


# Women **In**Justice:

## Gender and the Pathway to Jail in New York City



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## About The Prisoner Reentry Institute

The Prisoner Reentry Institute is one of twelve institutes that collectively comprise the Research Consortium of John Jay College of Criminal Justice. PRI was founded in 2005 by John Jay College President Jeremy Travis in recognition of a rapidly growing number of people returning to their communities across the country after periods of incarceration. The mission of PRI is to spur innovation and improve practice in the field of reentry by advancing knowledge, translating research into effective policy and service delivery, and fostering effective partnerships between criminal justice and non-criminal justice disciplines.

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## Executive Summary

The number of women in the American justice system has grown exponentially in recent decades, by more than 700% from 1980 to 2014. This dramatic increase was driven by criminal justice policies rooted in the so-called war on drugs and perceptions of increased violent crime. Although crime rates began to fall in the 1990s, harsh sentencing policies remained and, in some cases, grew harsher. Despite this increase, women still comprise only a fraction of those in the justice system and they are less likely to be charged with the most serious, violent crimes. The administration of justice has paid insufficient attention to gender and women have not been served well under a “one size fits all” approach. Now, as the deep costs of this mass incarceration have become apparent, conversations about collateral consequences, racial injustice, and lasting social inequality are beginning. As criminal justice system reform progresses, attention to gender is essential.

A robust body of scholarship has outlined the adversity faced by women that leads to their involvement in the justice system.<sup>4</sup> These pathways are driven by their experiences of violence, trauma, and poverty.<sup>5</sup> Women of color, particularly those from low-income communities, are disproportionately arrested and incarcerated.<sup>6</sup> Research has also increased our understanding of the types of gender-responsive programs that help women, demonstrating that women’s rehabilitative and psychosocial needs are different from men’s.<sup>7</sup> Overall, women are a lower risk population within the criminal justice system. New York City data shows that women are charged with less serious crimes, are less likely to be charged with violent crimes, and are less likely to return to jail within one year.<sup>8</sup> This is consistent with national research on women in the criminal justice system.<sup>9</sup>

The goal of this report is to foster understanding of the role of gender in the New York City justice system. This report also aims to bridge information gaps—to help those steeped in criminal justice reform to better understand the unique needs of women, and to help those steeped in women’s services to better understand the context of the criminal justice system.

In New York City, there has been increased attention to the tragic harms experienced by people in the criminal justice system. Public attention to the violence at Rikers Island, New York City’s central jail—and the only city facility in which women are held—is driving conversations about criminal justice reform.<sup>10</sup>

New York City has embarked on a series of reforms to divert people from jails and prisons and provide community supervision and community rehabilitation. We must ensure that reforms meet the specific needs of the people that enter these programs, and those needs are often gender-specific. This would be a welcome change, because women have not benefited from criminal justice reform to the same extent as men. Nationally, the number of men arrested and imprisoned has decreased while the number of women arrested and imprisoned has remained steady or continued to rise.<sup>11</sup> In New York City, while arrest numbers have declined significantly for men in the past five years, women have not experienced the same rate of decline.<sup>12</sup>

Reducing the number of women held at Rikers will require a multifaceted strategy, but the end result will be a system that is both fairer and more effective, while also reducing recidivism and improving the prospects of justice-involved women. Reforms must be gender-responsive, faithful to the principles of proportionality and parsimony, and engage social services to better serve individuals with criminal justice system histories.

In addition to these global considerations, reform would also target the major decision-making points that serve as the pipeline to jail. Most women in jail in New York City are being held pretrial, thus reform must focus on improving the criminal justice process to reduce the number of people arrested and detain fewer people, as well as providing an array of gender-responsive interventions, and connecting women to social services throughout their court involvement.

To facilitate gender-responsive criminal justice system reform for women in New York City, this report is divided into four parts:

**Part I: How They Get There: The Journeys That Lead Women to the NYC Justice System** provides an overview of the experiences that lead women to become justice-involved in New York City, painting a portrait of lives marked by trauma, victimization, and marginalization, and introduces the theoretical frameworks necessary for understanding these pathways.

**Part II: The Road to Rikers: Mapping Women's Trajectories through the NYC Justice System** uses a wealth of data to outline women's outcomes as they move through each decision-making point in the City's system, from arrest through reentry, creating a visual map of the road to Rikers and highlighting points where women typically exit the system or penetrate deeper into it.

**Part III: The Needs of Women in the NYC Justice System** identifies the services and support that women require for successful reintegration into their communities, including housing assistance, mental health and substance abuse treatment, employment and education programming, family and childcare support, and a reduction in the harms of incarceration itself, which can include physical and sexual assault, social stigma associated with having a criminal history, and trauma to the children and families of incarcerated women.

**Part IV: Addressing the Needs of NYC's Justice-Involved Women** outlines methods to meet these women's needs, focusing on using the criminal justice system as a hub for needs assessment and voluntary referral to appropriate gender-responsive services.

Finally, we conclude by summarizing principles that should guide reform efforts and recommending targeted interventions to better address the needs of women in the New York City criminal justice system. These *guiding principles of reform* posit that:

1. Interventions to address the needs of justice-involved women in New York City must be gender-responsive and trauma-informed.
2. The criminal justice system should be used as a hub for identifying the needs of NYC's justice-involved women and connecting them to social services, but should not mandate participation in programming as part of sentencing or pretrial conditions unless it is a proportionate and parsimonious response.
3. Social service systems must recognize, engage, and attend to the needs of women with criminal justice system involvement.

Our *recommendations for gender-responsive targeted interventions* are to:

1. Divert offenses common to women with behavioral health needs;
2. Increase the use of non-monetary release mechanisms;
3. Expand pretrial alternatives to individuals charged with certain serious crimes;
4. Increase defender-based pretrial advocacy capacity;
5. Increase alternatives to short jail sentences for misdemeanors;
6. Ensure that gender-responsive services are allocated system-wide; and
7. Facilitate community connections.

The findings and recommendations of this report were informed by three primary sources of information:

- Data on women in the criminal justice system obtained from the New York State Division of Criminal Justice Services, with assistance from Dr. Preeti Chauhan, associate professor at John Jay College of Criminal Justice; the New York City Department of Correction; and the Mayor's Office of Criminal Justice;
- Interviews with experts, including a wide-range of stakeholders from city government, criminal justice policy organizations, and criminal justice program service providers; and
- The body of scholarship on women involved in the criminal justice system.

Our focus on women in the justice system is not intended to suggest that our criminal justice system is currently meeting the needs of men. And we know that it does not do well with individuals who identify as transgendered or have non-conforming gender identities. Rather, by focusing on the needs of women, we can contribute to the overall efforts to create an equitable and fair system that treats people with dignity and addresses them as individuals with unique needs, thereby turning gender injustice into a deeper consideration of the role of gender in justice.

## Part I. How They Get There: The Journeys That Lead Women to the NYC Justice System

Women arrive at the doors of the criminal justice system with deep social service needs. Unfortunately, involvement in that system compounds existing social inequality and confounds efforts to address women's needs. Organizations that provide social services for women in the New York City justice system echo findings from national research: women in the justice system are likely to have histories of abuse, trauma, and poverty. The abuse and trauma experienced by women causes mental health, health, and substance use problems. Histories of abuse and trauma intersect with the struggles of poverty, increasing homelessness and lack of employment. These issues are compounded by involvement with the criminal justice system, which often retraumatizes women and fails to provide the services needed to move them away from the pathways that are associated with recidivism.

*Factors that Lead to Criminal Justice Involvement.* The following factors have been empirically linked with women's entrance into the criminal justice system:

- **Trauma and Abuse:** Histories of sexual and/or physical abuse appear to be major root causes of later delinquency, addiction, and criminality,<sup>13</sup> and abusive families and relationships are strong themes in the lives of female offenders.<sup>14</sup>
- **Mental Health and Addiction:** Many women suffer from substance abuse and some form of mental illness or co-occurring disorder and research has shown a strong link between drug use and justice system involvement.<sup>15</sup>
- **Relationships:** Women's criminal involvement is more likely to flow from their relationships with family or intimate partners than is men's.<sup>16</sup>
- **Poverty and Homelessness:** Economic marginalization—often shaped by disconnections from conventional institutions like school, work, and families—increases the likelihood of criminal behavior, as does homelessness resulting from severed social relations, economic vulnerability, addiction, and abuse.<sup>17</sup>
- **Caregiver Responsibilities:** Women are more likely than men to be the primary caregivers in families, and the stress and responsibility of providing for a family when living in poverty can lead to involvement with the criminal justice system.<sup>18</sup>

Taken together, these factors tell a story of women who have suffered trauma, marginalization, and victimization. They illustrate the impact of women's lives and environments on involvement with the criminal justice system. Research on women's pathways into the criminal justice system has also focused on the importance of life histories [*see sidebar*]. These differences in women's experiences as compared to men's support the creation of criminal justice responses that address women's unique needs—in other words, services that are gender-responsive. Such gender-responsive programming is needed to address the realities of women's lives and to improve outcomes at all phases of the criminal justice system.

## Theoretical Frameworks for Understanding Women's Pathways to Criminal Justice System Involvement

There are four overarching theoretical frameworks that are helpful in understanding women's involvement in the criminal justice system and creating a foundation for gender-responsive programming to address their distinct needs.

**Pathways Theory:** Research on women's pathways to the criminal justice system posits that women's offending is based on survival of abuse and poverty, and on substance abuse. Key issues driving behavior that leads to the criminal justice system are histories of personal abuse, mental illness tied to early life experiences, substance abuse and addiction, economic and social marginality, homelessness, and relationships.<sup>19</sup>

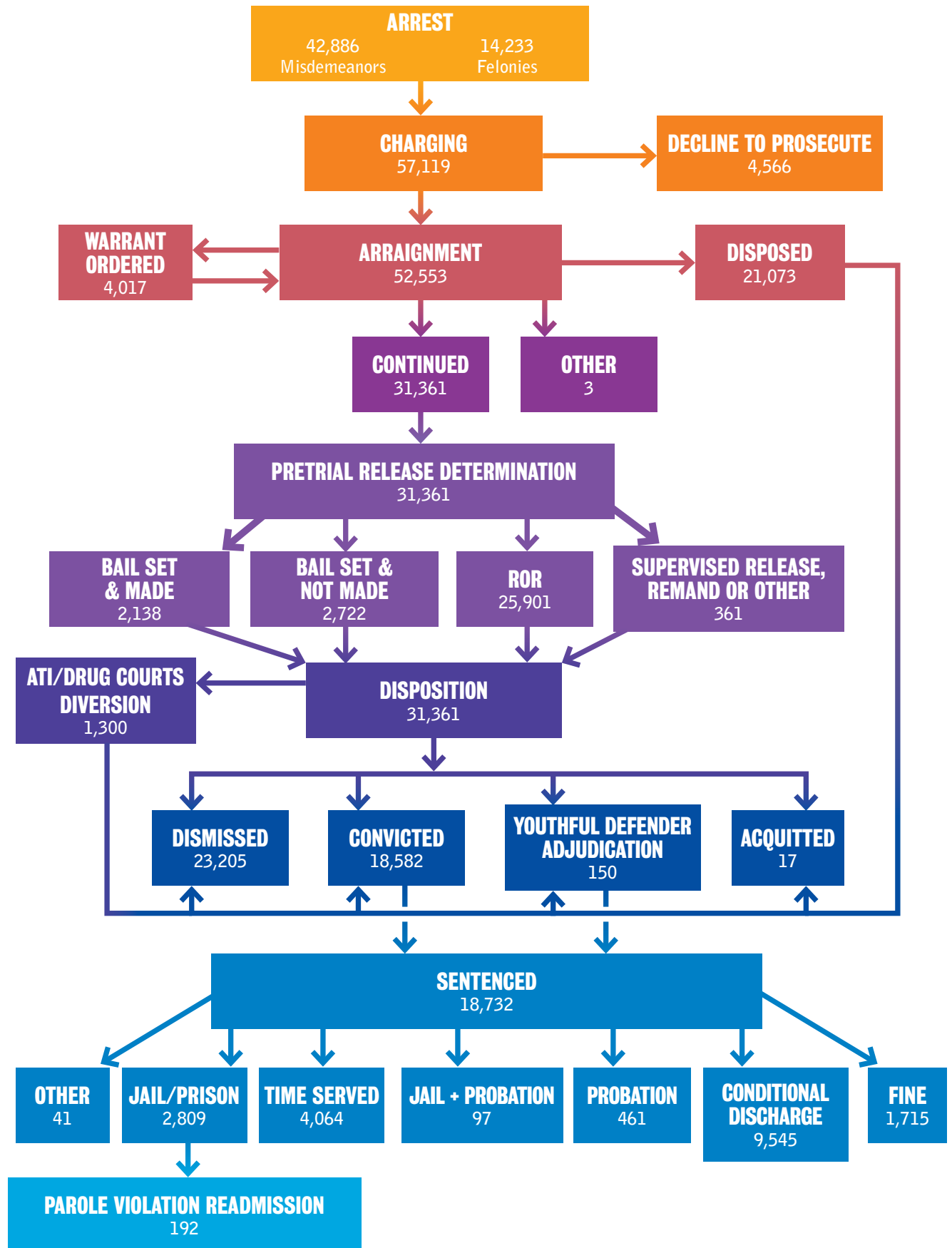
**Development or Relational-Cultural Theories:** These theories posit that the primary motivation for women is development of a strong sense of connection with others, and that women's sense of self and self-worth arises from such connections and relationships. Women in the justice system often have childhood experiences that reflect disconnection and violation, rather than healthy relationships and connections. Women's criminal behavior is often associated with people who are personally important to them.<sup>20</sup>

**Trauma Theory:** Trauma theory focuses on the impact of violence in the lives of women and understanding trauma response. Women's trauma—often from physical and sexual abuse—overwhelms coping mechanisms. Serious traumatic experiences often play a role in women's mental and physical health. Trauma, mental health disorders, and substance use disorders often co-occur and need to be treated together because the problems associated with each can result in poor psychosocial functioning, health problems, medication noncompliance, relapse, homelessness, and suicidal behavior.<sup>21</sup>

**Addiction Theory:** Addiction theory recognizes that substance use is impacted by a variety of personal and environmental factors—physical, emotional, psychological, and spiritual. In recognizing that addiction does not happen in isolation, addiction theory concludes that a holistic health model of treatment and a behavioral health recovery management model for treating disease are most effective. These two models together allow clinicians to treat addiction as the primary problem while also addressing the complexity of issues that women bring to treatment, including genetic predispositions, histories of abuse, health consequences, shame, and/or isolation.<sup>22</sup>



**Figure 1: Map of Women in the NYC Justice System 2014**



## Part II. The Road To Rikers: Mapping Women’s Trajectories Through The NYC Justice System

As seen in Part I, women’s lived experiences can lead to criminal justice involvement. Once so enmeshed, understanding how women flow through the criminal justice system requires analysis of every decision-making point in the system, each of which presents an opportunity to advance the system’s overarching values and goals. More specifically, each decision-making point determines whether someone exits the criminal justice system or penetrates deeper. Each point also offers insight into how gender influences overall outcomes and provides an opportunity for diversion to interventions that address the core needs that drive women’s involvement. Understanding the path of women through the New York City justice system is essential to understanding how women reach Rikers Island, the only New York City jail that houses adult women.<sup>23</sup>

There are seven decision-making points in the criminal justice system used nationwide in system analysis and reform efforts:

- Arrest
- Charge
- Assignment of Counsel
- Arraignment and Pretrial Release Determinations
- Case Processing
- Disposition and Sentencing
- Reentry/Post-Conviction

A review of these decision points<sup>24</sup> creates a map that shows the course of women through New York City’s criminal justice system, illustrating the places where women exit from the system and the funnels that lead to deeper involvement.

**Methodology of the Map and Data Presented.** *This map (opposite) is a reflection of the complex nature of the criminal justice system and the interrelated responsibilities of multiple government agencies. To create it, we combined data from multiple sources. Because there is no single entity collecting criminal justice system information from all system actors, and because the information was accessed at different points, there are small discrepancies between different system parts.*

*Most of the data presented here is from the New York State Division of Criminal Justice Services (DCJS). This aggregate level analysis was provided by Professor Preeti Chauhan of John Jay College of Criminal Justice, with permission from DCJS, the state central repository for fingerprint-based criminal justice information. The map data is from calendar year 2014, therefore not all arrests had dispositions at the time the data was obtained. After arrest, police take fingerprints and transmit them to DCJS with an associated arrest number and case-related information. As a case progresses through the criminal justice system, other law enforcement and court entities provide additional information as decisions are made, such as charges, convictions, and sentences. However, DCJS does not collect certain key pieces of information such as bail amounts or information on each court appearance. Nor does DCJS directly provide any criminal justice services.*

*In New York City, all criminal justice services are monitored by the Mayor’s Office of Criminal Justice (MOCJ).<sup>25</sup> MOCJ is the chief advisor to the Mayor on public safety strategy.<sup>26</sup> Part of the data in this report was obtained from MOCJ, which was collected from various criminal justice agencies in New York City. This report also contains data obtained from entities providing specific services within the criminal justice system: the NYC Department of Correction, the NYC Department of Probation, the New York State Unified Court System, and several non-profit service providers.*

*The NYC Department of Correction also provided data and descriptive information about women in custody. The data from the Department of Correction was for fiscal year 2015. Thus, this information varies in time period by six months from that obtained from other sources.*

Overall, there were 57,119 women arrested in 2014 out of a total of 314,595 arrests in New York City.<sup>27</sup> Women comprised 17.8% of all arrests in 2010, rising to 18.2% in 2014.<sup>28</sup> Between 2010 and 2014, the number of women arrested varied from a high of 61,091 in 2011 to a low of 57,119 in 2014, a total variation of 6.7%.<sup>29</sup> By contrast, the number of men arrested ranged from a high of 279,663 in 2010 to a low of 252,104, a total variation of 9.9%.<sup>30</sup>

Of the 57,119 women arrested in 2014, 6,745 were incarcerated at Rikers.<sup>31</sup> This means that 11.8% of women arrested in 2014 were incarcerated at Rikers at some point during their case. The system map details the number of women at each decision-making point in the system to further shed light on the decisions that result in incarceration at Rikers for women.

## Police Encounters 101 in New York City

**Full Arrest.** A full arrest, also referred to as an “on-line” arrest, occurs when the person is taken to the police precinct and held in custody, then transported to the court to be arraigned. This process, from arrest to arraignment, typically takes about 20 to 24 hours.<sup>32</sup>

**Desk Appearance Ticket (DAT).** If the charge is a misdemeanor<sup>33</sup> and the person has no warrants and does not have a long history of misdemeanor arrests, the police have the discretion to issue a DAT. In this process, a person is arrested, taken to the precinct, fingerprinted, and then released. The physical DAT is a piece of paper that notes the top charge and assigns a date to appear in court for arraignment. Typically, the arraignment is scheduled for three to six weeks in the future. At the future arraignment, the case is treated the same as a regular arrest.

**Criminal and Civil Summonses.** For minor crimes, the police can issue a summons on the street after a police stop. A summons does not require fingerprinting or custodial confinement at the precinct. A summons looks like a traffic ticket, but it is a criminal charge and directs a person to appear in court 4 to 12 weeks in the future. At court, the charge is adjudicated in front of a judicial hearing officer and often no prosecutor is present. If convicted, people are most often sentenced to pay fines. Recently, the New York City Council passed legislation that diverts certain low-level, non-violent offenses away from the criminal courts. Instead, the police now have discretion to issue a civil summons and the case will be heard at the Office of Administrative Trials and Hearings (OATH). If a person is found to have committed the offense, she or he will be required to pay a fine or perform community service.<sup>34</sup> Data about summonses are not included in this report because individuals are not at risk of incarceration for summonses unless they fail to appear for the summons court date and are subsequently arrested for another offense.

**Pilot Diversion Programs.** The Mayor’s Office of Criminal Justice is piloting two arrest diversion programs. The Court Intervention Response Team (CIRT) targets people with mental illness and gives police discretion to bring individuals to a clinical community health drop-off center rather than making an arrest for minor crimes.<sup>35</sup> The second program, Project Reset, targets 16- and 17-year-olds, diverting them to a brief program with services prior to arraignment.<sup>36</sup> Neither of these programs are targeted to women or girls, although women and girls are not excluded, so it is unclear whether the lack of gender-specific programming will have an impact on the extent to which women and girls are diverted or on their subsequent success.

## A. Arrest

Arrest is the entry point to the criminal justice system. Arrests most often happen in one of three circumstances: (i) the police are called to the scene of a crime; (ii) the police directly observe a crime; or (iii) a person is arrested in the course of other law enforcement activities such as a street encounter or traffic stop. In New York City, police have several options when there is probable cause to believe that a crime has been committed: a full arrest, arrest with issuance of a desk appearance ticket (DAT), or issuance of a summons.

The data presented in this report are only from arrests where the person was fingerprinted—on-line arrests and DATs—and does not include summonses arrests for local law offenses that do not require fingerprinting.<sup>37</sup>

In 2014, there were 42,886 misdemeanor and 14,233 felony arrests of women.<sup>38</sup> Women are less likely to be charged with felonies than men: 75% of women’s arrests were for misdemeanors in 2014, versus 70% for men.<sup>39</sup> The percentage of misdemeanor versus felony arrests has remained relatively steady for both genders from 2010 to 2014.<sup>40</sup> The vast majority of women’s felony arrests are for non-violent offenses. Only 10 to 15% of women’s arrests were for violent felony offenses in 2014.<sup>41</sup>

**Figure 2: Arrest Charge Level for Women vs. Arrest Charge Level for Men**

	Female		Male	
	Misdemeanor	Felony	Misdemeanor	Felony
<b>2010</b>	46,139	14,530	203,500	76,163
<b>2011</b>	46,969	14,122	200,423	73,960
<b>2012</b>	45,282	14,070	189,630	73,323
<b>2013</b>	43,273	14,406	189,630	75,641
<b>2014</b>	42,886	14,233	182,403	75,073
<b>Total</b>	224,459	71,361	965,586	374,160

## B. Charge

Prosecutors have great discretion in making decisions about what offenses to charge, which can impact plea bargaining,<sup>42</sup> pretrial detention, the amount of bail, eligibility for diversion, and the ultimate length of sentence to incarceration, including whether any mandatory minimum sentencing applies.<sup>43</sup> The prosecutor also decides whether to decline to prosecute the case,<sup>44</sup> which can happen for reasons such as insufficient evidence or if further investigation is needed.<sup>45</sup>

*Prosecutions Declined by Gender.*<sup>46</sup> If a prosecutor declines to prosecute, then no complaint is filed in criminal court. The person is released without appearance and all records associated with the arrest are sealed. For both men and women, the percentage of felony charges that prosecutors decline to prosecute has stayed at 7% and 8%, respectively, from 2010–2014.<sup>47</sup> However, the percentage of misdemeanor charges declined prosecution varies widely from year to year for both men and women. For men, a high of 11.4% of misdemeanor charges were declined in 2011, but just 6.7% were declined in 2014.<sup>48</sup> For women, a high of 12.4% of misdemeanor charges were declined in 2011, but just 7.9% were declined in 2014.<sup>49</sup> This wide variability deserves further study to tease out differences among the prosecutors’ offices in different boroughs and whether there are other relevant factors driving prosecution decisions, such as race, charge, or police behavior. Overall, for women in 2014, 4,566 cases, or 8% of the total arrests, were dismissed because the prosecutor declined to prosecute.<sup>50</sup>

## The Nature of Charges Against Women.

### Misdemeanors:

- *Simple Assault.* Although the vast majority of charges against women were for non-violent offenses, assault-related offenses comprised a significant portion of arrests. The most charged misdemeanors for women in 2014 fall into the category of misdemeanor simple assault, which accounted for 10,834 arrests, or 25.2% of misdemeanor arrests of women.<sup>51</sup> Not all of the arrests in the simple assault category involve actual violence. The simple assault category includes multiple offenses that do not involve physical injury, including harassment, menacing, and contempt of court. Other than assault, women are charged with very few violent crimes. It is unclear how many of the charges categorized as assault involved domestic or family violence. New York law does not have specific offenses that are defined as domestic violence, thus offenses are noted as domestic violence during court processing based solely on the relationship between the defendant and the complainant. There are different procedures the police must follow when an offense is considered domestic violence, including mandatory arrest in two situations: when the conduct is defined as a family offense, unless the complainant requests that no arrest be made; and when the offense involves violation of an order of protection.<sup>52</sup> Prosecutors have designated units assigned for prosecuting domestic violence crimes and courts have specialized parts for hearing cases involving domestic violence. This differential treatment is not based on the offense charged, but rather the relationship with the complaining witness.<sup>53</sup>
- *Larceny and Drug Possession.* Other common misdemeanor offenses for women were larceny and drug possession offenses. Misdemeanor-level larceny accounted for 10,029 arrests in 2014, or 23.3% of misdemeanor arrests.<sup>54</sup> Furthermore, there were 4,386 arrests for misdemeanor possession of a controlled substance, representing 10.2%, and another 2,794 arrests for possession of marijuana, or 6.5%.<sup>55</sup>
- *Fraud/Theft of Services.* 3,886 arrests, or 9% of women's misdemeanor arrests, were categorized as fraud. The most common fraud offense is theft of services (typically, mass transit fare evasion).<sup>56</sup>
- *Prostitution.* Despite increased focus on addressing sex-trafficking differently than other charges, a significant amount of women—1,764 or 4.1% of misdemeanor arrests—were charged with prostitution in 2014, although this does represent a significant decline from 2,286 arrests for prostitution in 2011.<sup>57</sup>

### Felonies:

- *Aggravated Assault.* The top felony charge for women in 2014 was aggravated assault, totaling 3,590 arrests or 25.2% of felony arrests.<sup>58</sup> Aggravated assault can include a range of incidents, including domestic violence offenses and some instances of failure to abide by a court's order of protection. An assault which causes minor injury—scratches or bruising, for example—is elevated to felony assault if a “dangerous instrument” is involved; however, any item can be interpreted as a “dangerous instrument,” even cooking spoons or umbrellas.<sup>59</sup>

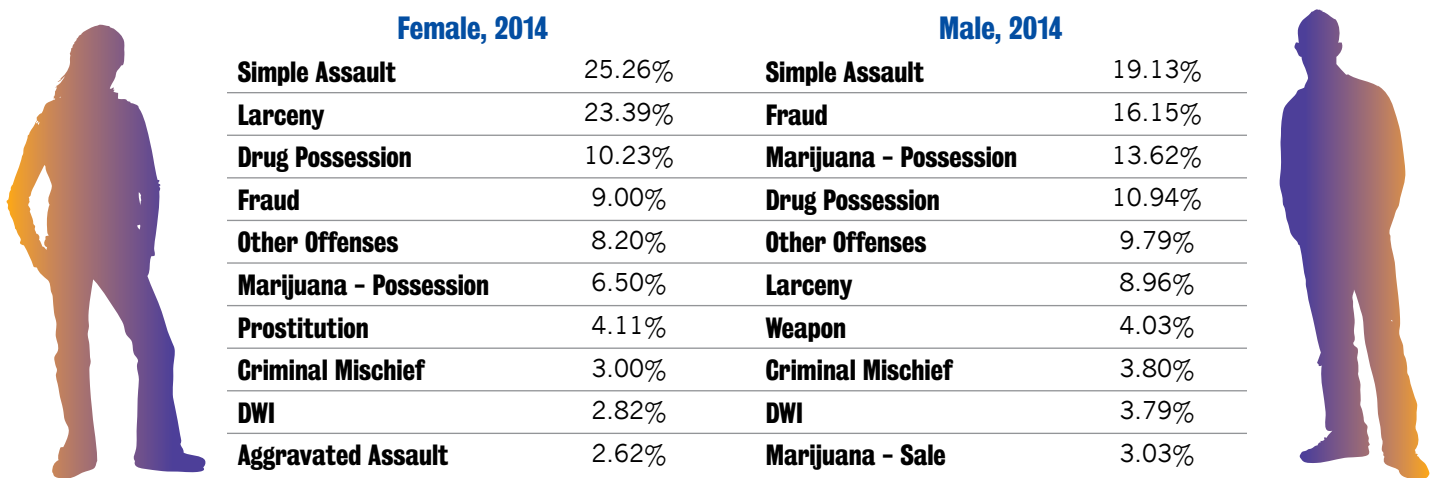
The remaining women's felony arrest charges fall largely into non-violent categories and other common arrest charges include:

- *Drug Arrests.* Possession and/or sale of a controlled substance, combined, accounted for 2,431 arrests or 17% of felony arrests in 2014 (not including marijuana, which resulted in an additional 66 felony arrests).<sup>60</sup> Of women's felony drug arrest charges, 57% were for sale and 43% were for possession.<sup>61</sup>

- *Felony Larceny.* The third most frequent felony arrest offense was for larceny, comprising 2,211 or 15.2% of arrests.<sup>62</sup>

*Comparison to Charges Against Men.* The most common charges for men differed slightly. The top misdemeanor charges for men were simple assault, fraud (again, primarily mass transit fare evasion), and possession of marijuana—comprising 19.13%, 16.15%, and 13.62% of misdemeanor arrests, respectively.<sup>63</sup> As with women, simple assault was the most common arrest charge for men, but it comprised a smaller percentage of men’s arrests than women’s (19.13% for men versus 25.2% for women).<sup>64</sup> The most common felony charges for men were controlled substance possession and/or sale, at 19.12% of felony arrests, half of which were for possession. Aggravated assault accounted for 13.29% of felony arrests for men.<sup>65</sup>

**Figure 3: Top Ten Arrest Charge Categories for Women vs. Men 2014**



Female, 2014		Male, 2014	
<b>Simple Assault</b>	25.26%	<b>Simple Assault</b>	19.13%
<b>Larceny</b>	23.39%	<b>Fraud</b>	16.15%
<b>Drug Possession</b>	10.23%	<b>Marijuana - Possession</b>	13.62%
<b>Fraud</b>	9.00%	<b>Drug Possession</b>	10.94%
<b>Other Offenses</b>	8.20%	<b>Other Offenses</b>	9.79%
<b>Marijuana - Possession</b>	6.50%	<b>Larceny</b>	8.96%
<b>Prostitution</b>	4.11%	<b>Weapon</b>	4.03%
<b>Criminal Mischief</b>	3.00%	<b>Criminal Mischief</b>	3.80%
<b>DWI</b>	2.82%	<b>DWI</b>	3.79%
<b>Aggravated Assault</b>	2.62%	<b>Marijuana - Sale</b>	3.03%

### C. Arraignment and Pretrial Release Determination

Arraignment in New York City is a fast-paced event, yet results in significant decision-making that affects the course of each case. After an arrest, a person is fingerprinted and processed at the precinct, then taken to “central booking,” the holding cells at each courthouse. A person remains in central booking while the prosecutor consults with police and necessary documents are produced. Once all the relevant documents are compiled, the person is brought to the cells behind the courtroom where they are assigned a defense attorney and interviewed by the attorney prior to appearing before the judge for arraignment.

*Disposition at Arraignment.* Almost half of people arrested have their cases disposed of at the first court date by either guilty plea, entry of an adjournment in contemplation of dismissal (ACD), or dismissal. For those arrested who do not receive DATs to appear later, this all happens within 24 hours. When analyzed by gender, however, there are notable differences. Only 37.3% (21,073) of women’s cases were disposed of at arraignment with a guilty plea or dismissal, compared to 44.1% (124,250) of men’s cases.<sup>66</sup> One possible explanation for this difference is the higher percentage of women arrested for assault charges versus men. In cases where the complainant is an individual—as opposed to a crime without a complainant, like drug possession, or a crime with a corporate complainant, as in shoplifting cases—charges are rarely, if ever, resolved at arraignment. Since fewer women plead guilty at arraignment, it follows that their involvement with the criminal justice system tends to be longer.

**Figure 4: Disposition at Arraignment Women vs. Men 2014**

	Female		Male	
	Number	%	Number	%
<b>Continued</b>	31361	55.6%	139311	49.4%
<b>Warrant ordered</b>	4017	7.1%	18218	6.5%
<b>Disposed</b>	21073	37.3%	124250	44.1%
<b>Other outcomes</b>	3	0%	10	0%

*Bail and Conditions of Release.* The inability to pay monetary bail is the biggest driver of incarceration at Rikers for both men and women. If a case is not disposed of at arraignment, then a judge makes a decision about conditions of release. The bail decision is not made until after any available plea bargains have been rejected. Under New York law, a court cannot set bail based on dangerousness or public safety. Bail is only appropriate if the court determines that it is necessary to ensure that a person will return to court.<sup>67</sup> In this regard, New York is an outlier in prohibiting courts from considering dangerousness or risk to public safety in making pretrial release decisions.<sup>68</sup>

Accordingly, New York City uses an assessment that measures only risk of failure to appear in court. The assessment was developed by the New York Criminal Justice Agency and is administered prior to arraignment. While in central booking, the Criminal Justice Agency (CJA) interviews each person to gather information about employment, current address, phone number, and community ties. CJA also gathers information about prior convictions and prior warrants. This results in a risk score that assesses a person’s likelihood to return to court for future case hearing dates and trial. This assessment is provided to the court, prosecutor, and defense attorney.

After bail is set, it can be paid at the courthouse by the family or friends of the defendant if they have the financial resources to pay by cash or credit card immediately. When that occurs, the defendant is released from the courthouse directly. Otherwise, the person is transported to Rikers Island and detained unless or until bail is paid.

When a woman is detained because bail has been set and cannot be paid immediately at the court, she is held on Rikers Island at the Rose M. Singer Center (RMSC). If she is able to pay bail later, she will be released directly from Rikers Island. Women who are sentenced to jail or are in transit to serve a prison sentence at a state facility are also held at RMSC. Most people held at Rikers, however, are “detainees”—presumptively innocent individuals whose criminal cases are still pending and who have not been convicted of a crime.

Approximately 6,745 women were held at Rikers in 2014 and, of that, approximately 5,000 were detainees.<sup>69</sup> The Department of Correction estimates that approximately 80% of the average daily population of women at Rikers are detainees.<sup>70</sup> There are some women who are detained without bail, also called remand, which can occur if they have an open warrant, a detainer, or have pled guilty to a felony and are awaiting sentence to incarceration.



**Charge Severity of Women at Rikers 2014**

Of all of the women at Rikers Island—those detained, sentenced, remanded, etc.

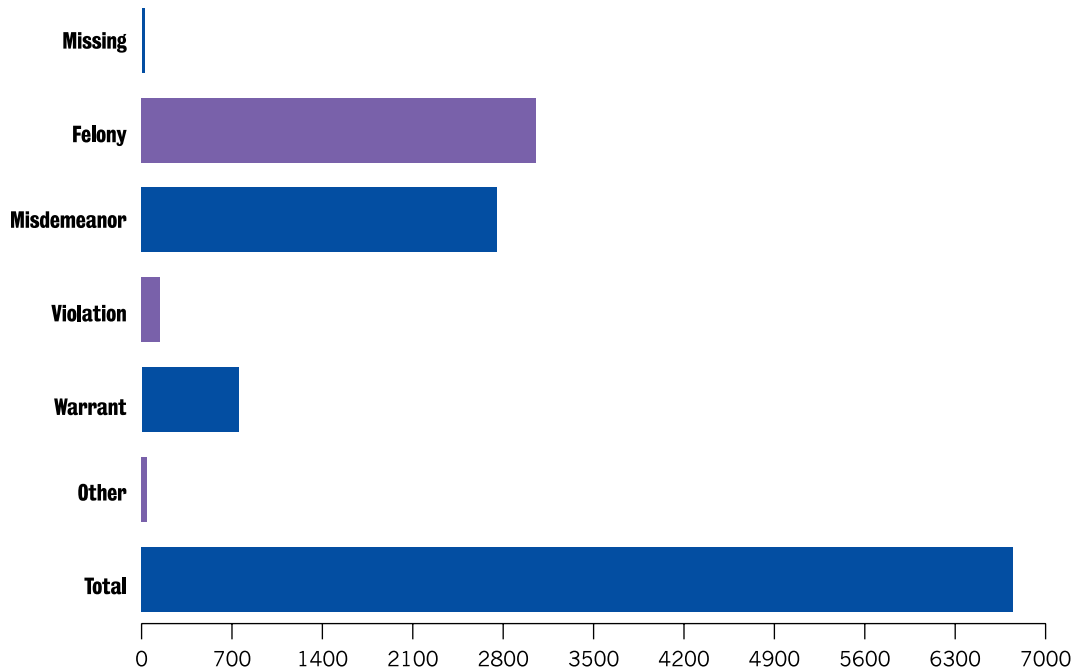
- **45.2% (3,052) were charged with felonies**
- **40.8% (2,753) were charged with misdemeanors**
- **2.1% (143) were charged with violations**
- **11.1% (751) had warrants.**

(There were 0.7% or 46 cases where the data was unknown or missing).



There are significant differences in how courts treat men and women when setting bail. Women are more likely to be released without bail at arraignment than men. In 2014, 82.6% or 25,901 women were released on recognizance, versus 65.6% of men. There were 4,860 women who had bail set in 2014.<sup>71</sup> Approximately 44% of those women were able to post bail at some point during their case.<sup>72</sup> Of that, just over 400 women were able to post bail at arraignment and avoid admission and detention at Rikers.<sup>73</sup>

**Figure 5: Charge Severity of Women Detained on Bail 2014**



Reducing the population at Rikers necessarily entails reducing the number of detainees because, as noted, they comprise the vast majority of those incarcerated. Many of these detainees are held on misdemeanor charges and for many New Yorkers, any amount of cash bail imposed results in de facto detention.

**Alternatives to Bail.** Recent efforts to reduce unnecessary incarceration include supervised release programs and bail funds.

*Supervised Release Programs.* The Mayor’s Office of Criminal Justice recently expanded the availability of supervised release programming. In exchange for release, supervised release programs impose conditions on defendants who are likely to have bail set and be detained. These conditions include regular check-ins, court reminders, and referrals to community services. The programs are run by community-based non-profit agencies that work directly in the courts with defense attorneys, judges, and prosecutors. The expanded availability of supervised release that began in March 2016 came after a multi-year pilot run by the New York Criminal Justice Agency. This additional program capacity aims to serve a total of 3,000 people throughout the five boroughs.

The supervised release pilots operated in Queens and Manhattan have targeted people charged with non-violent felonies who were likely to have bail set and to be detained. The program demonstrated high rates of return to court and low rates of re-arrest. The cost of the program was far less than the cost to incarcerate detainees.



The expanded supervised released programs target people who:

- Are charged with either misdemeanors or non-violent felonies;
- Do not pose a significant risk of felony re-arrest during case pendency;
- Are unlikely to be released on recognizance without supervision; and
- Are likely to have bail set based on a review of charge characteristics, criminal history, and risk.

*Community Bail Funds.* The high number of detainees in New York City has also spawned the creation of community bail funds. Bail funds are non-profit organizations that post bail on behalf of individuals who are charged with misdemeanors where less than \$2,000 in bail is set. There are two bail funds operating—the Bronx Freedom Fund and Brooklyn Community Bail Fund—and a third soon to be established that will be funded by the City Council and operated by The Doe Fund. The Bronx Freedom Fund is currently making bail for approximately 200–300 individuals in the Bronx and the Brooklyn Bail Fund is expecting to serve 500–600 individuals in 2016. When the funds post money, they typically receive 96 cents back for every dollar posted, with the loss largely due to court fees imposed when a person pleads guilty. Ninety-seven percent of people using bail funds return to court and thus bail is refunded, minus court fees.<sup>75</sup> Bail funds are an innovative idea to address a long-standing problem. Yet the funds operate under legal limitations—they can only be used for misdemeanors and for bail less than \$2,000.

Supervised release programs and bail funds are laudable, but they will not significantly decrease the nearly 5,000 women detained annually at Rikers unless expanded.

## Reevaluating Bail

The use of monetary bail keeps many people in jail who could otherwise be safely released, due solely to their lack of financial resources, and this burden disproportionately impacts people of color. Even periods of pretrial detention as short as two days for low and moderate risk defendants correlate with worse case outcomes, longer sentences to incarceration, and increased recidivism.<sup>76</sup> The impact of pretrial detention further reverberates through families, increasing the risk of homelessness, unemployment, and referral to child welfare systems.

As a result, jurisdictions nationwide have been reevaluating their bail systems.<sup>77</sup> Many individuals and organizations have called for the elimination of monetary bail, and it has been nearly eliminated or minimized in several jurisdictions.<sup>78</sup> Monetary bail is arguably the most expensive and least efficient way to maximize public safety and to ensure that individuals return to court. New York law authorizes nine different forms of bail, ranging from cash to unsecured bonds that do not require any money or property to be posted or paid unless the individual fails to return to court. In practice, and despite years of education and advocacy, courts rarely impose any other than the two most onerous forms of bail: cash or fully secured bond. Using other forms of bail<sup>79</sup> and investing in pretrial services that include monitoring and supervision has been proven to effectively increase court appearance and decrease re-arrest. More jurisdictions are also using pretrial risk assessments to better inform judicial decision-making, which has lowered pretrial detention rates in several jurisdictions.<sup>80</sup>

## D. Case Processing and Disposition

The size of a correctional population is a function of the number of admissions and the length of stay. Case processing time frames therefore have a direct impact on jail populations, and longer case lengths result in a higher average daily population at Rikers, even when the number of people admitted remains static. New York City has been criticized in the news for lengthy case disposition times. One report found that in most boroughs, it took an average of 400 days to conclude a case, and in the Bronx this time extended to 600 days.<sup>86</sup> In response, the City has undertaken efforts to shorten case processing times, such as establishing an initiative to address case delays and setting a goal to resolve half of the long-pending cases involving Rikers detainees within six months of the project's launch.<sup>87</sup>

Fundamentally, New York's speedy trial statute, which mandates that a prosecutor be ready for trial within certain time frames, is insufficient to ensure that people's cases are processed and completed in a reasonable amount of time. There are several ways that speedy trial provisions fail. Delay due to court congestion—including the lack of courtrooms available to hear trials or the unavailability of jurors—is excluded from the speedy trial calculation. Prosecutors can be unready for trial on the days when the case is scheduled, but file a certificate shortly thereafter affirming that they are now ready for trial.<sup>88</sup> Filing of this “certificate of readiness” stops the speedy trial clock from tolling until the next scheduled court date, which can be months in the future.

The system is neither resourced nor inclined to take very many cases to trial. Instead, the administration of justice relies on cases being resolved by plea bargaining, *i.e.*, when a defendant pleads guilty and waives her rights. In fact, there were only 587 trials in 2014 from a total of 351,511 cases; the vast majority of cases were disposed with a guilty plea.<sup>89</sup> Pretrial detention is by its very nature coercive, and results in guilty pleas simply because opting for trial may result in longer involvement with the court, longer stays in jail, and longer sentences after a guilty verdict than sentences offered pretrial.<sup>90</sup>

Yet the use of monetary bail remains high. Judges routinely deviate from risk assessment recommendations in making bail decisions. In New York City, analysis of bail decisions in 2014 showed that in cases where CJA recommended release, judges *still* set bail for 8% of individuals charged with misdemeanors and 38% of people charged with felonies.<sup>81</sup>

Why aren't judges inclined to favor alternatives to money bail? Bail decisions are made quickly, particularly in high-volume courts like those in New York, and some research theorizes that judges “rely on stereotypes and past experience” to make fast decisions.<sup>82</sup> The “focal concerns” theory of judicial decision-making posits that judges are focused on three main concerns: blameworthiness, community protection, and practical constraints.<sup>83</sup> One study concluded that bail decision-makers consider the lost freedom caused by pretrial detention to be more important when imposed on whites than on blacks.<sup>84</sup> Research compared predictive models with actual bail decisions, then estimated the actual cost of lost freedom for an individual. The conclusion was that judges valued the loss of freedom for blacks less.<sup>85</sup>

These studies suggest that more work is needed to address judges' implicit and explicit biases and to foster judicial buy-in for bail reform efforts.

*Alternative-to-Incarceration Programs (ATIs).* New York City is fortunate to have a rich array of ATIs that have become an integral part of the city justice system. There are different types of ATI programs serving different populations, including:

- Short-term programs ranging from a few hours to a few days aimed at harm reduction for individuals charged with minor offenses;
- Multi-faceted long-term programs that provide case management and a range of need-based services (including employment, education, substance abuse, family support, and mental health), as well as compliance reporting to courts; and
- Residential and non-residential substance abuse treatment, often operated through specialized drug courts.<sup>91</sup>

The use of community alternatives has the potential to divert women from incarceration, but they may come at a price: when clients do not succeed in alternative programming, they face even harsher sentences than if they had refused participation in the first place.

Overall, alternatives to incarceration and diversion programs are serving only a fraction of the nearly 20,000 women who are convicted each year. The ATI/Reentry Coalition—an association of ATI providers—reported that in 2014, they served 5,197 individuals in alternative-to-incarceration and diversion programs.<sup>92</sup> This is inclusive of men and women, though some serve only women.

Drug courts operate in all five boroughs and divert individuals to substance abuse treatment. In 2013, the most recent year for which published data is available, drug courts admitted 553 participants, including men and women, and graduated 320—a rate of 58%. The percentage of women participants ranged widely among different drug court programs, from approximately 10% to 30%.<sup>93</sup>

There are several programs providing gender-responsive alternatives to women, including the Justice Home project at the Women’s Prison Association, the Crossroads drug treatment program at the Center for Community Alternatives, Housing+Solutions’ Drew House residential program, and a program at STEPS to End Family Violence targeted to survivors of intimate partner violence. Some of these programs have been evaluated and shown to be successful in diverting women from jail or prison sentences.<sup>94</sup> Other programs are using proven, evidence-based models as part of their diversion services.<sup>95</sup>

*Dispositions.* A large percentage of cases are resolved through dismissal or adjournment in contemplation of dismissal. The disposition data obtained includes dispositions of all cases, including those that were disposed of at arraignment.

**Misdemeanors.** For misdemeanors in 2014:

- 43.15% (18,504) of women’s arrests were dismissed, including adjournments in contemplation of dismissal;<sup>96</sup> and
- 30.62% (13,130) of women were convicted.<sup>97</sup>

The remaining cases were:

- Declined for prosecution prior to arraignment (7.91% or 3,391);
- Granted youthful offender status (.07% or 31);
- Acquitted at trial (.02% or 10);

- Had a missing or unknown disposition (.26% or 110); or
- Were still pending at the time the data was obtained (18% or 7,710).<sup>98</sup>

**Felonies.** For felonies in 2014:

- 38.31% (5,452) of women were convicted;
- 33.03% (4,701) of women’s cases were dismissed, including adjournments in contemplation of dismissal,<sup>99</sup> and
- No disposition was yet reported for 18.44% (2,625) of women’s cases at the time the data was obtained.<sup>100</sup>

The remaining arrests were:

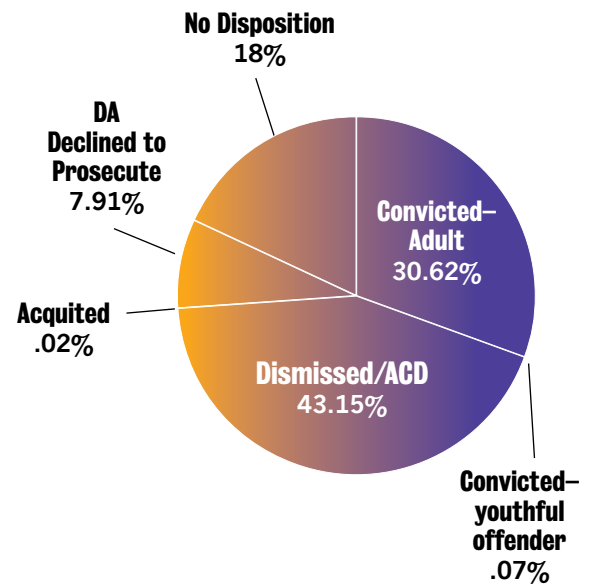
- Not prosecuted (8.26% or 1175);
- Granted youthful offender status (.84% or 119);
- Acquitted at trial (.05% or 7); or
- Had another disposition that was not defined (1.08% or 154).<sup>101</sup>

**E. Sentencing**

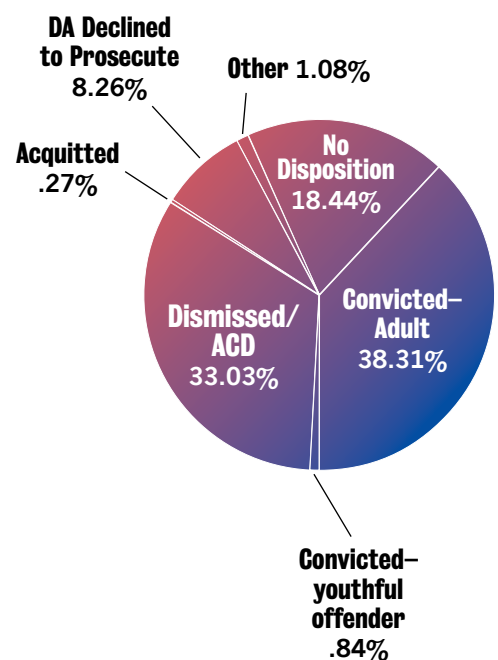
*Felonies vs. Misdemeanors.* In 2014, women were more likely to be sentenced to incarceration if they were charged with a felony, though looking at pure numbers, more women were sentenced to incarceration for misdemeanors. There were 1,020 women sentenced to jail or prison for felonies and 1,789 sentenced to jail for misdemeanors.<sup>102</sup> Comparatively, 7.17% of women arrested for felonies were sentenced to jail or prison and 4.17% of women arrested for misdemeanors were sentenced to jail.<sup>103</sup> If dismissed cases are excluded, however, the percentage of women who are sentenced to jail or prison looks different: 18.3% of women convicted for felonies receive a sentence of jail or prison, and 13.6% of women convicted for misdemeanors receive a sentence of jail.<sup>104</sup>

*Conditional Discharge.* The most common sentence for women, for both misdemeanors and felonies, is a conditional discharge. The most common conditional discharge sentences include completing community service, attending programming, or avoiding re-arrest. Failure to complete the conditional discharge can result in being re-sentenced to a harsher punishment, including jail. In 2014, 15.48% of women charged with misdemeanors and 20.41% of women charged with felonies were sentenced to a conditional discharge, although this does not factor in cases still pending.<sup>105</sup>

**Figure 6: Misdemeanor Case Outcomes for Women 2014**

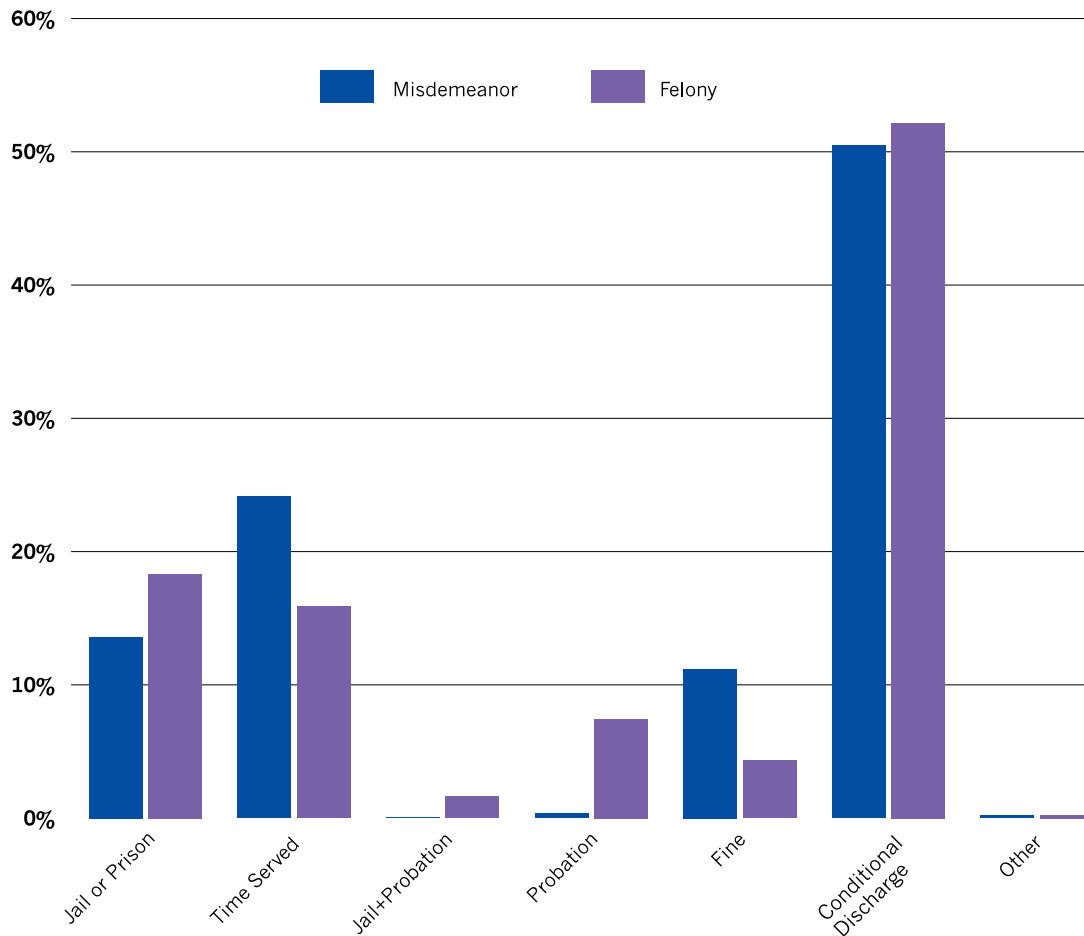


**Figure 7: Felony Case Outcomes for Women 2014**



*Probation/Split Sentencing.* A small number of women were sentenced to probation in 2014. A total of 461 women received a probation sentence, 414 for felony charges and 47 for misdemeanor charges.<sup>106</sup> An additional 92 women received a split sentence of both jail and probation.<sup>107</sup> The New York City Department of Probation reports that approximately 17% of its adult supervision population is women.<sup>108</sup> The Department of Probation does not designate specific officers that supervise only women.

**Figure 8: Women's Sentences 2014\***



\*Excluding cases dismissed or still pending

*Detention vs. Incarceration.* Only 12% to 15% of the average daily population of women at Rikers have been sentenced to jail, as most are detained on pending cases.<sup>109</sup> Jail sentences, also known as city sentences, are sentences of a year or less. Women who are sentenced to prison sentences—sentences of incarceration greater than one year—are held at Rikers until being transferred to the state prison facilities where they will serve their time.

Jail sentences for petty, misdemeanor crimes can be a hidden driver of detention rates, particularly for repeat offenders. For example, a person charged with subway fare evasion who has no prior arrests will likely have her or his case dismissed if she or he performs community service and avoids re-arrest for six months. However, a person charged with subway fare evasion who has a prior criminal record—even for minor crimes—will be faced with two choices, both of which involve jail: (1) plead not guilty and elect to go to trial and, if bail is set and not made, be detained on bail while waiting for a trial date; or (2) plead guilty and receive a short jail sentence. In each instance, the criminal conduct is the same—an unpaid \$2.75 subway fare.

*Rikers Stays by Offense Type.* The majority of women admitted to Rikers are charged with non-violent crimes. The New York City Department of Correction reports that women admitted to Rikers were admitted for the following types of cases in Fiscal Year 2015: 23% for drug crimes, 21% for violent crimes, 18% for property crimes, and 15% for misdemeanors that do not fall into the preceding categories.<sup>110</sup> These figures, however, do not distinguish between felony and misdemeanor drug, violent, and property crimes. Thus, these categories include significant variations in the seriousness of the conduct.

*Length of Stay at Rikers.* Most women are at Rikers for very short periods of time. But even short stays can cause significant harm, disrupting families, childcare, and health care, or leading women to lose their benefits, employment, or places at shelters.

About 60% of all women at Rikers stay for less than two weeks:<sup>111</sup> 48.2%, or 3,254, are held for six days or less and another 11.6% (783) are released in 7-13 days.<sup>112</sup> Fewer women are at Rikers for a month or more: 28.9% of women are released in 14-90 days.<sup>113</sup> Only 11.3% of women stay 90 days to one year.<sup>114</sup> The constant and rapid flow of women through Rikers presents intractable challenges for programming and reentry planning. Planning programming or attempting to address the reentry needs of these women is difficult when length of participation cannot be predicted, because for most people held at Rikers, release dates are unknown, contingent on the course of their cases.

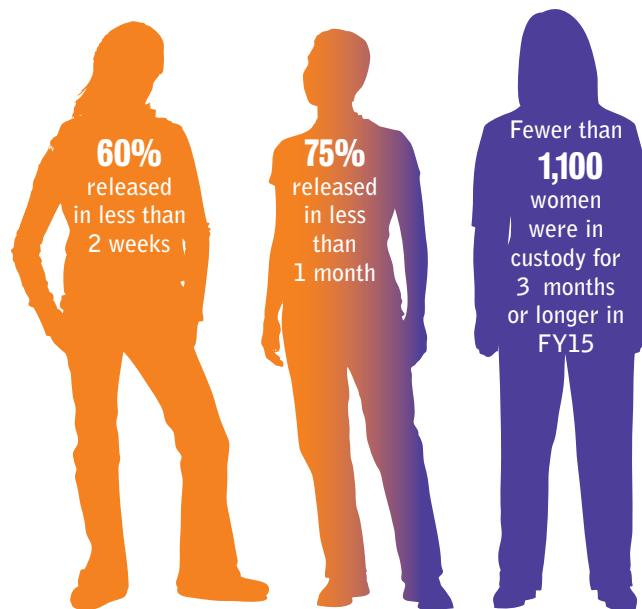
Moreover, corrections and program staff at Rikers Island cite several barriers to effectively delivering programming to women. First, because most women are detainees and are at Rikers for less than two weeks, they are ineligible for or unable to take advantage of services. Second, there are deep challenges associated with trying to provide services within a DOC setting, such as obtaining a sufficient number of escorts from housing units to program areas. Lockdowns are a frequent occurrence and can be triggered by even minor disputes, halting movement to programs. Further, there is simply not enough classroom and program space in most of the jails at Rikers. To address these problems, DOC has plans to begin housing individuals in areas based on their programmatic needs so that services can be provided within housing units.

Without the opportunity to connect women with programming during detention or to plan for services upon reentry, the utility of these short, pretrial detention stays is questionable, particularly given the underlying histories of trauma of many justice-involved women.

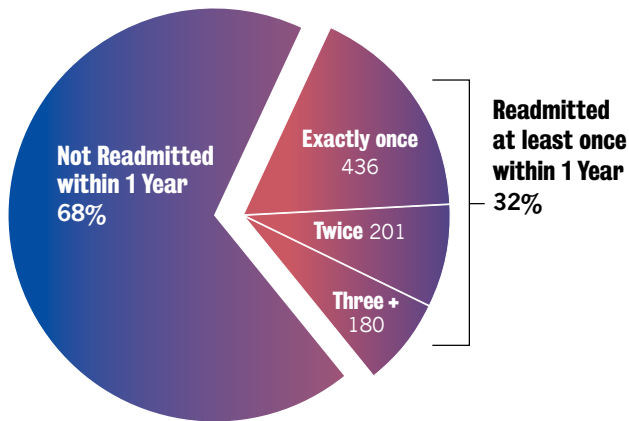
## F. Post-Disposition and Reentry

Women are less likely to be readmitted to jail within one year of release than are men. The Department of Correction found that that 32%, or 817 women, who were discharged from Rikers in 2014 were readmitted within one year, compared to 41% of men.<sup>115</sup> Of the 817 women who were readmitted, 436 were readmitted once, 201 were readmitted twice, and 180 were readmitted three or more times.<sup>116</sup>

**Figure 9: Length of Stay**



**Figure 10: Women's Rates of Readmission 2014**



The Department of Correction uses a risk of readmission scoring system to categorize incarcerated individuals in order to determine program eligibility and need upon release. Individuals at Rikers who present a high or medium risk of readmission and who are at Rikers for at least 20 days are eligible for the I-CAN reentry program, which provides services based on individual needs, including assistance with acquiring a valid state ID, earning a GED, preparing a resume, job placement and job retention, completion of culinary arts certification programs, and achieving abstinence from substance use.<sup>117</sup> In 2015, only 4% of the average daily population of women scored as high risk, and 18% scored medium-high risk. The remainder were medium-risk (25%), medium-low risk (24%), or low risk (18%), and 12% were not scored.<sup>118</sup>

The number of women who cycle through the jail multiple times on low-level charges highlights the need for considering alternatives to detention and incarceration as a first option, as well as the deep need for supportive services throughout the criminal justice system and at reentry to address homelessness, mental illness, and addiction, all of which drive recidivism.

### G. Women's Paths: Differences by Borough

The data showed notable differences between boroughs at certain decision-making points. New York County represented 26.2% of total arrests for women in 2014, but accounted for 36.3% of sentences to jail or prison for women.<sup>119</sup> Bronx County was in stark contrast, representing 24.0% of total arrests in 2014, but only 16.3% of sentences to jail or prison.<sup>120</sup> The majority of women's cases that were disposed because the District Attorney declined to prosecute were in Bronx County, which accounted for 62.5% of decline to prosecute dispositions of women in 2014.<sup>121</sup> This could be due to policing differences that result in legally insufficient evidence, incorrect entries by court clerks, or variations in the exercise of prosecutorial discretion on the part of assistant district attorneys.

**Figure 11: Borough Arrest and Jail Figures**

Women, 2014

	Bronx	Brooklyn	New York	Queens	Richmond	Total
<b>Misdemeanor Arrests</b>	10,667	11,066	11,827	7,541	1,785	42,886
<b>Felony Arrests</b>	3,045	4,537	3,132	2,815	704	14,233
<b>Total Arrests</b>	13,712	15,603	14,959	10,356	2,489	57,119
<b>% of NYC Arrests</b>	24%	27.32%	26.19%	18.13%	4.36%	100%
<b>Misd Jail/Prison Sentences</b>	1,904	2,938	4,222	2,085	502	11,651
<b>Felony Jail/Prison Sentences</b>	159	264	381	167	49	1,020
<b>Total Jail/Prison Sentence</b>	2,063	3,202	4,603	2,252	551	12,671
<b>% of Jail/Prison Sentences</b>	16.28%	25.27%	36.33%	17.77%	4.35%	100%



There are also differences in charges by boroughs that are not reflective of the general arrest rates by borough. From 2010 to 2014, New York County consistently had the highest percentage of larceny and stolen property arrest charges for women, both misdemeanor and felony level.<sup>122</sup> The Bronx and Brooklyn had the largest percentage of drug possession arrest charges against women.<sup>123</sup> Queens had the largest percentage of prostitution cases, although prostitution arrests in New York County have been steadily growing in the past three years.<sup>124</sup> In both the Bronx and Brooklyn, the percentage of arrests for assault—both misdemeanor and felony—were higher than in other boroughs.<sup>125</sup> Identifying such geographical differences can be useful in planning program availability. Note, however, that defendants often live in different counties than the one in which they are being charged, and the location of programs should consider the residences of defendants in order to increase their ability to participate.

## H. Women in the System: Race, Ethnicity, and Age

Overall, the age and race of women arrested in New York City is similar to that of men arrested in New York City: Black and Hispanic people are far more likely to be arrested than white people. However, there are differences between genders worth noting.

The majority of women arrested are over the age of 25.<sup>126</sup> Women arrested for felonies are more likely to be older than women arrested for misdemeanors.<sup>127</sup> On average, between 2010 and 2014, 58.42% of women arrested for misdemeanors were over the age of 25, compared to 67.37% of women arrested for felonies.<sup>128</sup> In comparison, there is little difference in age for men charged with misdemeanors and those charged with felonies: 62.59% of men arrested for misdemeanors were over the age of 25 compared with 64.88% of men charged with felonies.<sup>129</sup>

**Figure 12: Age at Arrest (Women, Felony and Misdemeanor)**

Age at Felony Arrest for Females 2010-2014						Age at Misdemeanor Arrest for Females 2010-2014					
	2010	2011	2012	2013	2014		2010	2011	2012	2013	2014
<b>16-17</b>	973	843	826	748	642	<b>16-17</b>	4,734	4,438	4,006	3,320	3,125
<b>18-20</b>	1,773	1,695	1,588	1,471	1,438	<b>18-20</b>	7,078	7,021	6,436	5,596	5,316
<b>21-24</b>	2,153	2,219	2,270	2,358	2,282	<b>21-24</b>	7,053	7,693	7,471	7,238	7,118
<b>25-34</b>	3,729	3,784	3,885	4,212	4,236	<b>25-34</b>	10,977	11,530	11,420	11,729	11,984
<b>35+</b>	5,902	5,581	5,501	5,617	5,635	<b>35+</b>	16,296	16,287	15,949	15,390	15,343

By Percentage: Age at Felony Arrest for Females						By Percentage: Age at Misdemeanor Arrest for Females					
	2010	2011	2012	2013	2014		2010	2011	2012	2013	2014
<b>16-17</b>	6.70%	5.97%	5.87%	5.19%	4.51%	<b>16-17</b>	10.26%	9.45%	8.85%	7.67%	7.29%
<b>18-20</b>	12.20%	12.00%	11.29%	10.21%	10.10%	<b>18-20</b>	15.34%	14.95%	14.21%	12.93%	12.40%
<b>21-24</b>	14.82%	15.71%	16.13%	16.37%	16.03%	<b>21-24</b>	15.29%	16.38%	16.50%	16.73%	16.60%
<b>25-34</b>	25.66%	26.80%	27.61%	29.24%	29.76%	<b>25-34</b>	23.79%	24.55%	25.22%	27.10%	27.94%
<b>35+</b>	40.62%	39.52%	39.10%	38.99%	39.59%	<b>35+</b>	35.32%	34.68%	35.22%	35.56%	35.78%



As the number of arrests have dropped in the past five years, the racial makeup of those arrested has varied slightly. The racial makeup for felony arrests has remained relatively static: Between 2010 and 2014, the percentage of female arrestees who were non-white has ranged from 86.43% to 87.25%. Of those who were non-white, the split between black, Hispanic, and other races remained static, with no group shifting greater than 1%.

The demographics of women arrested for misdemeanors has shifted more. While the percentage of white women arrested between 2010 and 2014 remained relatively stable, other groups shifted. The percentage of black women arrested for misdemeanors dropped from 50.77% to 47.28%.<sup>130</sup> The number of Hispanic women and women of other races arrested for misdemeanors rose a corresponding amount.<sup>131</sup>

**Figure 13: Racial Composition of Those Arrested (Women and Men, Felony and Misdemeanors)**

Race, Misdemeanor Arrest for Females 2010-2014						Race, Felony Arrest of Females 2010-2014					
	2010	2011	2012	2013	2014		2010	2011	2012	2013	2014
<b>White</b>	6,399	6,831	6,340	5,921	6,365	<b>White</b>	1904	1820	1787	1822	1919
<b>Black</b>	23,248	23,322	22,621	20,653	20,094	<b>Black</b>	7666	7603	7641	7550	7542
<b>Hispanic</b>	13,884	14,162	13,800	13,822	13,557	<b>Hispanic</b>	4164	3987	3984	4239	3961
<b>Other</b>	2,259	2,274	2,185	2,360	2,488	<b>Other</b>	715	631	583	679	717

By Percentage: Race, Misdemeanor Arrest for Females						By Percentage: Race, Felony Arrest for Females					
<b>White</b>	13.97%	14.66%	14.11%	13.85%	14.98%	<b>White</b>	13.18%	12.96%	12.77%	12.75%	13.57%
<b>Black</b>	50.77%	50.06%	50.33%	48.30%	47.28%	<b>Black</b>	53.06%	54.15%	54.60%	52.83%	53.34%
<b>Hispanic</b>	30.32%	30.40%	30.70%	32.33%	31.90%	<b>Hispanic</b>	28.82%	28.40%	28.47%	29.66%	28.01%
<b>Other</b>	4.93%	4.88%	4.86%	5.52%	5.85%	<b>Other</b>	4.95%	4.49%	4.17%	4.75%	5.07%

## Part III. The Needs Of Women In The NYC Justice System

Women in the New York City criminal justice system have high social service needs, both as a cause and a result of involvement in the criminal justice system. These include a high rate of homelessness and housing instability, substance abuse and mental health issues, and the challenges of caring for children. As shown in Part I, these needs often exist prior to justice system involvement—in many cases they are drivers of such involvement. In fact, involvement in the criminal justice system can exacerbate women’s needs in these areas. Incarceration can disrupt existing housing, employment, and childcare. A criminal record makes it more difficult to obtain housing and employment in the future. Women also face tremendous social stigma after criminal justice system involvement, confounding efforts to help women take advantage of opportunities for stability and success.

The needs of justice-involved women, however, are by no means monolithic. Success in the community involves ensuring adequate resources in six main areas: housing, health, livelihood, family, criminal justice compliance, and social connections. On the journey to achieve stability in any of these domains, women pass through various stages, including survival, stabilization, and increasing degrees of self-sufficiency. Service providers must determine where each person is on her journey and provide the necessary services to move her forward in each domain and stage [See chart, page 24].

### A. Homelessness and Lack of Stable Housing

Local providers of services to justice-involved women identified housing as the largest problem facing women in the New York City justice system. Access to housing has hit crisis levels in New York City and this crisis is particularly acute for women in the criminal justice system because of the spectrum of their needs. The number of homeless people sleeping in City shelters has increased 91% over the past ten years, reaching levels unseen since the Great Depression.<sup>132</sup> In February 2016, there were 60,144 homeless people, including 14,654 homeless families with 23,424 homeless children, sleeping each night in the New York City shelters. Two of the professionals we interviewed stressed that women had difficulty accessing domestic violence shelters, which are operated separately from general family shelters.<sup>133</sup> Providers sometimes must coordinate placement of women in shelters on Long Island or in Westchester, but can only pursue those options after exhausting outreach for potential shelter space in New York City.

According to the Mayor’s Office of Criminal Justice, 40% of people leaving Department of Homeless Services shelters have had a recent jail admission.<sup>134</sup> Women’s service providers estimated that 90% of the women they work with have issues related to stable housing. In fact, eight out of ten women at Rikers identified that they needed assistance finding housing upon discharge in an anonymous survey of 115 women conducted by the New York City Department of Correction in 2015.<sup>135</sup> According to data from the Mayor’s Office of Criminal Justice, 10.2% of the women detained at Rikers reported that they were homeless at admission.<sup>136</sup> While this is a much smaller percentage than reported by service providers and in the anonymous DOC survey, women may be less likely to report homelessness during the pretrial and jail admissions process for fear that the information could be used against them. Instead, women may identify as needing assistance with housing, rather than as being homeless. Staying with friends, families, or partners in situations that are not permanent is common among those facing housing instability.<sup>137</sup> Women may also be staying with abusive partners or family members in order to retain housing.

*Supportive Housing: Successes and Limitations.* The severe lack of housing in New York City must be addressed with an array of solutions, and commitments for additional housing must be targeted to meet the needs of those in the criminal justice system. Supportive housing has been identified as one of the most effective models to address the interrelated needs of those with co-occurring mental health, physical health, and substance abuse needs—needs that often spawn involvement in the justice system. Supportive housing units in New York provide stable, permanent homes and services to people who would otherwise cycle through institutional settings such as congregate shelters, prisons, or public institutions. Providers like Housing+Solutions,

**Chart: The Many Dimensions of Success in the Community**

PHASE	BASIC LIFE AREAS					
	Livelihood	Residence	Family	Health & Sobriety	Criminal Justice Compliance	Social/Civic Connections
<b>Survival</b>	Gate money Public assistance Soup kitchens, pantries Personal care kits	Shelter Family or Friend Street	Find children Make contact	Continuity of medication Relapse prevention	Report to supervising authority (court, probation, parole, etc.) Comply with requirements	Receive peer support
<b>Stabilization</b>	Public assistance/ Workfare Employment/ Education Training Clothes for Interviews	Transitional Residence Family or friend	Supervised visitation Get refamiliarized Trial discharge	Drug treatment and treatment of urgent health and mental health issues Counseling	Earn reduced supervision	Join support group or nurturing community Volunteer work
<b>Self-sufficiency</b>	Job that pays a living wage and provides benefits	One's own apartment with public subsidy, if necessary	Reunify Participate in family counseling Contribute to others	Regular health visits paid by health insurance Ongoing support: 12 step, therapy, community activities	Satisfy conditions of supervision	Help others Contribute to community life
<b>Goal</b>	Adequate money for food, clothing, transportation, and personal and family expenses	Safe, clean, affordable home that accommodates household comfortably	Reunification with children Reconciliation with family members	Physically and mentally healthy, or receiving affordable quality care including needed prescriptions	Abide by laws Live without community supervision	Healthy friendships and network of supportive adults Opportunities to give back, civic participation (voting, etc.)

Hour Children, and Greenhope Services for Women offer supportive housing exclusively to women and their families. Others, like New Destiny Housing, provide supportive housing exclusively to women and families who have experienced domestic violence to help them achieve independence and self-sufficiency.

Supportive housing has been proven effective as an intervention for those who frequently cycle through the criminal justice, shelter, and health systems in New York City. The City piloted an initiative to target people who most frequently cycle between the criminal justice and homelessness systems. They identified 473 men and women who each had 18 or more admissions to the jail system from 2008–2014 and at least four shelter stays in the previous five years. Of those, 85 were women, representing 12% of the group. As expected, these people were more likely to suffer from mental health and substance use disorders and to cycle through the shelter system. Their arrests were mostly for misdemeanors. The City responded by allocating 200 beds of supportive housing as part of the Frequent Users Service Enhancement (FUSE) initiative. The FUSE effort, coordinated and evaluated by the Corporation for Supportive Housing, resulted in fewer shelter, jail, and psychiatric hospitalization stays. Participants showed high rates of remaining in supportive housing, where they have access to services and coordinated care. The FUSE initiative was replicated, FUSE II, for 72 individuals with four jail and four shelter stays over the five years prior to admission, plus additional criteria from specific housing providers, based on client eligibility for available types of housing assistance. After two years, 86% were still housed, resulting in significant reductions in shelter use and a 40% decrease in days incarcerated. The FUSE and FUSE II initiatives provide an important template for addressing the needs of women in the criminal justice system and their overlapping vulnerabilities.<sup>138</sup>

Based on the success of supportive housing, New York State and New York City have committed to adding a total of 35,000 new units over the next several years. Supportive housing, however, targets individuals who experience mental illness and homelessness, and is not limited to those with criminal justice system involvement. Thus, even these large commitments will not fully meet the housing needs of women in the justice system.

*Transitional Housing.* Transitional housing is also an important need for women who need short-term housing and supportive services. A significant number of the women served by women’s transitional housing providers are involved in the justice system. A collection of five women’s housing providers—Greenhope Services for Women, Hour Children, Housing+Solutions, Providence House, and Women’s Prison Association have recently formed the Women’s Community Justice Project (WCJP). They are partnering with alternative-to-incarceration programs and bail alternatives to connect the women served in these programs with transitional housing and supportive services.

*Housing Discrimination Against the Justice-Involved.* Obtaining stable housing is made more difficult by widespread discrimination against people with criminal records. The New York City Public Housing Authority presumptively denies admission to people with criminal convictions for time periods based on the level of offense—four years ineligibility for a class A misdemeanor conviction, five years ineligibility for a D or E level felony, and six years for a C, B, or A level felony.<sup>139</sup> In addition to the time periods of presumed ineligibility, NYCHA also moves to evict families or individual household members who have been arrested.<sup>140</sup>

Housing providers for private or subsidized housing also discriminate against people with criminal records. Some housing providers have outright bans on applicants with criminal records.<sup>141</sup> In certain contexts, these bans may violate the Fair Housing Act, but a housing applicant may not know that a denial is based on a criminal record and there is no law in New York State that sets guidance for housing providers in assessing criminal records, as exists in the employment context. HUD recently announced its position that outright bans based on arrest history or criminal records violate the Fair Housing Act because they have a disparate impact on people of color.<sup>142</sup> HUD has also issued statements urging increased support and housing availability for people with criminal records.<sup>143</sup> The exact scale of discrimination against those with criminal records is unknown in New York City and these education and enforcement efforts will take time to reach providers.

Because of such discrimination, women with criminal records are often forced into deplorable and unsafe housing conditions, like Three-Quarter Houses. Three-Quarter Houses are essentially illegal rooming houses that accept the \$215/month shelter allowance provided to adults on public assistance. They are one- and two-family homes, larger apartment buildings, or other structures that rent beds to single adults. New York City housing code outlaws cohabitation by three or more unrelated persons, rendering most, if not all, Three-Quarter Houses illegal. They are typically grossly overcrowded, with a range of health and safety violations. They hold themselves out as “programs” but usually do not provide any of the in-house services they promise. They receive referrals from a range of governmental agencies and community-based organizations under government contract, but no government agency officially regulates or oversees the houses. As reported in the Prisoner Reentry Institute’s report *Three Quarter Houses: The View from the Inside*:

“Three-Quarter Houses exist because they fill a crucial need by providing housing for some of New York City’s most vulnerable individuals. While this housing is almost always illegal, often dangerous, and too frequently abusive, simply closing down the houses would render their occupants homeless, with potentially devastating results. . . . Thousands of people rely on Three-Quarter Houses—far more than the city shelter system is prepared to absorb.”<sup>144</sup>

Housing instability is both a driver and result of involvement in the criminal justice system. Therefore, attempts to expand supportive and affordable housing must include measures to connect justice-involved women with opportunities for stable housing.<sup>145</sup>

## **B. Trauma, Mental Health, and Substance Use**

The majority of women in the justice system have histories of trauma and abuse.<sup>146</sup> Researchers have found that “victimization and trauma often lead to depression and other internalized mood disorders, which then frequently lead to self-medicating behavior by abusing drugs.”<sup>147</sup> All are key drivers of criminal justice system involvement.

Leaders of programs serving women in the justice system identified trauma and mental health as a primary unaddressed need for the women they serve. They echoed findings that substance abuse can both precede and be a response to mental illness.<sup>148</sup> Mental illness and substance abuse often stem from victimization and other struggles that women face.<sup>149</sup> Both researchers and providers stress that it is vital to address underlying trauma and mental health to enable women to remain free of the criminal justice system.<sup>150</sup>

Over 40% of the women at Rikers are “M Designated.”<sup>151</sup> This means they have been diagnosed with a serious mental illness, referred for mental health services at Rikers, or receive specific psychotropic medications while at Rikers. This is, however, a limited definition that may not capture the entire spectrum of substance use disorders or traumatic response symptoms that women in the justice system experience. National research has found that as many as 80% of incarcerated women meet the criteria for having experienced at least one psychiatric disorder in their lifetime.<sup>152</sup> The body of research on the mental health needs of women offenders has found that:

- Women are more likely than their male counterparts to report extensive histories of physical, sexual, and emotional abuse often starting when they were children (women are typically abused by people who are close to them: parents, caretakers, siblings, extended family members, intimate partners, and acquaintances);
- There is a strong link between childhood abuse and adult mental health problems, particularly depression, post-traumatic stress, panic, and eating disorders; and
- Greater exposure to adverse childhood events is associated with behavioral problems throughout life, as well as with physical and mental health problems.<sup>153</sup>

The prevalence of mental disorders of incarcerated women compared with women in the general population reveals stark differences: 12% of women in the general population have symptoms of a mental disorder, compared to 75% in local jails, 73% in state prisons, and 61% in federal prisons.<sup>154</sup> Justice-involved women also have higher rates of mental health problems than do justice-involved men: 75% of women in local jails versus 63% of men. The New York City Department of Correction has instituted new programming to address the needs of people in custody who have mental illness. There are new housing units at Rikers for people with serious mental illness called PACE units, Program to Accelerate Clinical Effectiveness.<sup>155</sup> There are also units called CAPS—Clinical Alternative to Punitive Segregation—to house those with mental illness who have disciplinary infractions imposed. These units combine corrections and health staff serving continuously during the day in the housing area to create a clinical setting.<sup>156</sup> DOC has also convened a gender-responsive workgroup comprised of department staff, advocates, and practitioners to study how to integrate more gender-responsive strategies to meet the needs of women in custody.

Intimate Partner Violence (IPV) is also prevalent among women in the justice system. Among the general population, findings from the Centers for Disease Control and Prevention indicate that roughly 1 in 4 women have experienced severe physical violence by an intimate partner in their lifetime.<sup>157</sup> In addition, approximately 1 in 5 women have been raped at some point in their lifetime and 1.6% reported being raped in the 12-month period prior to the survey, translating into nearly 1.9 million women.<sup>158</sup>

For women in the criminal justice system, the rates of IPV are significantly higher than in the general population. Recent studies of IPV experienced by women under correctional supervision have found that between 77% and 90% of women have experienced intimate partner violence in their lifetime.<sup>159</sup> One of those studies found that IPV was associated with drug offending, sex work, and property crimes.<sup>160</sup>

Women's histories of trauma and abuse are likely connected to their high levels of arrest for simple assault and felony assault. Providers noted the difficulty faced by police when responding to domestic violence, speculating that the women's trauma responses could involve, or be interpreted as, aggression and violence by responding officers.<sup>161</sup> An area for further investigation is the mandatory domestic violence arrest policies and the possibility that they result in unintended harm to survivors of violence.

### C. Employment and Education

Women in the justice system are less likely to be employed than men, which can impact decision-making in the courts. A significant factor in the failure to appear risk assessments conducted by CJA at arraignment is current employment or educational engagement. Full-time employment has been correlated with a higher likelihood of appearing in court and thus counts as a positive factor toward a recommendation of release. Part-time employment is neutral in the assessment, while lack of employment is counted as a negative factor, both of which can result in risk scores that favor bail and pretrial detention over release on recognizance.

In 2014, CJA reported that of women interviewed at arraignment only 38% were employed, compared to 46% of men. Further analysis by the Mayor's Office of Criminal Justice found that 78% of the women who were detained at arraignment were not employed, versus 57% of women who were released. For men, 64% of men detained were not employed, versus 46% who were released.

Women are less likely to be employed than men because of gender-based structural inequality that creates barriers to labor force participation.<sup>162</sup> Women often do not participate in the labor market because of childcare responsibilities.<sup>163</sup> Single mothers have high unemployment rates.<sup>164</sup> Black women—who are overrepresented in the criminal justice system—with children under the age of six have the highest rates of unemployment among all women.<sup>165</sup> Thus, women can be penalized in the criminal justice system because of broader gender inequality that both is prevalent in the employment market and that may not adequately credit the discharge of other responsibilities outside of labor market participation, like child or elder care of relatives. A criminal record can pose barriers to

employment, despite significant efforts in New York State and New York City to prohibit blanket discrimination against individuals with criminal records.<sup>166</sup> Further, a person may lose her job while incarcerated.

Involvement in the criminal justice system can also disrupt educational attainment. Education can help women and their families achieve greater economic self-sufficiency through access to higher-paying jobs.<sup>167</sup> Education is also a strong predictor of desistance from future criminal activity among men and women.<sup>168</sup> Pretrial detention and incarceration interrupts progress in education, often leaving a permanent mark on academic records when a student cannot complete schoolwork or classes.

## **D. Family/Parental Status**

When the criminal justice system disrupts families by incarcerating women unnecessarily, the consequences reverberate for the next generation. Research has definitively concluded that parental imprisonment intensifies and compounds the challenges children face.<sup>169</sup> Parental incarceration is now recognized as an “adverse childhood experience” of the type that can significantly increase the likelihood of long-term negative outcomes for children, which may include emotional and psychological problems, hostility, aggression, academic problems, greater risk for involvement with the juvenile justice and foster care systems, and chronic health conditions.<sup>170</sup> Even reunification in reentry is stressful for formerly incarcerated parents, their children, and the parents or caregivers who have been raising children during the incarcerated parent’s absence.<sup>171</sup> The stress of incarceration and reentry can add a burden to each family member’s physical and mental health and his or her ability to engage in services.

The New York City Department of Correction estimates, using data provided by the New York City Criminal Justice Agency, that 20% to 25% of women in custody are the caretakers of children.<sup>172</sup> In a 2014 survey of 115 women held at Rikers, 45% identified that they would like help regaining custody of their children. Nationwide, the number of children under the age of 18 with a mother in prison more than doubled since 1991.<sup>173</sup> Providers of services to women spoke frequently of women’s needs related to involvement in the child welfare system. They report that women working to regain custody and guardianship of their children face intense challenges. Meeting the responsibilities set by the family courts and the criminal courts while working to meet basic survival needs can quickly become overwhelming.

## **E. Harms of Incarceration**

Women who are incarcerated are more likely to be physically and sexually assaulted, to face greater stigma after incarceration, and to experience lasting trauma as a result of arrest and incarceration.

### **1. Physical and Sexual Assault**

Sexual abuse of incarcerated people is prevalent in jails and prisons in the United States.<sup>174</sup> In the worst jails, as many as 1 in 4 women report being a victim of sexual abuse.<sup>175</sup> While incarcerated, women are particularly vulnerable to abuse by corrections staff, as well as from other incarcerated women.

A survey conducted by the U.S. Department of Justice found that the Rose M. Singer Center (RMSC), the women’s facility at Rikers Island, is one of the twelve worst jails in the country with respect to staff sexual misconduct.<sup>176</sup> Nationwide, 3.2% of jail inmates reported sexual victimization, but the rate at RMSC was 8.6%, and rates are higher at RMSC than at other Rikers’ buildings in the survey.<sup>177</sup> RMSC also has the country’s highest rate of non-violent staff sexual coercion of inmates,<sup>178</sup> with 5.9% of RMSC inmates reporting sexual abuse by staff.<sup>179</sup>

A lawsuit filed by the Legal Aid Society on May 19, 2015, on behalf of women held at RMSC alleged that women who report sexual abuse are retaliated against and that corrections policies do little to prevent sexual abuse or protect women who report it.<sup>180</sup> It also alleges that male corrections officers have unsupervised access to women, that too many locations are without cameras, that officers are kept in the same staff positions after allegations have been made,



and that there is a culture of cover-up.<sup>181</sup> At a City Council hearing on May 26, 2016, medical staff at Rikers Island reported that there had been 118 allegations by inmates of sexual assault or misconduct in 2016 to that date.<sup>182</sup>

The Board of Correction recently announced its intention to engage in rule-making to address sexual assault of women, but existing and future rules must be enforced to reduce the harm to women stemming from incarceration.<sup>183</sup>

## **2. Stigma**

Stigma for women in the justice system can stem from their incarceration history, drug use, mental health status, gender, race/ethnicity, or sexual orientation.<sup>184</sup> Stigma is a set of negative and often unfair beliefs that a society or group of people have about a characteristic of another person. Stigma results in prejudice and discrimination against the stigmatized group, reinforcing existing social inequalities, particularly those rooted in gender, sexuality, and race. Those who are stigmatized can experience direct, structural, or internalized discrimination.<sup>185</sup>

Both drug use and incarceration carry stigma for men and women, but the degree of stigma is much greater for women because of gender-based stereotypes that hold women to different standards.<sup>186</sup> Formerly incarcerated women face stigma that can negatively impact successful reentry and result in poor treatment and compromised access to health care, drug treatment, employment, and housing.<sup>187</sup> Stigma can also limit one's help-seeking intentions, causing women to internalize feelings of worthlessness, which can exacerbate mental health problems, increase the risk of relapse, and result in low self-esteem. Stigma can also contribute to a return to the behavior that precipitated a woman's original criminal justice involvement.<sup>188</sup> Reentry services providers cited stigma as a driver of mental health issues, particularly depression, for formerly incarcerated women.

## **3. Trauma to Women and Their Families**

Incarceration itself has adverse effects on women and their families. Separation from a parent who was the primary caregiver can be particularly traumatic for young children. Children also experience a combination of trauma, shame, and stigma from parental incarceration. Even in the absence of incarceration, children can be traumatized by a parent's involvement with the criminal justice system. A 2010 study found that children who witnessed the arrest of someone in their household and had a recently arrested parent were 73% more likely to have elevated post-traumatic stress symptoms than children who did not have an arrested parent and had never witnessed an arrest.<sup>189</sup> An in-depth report of the New York Initiative of the Children of Incarcerated Parents, established by the Osborne Association, recommends prompt release on bail or pretrial supervision to reduce the trauma of arrest by returning the parent to the community.<sup>190</sup>

There has been little research on the trauma resulting from an arrest. For women with histories of trauma, an arrest is an event that may trigger a severe traumatic reaction. Instances where New York City police have utilized unnecessary force have been documented in recent years, including videos showing an undressed woman being dragged from an apartment and a pregnant woman being thrown face-down and handcuffed.<sup>191</sup>

In addition, women incarcerated at Rikers are strip searched regularly. Every court date for a detained woman involves four separate strip searches: upon exiting Rikers, entering the court, exiting the court, and re-entering Rikers. Strip searching is an invasive procedure that can activate traumatic responses, especially among the many justice-involved women who have experienced abuse in the past. While ensuring that contraband does not enter prisons is important to maintaining a safe and secure environment, less invasive search methods, such as scanning and swabbing, can reduce the potential trauma to women detainees.<sup>192</sup>



## Part IV. Addressing The Needs Of NYC’s Justice-Involved Women

### A. The Intersection of Social Service Programming and the Criminal Justice System

In Part III, we examined the many social and emotional needs of justice-involved women in New York City. The questions then become: How best can we connect these women with the services and programming they require to meet these needs? What is the best way to deliver services to the women who need them? What is the optimal relationship between the criminal justice system, social service providers, and justice-involved women?

Two core principles of justice—proportionality and parsimony—are germane to assessing the role of the criminal justice system in assisting people who have high social service needs. Proportionality requires that the punishment be tailored to the severity of the crime. Parsimony asserts that punishment should be no more than necessary to achieve a legitimate public purpose. These normative principles help to determine whether a policy is justifiable and legitimate.<sup>193</sup> Without adherence to them, the justice system loses credibility.

Based on what we know about women in the justice system, there is a temptation to use the criminal justice system to meet their extensive social service needs. However, the criminal justice system should not assume management of social services. It is a role that courts are ill-equipped to play in the context of adversarial proceedings. When services to meet women’s needs are court-mandated, such mandates can bump up against the principles of parsimony and proportionality, entangling women with the adversarial criminal justice system even for minor offenses—or, in the case of pretrial conditions, even when they are considered presumptively innocent.

Diversion programs in New York City have typically operated with a “carrot and stick” approach. A person is given the opportunity to participate in rehabilitative or programmatic services instead of facing a harsher punishment, typically a jail or prison sentence. Requirements vary, but can include mandatory attendance, drug screening, counseling sessions, regular meetings with case managers, and follow-through on referrals to additional services. Although a person may be given multiple chances to “comply,” if a person fails to meet the requirements set by the court and the program, they are punished. Often, the ultimate sentence is more severe than if the person had accepted a plea bargain in the beginning of the case.<sup>194</sup> Thus, providing social services as part of a plea bargain can inadvertently lengthen and deepen involvement with the criminal justice system.

Instead, social services should be *accessible* through the criminal justice system, but not *mandated* by it. Neither should the criminal justice system bear the burden of funding social services. Rather, other social service systems must collaborate with criminal justice system entities that have ongoing contact with individuals, using it, in essence, as a hub for delivering services to those in need on a voluntary basis.

Ignoring the basic human needs of individuals entering the criminal justice system is a missed opportunity. Identifying the needs of justice-involved women and fostering relationships with community providers to offer services to meet these needs is valuable as a stand-alone goal. It is also an important step to ensure against re-offending. But because the criminal justice system is neither skilled in the delivery of social services, nor funded to do so, its role is best envisaged as a key connection point to social services, divorced from mandated criminal penalties. Key public service systems—including homeless, health, mental health, and addiction service providers—must embrace those with involvement in the criminal justice and recognize that they are a core part of their constituency.

For women in the criminal justice system, continuity of service is essential for successful reentry, as it is for men. Yet studies show that women experience fragmented behavioral health and addiction services immediately following release. Justice-involved women who remain in the community also experience fragmented services.<sup>195</sup> Many barriers to service for women account for this fragmentation, including insurance lapse, costs of services, familial responsibilities, proximity to services, difficulty obtaining timely appointments, and lack of service providers that can adequately meet the needs of those with criminal justice histories.

## B. Gender-Responsive Services

Service providers and the criminal justice system must recognize that women's treatment needs are unique. Gender-responsive programs acknowledge the realities of women's lives and how they differ from men's.<sup>196</sup> They also address issues common to women in the justice system—violence, trauma, abuse, interpersonal relationships, caretaker responsibilities, substance use, mental health, and poverty.<sup>197</sup> If women's gender-specific needs are left untreated, the odds of recidivism are significantly increased.<sup>198</sup>

An example of gender-based programming for substance use disorders is instructive. The most prevalent substance abuse treatment for decades has been therapeutic communities that emphasize breaking down the individual ego to fully confront addiction. Women with substance use disorders often suffer from low self-worth, thus the process of breaking down ego can inflict more harm and drive women back to substance use. Moreover, traditional addiction treatment has focused on substance use as a singular problem. Gender-responsive addiction treatment recognizes that substance use does not happen in a vacuum and addresses a person's gendered needs holistically and as a chronic condition. Although both men and women may use substances as a result of trauma, there is a strong link between victimization or traumatization in women and substance use disorders.<sup>199</sup> Thus, to be gender-responsive, women's treatment must also be trauma-informed.<sup>200</sup>

*Tenets of Gender-Responsive Interventions.* Robust scholarship, particularly by leading researchers in this field, like Dr. Stephanie Covington, has developed six core elements that must be present in interventions that are gender-responsive:

- Gender: Acknowledge that gender makes a difference.
- Environment: Create an environment based on safety, respect, and dignity.
- Relationships: Develop policies, practices, and programs that are relational and promote healthy connections to children, family, significant others, and the community.
- Services: Address substance abuse, trauma, and mental health issues through comprehensive, integrated, and culturally relevant services.
- Socioeconomic status: Provide women with opportunities to improve their socioeconomic conditions.
- Community: Establish a system of comprehensive and collaborative community services that build on women's strengths and resilience.<sup>201</sup>

*Tenets of Trauma-Informed Services.* Gender-responsive service delivery should also consider the principles for trauma-informed services, given the prevalence of traumatic histories among women in the justice system and the potential for arrest and incarceration to retraumatize. Service providers and criminal justice entities must, therefore, understand and incorporate five core values of trauma-informed care:

- Safety: Ensuring physical and emotional safety.
- Trustworthiness: Maximizing trustworthiness, making tasks clear, and maintaining appropriate boundaries;
- Choice: Prioritizing client choice and control.
- Collaboration: Maximizing collaboration and sharing power with clients.
- Empowerment: Prioritizing client empowerment and skill-building.<sup>202</sup>

## Examples of Gender-Responsive Program Curriculum

The following curricula are gender-responsive programs designed to address women's offending while highlighting common pathways to the criminal justice system. These programs are not designed to meet women's social service needs, but they can be an appropriate criminal justice system response in addition to connecting women voluntarily to other services. Some of these programs are currently offered by providers of alternative-to-incarceration programs that serve women in New York City.

- *Healing Trauma (HT)* is a five-session adaptation of the best-selling evidence-based multimedia curriculum *Beyond Trauma: A Healing Journey for Women*. It is particularly designed for settings requiring a shorter intervention: jails, domestic violence agencies, and sexual assault services. There are detailed instructions and specific lesson plans for the session topics, which include the process of trauma; power and abuse; grounding and self-soothing; and healthy relationships. There is a strong emphasis on building grounding skills to maintain awareness of mind and body when confronted with strong emotions or triggers.
- *Moving On: A Program for At-Risk Women* provides women with alternatives to criminal activity by helping them identify and mobilize personal and community resources.<sup>203</sup> This six-session program, used by several service providers as part of more intense interventions, is a flexible and open-ended intervention program that allows for continuous intake. It draws on the evidence-based treatment models of relational theory and cognitive-behavioral therapy and is ideal for groups or individuals in community corrections and institutional settings. An evaluation found it is effective in reducing recidivism.<sup>204</sup>
- *Helping Women Recover: A Program for Treating Addiction*, is an evidence-based 17-session program that integrates theories of women's psychological development, trauma, and addiction to meet the needs of women with addictive disorders. The comprehensive curriculum contains four modules that address the areas that women in treatment identify as triggers for relapse: self, relationships, sexuality, and spirituality. They include the issues of self-esteem, sexism, family of origin, relationships, domestic violence, and trauma.
- *Beyond Violence* is an evidence-based, manualized, 20-session curriculum for women in criminal justice settings (jails, prisons, and community corrections) with histories of aggression and/or violence. It deals with the violence and trauma they have experienced, as well as the violence they may have perpetrated. This four-level model of violence prevention considers the complex interplay between individual, relationship, community, and societal factors. It addresses the factors that put people at risk for experiencing and/or perpetrating violence. This model is used by the Centers for Disease Control and Prevention (CDC), and the World Health Organization (WHO), and was referenced in the Prison Rape Elimination Act (PREA) research on women in prison.

Overall, women are a lower risk population within the criminal justice system. New York City data shows that women are charged with less serious crimes, are less likely to be charged with violent crimes, and are less likely to return to jail within one year.<sup>205</sup> This is consistent with national research on women in the criminal justice system.<sup>206</sup> Therefore, in assessing risk, women should be evaluated using gender-responsive instruments to ensure that their risk and needs are being considered appropriately and that they are not excluded from resources because of gender or subjected to a framework of options that are non-responsive to their needs.

Advances in our understanding of risk measurement and risk management have demonstrated the need for evidence-based decision-making. Accordingly, there has been a strong move toward the use of objective risk assessment instruments in the United States as a whole, and in New York City in particular. Such instruments assess risk of recidivism, identify needs that, if left unaddressed, increase that risk, and inform pretrial detention decisions, sentencing, levels of community supervision, and inmate classification.

One criticism of these objective risk assessment tools, however, is that they fail to adequately capture the needs of certain sub-populations of people in the criminal justice system, including women.

Indeed, most risk assessments were developed and validated for a majority male population. Some instruments were touted as being “gender-neutral” even though the female population included in validation testing was insufficient.<sup>207</sup> Research has shown that these risk assessment instruments designed for men do not accurately predict risk in women.<sup>208</sup> This has spurred the creation of gender-responsive assessment tools, which draw on the significant research on the distinct biological, social, and psychological attributes of women and take into account their distinct gendered pathways into the criminal justice system. In New York City, several different risk assessments are used at different points as women move through the justice system. At arraignment, the risk assessment performed by CJA is designed only to determine the risk of failure to appear in court and does not include any gender-specific factors.<sup>209</sup> The gender validity of the New York City failure-to-appear assessment has not been studied, but it does rely on the same factors that have been shown in other contexts to over-assess women’s risk, including employment and education status, and may not adequately capture that women are more likely to be full-time caretakers.

In addition to the risk tool used to assess failure to appear, different risk assessment tools may be used if women are diverted into post-release supervision programs, alternatives to incarceration, or probation. The use of appropriate risk assessment instruments is particularly important in the context of treatment because of the growing understanding and use of the “Risk-Need-Responsivity” framework. This framework has been adopted widely for assessing and treating individuals in the criminal justice system. At its core are three principles:

- The *risk principle* asserts that criminal behavior can be reliably predicted and that treatment should focus on higher risk offenders;
- The *need principle* highlights the importance of designing and delivering treatment that addresses needs which, if unaddressed, have been shown to contribute to recidivism; and
- The *responsivity principle* describes providing treatment based on the personal strengths and specific, individual factors that might influence the effectiveness of treatment services.<sup>210</sup>

## Principles and Recommendations

Dramatically reducing the number of women held at Rikers will require a multifaceted strategy, but the end result will be a system that is both fairer and more effective, while also reducing recidivism and improving the prospects of justice-involved women. Reforms must be gender-responsive, faithful to the principles of proportionality and parsimony, and engage social services to better serve individuals with criminal justice system histories.

In addition to these global considerations, the second dimension of reform would target the major decision-making points that serve as the pipeline to jail. This includes improvements to the criminal justice process to reduce the number of people arrested, detaining fewer people by setting the least restrictive pretrial conditions necessary, providing an array of gender-responsive interventions, and connecting women to social services throughout their court involvement, from arraignment through reentry.

### Guiding Principles of Reform

#### **1 Interventions to address the needs of justice-involved women in NYC must be gender-responsive and trauma-informed.**

Criminal justice system responses that are not gender-responsive are less effective at reducing recidivism, fail to meet women's needs, and may even be harmful. When compared to men, women in the criminal justice system have different pathways to crime and different rehabilitative needs that stem from the prevalence of trauma, abuse, mental health disorders, unhealthy relationships, poverty, and care-giving responsibilities. In general, women are also arrested for less serious, less violent crimes than men, and have a lower risk of recidivism. Programs for women in the criminal justice system must be based on an understanding of the pathways that lead women to commit crimes. Moving the criminal justice system to gender-responsive approaches also includes using gender-responsive risk assessments. Assessments used at all points in the criminal justice system process should be gender-normed and periodically validated on women in the jurisdiction in which they are being used.

#### **2 The criminal justice system should be used as a hub for identifying the needs of NYC's justice-involved women and connecting them to social services, but should not mandate participation in programming as part of sentencing or pretrial conditions unless it is a proportionate and parsimonious response.**

Having a sufficient supply of gender-responsive services available to meet women's needs is a worthy goal. However, the criminal courts should not require utilization of these services unless the mandate is proportionate to the offense committed, because to do so risks deepening women's entanglement with the system even for minor offenses. Furthermore, the criminal justice system is an adversarial, legal system ill-equipped to provide or manage social service needs. Instead, housing, employment, education, and physical and mental health services should be available to all women, and the criminal justice system can operate as an ideal access point for assessing the need for such services because the people going through it are likely to be in high need. Offering additional services on a voluntary basis can be a useful way of targeting individuals most in need during pretrial and throughout the criminal justice process. Such services should be provided separately from the criminal justice system response, and an individual's failure to engage should not trigger additional punishment.

### **3 Social service systems must recognize, engage, and attend to the needs of women with criminal justice system involvement.**

Social services providers need to understand that women in the criminal justice system are a core part of the population they serve. To adequately serve justice-involved women requires a fluent understanding of the criminal justice system and the unique needs of women who come in contact with it. Without resources to serve those in the criminal justice system, however, it is easy to accept individuals with fewer needs and ignore those who may need a broader array of services. Providers will require additional capacity and resources to meet these needs.

## **Recommendations for Gender-Responsive Targeted Interventions**

The data charting women's paths through the criminal justice system and the information about their characteristics suggest several interventions that would reduce the number of women at Rikers Island. The goals of these recommendations are to:

- Address the largest entry points to Rikers for women;
- Better meet the unique needs of justice-involved women; and
- Reduce the use of incarceration for those who pose little risk to safety and little risk of recidivism.

### **1 Divert offenses common to women with behavioral health needs**

The gateway to the criminal justice system is arrest. Diverting women at arrest precludes further harms that stem from court processing and incarceration, while providing an opportunity to connect to community resources. Three-fourths of women's arrests are for misdemeanors, and the most prevalent misdemeanor offenses relate to trauma, abuse, mental health, and poverty. Diverting women who commit minor offenses would also preserve scarce resources to address crime that is more serious. Women charged with controlled substance possession, shoplifting, subway fare evasion, prostitution, and offenses related to intimate partner violence should be referred to community-based, gender-responsive services, which should provide a brief evaluation, along with opportunities to participate voluntarily in additional programming. Such a system would decrease the pipeline of women entering the criminal justice system, while optimizing the potential to use arrest as an access point to engage with voluntary services.<sup>211</sup>

To reduce arrests further, additional research is needed to investigate the impact that domestic violence arrest policies have on women who have histories of trauma. Although these policies were promulgated with the intent to protect victims of domestic and intimate partner violence, they might be inadvertently punishing women by requiring police officers to make judgments about the initial aggressor in situations where women may be having a traumatic response that manifests as erratic or dangerous behavior. Changes in arrest practice and policy in situations of domestic violence could potentially divert a significant number of women charged with assault-related offenses from the system. NYPD began Crisis Intervention Team training in 2015 with the goal of teaching 10,000 officers techniques for responding to people exhibiting symptoms of mental illness.<sup>212</sup> Efforts like this should be expanded to reach all officers and incorporate gender-responsive, trauma-informed practices to prevent encounters from escalating.



## **2 Increase use of non-monetary release**

There are nine forms of bail that can be used under New York state law, yet only two forms are typically used by the courts: cash bail and fully-secured bond. These are also the forms of bail least available to people living in poverty. The persistent use of only these two forms of bail continues to penalize poor people despite increased attention to and advocacy about the unfairness of and disparities inherent in the bail system.

Increasing the use of unsecured, non-monetary bail by judges requires understanding individual and practical barriers to their use and fostering buy-in from the judiciary, mayoral administration, prosecutors, and defense bar to make the use of other forms of bail a shared goal. Alternatives to monetary bail have been proven effective at ensuring both return to court and public safety. Indeed, several jurisdictions, including Washington, D.C., have nearly eliminated the use of money bail. Since few women are able to pay bail immediately at the courthouse, even those with financial resources are sent to Rikers until they can make arrangements for bail payment. By increasing non-financial bail options, more women could be released at the courthouse, thus lowering admissions and short stays at Rikers.

## **3 Expand pretrial alternatives to individuals charged with certain serious crimes**

Recent increases in resources for bail funds and supervised release programs are laudable and important efforts but, at current levels and under current restrictions, they will not serve enough individuals to make a significant impact on the total number of people being detained at Rikers. For bail funds to serve even more people, New York law needs to be changed to include those charged with felonies. Supervised release programs could serve more people if the City expanded eligibility to those charged with violent felonies who pose a low risk of re-offense. Making program eligibility based on assessed risk, rather than the offense charged, would divert more people from Rikers while ensuring public safety. Finally, program providers in each borough and the City should investigate whether each program is serving women at levels proportionate to detention rates by gender.

## **4 Increase defender-based pretrial advocacy capacity**

The arraignment and pretrial processes are ripe opportunities to assess women's needs and connect them with services. At present, however, these phases move so quickly that attorneys have insufficient time to understand the full spectrum of their clients' needs. Too often, arraignment is a missed opportunity to connect individuals to voluntary services at the first point of contact with the court system.

Resourcing and strengthening a robust system of defender-based pretrial advocacy that begins at arraignment could begin to assess social service need at arraignment and address it appropriately. Organizations like the Osborne Association also offer social services upon request to a panel of private attorneys that provides court-appointed representation. However, these services are not designed to be accessed at arraignment. Defender-based social services also lack the capacity to serve every client. While attorneys often try to assess clients' social services needs and gather information about community ties and program participation in order to inform their bail advocacy, they are constrained by time, lack of resources, and the need to work quickly to get people out of custody.

If needs assessments were housed as part of the defense function, the information gathered through the defense service could be relayed to the court to enhance bail decisions at the initial arraignment. These services could also be used to assess and address needs early in a case, without entangling such assessment with the prosecution and adjudication functions of the court. Basing these services within defense offices—the only system actor whose sole ethical obligation is to act in the best interest of the defendant—and funding them directly to the defender or to a contracting non-profit would allow for richer advocacy and connections to services. This system would also institutionalize referrals to voluntary, community-based services based on need, beginning at the first point in the court process.

## **5 Increase alternatives to short jail sentences for misdemeanors**

In addition to decreasing the number of women detained, resources should be allocated to increase community alternatives to short sentences for misdemeanors. It is common in the criminal justice system for a person charged repeatedly with petty crimes to receive longer and longer jail sentences based on such recidivism. However, repeat incarceration for increasing amounts of time does nothing to address the root causes of crime and can actually exacerbate these causes.

The length of sentences offered for petty crimes can be a driver of detention rates: when a plea offer at arraignment is not proportionate to the conduct, people opt to plead not guilty. If the judge sets bail, and individuals cannot meet it, they are detained while the case is pending. Ultimately, a substantial portion plead guilty because the time they spent detained is credited toward the ultimate sentence and pleading guilty results in quicker release from jail than proceeding to trial. If the court offered community-based alternatives to the jail sentences for repeat, petty crimes, the need for detention would become moot.

Community-based interventions that are proportional to the offense and available to repeat offenders will reduce the population at Rikers and provide a more effective response to minor law-breaking. These interventions must be trauma-informed and gender-responsive, using curricula such as those discussed in Part IV of this report. Brief, community-based alternatives have been used in youth courts and sex trafficking courts. They have also been implemented for first-time, non-violent misdemeanor cases in the Bronx through Bronx Community Solutions, a project of the Center for Court Innovation.<sup>213</sup> When successful, these short interventions can lead to continued voluntary participation in services.

Several programs with a range of lengths could be provided to women in response to specific offenses. To be effective, these interventions should be housed within community-based programs that can also provide or connect individuals with supportive services such as housing, employment, and case management on a voluntary basis. These approaches must also recognize that the road leading from involvement in the criminal justice system is not straight. Individuals who fail to complete the mandates of a program still get value from their participation, which can influence behavior in the future. Diversion should not be viewed as a one-time, second chance for which failure results in harsher punishment.



## **6 Ensure that gender-responsive services are allocated system-wide**

At every major point in the criminal justice system, New York City and New York State should ensure that there are appropriate and proportional services allocated for women and that those services are gender-responsive. This includes provision of gender-responsive services through all boroughs. The existence of services, however, does not always translate into universal utilization. Judges, prosecutors, and defense attorneys must have knowledge of and trust in those services. The Mayor's Office should play a central role in ensuring that diversion programs are integrated into the courts and that all judges, prosecutors, and defense attorneys are aware of these programs and understand the value of using alternatives to incarceration.

## **7 Facilitate community connections**

The unfortunate circumstance of an arrest can provide an opportunity to provide social service needs. Yet many people cycle through the system without introductions to opportunities to improve their lives. Community-based social services must be embedded into access points within the criminal justice system, which should not be tied to court mandates or plea-bargaining.

This is particularly vital upon release and reentry. Currently, due to the rapidly revolving door at RMSC, many women do not receive discharge or reentry planning services before exiting incarceration. Under the settlement of *Brad H. v. The City of New York*,<sup>214</sup> the Department of Correction is required to provide discharge planning to certain individuals with mental illness. New York City administrative code also requires discharge planning for additional inmates, but only for people sentenced to more than 10 days in jail.<sup>215</sup> Although the Department of Correction has voluntarily expanded discharge planning to a great number of people,<sup>216</sup> a large number of women who churn through Rikers do not receive reentry planning, since nearly half of all women detained there are released within six days. Though providing reentry services for women who are at Rikers for less than a week poses particular challenges, efforts must focus on referring women to accessible community-based services. This means doing more than merely providing referral information. "Warm handoffs" are necessary, including assisting with post-release planning, making direct introductions, escorting women from Rikers to programs, paying transportation costs, and providing immediate follow-through.

Reentry planning should work to meet women's needs, whether they are in custody or in the community. Community providers must be equipped to determine where each person is on her journey to success in the community and be able to provide the necessary services to move her forward in each domain and each phase. This can entail long-term engagement as she makes incremental process forward, requiring a spectrum of resources for each phase.

## Further Areas for Study

Several areas of inquiry that arose during the course of research for this report that merit further study:

- There is a need for longitudinal data on women that studies how they intersect with the New York City justice system throughout their lives, as well as the interconnections women in the justice system and their families have with other public systems. From the data obtained for this report, it is impossible to ascertain how many women are repeatedly cycling through the criminal justice system and how that impacts decision-making at the major points outlined.
- This report does not study the direct experiences of women in the criminal justice system, and these perspectives are vital to understanding the challenges women face. Qualitative research that unearths and analyzes the first-person stories of currently or formerly incarcerated women is necessary to envision a system that better meets women's needs and reflects their input.
- This report did not address the unique needs of transgender women or those with non-conforming gender identities.

## Conclusion

Women in the New York City criminal justice system differ from men in ways that are important to the on-going conversations surrounding mass incarceration, criminal justice system reform, and the deep problems at Rikers Island. The pathway to Rikers begins in the histories of women's lives, which are often marked by poverty, abuse, trauma, mental illness, and addiction. These contextual factors drive women's involvement in the justice system and efforts to address these root causes must respond to women's unique needs and pathways. Yet while these needs are common among women in the justice system, provision of basic social services should not be entangled in the adversarial court process. Rather, the criminal justice system is an ideal access point for voluntary referrals to social service systems.

Once women are at the doors of the justice system, analysis of the key decision-making points shows that bail decisions at arraignment have the biggest impact on the overall number of women held at Rikers Island. Most women at Rikers Island are being detained pretrial because they cannot post bail and most stay at Rikers for less than two weeks. The length of time that most women spend in Rikers provides little justification for its use—the incapacitation value for public safety is minimal. Yet serious harms accrue to women from stigma, physical and sexual assault, and disruption to health, family, housing, employment, and services. Targeting interventions to reduce pretrial detention are necessary for reducing the overall number of people at Rikers Island, which will in turn vastly improve the experiences of justice-involved women in New York City and their families.

## Endnotes

1. “Incarcerated Women and Girls.” November 2015. <http://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>. However, women still account for only a fraction of all arrests, nationally comparison 26.2% of arrests. National Criminal Justice Reference Service. “Women and Girls in the Justice System.” available at <https://www.ncjrs.gov/spotlight/wgcjs/facts.html>
2. For an in-depth analysis of the rise in the number of women in jail on a national level, see Elizabeth Swavola, Kristine Riley, Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform*. New York: Vera Institute of Justice, 2016.
3. National Research Council. “*The Growth of Incarceration in the United States: Exploring Causes and Consequences*.” Washington, DC: The National Academies Press, 2014. doi:10.17226/18613.
4. “Statistics on Women in the Justice System.” Bureau of Justice Statistics. January 2014. <http://www.csosa.gov/newsmedia/factsheets/statistics-on-women-offenders-2014.pdf>.
5. See, e.g., Gendered Pathways: A Quantitative Investigation of Women Probationers’ Paths to Incarceration, Emily J. Salisbury; Bloom, B., Owen, B., & Covington, S. (2003). *Gender responsive strategies: Research, practice, and guiding principles for women offenders*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.
6. Bloom, Barbara, Barbara Owen, and Stephanie Covington. “A theoretical basis for gender-responsive strategies in criminal justice.” In *American Society of Criminology Annual Meeting, Chicago, IL*. 2002.
7. Ibid.
8. *Infra* part 1.
9. Ney, Becky. “10 Facts About Women in Jails – American Jail Association.” American Jail Association. 2014. <http://www.americanjail.org/10-facts-about-women-in-jails/>.
10. Hu, Winnie. “Gang Violence at Rikers Seizes Spotlight During Guards’ Trial in ‘12 Beating.” The New York Times. May 30, 2016. <http://www.nytimes.com/2016/05/30/nyregion/gang-violence-at-rikers-seizes-spotlight-during-guards-trial-in-12-beating.html> Coates; Ta-Nehisi. “An American Kidnapping.” The Atlantic. June 17, 2015. <http://www.theatlantic.com/politics/archive/2015/06/kalief-browder/395963/>.
11. Ibid.
12. See Part II *infra*.
13. Bloom, Barbara, Barbara Owen, and Stephanie Covington. “A theoretical basis for gender-responsive strategies in criminal justice.” In *American Society of Criminology Annual Meeting, Chicago, IL*. 2002.
14. Bloom, Barbara, and Stephanie Covington. “Gender-specific programming for female offenders: What is it and why is it important.” In *50th annual meeting of the American Society of Criminology, Washington, DC*. 1998.
15. Center for Substance Abuse Treatment. “Substance abuse treatment and domestic violence.” (1997).
16. Covington, Stephanie. “The Relational Theory of Women’s Psychological Development: Implications for the Criminal Justice System.” In *Female Offenders: Critical Perspectives and Effective Interventions*, edited by Ruth Zaplin, 8. 2nd ed.
17. Bloom, Barbara, Barbara Owen, and Stephanie Covington. “A theoretical basis for gender-responsive strategies in criminal justice.” In *American Society of Criminology Annual Meeting, Chicago, IL*. 2002.
18. Ibid.
19. Bloom, Barbara E., and Stephanie Covington. “Addressing the mental health needs of women offenders.” *Women’s mental health issues across the criminal justice system* (2008): 160–176.
20. Covington, Stephanie. “The Relational Theory of Women’s Psychological Development: Implications for the Criminal Justice System.” In *Female Offenders: Critical Perspectives and Effective Interventions*, edited by Ruth Zaplin, 2nd ed.
21. Bloom, Barbara, Barbara Owen, and Stephanie Covington. “A theoretical basis for gender-responsive strategies in criminal justice.” In *American Society of Criminology Annual Meeting, Chicago, IL*. 2002.
22. O’Neil, Alessandra Liquori, and Jonathan Lucas, eds. “DAWN Drugs and Alcohol Women Network: Promoting a Gender Responsive Approach to Addiction.” no. 104 (December 2013). [http://www.stephaniecovington.com/assets/files/DAWN\\_Promoting-GR-Approach,-Chapter-IV-SC-Section.pdf](http://www.stephaniecovington.com/assets/files/DAWN_Promoting-GR-Approach,-Chapter-IV-SC-Section.pdf).
23. Adult women includes any female over the age of 16.

24. In this map of women in New York City's criminal justice system, we use six of the seven decision-making points. The decision to assign counsel is not analyzed in this report because New York City has a robust indigent defense system and automatic assignment of counsel at arraignment. In other jurisdictions, assignment of counsel is not automatic, and thus represents important institutional decision-making that has significant repercussions.
25. In prior mayoral administrations, this office was called the "New York City Office of the Criminal Justice Coordinator." "About the Mayor's Office of Criminal Justice." <http://www1.nyc.gov/site/criminaljustice/about/about.page>.
26. Ibid.
27. Data from DCJS on file with the author.
28. Data from DCJS on file with the author.
29. Data from DCJS on file with the author.
30. Data from DCJS on file with the author.
31. Data from MOCJ on file with the author.
32. The People of the State of New York Ex Rel. Michele Maxian, On Behalf Of Damon Roundtree, et al., v. Lee Brown, Commissioner, New York City Police Department, et al., 77 N.Y.2d 422, 570 N.E.2d 223, 568 N.Y.S.2d 575 (1991).
33. New York Criminal Procedure Law Article 150 allows for the issuance of an appearance ticket for any offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10 of the Penal Law. However, the 2009 NYPD Patrol Guide directives are stricter and only allow a DAT when an E felony is charged if the person is hospitalized. The Patrol Guide also prohibits DATs for persistent misdemeanants. "NYPD Patrol Guide 2009-B." (n.d.): 360-081. New York City Police Department.
34. USA. The New York City Council. Criminal Justice Reform Act. June 13, 2016. <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2553507&GUID=BF52096B-1917-4914-977F-91E604025A50&Options=&Search=>.
35. Reducing the Number of People with Behavioral Health Needs Behind Bars." Behavioral Health Criminal Justice. <http://www1.nyc.gov/site/criminaljustice/work/bhtf.page>.
36. "Diversion." Center for Court Innovation. <http://www.courtinnovation.org/topic/diversion>.
37. Research has found that from 1993 to 2013, 7.7% to 13.7% of all misdemeanor arrests were for non-finger-printable offenses. Chauhan, P., Fera, A.G., Welsh, M.B., Balazon, E., & Misshula, E. with an Introduction by Jeremy Travis. (2014, October). Trends in misdemeanor arrest rates in New York. Report Presented to the Citizens Crime Commission. New York: New York.
38. Data from DCJS on file with the author.
39. Data from DCJS on file with the author.
40. Data from DCJS on file with the author.
41. The exact percentage depends on the definition of violence used. New York Penal Law section 70.02 lists all the penal offenses categorized as violent, and thus subject to increased sentences. However, the data provided from DCJS lists arrests according the broad Uniform Crime Reporting categories, not the specific penal law offense. The estimation of total violent offenses is based on whether the Uniform Crime Reporting categories are comprised mostly of offenses that New York defines as violent. For example, all robbery arrests were counted as being violent, while drug offenses were counted as non-violent.
42. New York Penal Law Articles 60 and 70.
43. New York Criminal Procedure Law section 70.00.
44. *Criminal Justice in New York County: Learning About the Process*. Report. New York, NY: New York County District Attorney's Office. <http://manhattanda.org/sites/default/files/Criminal%20Justice%20in%20NYC-English.pdf>
45. Ibid.
46. The data on charging obtained from the Division of Criminal Justice Services categorizes arrest charges into the Uniform Crime Reporting (UCR) categories set by the Federal Bureau of Investigations to chart crime across jurisdictions. Thus, this data is not categorized by the New York criminal charge, rather New York criminal charges are grouped into uniform descriptive categories that allow comparison between states. **Appendix 1** contains a chart that correlates the UCR categories to the specific New York State criminal offense.
47. Data from DCJS on file with the author.
48. Data from DCJS on file with the author.
49. Data from DCJS on file with the author.
50. Data from DCJS on file with the author.

51. Data from DCJS on file with the author
52. N.Y. Criminal Procedure Law section 140.10(4). Family offenses are defined in N.Y. Criminal Procedure Law section 530.11 and section 812 of the N.Y. Family Court Act.
53. Given the high rates of trauma and interpersonal violence that women in the justice system have experienced, further inquiry into the nature of women's assault charges and whether they predominately involve domestic violence is warranted. This would help determine whether there are alternatives to traditional criminal justice responses that would be more effective, and whether women are experiencing differential treatment when police respond to complaints of household violence.
54. Data from DCJS on file with the author.
55. Data from DCJS on file with the author.
56. Data from DCJS on file with the author.
57. Data from DCJS on file with the author.
58. Data from DCJS on file with the author.
59. New York Penal Law sections 10 and 120.05.
60. Data from DCJS on file with the author.
61. Data from DCJS on file with the author.
62. Data from DCJS on file with the author.
63. Data from DCJS on file with the author.
64. Data from DCJS on file with the author.
65. Data from DCJS on file with the author.
66. Data from MOCJ on file with the author.
67. New York Criminal Procedure Law section 510.30(a). The statute also lists factors the court can consider in determining what is necessary to secure a person's attendance at court in the future.
68. Many advocates have contended that judges' bail decisions are based on their subjective assessments of dangerousness, despite the fact that it is not allowed by law. "The Price of Freedom." Human Rights Watch. December 02, 2010. <https://www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york>. Since judges are not required to articulate a reason for setting bail, it is hard to test this hypothesis. If assessments of dangerousness underlie judges' bail decisions, then those decisions are made without the benefit of argument or information about dangerousness, such as a risk assessment. Importantly, in jurisdictions outside of New York, the use of validated risk assessments to guide judicial decision-making on release has been shown to reduce rates of pretrial detention. "Results from the First Six Months of the Public Safety Assessment – Court in Kentucky." July 2014. <http://www.arnoldfoundation.org/wp-content/uploads/2014/02/PSA-Court-Kentucky-6-Month-Report.pdf>.
69. Data from MOCJ on file with the author.
70. Data from the Department of Correction on file with the author.
71. Data from MOCJ on file with the author.
72. Data from MOCJ on file with the author. These numbers are an approximation. Data on bail payment is kept by a different source depending on when it is paid and does not align perfectly.
73. Data from MOCJ on file with the author.
74. Data from MOCJ on file with the author.
75. "Results." The Bronx Freedom Fund. <http://www.thebronxfreedomfund.org/our-results/>. "About The Fund." Brooklyn Community Bail Fund. <http://www.brooklynbailfund.org/about-the-fund/>.
76. Lowenkamp, C., VanNostrand, M., & Holsinger, A., The Hidden Costs of Pretrial Detention. The Laura and John Arnold Foundation. Nov. 2013. Available at [http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF\\_Report\\_hidden-costs\\_FNL.pdf](http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf)
77. "Bail Fail. Why The US Should End The Practice of Using Money for Bail." September 2012. <http://www.justicepolicy.org/uploads/justicepolicy/documents/bail-fail.pdf>.
78. Ibid.
79. Jones, Michael R. "Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option." October 2013. [http://www.pretrial.org/download/research/Unsecured Bonds, The As Effective and Most Efficient Pretrial Release Option – Jones 2013.pdf](http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective%20and%20Most%20Efficient%20Pretrial%20Release%20Option%20-%20Jones%202013.pdf).
80. Ibid.
81. USA. New York City. Criminal Justice Agency. *Annual Report 2014*. April 2016. <http://www.nycja.org/library.php#>. In Chicago, a new risk assessment system was

- implemented that took into account ‘threat to community’ and ‘likelihood to return to court.’ Although the overall release rate for people charged with non-violent, non-weapons charges increased from 52% to 67%, a small sample found that judicial decisions deviated from the recommendation in 85% of cases. Main, Frank. “Cook County Judges Not Following Bail Recommendations: Study.” *Chicago Sun-Times*. July 3, 2016. <http://chicago.suntimes.com/news/cook-county-judges-not-following-bail-recommendations-study-find/>.
82. Albonetti, Celesta A. “An integration of theories to explain judicial discretion.” *Social Problems* 38, no. 2 (1991): 247-266.
  83. Freiburger, Tina L., “Race and the Sentencing of Drug Offenders: An Examination of the Focal Concerns Perspective.” *Southwest Journal of Criminal Justice* 6, no. 2 (2009). Blameworthiness and community protection implicate the charge severity and criminal history of the person, while practical constraints focus on court resources, impact on the defendant, and social consequences. “Bail Fail. Why The US Should End The Practice of Using Money for Bail.” September 2012. <http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf>.
  84. Ibid.
  85. Belbach, Jonah B. and Bushway, Shawn D., Testing for Racial Discrimination in Bail Setting Using Non-parametric Estimation of a Parametric Model (August 20, 2011). Available at SSRN: <http://ssrn.com/abstract=1990324>.
  86. USA. Criminal Court of the City of New York. *Annual Report 2015*. By Justin Barry. Edited by Lisa Lindsay. June 2016. [https://www.nycourts.gov/COURTS/nyc/criminal/2015\\_crim\\_crt\\_ann\\_rpt\\_062316\\_finl2.pdf](https://www.nycourts.gov/COURTS/nyc/criminal/2015_crim_crt_ann_rpt_062316_finl2.pdf).
  87. “Cutting Case Processing Times.” New York City Mayor’s Office of Criminal Justice. [http://www1.nyc.gov/site/criminaljustice/work/cutting\\_case\\_processing\\_times.page](http://www1.nyc.gov/site/criminaljustice/work/cutting_case_processing_times.page)
  88. New York Criminal Procedure Law section 30.30.
  89. Annual Report, Criminal Court of the City of New York, 2015.
  90. Rakoff, Jed S. “Why Innocent People Plead Guilty.” *The New York Review of Books*. November 20, 2014. <http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/>.
  91. Average case processing times can be misleading. When people are diverted into alternative-to-incarceration programs (ATIs), they often plead guilty and are monitored by the court during their participation. The person is not sentenced until the program is completed. For substance abuse treatment, the monitoring can go on for years. An increasing number of people in the justice system are being diverted to community alternatives to incarceration. More people are also entering substance abuse programming through drug courts as an alternative to jail or prison. However, the increased use of these programs does not necessarily mean that a person will avoid being detained Rikers Island. Prior to being diverted into alternative programming, people can be detained at Rikers if they cannot pay bail. In addition, failure to comply with programming can result in jail in two ways. First, some judges will remand program non-compliant participants for a short period in order to induce future compliance. Second, if a person’s noncompliance is serious enough that they are deemed unable to complete the program, they are usually sentenced to jail or prison.
  92. “The New York City ATI/Reentry Coalition Services Report 2015.” <http://www.ati-ny.org/files/2015ATI-booklet.pdf>.
  93. USA. Criminal Court of the City of New York. *Drug Court Initiative Annual Report 2013*. Edited by Lisa Lindsay. By Darren Edwards. December 2014. [https://www.nycourts.gov/courts/nyc/drug\\_treatment/publications\\_pdf/2013\\_Annual\\_Report.pdf](https://www.nycourts.gov/courts/nyc/drug_treatment/publications_pdf/2013_Annual_Report.pdf).
  94. “Criminal Justice Services: Alternatives to Incarceration.” Edwin Gould Services for Children and Families. <http://www.egscf.org/programs/steps/criminal-justice-services/>; “Crossroads for Women.” Center for Community Alternatives. <http://www.communityalternatives.org/programs/crossroadsWomen.html>. Goshin, Lorie S., Bryne, Mary W., *Evaluation of a Supportive Housing Alternative to Incarceration for Women Charged with a Felony and Their Children*. Columbia University. September 22, 2011. [http://www.housingplussolutions.org/wp-content/uploads/2012/07/DrewHouse\\_Report.pdf](http://www.housingplussolutions.org/wp-content/uploads/2012/07/DrewHouse_Report.pdf).
  95. “Alternative to Incarceration.” Women’s Prison Association. <http://www.wpaonline.org/services/alternative-to-incarceration>.
  96. ACDs are authorized by New York Criminal Procedure Law sections 170.55 and 170.56. “An ACD (adjournment in contemplation of dismissal) also known in some locales as an ACoD is a mechanism which allows for the postponement of a criminal case with the understanding that if the accused fulfills certain conditions, all charges will be dismissed. The conditions vary but can be as simple as staying out of trouble and not being re-arrested during the postponement period. They may also include the



additional requirements of community service, restitution to the alleged victim of the occurrence, obeying a court Order of Protection, a shoplifting awareness class, or some anti-drug program or class. An ACD is not a form of probation or a conviction of any kind. The person receiving the ACD will not be asked to admit any wrongdoing or facts about the case. In order for an ACD to be granted, all parties must agree: the judge, prosecutor, and the accused. If the conditions are met, at the end of the adjournment period, the charges are dismissed and the record is sealed.” Southard, Richard. “Understanding the ACD in New York.” Avvo. July 6, 2011. <https://www.avvo.com/legal-guides/ugc/understanding-the-acd-in-new-york>.

97. Data from DCJS on file with the author.
98. Data from DCJS on file with the author.
99. Data from DCJS on file with the author.
100. Data from DCJS on file with the author.
101. Data from DCJS on file with the author.
102. Data from DCJS on file with the author.
103. Data from DCJS on file with the author.
104. This calculation of women “convicted” for felonies and misdemeanors includes young women who receive youthful offender adjudications, which, though they are not convictions, still carry a sentence that can include jail or prison. Underlying data from DCJS on file with the author.
105. Data from DCJS on file with the author.
106. Data from DCJS on file with the author.
107. “Split sentences” are sentences involving both jail and probation, where a person is sentenced to jail for a period of up to six months, followed by a probation sentence. New York Penal Law 60.01(2)(d).
108. Information from the Department of Probation on file with the author.
109. Data from the NYC DOC on file with the author.
110. Data from the NYC DOC on file with the author.
111. Data from the NYC DOC on file with the author.
112. Data from the NYC DOC on file with the author.
113. Data from the NYC DOC on file with the author.
114. Data from the NYC DOC on file with the author.
115. Data from the NYC DOC on file with the author.
116. Data from NYC DOC on file with the author.
117. <http://www.osborneny.org/programs.cfm?program-ID=46>.
118. Data from the NYC DOC on file with the author.
119. Data from DCJS on file with the author.
120. Data from DCJS on file with the author.
121. Data from DCJS on file with the author.
122. Data from DCJS on file with the author.
123. Data from DCJS on file with the author.
124. Data from DCJS on file with the author.
125. Data from DCJS on file with the author.
126. Data from DCJS on file with the author.
127. Without data that studies the path of individual women over the course of many years, it is difficult to draw conclusions from these statistics. We cannot say using the data analyzed for this report whether women are entering the justice system for the first time at older ages or whether the increase at older ages represents a small group of women who have been involved in the criminal justice system for some time.
128. Data from DCJS on file with the author.
129. Data from DCJS on file with the author.
130. Data from DCJS on file with the author.
131. Data from DCJS on file with the author.
132. “Basic Facts About Homelessness: New York City - Coalition For The Homeless.” Coalition For The Homeless. <http://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/>.
133. NYC Independent Budget Office, “The Rising Number of Homeless Families in NYC, 2002–2012,” New York, NY, 2014.
134. Data provided by MOCJ on file with author.
135. On file with author.
136. On file with author.
137. “Housing Instability: A Continuum of Risk.” Reports and Briefs. <http://www.icphusa.org/index.asp?page=16>.



138. Aidala, A., McAllister, W., Yomogida, M., & Shubert, V. (2013). *Frequent Users Service Enhancement 'FUSE' Initiative: New York City FUSE II Evaluation Report*. Columbia University Mailman School of Public Health.
139. "New York City Housing Authority Tenant Selection and Assignment Plan." January 22, 2016. New York City Housing Authority. <https://www1.nyc.gov/assets/nycha/downloads/pdf/TSAPlan.pdf>.
140. USA. New York City. Housing Authority. *Grievance Procedures*. [https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure\\_040302.pdf](https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure_040302.pdf).
141. The Fortune Society. "New Lawsuit Challenges Landlord's Ban on Renting to Those With Criminal Records." News release, October 31, 2014. <http://fortunesociety.org/2014/10/31/press-release-new-lawsuit-challenges-landlords-ban-on-renting-to-those-with-criminal-records/>.
142. U.S. Department of Housing and Urban Development. Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transaction, issued April 4, 2016.
143. U.S. Department of Housing and Urban Development. "Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions." Notice PIH 2015-19, issued November 2, 2015.
144. John Jay College of Criminal Justice, Prisoner Reentry Institute, and United States of America. "Three Quarter Houses: The View From the Inside." (2013).
145. CSH's Federal Policy Work on People Involved with Criminal Justice." CSH. <http://www.csh.org/csh-solutions/serving-vulnerable-populations/re-entry-populations/criminal-justice-policy/>.
146. *Trauma Matters*. Connecticut Women's Consortium and the Connecticut Department of Mental Health and Addiction Services in support of the Connecticut Trauma Initiative. 2015.
147. Salisbury, E. J., and P. Van Voorhis. "Gendered Pathways: A Quantitative Investigation of Women Probationers' Paths to Incarceration." *Criminal Justice and Behavior* 36, no. 6 (2009): 541-66. doi:10.1177/0093854809334076.
148. Ibid.
149. Bowles, Melissa A., Dana Dehart, and Jennifer Reid Webb. "Family Influences on Female Offenders' Substance Use: The Role of Adverse Childhood Events among Incarcerated Women." *J Fam Viol Journal of Family Violence* 27, no. 7 (2012): 681-86. doi:10.1007/s10896-012-9450-4.
150. Begun, Audrey L., Theresa J. Early, and Ashleigh Hodge. "Mental Health and Substance Abuse Service Engagement by Men and Women During Community Reentry Following Incarceration." *Administration and Policy in Mental Health and Mental Health Services Research Adm Policy Ment Health* 43, no. 2 (2016): 207-18. doi:10.1007/s10488-015-0632-2. In the words of Andrea Williams, ReConnect Program Director for the Women in Prison Project at the Correctional Association, "Trauma is the backdrop. Unaddressed trauma is embodied and a person carries it with them, affecting their ability to be in the world. Women need consistent healing of trauma to create space inside to meet personal and professional needs."
151. "M Designation" is also referred to as "M Status" or "Brad H," after the class action lawsuit *Brad H. v. City of New York*, 716 N.Y.S.2d 852 (App. Div. 2000), which was settled in 2003 and required the Department of Corrections to provide planning for access to mental health ongoing services upon release. The text of the settlement and related court decisions can be found here: <https://mhp.urbanjustice.org/mhp-bradH.v.cityofnewyork>.
152. Teplin, Linda A., K. Abram, and G. McClelland. "Prevalence of Psychiatric Disorders Among Incarcerated Women." *Arch Gen Psychiatry Archives of General Psychiatry* 53, no. 6 (1996): 505. doi:10.1001/archpsyc.1996.01830060047007. Prevalence of psychiatric disorders among incarcerated women. *Archives of General Psychiatry*, 53, 513-519.
153. Covington, Stephanie S., and Barbara E. Bloom. "Women and the Criminal Justice System." *Women's Health Issues* 17, no. 4 (2007): 180-82. doi:10.1016/j.whi.2007.05.004.
154. United States. Department of Justice. Justice Programs. *Mental Health Problems of Prison and Jail Inmates*. By Doris J. James and Lauren E. Glaze. Washington, DC: U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2006.
155. Ponte, J. "Statement Before the New York City Council." New York City Department of Corrections. March 10, 2016. [http://www1.nyc.gov/site/doc/media/budget\\_testimony.page](http://www1.nyc.gov/site/doc/media/budget_testimony.page).
156. Ibid.
157. Breiding, MJ, SG Smith, KC Basille, ML Walters, J. Chen, and MT Derrick. "Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence

- Victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011.” *Am J Public Health American Journal of Public Health* 105, no. 4 (2015): 1-18. doi:10.2105/ajph.2015.302634.
- 158.** Ibid.
- 159.** Dehart, D., S. Lynch, J. Belknap, P. Dass-Brailsford, and B. Green. “Life History Models of Female Offending: The Roles of Serious Mental Illness and Trauma in Women’s Pathways to Jail.” *Psychology of Women Quarterly* 38, no. 1 (2013): 138-51. doi:10.1177/0361684313494357. (finding 90.4% of women on probation and parole in Jefferson County, Kentucky have experienced physical or sexual intimate partner violence); Lynch, S.M., Fritch A., & Heath, N.M. (2012); “Looking Beneath the Surface: The Nature of Incarcerated Women’s Experiences of Interpersonal Violence, Treatment Needs, and Mental Health.” *Feminist Criminology* 7, no. 4 (2012): 381-400. doi:10.1177/1557085112439224.
- 160.** Dehart, D., S. Lynch, J. Belknap, P. Dass-Brailsford, and B. Green. “Life History Models of Female Offending: The Roles of Serious Mental Illness and Trauma in Women’s Pathways to Jail.” *Psychology of Women Quarterly* 38, no. 1 (2013): 138-51. doi:10.1177/0361684313494357; Golder, Seana, Martin T. Hall, Tk Logan, George E. Higgins, Amanda Dishon, Tanya Renn, and Katherine M. Winham. “Substance Use Among Victimized Women on Probation and Parole.” *Substance Use & Misuse* 49, no. 4 (2013): 435-47. doi:10.3109/10826084.2013.844164 ; Lynch, S. M., A. Fritch, and N. M. Heath. “Looking Beneath the Surface: The Nature of Incarcerated Women’s Experiences of Interpersonal Violence, Treatment Needs, and Mental Health.” *Feminist Criminology* 7, no. 4 (2012): 381-400. doi:10.1177/1557085112439224.
- 161.** This issue was stressed particularly by Anne Patterson, Director of STEPS to End Family Violence, which provides holistic program services for victims of gender-based violence with a focus on prevention, intervention, and policy advocacy, including a program at Rikers Island for women.
- 162.** Women comprise only 46.8% of the labor force though they are 51.7% of the population. “Latest Annual Data.” Women’s Bureau (WB). [https://www.dol.gov/wb/stats/latest\\_annual\\_data.htm](https://www.dol.gov/wb/stats/latest_annual_data.htm).
- 163.** “Women’s Labor Force Participation - Women in the States.” Women in the States Women’s Labor Force Participation Comments. <http://statusofwomendata.org/earnings-and-the-gender-wage-gap/womens-labor-force-participation/>.
- 164.** Ibid.
- 165.** “Latest Annual Data.” Women’s Bureau (WB). [http://www.dol.gov/wb/stats/latest\\_annual\\_data.htm](http://www.dol.gov/wb/stats/latest_annual_data.htm).
- 166.** New York State Correction Law Article 23-A prohibits blanket bans on hiring individuals with criminal records and requires individualized assessment of whether a conviction poses a risk to safety or property and whether there is a connection between the conviction and job sought. The New York City Fair Chance Act prohibits employers from inquiring about a person’s criminal record until a conditional offer of employment is made.
- 167.** Bureau of Labor Statistics. *Employment Projections*. [http://www.bls.gov/emp/ep\\_chart\\_001.htm](http://www.bls.gov/emp/ep_chart_001.htm).
- 168.** Graduate Center of the City University of New York and Women in Prison at Bedford Hills Correctional Facility. *Changing Minds: The Impact of College in Maximum Security Prison*. September 2001.
- 169.** Allard, P., & Green, J. “Children on the Outside: Voicing the Pain and Human Costs of Parental Incarceration.” Justice Strategies. January 12, 2011. <http://www.justices-trategies.org/publications/2011/children-outside-voicing-pain-and-human-costs-parental-incarceration>.
- 170.** Tanya Krupat, Elizabeth Gaynes, and Yali Lincroft. “A Call to Action: Safeguarding New York’s Children of Incarcerated Parents.” *Initiative for Children of Incarcerated Parents, The Osborne Association*. New York, New York: 2011.
- 171.** Ibid.
- 172.** New York City Department of Correction report on file with author.
- 173.** United States of America. U.S. Department of Justice. Office of Justice Programs. *Parents in Prison and Their Minor Children*. By Lauren E. Glaze and Laura M. Maruschak. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, 2008.
- 174.** Just Detention International. Fact Sheet: *The Basics About Sexual Abuse in U.S. Detention*. 2009. <http://www.preareresourcecenter.org/sites/default/files/library/22-jdi-usdetentionbasics.pdf>
- 175.** Ibid.
- 176.** United States of America. U.S. Department of Justice. Office of Justice Programs. *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12: National Inmate Survey, 2011-12*. By Allen J. Beck. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2013.
- 177.** Ibid.

178. Ibid.
179. Ibid.
180. The Legal-Aide Society." Legal Aid and Cleary Gottlieb File Federal Lawsuit For Women Inmates Raped and Sexually Abused at Rikers." *The Legal-Aid Society*. May 19, 2015. <http://www.legalaid.org/en/mediaandpublicinformation/inthenews/legalaidandclearygottliebfile-federallawsuitforwomeninmates.aspx>.
181. Ibid.
182. Rodriguez, Cindy. "Reports of Sexual Abuse Against Rikers Inmates Rise." WNYC. May 26, 2016. <http://www.wnyc.org/story/reports-sexual-abuse-rikers-concern-medical-staff/>.
183. "Rulemaking 2016 (Sexual Abuse and Sexual Harassment)." Rule Making. 2016. <http://www1.nyc.gov/site/boc/jail-regulations/rulemaking-winter-2016.page>
184. O'Brien, Patricia. *Making It in the "Free World": Women in Transition from Prison*. Albany: State University of New York Press, 2001.
185. Link, Bruce G., and Jo C. Phelan. "Conceptualizing Stigma." *Annu. Rev. Sociol. Annual Review of Sociology* 27, no. 1 (2001): 363-85. doi:10.1146/annurev.soc.27.1.363.
186. O'Brien, Patricia. *Making It in the "Free World": Women in Transition from Prison*. Albany: State University of New York Press, 2001.
187. Olphen, Juliana Van, Michele J. Eliason, Nicholas Freudenberg, and Marilyn Barnes. "Nowhere to Go: How Stigma Limits the Options of Female Drug Users after Release from Jail." *Subst Abuse Treat Prev Policy Substance Abuse Treatment, Prevention, and Policy* 4, no. 1 (2009): 10. doi:10.1186/1747-597x-4-10; Link, Bruce G., and Jo C. Phelan. "Conceptualizing Stigma." *Annu. Rev. Sociol. Annual Review of Sociology* 27, no. 1 (2001): 363-85. doi:10.1146/annurev.soc.27.1.363.
188. A study of women returning home from the San Francisco County Jail concluded that policies that stigmatize drug users in an effort to deter drug use have counter-productive effects. Van Olphen J, Eliason MJ, Freudenberg N, Barnes M. Nowhere to go: How stigma limits the options of female drug users after release from jail. *Substance Abuse Treatment, Prevention, and Policy*. 2009;4:10. doi:10.1186/1747-597X-4-10. Researchers found that for the women who were the actual targets of these policies, the real impact was often the reverse: punitive policies, lack of services, and stigmatization encouraged a return to drug use and increased behavior that led to the criminal justice system, in addition to exacerbating individual and community health problems.
189. Phillips, Susan D., Zhao, Jian (2010). The relationship between witnessing arrest and elevated symptoms of posttraumatic stress: Findings from a national study of children involved in the child welfare system. *Children and Youth Services Review*, 32, 1246-1254.
190. Krupa, Tanya, Elizabeth Gaynes, and Yali Lincroft. "A Call to Action: Safeguarding New York's Children of Incarcerated Parents" *A Report of the New York Initiative for Children of Incarcerated Parents*. May 2011. <http://www.osborneny.org/NYCIP/ACalltoActionNYCIP.Osborne2011.pdf>.
191. Marzulli, John, Laura Dimon, and Ginger Adams Otis. "NYPD Officers Drag Naked Brooklyn Woman from Apartment — VIDEO." NY Daily News. August 1, 2014. <http://www.nydailynews.com/new-york/brooklyn/nypd-officers-drag-naked-brooklyn-woman-apartment-video-article-1.1889292>; Martinez, Michael, and Kyung Lah. "California Police Video: Pregnant Woman Arrested." CNN. May 29, 2015. <http://www.cnn.com/2015/05/28/us/barstow-california-police-video-pregnant-woman-arrest/>.
192. Pereira, C. "Strip Search as Sexual Assault." *Women in Prison Journal*. Sisters Inside, Inc. Vol. 2 October 2001.
193. National Research Council. "*The Growth of Incarceration in the United States: Exploring Causes and Consequences*." Washington, DC: The National Academies Press, 2014. doi:10.17226/18613.
194. Honorable Jed S. Rakoff. "Why Innocent People Plead Guilty." *New York Review of Books*. November 20, 2014.
195. Begun, Audrey L., Theresa J. Early, and Ashleigh Hodge. "Mental Health and Substance Abuse Service Engagement by Men and Women During Community Reentry Following Incarceration." *Administration and Policy in Mental Health and Mental Health Services Research Adm Policy Ment Health* 43, no. 2 (2016): 207-18
196. Covington, Stephanie S., and Barbara E. Bloom. "Gender Responsive Treatment and Services in Correctional Settings." *Women & Therapy* 29, no. 3-4 (2006): 9-33. doi:10.1300/j015v29n03\_02.
197. Ibid.
198. Holtfreter, K., and K. A. Wattanaporn. "The Transition from Prison to Community Initiative: An Examination of Gender Responsiveness for Female Offender Reentry." *Criminal Justice and Behavior* 41, no. 1 (2013): 41-57. doi:10.1177/0093854813504406.

199. Covington, Stephanie S., Cynthia Burke, Sandy Keaton, and Candice Norcott. "Evaluation of a Trauma-Informed and Gender-Responsive Intervention for Women in Drug Treatment." *Journal of Psychoactive Drugs* 40, no. Sup5 (2008): 387-98. doi:10.1080/02791072.2008.10400666.
200. Covington, Stephanie. "Creating gender-responsive and trauma-informed services for women in the justice system." *Magistrate* 70, no. 5 (2014): 2-3.
201. Bloom, Bloom, Barbara Owen, Stephanie Covington. A Theoretical Basis for Gender-Responsive Strategies in Criminal Justice. *National Institute of Corrections Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders Report* (2002).
202. Covington, Stephanie. "Creating gender-responsive and trauma-informed services for women in the justice system." *Magistrate* 70, no. 5 (2014): 2-3.
203. Orbis Partners Inc. *Moving on Curriculum A Program for At-Risk Women*. Hazelden Publishing, 2010.
204. Gehring, Krista S., Patricia Van Voorhis, Velerie R. Bell. "What Works' for Female Probationers? An Evaluation of the *Moving On* Program." University of Cincinnati. <https://www.uc.edu/content/dam/uc/womenoffenders/docs/MOVING%20ON.pdf>.
205. *Infra* part 1 .
206. Ney, Becky. "10 Facts About Women in Jails - American Jail Association." American Jail Association. 2014. <http://www.americanjail.org/10-facts-about-women-in-jails/>.
207. Barlow, Elise. *Understanding Women in Prison: A Review of Gender Specific Needs and Risk Assessments and Their Policy and Research Implications*. Master's Thesis, Portland State University. University Honors Presses Paper 79, 2014.
208. Hannah-Moffat, Kelly. "Gridlock or Mutability: Reconsidering "gender" and Risk Assessment." *Criminology & Public Policy* 8, no. 1 (2009): 209-19. doi:10.1111/j.1745-9133.2009.00549.x.
209. Siddiqi, Qusdia. "Pretrial Failure Among New York City Defendants." *Research Brief Series*, no. 19 (2009): New York: New York City Criminal Justice Agency, Inc.
210. Bonta, James and D.A. Andrews. "Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation." *Her Majesty the Queen in Right of Canada. 2006-2007*.
211. Examples of successful pre-diversion approaches include the Law Enforcement Assisted Diversion (LEAD) in Seattle, Washington. LEAD is a pilot program that diverts individuals engaged in prostitution and drug offenses to community-based services—including housing, health care, job training, treatment, and mental health support—as an alternative to arrest and court processing. "Evaluation," LEAD Law Enforcement Assisted Diversion. <http://leadkingcounty.org/lead-evaluation/>. Evaluations of lead have found individuals were 58% less likely to be re-arrested. Individual outcomes also improved; individuals diverted through LEAD were more likely to obtain housing, employment, and legitimate income in the 18 months following the diversion. LEAD does not serve women specifically, but this successful approach could be combined with trauma-informed trainings for police officers and referrals to community providers using gender-responsive approaches to insure that women's needs are met.
212. "Promoting Empathy & Deescalation in Crisis Situations." NYPD News. October 5, 2015. <http://nypdnews.com/2015/10/promoting-empathy-deescalation-in-crisis-situations/>
213. "Bronx Community Solutions." Center for Court Innovation. <http://www.courtinnovation.org/project/bronx-community-solutions>.
214. 17 N.Y.3d 781, 929 N.Y.S.2d 82, 952 N.E.2d 1076 (N.Y. Ct. App. 2011).
215. NYC Administrative Code section 9-127.
216. New York City Department of Correction. "Implementation of Administrative Code Discharge Planning Provisions." December 2014, available at <http://www1.nyc.gov/html/doc/html/about/Annual%20Discharge%20Planning%20Report%202014.pdf>.

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