sentences that cannot be mitigated by consideration of the sexual violence and other abuse they have endured.³³

Presenters and participants raised concerns that mandatory minimum sentences of incarceration require that a woman who is a survivor of violence and who is found guilty of certain offenses be incarcerated regardless of the harm she will suffer emotionally and mentally

³²See Note 27: Messina and Grella; Dichter and Osthoff.

³³Regina Arnold's study, "Processes of Victimization and Criminalization of Black Women," found that for "young Black girls from lower socioeconomic classes, involvement in 'pre-criminal behavior' may be viewed as active resistance to victimization," and that "victimization, resistance to victimization, and structural dislocation preceded early institutionalization." Regina Arnold, "Processes of Victimization and Criminalization of Black Women," *Social Justice*, Vol.17, No.3, (1990), pp. 153-166. For a more recent examination, see Note 21: Saada Saar, et al.

from the imprisonment. Judges in these cases typically cannot exercise discretion or render an alternative sentence such as probation or non-residential treatment.

Participants noted that the prison experience has a profound impact on any person who is subjected to such an existence. This is exacerbated for women who are survivors. While in prison, the routine activities of pat downs, body cavity searches, lack of privacy, and exposure to violence while in confinement can be triggering experiences that continue to harm the survivors and sometimes lead to reactive behaviors for which additional punishment is meted out. Additionally, some incarcerated women face extended periods of solitary confinement, which can be highly retraumatizing and make women more vulnerable to abuse by correctional staff.³⁴ Black women are significantly overrepresented among incarcerated women in solitary confinement.³⁵

With the disproportionate presence of Black women survivors in prison, participants noted that the challenge to the antiviolence movement is to fully recognize and act to address the impact of criminalization policies on Black women survivors. This requires bringing the leadership, visibility, and voices of Black women from the margins to the center in the antiviolence movement.

Impact of Mandatory Arrest Laws on Black Women and Girls

Roundtable participants expressed concern that the increased use of mandatory arrest laws over the past two decades to address domestic violence also has had a disproportionate impact on African American women who try to defend themselves, particularly in the ways that stereotypes about Black women can influence arrest, charging, and sentencing decisions. Some African American survivors who may not trust calling the police because of the community's negative experience with policing avoid doing so and rely on self-defense strategies and resistance instead. If they experience escalating violence and eventually call the police—or if someone else calls—they run the risk of being arrested, particularly if seen as an “angry Black woman.”

³⁴ ACLU, *Worse than Second Class: Solitary Confinement of Women in the United States*. Online. April 2014. <https://www.aclu.org/report/worse-second-class-solitary-confinement-women-united-states>.

³⁵ Association of State Correctional Administrators and the Arthur Liman Program at Yale Law School, “Aiming to Reduce Time-in-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms.” Online. 2016. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2874492.

Roundtable participants emphasized the importance of seeing and understanding the ways in which stereotypes of Black women as domineering, assertive, and masculine contribute to the invisibility of Black women as victims of sexual and domestic violence. As a result of these stereotypes, Black women are more likely to be seen as the perpetrator and aggressor when they stand up for themselves, regardless of the reality of their circumstances and the violence they face. Some biased perceptions even lead to the conclusion that Black women cannot be battered and the survivors of violence because they are violent and can protect themselves.³⁶

Impact of Criminalization Policies on Girls

Roundtable discussions included attention to the impact of mandatory and pro-arrest laws on Black girls. Today, nearly 30 percent of juveniles arrested are girls or young women, and their share of arrests, detainment, and court cases has steadily increased over the past two decades.³⁷

According to Adverse Childhood Experiences (ACE)³⁸ data, Black girls experience higher rates of victimization and overall exposure to ACE risk factors, including poverty, addiction in the home, child welfare involvement, and having an incarcerated parent. Promoting lives free of violence for Black girls and women requires holistic approaches that address all of these risk factors, as well as increasing access to culturally relevant community-based services.

REMARKS BY PROFESSOR FRANCINE SHERMAN

Among the impacts of mandatory and pro-arrest domestic violence laws and policies has been an increase in criminal justice responses to girls involved in altercations with their parents or guardians. The combination of mandatory or pro-arrest responses, plus the broad definition of domestic violence in many state statutes, to include not only intimate partners but all family members, has resulted in many girls being arrested because they were perceived as the

³⁶Vernetta Young, "Gender Expectations and Their Impact on Black Female Offenders and the Victims," *Justice Quarterly* 3.2: 305-327, 1986. For further discussion of the impact of assumptions about Black women in the context of the criminal legal system—including the impact of mandatory arrest—see Beth E. Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation*, New York University Press, 2012.

³⁷ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention Policy Guidance, "Girls and the Juvenile Justice System" (2015). Retrieved from <https://www.ojjdp.gov/policyguidance/girls-juvenile-justice-system/>.

³⁸Roy Wade Jr., Judy A. Shea, David Rubin, and Joanne Wood. "Adverse Childhood Experiences of Low-Income Urban Youth." Online. 2014. <http://sanctuaryweb.com/Portals/0/2016%20PDFs/ACEs/Wade%20et%20al%20Adverse%20childhood%20experiences%20urban%20youth.pdf>.

aggressor in cases where they were, in fact, a victim.³⁹ Girls who are in physical confrontations with a parent or guardian or other adult residing in the home are often responding to a failure to be protected from physical, sexual, or emotional harm. The data on criminalization of in-home violence applies to girls across racial and ethnic groups, although data for girls by race or ethnicity is sparse. Often, however, when Black girls are arrested they are detained in facilities and face an increased likelihood of having repeated and more severe contact with the juvenile and criminal legal systems.⁴⁰

Girls' share of arrests has increased since 1992, as has their percentages among all formal processes, detention, and post-adjudication placements. Between 1992 and 2008, the number of girls referred to juvenile court had increased by 48 percent to 450,000—almost 30 percent of total delinquency court referrals.⁴¹ Many are being arrested for “prostitution” as the basis of the offense, even though they are at an age—depending upon the state—where youth cannot have consensual sex.⁴² In 2015, for the first time, the Office of Juvenile Justice and Delinquency Prevention presented data on juvenile court referrals disaggregated by gender, cross-referenced by race and ethnicity categories. An important statistic from this data is that Black girls are referred to juvenile court at three times the rate of White girls.⁴³

Twenty-three states have domestic violence mandatory arrest laws. Most other states have pro-arrest policies that allow for discretion to be used, but generally favor arrest in domestic violence cases where there is probable cause to make an arrest. Only six states have exceptions for minors in some manner. In many parts of the country, domestic violence laws that were intended for adult intimate-partner relationships are being applied to situations involving teenage girls and, often, one of their parents or siblings. Law enforcement officers responding to a “domestic dispute” involving, for example, a girl and her mother, cite the local mandatory arrest law and arrest the girl. Failing to acknowledge the age-appropriate cognitive development of children and youth and the influence of other factors on their behavior means

³⁹Francine T. Sherman, “Unintended Consequences: Addressing the Impact of Domestic Violence Mandatory and Pro-Arrest Policies and Practices on Girls and Young Women.” Online. 2015.

<http://nationalcrittenton.org/wp-content/uploads/2015/03/Unintended-Consequences-NGI.pdf>.

⁴⁰Francine T. Sherman, “Justice for Girls: Are We Making Progress?” Online. 2012.

<https://www.uchastings.edu/academics/faculty/adjunct/onek2/docs/Justice-for-Girls-AreWeMakingProgress2-15-13.pdf>.

⁴¹Id.

⁴²Charles Puzzanchera, “Juvenile Arrests 2011.” Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. (Females were 76 % of arrests in 2011 for prostitution and commercialized vice.). Online. 2013. <http://www.ojjdp.gov/pubs/244476.pdf>.

⁴³Charles Puzzanchera and Sarah Hockenberry, “National Disproportionate Minority Contact Databook.” Developed by the National Center for Juvenile Justice for the Office of Juvenile Justice and Delinquency Prevention. Online. 2015. <http://www.ojjdp.gov/ojstatbb/dmcdcb>.

that these young girls are at increased risk of juvenile and criminal justice interventions that are inappropriate, that compromise their safety, and that escalate their risk of moving deeper into the justice system.

REMARKS BY NOLA BRANTLEY

The average age of entry into the sex industry is 12 or 13 years old, ages at which minors who cannot legally give consent. Girls are often in the foster care system when they enter the sex industry. They often proceed from being victimized as youth/children to being victimized as adults, moving from the juvenile justice system—where they may have been labeled “prostitute”—into the adult criminal justice system.

There are many barriers that prevent sexually exploited girls from seeking help. Girls do not report their victimization to law enforcement because of the stigma of sex work. Additionally, girls often fear retaliation and worry that their abuser will come after them and that the police will not protect them. In many cases, sexually exploited girls do not view law enforcement as helping because they, other girls they know, or their family members have also been victimized by law enforcement in various ways. These girls ultimately fear that if they seek assistance from law enforcement, the result will be their criminalization rather than their protection.

Some Roundtable participants expressed concern about “specialty courts,” especially courts to respond to sexually exploited youth. While acknowledging that the services and programs provided through the specialty courts are often good, participants questioned why adequate services could not be provided without girls being arrested and going to court in the first place.

Participants noted that the question of how to bring the voices of survivors from the margins to the center—particularly the voices of Black women and girls—is central to addressing the issue of criminalization policies. They emphasized the need for holistic approaches for promoting lives free of violence. Such holistic approaches must be developed for girls and women, along with increasing access to culturally relevant community-based services.

Exploring Restorative Justice as a Paradigm Shift

REMARKS BY SUJATHA BALIGA

Restorative Justice focuses on repairing the harm to the victim, the acceptance of accountability of the person(s) who caused the harm, and the prevention of future harm. The application of restorative justice to domestic and sexual violence is new, but growing, as

survivors, advocates, and communities seek alternatives to the criminal legal system as the predominant response.

Few cases of sexual assault are prosecuted and, of those that are prosecuted, few result in a conviction.⁴⁴ And sexual and domestic violence are the most underreported violent crimes by a wide margin.⁴⁵ This reality reinforces the need for alternative approaches to addressing the harms caused by domestic and sexual violence. Restorative justice offers one such alternative. Restorative justice is a paradigm shift from how we currently think about harm. To illustrate, the three questions that the criminal justice system currently asks are:

- (1) What law was broken?
- (2) Who broke the law? and
- (3) How should they be punished?

In contrast, the three questions that restorative justice asks are:

- (1) Who has been harmed?
- (2) What do they need? and
- (3) Whose obligations is it to meet those needs?

Harms, needs, and obligations are the central concerns of restorative justice. Ideally, restorative justice processes involve community-based dialogue and participatory decision-making and include those who have caused harm, those harmed, and their respective supporters. Accountability is defined, in restorative justice, as those who have harmed meeting victim-identified needs. A central question in considering the application of restorative justice to intimate partner violence is, “Can accountability be achieved through addressing victim-identified needs in a way that increases safety for all affected persons?” Restorative justice indicates that if we engage with survivors about what they want and need, it is likely we will find that they want safety and healing. It is important to recognize that many people who are victimized by intimate partner violence stay in or return to the relationship for a myriad of reasons, including having children in common with their abusive partner, or because they are economically dependent on them. Many stay because they love the person who has harmed

⁴⁴ See, for example: Campbell, R., Bybee, D., Townsend, S. M., Shaw, J., Karim, N., & Markowitz, J. (2014). The impact of Sexual Assault Nurse Examiner programs on criminal justice case outcomes: a multisite replication study. *Violence Against Women*, 20(5):607-625; and Spohn, C. & Holleran, D. (2004). *Prosecuting sexual assault: a comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners*. (NCJ 199720). Washington, DC: United States Department of Justice, National Institute of Justice.

⁴⁵ See: Truman, J., & Langton, L. (September 2015). *Criminal victimization, 2014*. Washington, DC: Bureau of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/cv14.pdf>. See also National Institute of Justice, “Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges.” Online. 2009. <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

them. Given these realities, restorative justice may offer a possibility for addressing the violence in the relationship and helping keep the relationship violence free.

One restorative justice model is “family group conferencing” (also referred to as restorative community conferencing), and works with the victim together with the person who caused harm, including family and community members on both sides in the dialogue, as well. In one study of this method of working with youth who have caused harm, youth who completed the conferencing program had much lower recidivism rates as compared to youth who were adjudicated delinquent for the same crimes.⁴⁶ Family group conferencing or restorative community conferencing is largely untested, however, in its application to intimate partner violence. We still need more information and evaluation about what restorative justice programs require to be effective and safe in that context.

Although some victim advocates consider restorative justice models to be a promising approach to intimate partner violence, other victim advocates do not support the use of restorative justice approaches due to concerns for the safety of the victims and the accountability of the person who caused harm. However, some antiviolence activists argue that restorative justice approaches, particularly family conferencing models, provide greater protection for the survivor and require accountability by the abuser because of the involvement of the family and community in reinforcing that accountability.⁴⁷

Roundtable participants agreed that there is a need for greater opportunities to explore different models that can present victims of intimate partner violence or sexual assault with choices in pursuing accountability and healing, particularly for those survivors who do not want to engage with the criminal legal system as their first or only choice.

⁴⁶ The recidivism rates were 26.5% for rearrests and 11.8% for delinquency adjudications (as compared to 45% and 31.4% of youth in the juvenile justice system). National Council on Crime & Delinquency (NCCD), “Scaling Restorative Community Conferencing Through a Pay for Success Model.” Online. 2015. http://www.nccdglobal.org/sites/default/files/publication_pdf/rj-pfs-summary.pdf.

⁴⁷ James Ptacek and Loretta Frederick, “Restorative Justice and Intimate Partner Violence.” Online. 2009. <http://vawnet.org/material/restorative-justice-and-intimate-partner-violence>.

Moving Forward: Addressing Key Gaps

Key Gaps Regarding Black Girls in the Criminal Legal System

Roundtable participants noted that there remain key gaps in our collective understanding about the unique vulnerabilities of Black girls who face domestic violence and sexual assault, in large part because there has been limited research focused on the experiences of Black girls. These gaps in understanding include:

- The overall impact of domestic violence mandatory and pro-arrest laws on African American girls
- The ways in which conditions and experiences related to domestic violence and sexual assault intersect with girls' experiences in the child welfare and social services systems
- The ways in which "dual jurisdiction" (child welfare and delinquency caseloads) increase girls' vulnerability to increased criminalization
- The critical intersections between schools and the need for more trauma-responsive interventions that do not marginalize Black girls who have experienced domestic violence and sexual assault (particularly those who have had a history of commercial sexual exploitation)⁴⁸

Key Gaps Regarding Black Women in the Criminal Legal System

Roundtable participants expressed several concerns about the undesired consequences, gaps in research, and gaps in support for Black women in the criminal justice system. These concerns include:

- The absence and invisibility of Black women in developing criminal justice policies and in analyzing the impact of such policies
- Perceptions and stereotypes of some Black women survivors as aggressive perpetrators of violence or as invulnerable to abuse
- The lack of sufficient culturally appropriate responses to Black women survivors and the impact of that on their involvement in the criminal justice system
- Implicit or explicit biases by decision makers in the criminal justice system against Black women victims of domestic violence and sexual assault

⁴⁸Monique M. Morris, "Pushout: The Criminalization of Black Girls in Schools." New York: New, 2016. Print.

- The impact of the prison experience on Black women survivors and the lack of adequate services and programs while in prison and upon reentry

Roundtable participants emphasized that Black women and girls are seldom a focal point of discussion when developing or evaluating the impact of criminal justice policies. They are mentioned tangentially in most research, if at all. Because of their gender as well as their race, Black women and girls are rendered invisible in policy discussions, in contrast to their male and white counterparts.

Roundtable participants underscored a dire lack of responses available to address the needs of Black women survivors of domestic violence and sexual abuse in a culturally appropriate manner. The intersectionality of race, ethnicity, and gender needs to be central to offering the tools by which Black women survivors can advocate for themselves and work toward healing. A “one-size-fits-all” approach works no better for responding to the needs of a survivor than it does for sentencing schemes like mandatory minimums. Other intersections that further marginalization also need attention and response, such as Black women survivors who are also HIV positive, and those who are lesbian, bi-sexual, and transgender. Within the context of the community it is important to talk about wellbeing and wholeness.

Roundtable participants stressed the importance of fostering more diverse leadership in domestic violence and sexual assault organizations and supporting greater capacity building and access to resources for culturally specific community-based organizations. These conversations need to include the faith community as well as civil rights organizations.

Some Roundtable participants suggested changing use of the phrase “unintended consequences.” They asserted that the criminalization of Black women and girls has been going on for a long time, raising the question of whether it has been going on too long to be “unintended.” When decision makers in the criminal justice system are unaware of or allowed to include their biases in their decisions about the fate of Black women or girl survivors—as emphasized throughout the Roundtable—violence against Black women and girls is perpetuated. This is the case whether the decision maker is serving in the capacity of law enforcement, judge, legislator, researcher, or service provider.

Participant discussions highlighted the need to address the historical perspective and the intersections of issues that impact survivors. Moving forward to address these gaps requires attention to not only the historical role of patriarchy in underpinning violence against Black women and girls, but also the role of sexism, racism, and classism. The Roundtable participants called on the criminal justice system to shift its collective consciousness about Black women

and violence. The voices of African American survivors and victims in anti-domestic violence and anti-sexual assault work should be strengthened and elevated, on both the programmatic side and the policy side. Policymakers need to engage African American victims and survivors in the analysis and development of appropriate and responsive policies to gain a clear understanding of what these policies should look like when implemented.

The Roundtable included smaller break-out group discussions to help further identify gaps in the response to Black women and girls and to identify alternatives to incarceration and possible policy and practice changes. Notes from these discussions are included **Appendix 3**.

Critical Opportunities and Emerging Policy Directions

The concerns articulated above also point to some of the key gaps identified during the Roundtable that are particularly relevant to better understanding and addressing the impact of criminalization policies on Black women and girls who are survivors of domestic violence and sexual abuse. Some of these areas that require further attention include:

- Conduct additional research to identify the gaps in policy development and impact, as well as the administration of justice, at the intersection of race and gender, with a focus on Black women survivors.
- Identify and incorporate the necessary components of culturally appropriate, trauma- and healing-informed responses to Black women survivors into non-criminal justice policies and programs—which should be preferred and strengthened—as well as those along the criminal justice continuum.
- Create safe environments, both structural and relational, for the support of Black women survivors—and Black girls—created by and for survivors.
- Increase support for Black women survivors who are incarcerated to remove and reduce the harms related to incarceration, such as routines and practices that reinforce the dynamics and trauma related to domestic violence and sexual assault and further damage parent-child bonds.
- Address the commercial sexual exploitation of girls and recognize that girls under age 18 who are being trafficked—i.e., girls who are *minors*—cannot consent to sex and should not be criminalized. These efforts also need to include the issues and voices of transgender youth.

- Address the issues of economic justice that prevent women who experience domestic violence and sexual assault from having real choices. Lack of economic opportunities often keep women trapped in abusive relationships or at risk of commercial sexual exploitation.
- Expand who is involved in these conversations, including representatives from the following sectors: survivors and impacted young women and adult women, the child welfare system, foundations, judges, STOP Administrators (who administer VAWA funds at the state level), advocates for the elderly, correctional associations, juvenile justice, prosecutorial associations, national police and sheriffs' associations, probation and parole, homeless organizations, and civil rights organizations, among others.

At the conclusion of the Roundtable, Bea Hanson thanked the planning committee, the presenters and the participants for engaging in this rich and challenging dialogue and for sharing their insights, experiences and recommendations. While acknowledging the complexities of these issues, many of which are beyond the scope of OVW to address, she made a commitment to continue to advance this dialogue with additional stakeholders and federal partners, and to explore ways for OVW to continue to address many of the critical issues raised at this Roundtable.

Afterword: Related Actions Taken by OVW Since the Roundtable

The Roundtable provided a rich forum for dialogue on critical issues and resulted in numerous recommendations for further consideration and evaluation. OVW seeks to support, through its many different grant programs, the development of innovative, culturally specific strategies and projects to enhance access to services and resources for all victims of sexual assault, domestic violence, dating violence and stalking, with a concerted effort to address the needs of marginalized and underserved populations. In addition to its ongoing grant programs, OVW has undertaken several special initiatives. Summarized below are some of the OVW activities during the past year that have provided opportunities to advance the ongoing commitment on the part of OVW to address the critical issues raised at this Roundtable.

- As previously noted, OVW partnered with DOJ's Civil Rights Division to draft guidance focused on identifying and preventing gender bias in the law enforcement response to sexual assault and domestic violence, and to gather stakeholder and law enforcement input in the development of that guidance. The Attorney General, in December of 2015, issued the DOJ guidance: *Identifying and Preventing Gender Bias in Law Enforcement*

Response to Sexual Assault and Domestic Violence.⁴⁹ The guidance noted that, “the intersection of racial and gender stereotypes and biases can also pose unique difficulties for women and LGBT individuals of color seeking police services to address sexual assault and domestic violence incidents.”⁵⁰ Utilizing a series of case examples, the document provides guidance for law enforcement agencies to adhere to eight baseline principles that are centered on a trauma-informed, victim-centered approach, and to incorporate these principles into clear policies, comprehensive training, and effective supervision protocols.⁵¹

- In August 2016, OVW convened a subsequent Roundtable with representatives of national advocacy organizations, law enforcement, prosecutorial associations, civil rights organizations, researchers, and other stakeholders focused on strategies to implement the DOJ guidance on *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*. A report from that Roundtable is forthcoming.
- To support communities putting the DOJ Guidance into practice, the Justice Department announced in September 2016 the award of nearly \$10 million in grants for new national training and technical assistance initiatives, demonstration programs, and community grants designed to integrate the principles outlined in the DOJ Guidance into law enforcement agency policies, training, supervision protocols, and systems of accountability.⁵²
- In fiscal year 2016, OVW changed the working title of the Grants to Encourage Arrest Policies and Enforcement of Protection Orders (Arrest) Program. The new title is the

⁴⁹Department of Justice Office of Public Affairs, “Justice Department Issues Guidance on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence.” Online. 2015. <https://www.justice.gov/opa/pr/justice-department-issues-guidance-identifying-and-preventing-gender-bias-law-enforcement>.

⁵⁰Id., p. 7.

⁵¹The principles include: (1) Recognize and address biases, assumptions and stereotypes about victims; (2) treat all victims with respect and employ interviewing tactics that encourage a victim to participate and provide facts about the incident; (3) investigate sexual assault or domestic violence complaints thoroughly and effectively; (4) appropriately classify reports of sexual assault or domestic violence; (5) refer victims to appropriate services; (6) properly identify the assailant in domestic violence incidents; (7) hold officers who commit sexual assault or domestic violence accountable; (8) maintain, review and act upon data regarding sexual assault and domestic violence.

⁵²For more information about these grants, see Department of Justice Office of Public Affairs, “Department of Justice Awards \$9.85 Million to Identify and Prevent Gender Bias in Policing.” Online. 2016. <https://www.justice.gov/opa/pr/department-justice-awards-985-million-identify-and-prevent-gender-bias-policing>.

Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant (Improving Criminal Justice Responses) Program to more accurately reflect the program's scope.⁵³

- The Principal Deputy Director of OVW traveled in April 2016 to Federal Prison Camp Alderson in West Virginia with colleagues from OVW and the Bureau of Prisons, as well as with the White House Advisor on Violence Against Women. They met with a group of survivors of sexual assault, domestic violence, and child sexual abuse and heard about their experiences of victimization prior to incarceration, as well as their need for support and programming while incarcerated and for reentry. They also visited vocational training programs at the prison that provide women with skills for employment post-release and viewed the facility's trauma and drug treatment programs. The Director published a blog about this visit during the Department of Justice's first ever National Reentry Week.⁵⁴
- OVW awarded a grant in September 2016 to the National Clearinghouse for the Defense of Battered Women (NCDBW), in collaboration with several statewide domestic violence and sexual assault coalitions, to launch a new project entitled *Ending Mass Incarceration, Centralizing Racial Justice and Developing Alternatives: The Role of Anti-Domestic Violence and Sexual Assault Organizations*. The purpose of this project is to engage anti-domestic violence and sexual assault advocates to address the consequences of mass incarceration, including on survivors of domestic violence and sexual assault; incorporate racial justice into all areas of their work; explore possible alternatives to criminal legal interventions; and enhance access to services for all victims/survivors, including those involved with the criminal justice system.
- OVW announced nine new research projects in September 2016. This was the first set of awards provided under its new Research and Evaluation Initiative that was launched earlier in the year. All nine awards focus on learning more about effective approaches for the life-saving work authorized under VAWA and examining specific issues related to victims from marginalized and underserved populations. The Research and Evaluation Initiative emphasizes researcher-practitioner partnerships that can identify effective

⁵³Department of Justice Office on Violence Against Women, "Important Notice to OVW Grantees, Applicants, and Stakeholders: Title Change to the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program." Online. 2016. <https://www.justice.gov/ovw/blog/important-notice-ovw-grantees-applicants-and-stakeholders-title-change-grants-encourage>.

⁵⁴Department of Justice Office on Violence Against Women, "Strengthening Communities and Supporting Survivors in Reentry." Online. 2016. <https://www.justice.gov/opa/blog/strengthening-communities-and-supporting-survivors-reentry>

strategies and lead to sustainable ways of responding to sexual assault, domestic and dating violence and stalking, plus reduce the harmful impact of these crimes on victims and communities. In particular, a grant to the University of California, Los Angeles, will fund a study on the effects of violence and victimization on incarcerated women and an evaluation of a program designed to reduce the recurrence of violence and victimization in their lives. Another grant was provided to the Fund for the City of New York to undertake a survey of programs that use restorative justice to address domestic violence and develop guidelines for restorative justice programs.⁵⁵

- OVW issued a new award in 2016 to Just Detention International (Just Detention) to continue its technical assistance work with OVW grantees to support incarcerated and formerly incarcerated victims. Specifically, in order to build the capacity of rape crisis centers and coalitions to provide culturally sensitive services for incarcerated and formerly incarcerated sexual abuse survivors, Just Detention will focus on expanding and enhancing existing materials and adapting them to meet local needs and challenges, and providing advanced training and technical assistance to rape crisis centers and coalitions.
- OVW revised its grant solicitations to provide additional information about activities that may compromise victim safety and recovery. OVW added language to all solicitations indicating that procedures or policies that exclude victims from receiving assistance based on their criminal record are activities that have been found to jeopardize victim safety or deter or prevent physical or emotional healing for victims. The guidance notes that policies that do not directly exclude victims may still have the impact of excluding them. One example that is provided is that if a program uses criminal background checks as part of their screening process, it may deter victims with a criminal history from coming forward and could be considered a practice that compromises victim safety.
- OVW, in partnership with the Office of Juvenile Justice and Delinquency Prevention as well as the National Girls Initiative, convened a roundtable in February 2016 with a group of advocates representing the violence against women and the juvenile justice reform for girls' communities. The roundtable focused on the unintended consequences

⁵⁵ Department of Justice Office on Violence Against Women, "Justice Department Announces Nine Studies Focused on Approaches to Life-Saving Work Authorized by the Violence Against Women Act," September 30, 2015, Retrieved at: <https://www.justice.gov/opa/pr/justice-department-announces-nine-studies-focused-approaches-life-saving-work-authorized>

of domestic violence mandatory and pro-arrest policies on girls and young women, as well as the disproportionate impact on communities of color. A report of the roundtable discussion and recommendation, *Unintended Consequence: Addressing the Impact of Domestic Violence Mandatory and Pro-Arrest Policies and Practices on Girls and Young Women*, was published by the National Girls Initiative.⁵⁶

- OVW convened additional roundtables this past year to further analyze and discuss emerging issues in the areas of violence against women. This included the following roundtables: Restorative Practices in Cases of Intimate Partner Violence; Judicial Roundtable on Mediation; and Where We've Been, Where We're Going: Mobilizing Men and Boys to Prevent Gender-Based Violence. Reports of the discussions and recommendations from each of these roundtables are forthcoming.
- In June 2016, OVW participated in the White House Summit on the United State of Women. Over 5,000 people traveled to Washington, D.C., from all across the country and around the world, and many thousands more attended via livestream. During the Summit, various breakouts, referred to as "Solution Seminars" focused on violence against women issues. The Principal Deputy Director of OVW moderated one of these breakouts, entitled "From the Margins to the Center: Solutions to Stopping Violence in All Communities," which was livestreamed nationally and can be viewed on the [Watch the Summit webpage](#) (at 4:15:17). The discussion centered around the increasing need for interventions addressing domestic and sexual violence to be led by and for diverse communities. The panel discussed how this could be done through culturally based and innovative approaches that build on the strengths and resilience of their communities.
- Following the United State of Women Summit, OVW, in conjunction with the DOJ Office for Victims of Crime and the Family Violence Prevention and Services Office of Health and Human Services, co-hosted an event in June, 2016, entitled "Reimagining, Reinvigorating and Moving Forward to End Sexual Assault, Domestic violence, Dating Violence and Stalking." Leaders from national, state, tribal, and local domestic violence, sexual assault, dating violence, and stalking organizations facilitated discussions for more than 400 participants on promising practices, innovative approaches, and the needs of survivors in marginalized and underserved communities. Topics included improving the criminal justice response to violence against women, exploring alternative pathways to safety and healing for survivors, enhancing the role of health care providers

⁵⁶Francine T. Sherman, "Unintended Consequences: Addressing the Impact of Domestic Violence Mandatory and Pro-Arrest Policies and Practices on Girls and Young Women." Online. 2015. <http://nationalcrittenton.org/wp-content/uploads/2015/03/Unintended-Consequences-NGI.pdf>.

in prevention and intervention efforts, improving access to shelter and housing, economic justice, tribal sovereignty and fostering youth leadership.⁵⁷

⁵⁷ Department of Justice Office on Violence Against Women, “The United State of Women, Together We are All Stronger,” June 30, 2016, Available at <https://www.justice.gov/ovw/blog/united-state-women-together-we-are-all-stronger>.

Appendix 1: Participants

ROUNDTABLE ON THE IMPACT OF INCARCERATION AND MANDATORY MINIMUMS ON SURVIVORS: EXPLORING THE IMPACT OF CRIMINALIZING POLICIES ON AFRICAN AMERICAN WOMEN AND GIRLS

September 21-22, 2015
Washington, DC

PARTICIPANT LIST

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Appendix 2: Agenda

OVW Roundtable

The Impact of Incarceration and Mandatory Minimums on Survivors: Exploring the Impact of Criminalizing Policies on African American Women and Girls

September 21 & 22, 2015
Office on Violence Against Women
145 N Street, NE; Room 1W.1201/1W.1203
Washington DC, 20530

Goals:

- To review the impact of criminalization policies on African American women and girls who are survivors of domestic and sexual violence, including the impact of arrest, detention, incarceration, and mandatory minimums;
- To review efforts to prevent and respond to domestic and sexual violence since the passage of the Violence Against Women Act, and identify challenges and remaining gaps that impact African American women and girls;
- To discuss policy recommendations and new initiatives to reduce or eliminate the harm that domestic violence or sexual assault victims may experience in the criminal legal system, particularly survivors from African American communities;
- To identify new initiatives, frameworks, promising practices, and policy recommendations to create a continuum of options for safety and wellbeing to better meet the needs of survivors from African American communities.

Monday, September 21, 2015

8:30 – 8:45 am

Arrive at OVW

9:00 – 9:45 am

Welcome/Introductions

OVW Welcome: Bea Hanson, Principal Deputy Director

Housekeeping and Logistics: OVW

Roundtable Goals/Participant Introductions

9:45 – 10:30 am

Framing the Issues

- VAWA and Black American women and girls: What are the updates?
- What are the unintended consequences and gaps in support for African-American Women and Girls who experience domestic and sexual violence?

10:30 – 10:45 am

Break

10:45 – 12:00 pm

Continue – Framing the Issues

- What are “mandatory minimums” and how have they impacted Black American women and girls?
- What other criminalizing policies or practices should be considered in this conversation about DV/SA and the risk of incarceration for Black American women?
- What are the culturally competent, trauma- and healing-informed resources available to incarcerated/detained Black women and girls?

12:00 – 1:00 pm

Lunch

1:00 – 2:30 pm

Exploring Intersections between DV/SA and VAWA: Systems Responses

- How are mandatory minimums helping or hurting efforts to reduce domestic violence/sexual assault against women and girls of color?
- How does incarceration impact the willingness of survivors in Communities of Color to call the police or seek help?
- What education and training are needed for the criminal justice system to better respond to Black women in these circumstances?

2:30 – 2:45 pm

Break

2:45 – 3:45 pm

The Research

- What are the research gaps?
- What are your recommendations re: future areas of research that might inform policy and practice on this topic?

3:45 – 4:15 pm	Establishing the Foundation for New Policy Frameworks
4:15 – 4:45 pm	Summary of Key Themes
4:45 – 5:00 pm	Announcements/Closing

Tuesday, September 22, 2015

8:30 – 8:45 am	Arrive at OVW
9:00 – 9:30am	Debrief of Day 1
9:30 – 10:30 am	Promising Alternatives to Incarceration <ul style="list-style-type: none"> - What emerging paradigms of justice (policy and practice) should inform future practices to reduce the negative impact of incarceration and mandatory minimums on Black women and girls?
10:30 – 11:30 pm	Continued discussion about Alternatives Small Group
11:30 – 12:00pm	Report Out
12:00 – 1:00 pm	Lunch
1:00 – 2:30 pm	Discussion of Possible Policy & Practice Recommendations
2:30 – 3:00pm	Next Steps and The role of national and local advocates <ul style="list-style-type: none"> - Who is missing from the conversation? - How/when should they be invited to join the conversation?
3:00-3:15 pm	Closing of Roundtable

Appendix 3: Break-Out Session Notes

The Roundtable included smaller break-out group discussions to help further identify gaps in the response to Black women and girls and to identify alternatives to incarceration and possible policy and practice changes. Below are the notes from the break-out group brain-storming sessions.

SEXUALLY EXPLOITED WOMEN AND GIRLS

- The language that is used to discuss victims and survivors should be changed. The term “prostitute” is shaming and damaging. Participants suggested that research on the topic of women and girls who are trafficked should acknowledge their victimization in this relationship.
- It is important to fund programs that seek reform on this issue and that help victims of trafficking access programs rather than be sent to jail.
- The re-authorization of the Juvenile Justice and Delinquency Prevention Act (JJDP A) is a critical opportunity to engage in specific research and policy analysis that examines the possibility of eliminating the valid court order exception.⁵⁸
- Participants noted the importance of centering the following inquiry: What is the intersection between foster care and victimization and criminalization?
- There is a need to connect research on brain science to the youth justice system and to look at the continued victimization of girls as they transition from being victimized as youth to being victimized as adults.
- Participants felt that Black women who have children in prison need to be protected. More research and policy responses are needed to better understand and respond to this issue.
- There is a need for more comprehensive parental support programs to help build relationships between incarcerated women and their children. Participants stressed the need for parenting *support* beyond just parenting classes.

⁵⁸ Since 1974, the Deinstitutionalization of Status Offenders (DSO) core requirement of the federal Juvenile Justice and Delinquency Prevention Act (JJDP A) has provided that youth adjudicated for a status offense may not be placed in locked confinement.¹ In 1984, the JJDP A was amended to provide an exception to the DSO core requirement that allows judges to securely confine youth adjudicated for a status offense if the child violated a “valid” order of the court (known as the Valid Court Order exception). See Office of Juvenile Justice and Delinquency Prevention. (Fall/Winter 1995). “Deinstitutionalizing Status Offenders: A Record of Progress.” *Juvenile Justice*, II (2). Washington, DC: U.S. Department of Justice.

JUSTICE REINVESTMENT/DE-INCARCERATION

- There should be more of a focus on Justice Reinvestment⁵⁹ as opposed to just de-incarceration. Jurisdictions should use the justice reinvestment approach to determine how to invest a portion of the generated savings from policy changes, such as reducing or averting growth in the jail and prison populations, in strategies to increase public safety. Increased public safety strategies could include community-based treatment and probation, prevention-oriented policing strategies, and community-based recidivism reduction efforts.
- Participants raised concerns that when some jails/prisons are privatized they do not have the same incentive to reduce incarceration and invest in prevention-oriented policies.
- There is a need to invest more in collecting data regarding the impact of re-investment and what happens when money that is saved by reducing incarceration is re-invested in communities. Additional funds are also necessary for *pre-investment*. Preventing incarceration of those who have experienced abuse is better for individuals, families, and communities, rather than spending funds on re-entry after incarceration.
- Participants discussed the importance of supporting policies that end school “pushout” of Black girls. Communities also need to examine the role is of the school resource officer and whether schools have adopted more of a criminalizing approach as opposed to a trauma-informed approach to working with youth.

SELF-DEFENSE AND FAILURE TO PROTECT

- It is important to further develop and fund victim advocacy that is not tied to prosecutors or criminal legal systems.
- Policies need to be reassessed to de-criminalize survival strategies and provide adequate services instead.
- It is important to develop further research and policies that recognize self-defense by victims of abuse.
- Research and policies are necessary to address strategies by survivors that get interpreted as “failure to protect” in the child welfare system. Efforts should be made to support victims and their children holistically.

RE-ENTRY AND HEALING

⁵⁹Department of Justice, Office of Justice Programs, “What is Justice Reinvestment?” Online. 2016. https://www.bja.gov/programs/justicereinvestment/what_is_jri.html.

- Further analysis and research is needed regarding the costs of incarceration, including the costs to families and communities, and to explore the economic impacts of alternatives to the incarceration.
- Screening and intake background checks of criminal history should not be used to screen people out of services or limit their access to services.
- There is a need to re-structure the OVW and DOJ mission to lead with the inclusion of prevention language.
- Evaluation components need to include the community perspective.
- It is important to end practices around shackling women who give birth while incarcerated.
- OVW should hold listening sessions and convene meetings with survivors to listen to those who have lived the experiences discussed in this Roundtable, including doing a listening session with women in prison.

POLICY ISSUES

- There is a need to provide more funding for program evaluation in order to better assess which approaches are having an impact and which are not as effective.
- It is necessary to provide greater capacity training, technical assistance, and resources for grassroots programs that are “in the trenches.”
- There is a need for increasing opportunities for training and assistance to small programs that do not have the capacity to write federal grants.
- Advocates who work with smaller grassroots organizations should be provided with a living wage.
- Funding options should be broadened to provide more opportunities for holistic and innovative approaches and to support evaluations for these initiatives.
- Participants raised concerns about the increasing role of the private prison industry.
- It is necessary to look at systemic issues that impact victims of domestic violence and sexual assault, such as homelessness, poverty, and the role of child protective services.
- The name of OVW’s “Grants to Encourage to Arrest” should be changed and consideration should be given to restructuring funding streams.
- The time is overdue to reassess the amount of OVW funding that goes to law enforcement and to supporting a prosecutorial paradigm.
- Public awareness efforts, community engagement, and trainings need to be expanded to include more faith-based communities and Black Greek organizations.
- There is a crisis of Black women who are incarcerated. Addressing this issue is not just about technical assistance workshops or grants, but rather it important that national leadership is focusing on the issues of Black girls and women.

- Trainings for prosecutors and law enforcement should be enhanced to help them better understand the negative impact their decisions have on Black girls and women who are survivors.
- OVW should develop a document and plan focused on the needs identified in the Roundtable to highlight and address these issues in a strategic and sustained manner.