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Courtney K. Cross

University of Alabama - School of Law, CCROSS@LAW.UA.EDU

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Reentering Survivors: Invisible at the Intersection of the Criminal Legal System and the Domestic Violence Movement

Courtney Cross[†]

ABSTRACT

Like all returning citizens, women coming home after incarceration face significant challenges to successful reentry. In addition to the collateral consequences of their criminal convictions, reentering women also encounter uniquely gendered obstacles. This Article explores one such obstacle: the relationship between women's reentry and domestic violence. Women on probation or parole who are also experiencing domestic violence too often fall into a blind spot in which the structure of community supervision pressures them to remain in unsafe homes and also punishes them when the abuse they endure interferes with their ability to comply with the conditions of their release. Because reentering survivors' criminal histories place them outside of the traditional conception of a "real" victim of domestic violence, many domestic violence agencies deem them ineligible for services and assistance.

Despite the serious challenges experienced by reentering survivors, this intersection has received very little attention from scholars and activists. This Article exposes the structural invisibility of reentering survivors within the criminal legal system and the domestic violence movement. An analysis of both the criminal legal system's shift from rehabilitation to "tough on crime" platforms and the domestic violence movement's transition away from grassroots activism toward criminal intervention reveals how reentering survivors have become caught in a double bind that threatens both their liberty and their safety. Reentering survivors risk being reincarcerated for failing to

[†] Visiting Assistant Professor, Civil Litigation Clinic, University of Denver, Sturm College of Law. For comments, insight, and discussion, I am grateful to Robin West, Deborah Epstein, Jane Aiken, Holly Maguigan, Sue Osthoff, and Lindsay Harris. I would also like to express my continuing gratitude and respect to the many reentering women who have shared their stories with me and inspired me to write this piece. Thanks also to Cory Hernandez and the staff of the *Berkeley Journal of Gender, Law and Justice*. All errors are my own.

successfully reintegrate into their communities, yet they struggle to access the resources they need to achieve stability and safety.

This Article builds on recent scholarship urging domestic violence advocates and activists to embrace reforms addressing the needs of marginalized survivors. In addition to recognizing reentering survivors as legitimate victims of domestic violence, this Article recommends that the domestic violence movement reevaluate its emphasis on criminalization and instead prioritize economic empowerment and community economic development.

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INTRODUCTION

When Lauren Walker came home from prison, she discovered that her boyfriend, John Baldwin, had forged his name onto her lease and was living in her apartment.¹ John refused to move out and told Lauren that he would get her sent back to prison if she kicked him out. Lauren tried to end the relationship but she could not get away from John. When she went to work, he called her cell phone constantly. If she turned her cell phone off, he called her office and demanded to speak with her. John frequently went to Lauren’s job to check on her. As a result, Lauren was fired. She could not find another job and became extremely depressed. She began self-medicating with crack cocaine, a habit she developed at age fifteen to cope with being sexually abused by several family

1. Although names have been changed and personal details have been removed, Ms. Walker’s story is true. The author represented her in a parole revocation hearing in front of the United States Parole Commission.

members and older men.

After Lauren lost her job, John became physically abusive. He blamed his violence on her drug use. He hit her and strangled her several times a week, choking her until she passed out multiple times. Lauren frequently had black eyes, split lips, and bruises and burns around her neck. Although he was working, John still repeatedly called Lauren and came to the apartment during the day to make sure she had not left. John did not use drugs himself but he often bought drugs for Lauren, spending his entire income tax return on crack because he did not like her interacting with other men to buy drugs.

John rarely allowed Lauren to leave the house alone: he would drive her to meetings with her parole officer and her addiction support group and wait outside. Although Lauren had confided in her parole officer about the violence, she was too afraid of John and too dependent on his income to call the police or get a protection order like her parole officer recommended. Because she was embarrassed by her injuries and afraid that her parole officer would have John arrested, Lauren stopped going to her mandatory meetings and drug tests.

Lauren felt trapped. When she had the locks changed to her apartment, John broke in. When she tried to call her family for help, John broke her cell phone. When her parole officer sent her to an in-patient drug treatment program, John entered the same program and forced Lauren to leave when he found out that they could not see each other during the program. On her own, Lauren arranged to attend another treatment program. When John found out, he became furious and found Lauren outside of her apartment building and dragged her up the stairs to the apartment, breaking her GPS ankle monitor. She refused to go inside so John took her broken GPS monitor and drove off. Lauren immediately left for the program.

When she completed the program, Lauren tried to break off the relationship again. John did move out but continued to come by the apartment to see who she had over and where she went. John's new girlfriend also started coming by Lauren's apartment to harass her. When his girlfriend hit Lauren with her car, John took Lauren to the hospital but made her leave before seeing a doctor because he was afraid the police would be called. Shortly thereafter, Lauren was sent back to prison for a year because she violated the terms of her parole by using drugs, skipping mandatory meetings and drug tests with her parole officer, and tampering with her GPS monitor.

Lauren's story is not unique in its facts or its outcome. Many incarcerated women feel pressure to return to and remain in volatile homes upon their release,² only to find the obstacles inherent in the reentry process compounded

2. Although jurisdictions differ on whether women's home addresses must be pre-approved before they are released from incarceration, maintaining a stable home address once released is a common requirement for individuals on probation, parole, or supervised release so that supervision officers can make scheduled and unscheduled home visits and send mail to their supervisees. See, e.g., Jillian Lloyd, *So Many Parolees, So Little Time*, CHRISTIAN SCI. MONITOR (Jan. 12, 1999), <http://www.csmonitor.com/1999/0112/p1s4.html> (describing

by domestic violence at home. The reentry requirements imposed upon returning citizens³ by community supervision⁴ make it especially difficult for reentering women who are experiencing domestic violence⁵ to leave unsafe and unsupportive homes. These same women often find that they are unable to access domestic violence services due to their criminal backgrounds. Women on community supervision experiencing domestic violence—referred to here as “reentering survivors”—must then choose whether to remain in an unsafe living situation or risk reincarceration if their attempts to escape or ameliorate the

home visits conducted by an individual parole officer in Colorado).

3. “Returning citizens” is the term used to describe individuals returning from incarceration. Although not all returning citizens are on any form of community supervision (defined below), this Article typically uses the terms “returning female citizen” and “reentering woman” to mean a woman (cisgender or transgender) who is currently on some form of parole, supervised release, or probation. Many (but not all) of the challenges described in this Article apply to returning female citizens who are not on community supervision but who remain impacted by their criminal histories. Some of the challenges described in this Article may also apply to returning citizens of other genders, but I am choosing to limit my discussions to returning female citizens.
4. Community supervision consists of probation, parole, and supervised release. The Department of Justice (“DOJ”) defines probation as “a court-ordered period of correctional supervision in the community, generally as an alternative to incarceration. In some cases, probation can be a combined sentence of incarceration followed by a period of community supervision.” LAURA M. MARUSCHAK & THOMAS P. BONCZAL, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES, 2012, at 2 (Dec. 2013) [hereinafter PROBATION AND PAROLE IN THE UNITED STATES]. The DOJ defines parole as “a period of conditional supervised release in the community following a prison term. It includes parolees released through discretionary or mandatory supervised release from prison, those released through other types of post-custody conditional supervision, and those sentenced to a term of supervised release.” *Id.* The federal government replaced parole with supervised release in Section II of the Comprehensive Crime Control Act of 1984. 18 U.S.C. §§ 3551–3580 (1984). Although they operate differently in terms of both sentencing and revocation, for the purposes of this Article they will be considered together due to their structural similarities. Typically the DOJ also considers supervised release as a form of parole. LAUREN E. GLAZE & ERINN J. HERBERMAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2012, at 4 (Dec. 2013) [hereinafter CORRECTIONAL POPULATIONS IN THE UNITED STATES]. As of year-end 2012, the DOJ estimated that there were 4,781,300 individuals in the United States on some form of community supervision. *Id.* at 3. Of this total, women made up 24% of the probation population, 11% of the parole population, and 18.9% of the federal supervision population. PROBATION AND PAROLE IN THE UNITED STATES, *supra*, at 21–24. As of year-end 2012, the DOJ estimated that there were 1,571,013 individuals incarcerated in federal and state correctional facilities, approximately 7% of whom were women. E. ANN CARSON & DANIELA GOLINELLI, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PRISONERS IN 2012, at 2 (Dec. 2013) [hereinafter PRISONERS]. Although pre-trial supervision for individuals with pending charges who are in the community on bail or personal recognizance is also a form of community supervision, this Article focuses only on post-conviction community supervision. Much of the discussion regarding the operation and effects of community supervision may apply to individuals on pre-trial supervision.
5. This Article uses the terms domestic violence, intimate partner violence, and battering interchangeably to encompass the forms of physical violence, sexual violence, threats of physical and sexual violence, and psychological and emotional abuse defined by the Centers for Disease Control. See LINDA E. SALTZMAN ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, INTIMATE PARTNER VIOLENCE SURVEILLANCE: UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS 11–13 (2002).

violence cause them to violate the terms of their supervision. Reentering survivors' experiences demonstrate how the criminal legal system⁶ first ignores how community supervision interacts with and exacerbates violence against women, and then systematically punishes women whose experiences of abuse interfere with their ability to meet supervision requirements.

At the same time, the domestic violence advocacy movement has excluded reentering survivors from its basic conception of a "good victim" and, hence, has excluded reentering survivors from being eligible to receive domestic violence services. Reentering survivors must comply with the stringent requirements of community supervision to prevent reincarceration, yet the very fact of their involvement with the criminal legal system makes it extremely difficult for them to meet the strict eligibility requirements enforced by domestic violence agencies and organizations. This convergence of the harm inflicted by the criminal legal system and the harm imposed by the domestic violence movement has forced reentering survivors into a systematized periphery, in which they struggle to access the support and services they need to successfully and safely reintegrate into their communities.

One cannot fully comprehend the experiences of reentering survivors solely by exploring either the abuse they endure at home or the challenges they face through community supervision.⁷ Rather, it is critical to understand the many ways in which the intersection of these two experiences profoundly affect the lives of reentering women.⁸ Because many reentering survivors are non-

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6. Scholar and activist Shamita Das Dasgupta has articulated that the choice to use the term "criminal legal system" instead of "criminal justice system" is made "in recognition that the system disproportionately singles out people of color for punishment and is therefore not a system of 'justice.'" PATRICIA ENG & SHAMITA DAS DASGUPTA, MS. FOUND. FOR WOMEN, SAFETY AND JUSTICE FOR ALL: EXAMINING THE RELATIONSHIP BETWEEN THE WOMEN'S ANTI-VIOLENCE MOVEMENT AND THE CRIMINAL JUSTICE AND PROSECUTION SYSTEM 6 (2003). I have chosen to adopt this terminology to underscore the ways in which the criminal legal system both targets and also ignores marginalized individuals.
 7. This process of naming and describing both women's experiences and the specific harms certain women suffer has deep roots in feminism's commitment to making oppression and subordination visible when previously it was not. *See, e.g.,* Martha R. Mahoney, *Victimization or Oppression? Women's Lives, Violence, and Agency*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE* 59, 59 (Martha Albertson Fineman & Roxanne Maykiutuk eds., 1994) ("Fighting oppression requires describing and confronting it. Describing harm has been a particularly important project for feminism, because many aspects of women's oppression were previously hidden . . . or naturalized.").
 8. I rely on an intersectional analysis throughout this Article in order to explore how domestic violence and trauma intersect and interact with incarceration and reentry. Intersectionality has long been used to demonstrate that "the trauma of domestic violence is amplified by further victimization outside the intimate relationship, including racism, heterosexism, and class oppression." Natalie J. Sokoloff & Ida Dupont, *Domestic Violence: Examining the Intersections of Race, Class, and Gender—An Introduction*, in *DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE, CLASS, GENDER, AND CULTURE* 1, 3–4 (Natalie J. Sokoloff ed., 2005). An intersectional approach to domestic violence explores the ways in which "[i]ntersectionalities color the meaning and nature of domestic violence, how it is experienced by self and responded to by others, how personal and social consequences are represented, and how and whether escape and safety can be obtained." Michelle Bograd, *Strengthening Domestic Violence Theories: Intersections of Race, Class, Sexual Orientation,*

white,⁹ low-income¹⁰ women,¹¹ the violence and coercion inflicted by their abusive partners and the control exerted by the state are further compounded by issues of race, class, and gender. In addition, the convergence of the criminal legal system and the domestic violence movement in supporting “tough on crime” policies has further excluded reentering survivors from social and legal services created for victims of domestic violence and further exposed them to the punitive structure of community supervision.

Despite the serious challenges created for reentering women experiencing domestic violence, this intersection has received very little attention from scholars or activists in the domestic violence or criminal reform movements. Exposing this invisibility calls into question policies, practices, and philosophies embedded in both the criminal legal system and the domestic violence movement that promote indifference and even hostility toward marginalized women. Section I of this Article provides the backdrop against which this blind spot has developed by analyzing both the criminal legal system’s shift from rehabilitation to “tough on crime” policies and the impact of this transformation on the lives of reentering women. Section II analyzes how the domestic violence movement transformed from radical grassroots activism to a mainstream institution, underscoring the ways in which this transition has excluded and endangered reentering survivors. Section III examines the concept of domestic violence victimhood and argues that reentering survivors face specific barriers

and Gender, 25 J. MARITAL & FAMILY THERAPY 275 (1999), as reprinted in DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE CLASS, GENDER, AND CULTURE 25, 26–27 (Natalie J. Sokoloff ed., 2005).

9. Incarceration rates among women of different races differ; we can thus expect the rates of women returning home from incarceration to vary across races as well. Although racial disparities in women’s incarceration rates are decreasing, it is especially important when thinking about reentry to recognize the historical differentials as well. See generally MARC MAUER, THE SENTENCING PROJECT, THE CHANGING RACIAL DYNAMICS OF WOMEN’S INCARCERATION (2013). For example, in 2000, the rate of incarceration of black women in relation to white women was 6:1, and the rate of incarceration of Hispanic women in relation to white women was 1.8:1. *Id.* at 8. As of 2009, the ratio of incarcerated black women to incarcerated white women had decreased to 2.8:1, and the ratio of incarcerated Hispanic women to incarcerated white women had decreased to 1.5:1. *Id.* In light of these changes, it is important to remember both that women of color are still incarcerated at higher rates than white women and that the percentages of formerly incarcerated women within each race remain stark. See *id.*
10. See Stephanie S. Covington, *A Woman’s Journey Home: Challenges for Female Offenders*, in PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 67, 69–71 (Jeremy Travis & Michelle Waul eds., 2003) (“Women in the criminal justice system are poor, undereducated, and unskilled, and they are disproportionately women of color. Many come from impoverished urban environments and were raised by single mothers or in foster homes. . . . Many women on the social and economic margins struggle to survive outside of legitimate enterprises, engaging in a lifestyle that brings them into contact with the criminal justice system.”).
11. As noted above, the scope of this Article is limited to women on community supervision experiencing domestic violence. Use of the phrase “reentering survivor” is not meant to imply that people of other genders returning to their communities cannot be survivors of domestic violence; this Article is merely limited to a discussion about reentering women who are being abused.

that prevent them from being seen as “real” victims. Section III also argues that the battered woman defense actually perpetuates these same stereotypical expectations around victimhood, thereby denying many justice-involved women¹² access to potential justification or mitigation in the courtroom. Section IV concludes with recommendations for both the criminal legal system and the domestic violence movement, arguing that the focus of both institutions should shift to a more holistic approach to individual and community empowerment.

I. THE CRIMINAL LEGAL SYSTEM: FROM REHABILITATION TO “TOUGH ON CRIME”

Since the 1970s, the U.S. criminal legal system has been moving steadily and intentionally away from rehabilitation and toward retributivism as its underlying rationale. The emphasis of this “tough on crime” movement is primarily on criminalization and sentencing reforms, resulting in longer and more frequent terms of incarceration. The reach of these new federal- and state-level policies extends well beyond the term of imprisonment for those consequently incarcerated. These policies have also led to both more onerous community supervision requirements and harsher collateral consequences associated with having a criminal conviction. At all stages, law enforcement, incarceration, collateral consequences, and community supervision now contribute to an interlocking, punitive system that has a very harmful effect on women reentering society after incarceration—especially those who are survivors of domestic violence. The criminal legal system’s prioritization of “tough on crime” policies ignores how vulnerable some reentering women are to domestic violence, even when abusive partners are actually interfering with or sabotaging reentering survivors’ efforts to comply with their community supervision requirements. Current policies place heavy constraints on reentering women’s options and often serve to entrap them in violent relationships.

A. Arrests and Incarceration

Although scholars once viewed the extinction of incarceration as likely,¹³

12. The term “justice-involved women” is used to describe women involved in any stage of the criminal justice system. The term is widespread: for example, the National Resource Center on Justice Involved Women was established by the U.S. Department of Justice’s Bureau of Justice Assistance in partnership with the National Institute of Corrections. *See generally* NAT’L RES. CTR. ON JUSTICE INVOLVED WOMEN, U.S. DEP’T OF JUSTICE, <http://cjininvolvedwomen.org/about/> (last visited Dec. 30, 2015).

13. *See* Daniel S. Nagin, Francis T. Cullen & Cheryl Lero Johnson, *Imprisonment and Reoffending*, 38 CRIME & JUST. 115, 116–17 (2009) (“In the early 1970s, the United States had experienced relative stability in imprisonment for at least half a century, with rates of incarceration hovering around 100 state and federal inmates per 100,000 population. The use of prison as a mechanism of social control seemed to be on the decline. . . . Scholars wrote about the inevitability of ‘decarceration’ and the ‘end of imprisonment.’”) (citations omitted).

the last forty years have instead witnessed a significant increase in arrests¹⁴ and incarceration.¹⁵ This shift began in the mid-1970s with the determinate sentencing reform movement,¹⁶ which had broad popular support due to an increase in crime rates during the first half of the decade.¹⁷ The widespread practice of indeterminate sentencing, in which a person's sentence consisted of a range of months or years with no predetermined release date, came under fire from liberals for being too arbitrary and biased and from conservatives for being too lenient.¹⁸ Thus, state legislatures began to pass laws requiring more clearly defined sentences.¹⁹ During this same period—broadly, 1975–1985—states were also adopting legislation requiring sentencing guidelines and establishing mandatory sentences. By 1985, every state had passed one or more mandatory sentencing laws,²⁰ including mandatory or enhanced prison sentences for certain crimes or for individuals with certain criminal histories.²¹ Whereas only ten years earlier a convicted defendant was typically sentenced by a judge to a broad range of time and her release date was decided by a local parole board, by 1985, judges had much less discretion over the length of a defendant's sentence and parole boards played a much more limited role in determining a defendant's

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14. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, ARRESTS IN THE UNITED STATES, 1980–2009, at 15 (2013) (estimating an increase in arrests between 1980 and 2009 of over 3 million people).
 15. THE SENTENCING PROJECT, FACT SHEET: TRENDS IN U.S. CORRECTIONS 2 (2012) (estimating that there were nearly 1.7 million more people incarcerated in 2012 than were incarcerated in 1980).
 16. See Judith Greene, *Getting Tough on Crime: The History and Political Context of Sentencing Reform Developments Leading to the Passage of the 1994 Crime Act*, in SENTENCING AND SOCIETY: INTERNATIONAL PERSPECTIVES 43, 46 (Cyrus Tata & Neil Hutton eds., 2002) (describing the movement advocating for determinate sentencing which ultimately produced the 1994 Crime Act).
 17. Paul J. Larkin, Jr., *Clemency, Parole, Good-Time Credits, and Crowded Prisons: Reconsidering Early Release*, 11 GEO. J.L. & PUB. POL'Y 1, 9–10 (2013) (“Against the background of social foment generated by the Civil Rights Movement, the Vietnam War, Watergate, and a severe recession, an escalating crime rate alarmed the public, which demanded that stiffer measures be taken. . . . Politicians responded with more severe sentencing laws.”); Greene, *supra* note 16, at 2–3 (“[B]y the mid-1960s . . . UCR data on violent crimes reported to the police per 100,000 U.S. inhabitants rose from 200.2 in 1965 to 363.5; by 1975 the violent crime rate had reached 487.8 per 100,000.”) (citations omitted).
 18. Christine S. Scott-Hayward, *The Failure of Parole: Rethinking the Role of the State in Reentry*, 41 N.M. L. REV. 421, 432–33 (2011) (“A system where prisoners did not know when they would be released was seen as inhumane while the uncontrolled discretion of parole boards was criticized as racist and biased against the lower classes. On the other hand, some felt that the system was too lenient: victim advocacy groups criticized the fact that some people were released after serving only a fraction of their sentence.”).
 19. *Id.* at 433 (discussing the nationwide trend among the states toward “a determinate, structured sentencing scheme, where broad sentence ranges were replaced with fixed sentences. In many states, legislatures increased maximum penalties and added sentence enhancements.”). For a discussion of how release previously operated under indeterminate sentencing and discretionary release policies, see *id.* at 432.
 20. Greene, *supra* note 16, at 49.
 21. Gary T. Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform*, 81 CALIF. L. REV. 61, 73–77 (1993).

release date.²² As a result of these changes, more individuals were being incarcerated and they were staying in prison for longer periods of time.²³

The year 1982 marked the formal beginning of the War on Drugs which, in conjunction with earlier and concurrent sentencing reform laws, promoted “tough on crime” policies and pushed the criminal legal system farther away from rehabilitation.²⁴ The War on Drugs included both increased spending on drug enforcement policies and an aggressive campaign to demonize drugs and drug users,²⁵ both of which have continued in various forms for over thirty years.²⁶ The War on Drugs has contributed not only to a significant increase in arrests for drug-related crimes,²⁷ but also to an overrepresentation of people of color incarcerated and involved in the criminal legal system.²⁸

This implementation of expansive and overlapping “tough on crime” policies has been detrimental for women, especially women of color and low-income women.²⁹ Poor women and women of color remain extremely vulnerable to the “criminalization of social problems”³⁰ that has occurred as increased criminalization of women’s poverty (for example, sex work and substance

22. See Greene, *supra* note 16, at 44–50; Scott-Hayward, *supra* note 18, at 432–34.

23. Geneva Brown, *The Wind Cries Mary—The Intersectionality of Race, Gender, and Reentry: Challenges for African-American Women*, 24 ST. JOHN’S LEGAL COMMENT 625, 633 (2010).

24. MARC MAUER & RYAN S. KING, THE SENTENCING PROJECT, A 25-YEAR QUAGMIRE: THE WAR ON DRUGS AND ITS IMPACT ON AMERICAN SOCIETY 1 (2007). It is important to keep in mind, however, that the War on Drugs is not the sole cause of mass incarceration in the United States. See MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 126–30 (2015) (noting that, while the War on Drugs disproportionately affected people of color, it was only one of several policies that led to the expansion of the U.S. prison population).

25. See Kenneth B. Nunn, *Race, Crime, and the Pool of Surplus Criminality: Or Why the “War on Drugs” Was a “War on Blacks,”* 6 J. GENDER RACE & JUST. 381, 387 (2002). Nunn questions whether the War on Drugs was intended to target and decimate black communities or whether that outcome was merely a consequence to which legislators were indifferent. See *id.* at 391–412.

26. Jonathan Blanks, *Obama Says He Ended the “War on Drugs.” Don’t Believe Him*, WASH. POST (Jul. 18, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/07/18/obama-says-he-ended-the-war-on-drugs-dont-believe-him/>.

27. MAUER & KING, *supra* note 24, at 3–4 (describing how drug arrests tripled between 1980 and 2007).

28. *Id.* at 19–23; see also MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 57–58 (2010).

29. See Patricia Allard, *Crime, Punishment, and Economic Violence*, in THE COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY 157, 157 (INCITE! Women of Color Against Violence ed., 2006) (“The current preoccupation with punishment rather than prevention and rehabilitation has resulted in the increasing dehumanization of women, especially women of color, through arrest, prosecution, and incarceration without regard for the circumstances that lead to women’s contact with the criminal punishment system.”); ANANNYA BHATTACHARJEE, AM. FRIENDS SERV. COMM., WHOSE SAFETY? WOMEN OF COLOR AND THE VIOLENCE OF LAW ENFORCEMENT 18 (2001) (“Women of color have been especially affected by laws mandating mandatory minimum sentences for all drug offenses, which spread across the nation following the enactment of the Rockefeller Drug Laws in New York State in the early 1970s.”). Because of these policies and practices, about one-third of all incarcerated women and girls worldwide are detained in the United States. ROY WALMSLEY, INT’L CTR. PRISON STUDIES, WORLD FEMALE IMPRISONMENT LIST 1 (2014).

30. ENG & DASGUPTA, *supra* note 6, at 13.

abuse) has been met not with expanded services, but with enhanced punishment and long-lasting consequences.³¹

Even after a woman is released from jail or prison, her experiences of arrest and incarceration continue to affect her ability to successfully reenter society.³² The fact of an arrest itself can have lasting effects on a woman, creating logistical difficulties in terms of her ability to attend work or school, pay rent, or take care of her children.³³ Beyond this host of practical difficulties, however, arrests, for many women, involve mistreatment and even violence at the hands of law enforcement. Especially for women of color and women perceived as transgressing traditional social norms, encounters with law enforcement can result in harsh conduct from police officers.³⁴ An officer's perceptions of how a woman appears and behaves—even if she neither requests

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31. See *id.* at 12 (“Drug addiction, tenuous immigration status, homelessness, non-payment of child support, prostitution, and other survival strategies of last resort for those with very few economic options . . . have become part of the ever-widening net of behavior considered as criminal activity. For some, expanding categories of crime was viewed as an expedient way of addressing social problems. . . . It was simpler to pass a law criminalizing a behavior because this strategy did not involve an outlay of cash, as prevention, education, or other services do.”); see also Julia Sudbury, *Unpacking the Crisis: Women of Color, Globalization, and the Prison-Industrial Complex*, in INTERRUPTED LIFE: EXPERIENCES OF INCARCERATED WOMEN IN THE UNITED STATES 11, 13–14 (Rickie Solinger et al. eds., 2010) (“With social expenditure decreasing, criminalization has become the primary response to growing poverty. Women’s poverty is criminalized in numerous ways. Women who turn to the street economy, sex work, petty theft, welfare ‘fraud,’ or other economic survival strategies in the face of declining incomes and few economic opportunities are frequently caught up in the revolving door of initially short and then longer jail times.”).
 32. For a discussion on how incarceration affects returning citizens’ mental health during reentry, see CRAIG HANEY, *THE PSYCHOLOGICAL IMPACT OF INCARCERATION: IMPLICATIONS FOR POST-PRISON ADJUSTMENT* (2001). Beyond the effects of arrest and incarceration on arrested and incarcerated women themselves, women’s detention also negatively impacts their communities. See, e.g., Candace Kruttschnitt, *The Paradox of Women’s Imprisonment*, 139 *DAEDALUS* 32, 39 (2010) (noting that “the paradox of women’s imprisonment, then, lies in the sizable repercussions it has on society given the small number of individuals it affects.”). One focus of this literature is on how the incarceration of women affects childrearing, given that women are, more often than men, children’s primary caretakers at the time of their incarceration; this in turn raises questions as to how the foster care system intersects with women’s incarceration and reentry. See JEREMY TRAVIS, *BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY* 119–32 (2005) (describing the interaction between incarcerated mothers and the foster care system).
 33. BETH E. RICHIE, *COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN* 6 (1996) [hereinafter *COMPELLED TO CRIME*].
 34. Andrea J. Richie, *Law Enforcement Violence Against Women of Color*, in *THE COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY*, *supra* note 29, at 138, 143 [hereinafter *Law Enforcement Violence Against Women of Color*] (“Women framed as ‘masculine’—including African American women who are routinely ‘masculinized’ through systemic racial stereotypes—are consistently treated by police as potentially violent, predatory, or noncompliant regardless of their actual conduct or circumstances, no matter how old, young, disabled, small, or ill. . . . Working-class or low-income women are also perceived as more ‘masculine’ than middle- or upper-class women, and therefore subject to greater violence by law enforcement officers. Young women wearing ‘tuggish attire,’ as current hip-hop fashions are sometimes described, have also been reported to attract greater police attention than other women. Similarly, lesbians are often ‘defeminized’ and ‘dehumanized’ by the criminal justice system, and therefore subjected to considerable abuse by law enforcement agents.”).

nor desires police assistance—often determines the nature and outcome of the interaction; that is, whether she is assumed to be credible or a liar, treated with respect or violence, and assisted or arrested.³⁵ Unpredictable, unkind, and unlawful treatment by law enforcement can traumatize a woman and affect her safety: a reentering woman facing abuse may be less willing to call the police for help based on her negative previous experiences. For instance, it is important to note the gender disparity in the media focus around the widespread problem of police violence against people of color, particularly in low-income neighborhoods. Although this issue has gained national attention through the murders of men of color like Michael Brown and Eric Garner,³⁶ the specific plight of police violence against women of color has received less publicity despite being equally problematic.³⁷

In addition to arrest, the experience of incarceration can have extensive, harmful effects on a woman's ability to successfully reintegrate into her community and comply with the terms of her supervision. An incarcerated woman loses her independence and freedom; she is forced to submit to almost limitless systems of authority and punishment.³⁸ Many incarcerated women feel isolated, alienated, and afraid due to their confinement.³⁹ On top of this, many women also experience violence while inside the institution from staff, other prisoners, and even themselves.⁴⁰ Although the Prison Rape Elimination Act of

35. Sue Osthoff, *But, Gertrude, I Beg to Differ, a Hit Is Not a Hit Is Not a Hit: When Battered Women Are Arrested for Assaulting Their Partners*, 8 VIOLENCE AGAINST WOMEN 1521, 1533 (2002) ("Others may be arrested because they are mouthy or aggressive toward the police, or drunk, or deemed to be a 'bad actor,' or are otherwise not liked by their arresting officers.").

36. See, e.g., Shakeer Rahman & Sam Barr, *Eric Garner and the Legal Rules that Enable Police Violence*, N.Y. TIMES (Dec. 5, 2014), <http://www.nytimes.com/2014/12/06/opinion/eric-garner-and-the-legal-rules-that-enable-police-violence.html>.

37. See Zoe Carpenter, *The Police Violence We Aren't Talking About*, THE NATION (Aug. 27, 2014), <http://www.thenation.com/article/police-violence-we-arent-talking-about/>; see also Erick A. Paulino, *Deconstructing the Arrest of Sandra Bland*, THE FEMINIST WIRE (Aug. 4, 2015), <http://www.thefeministwire.com/2015/08/deconstructing-the-arrest-of-sandra-bland/> (arguing that "in challenging racial profiling and police brutality against people of color, #BlackLivesMatter activism must pay particular attention to how police exercise force differently for men and women, as well as for LGBT+ people, especially transgender individuals and others whom are variously gender non-conforming."); Chaedria Labouvier, *How Many Viral Videos Will It Take? Another Reminder of the Vulnerability of the Black Girl in America*, ELLE (Oct. 28, 2015), <http://www.elle.com/culture/career-politics/a31527/do-we-need-another-video-to-remind-us-that-black-girls-are-the-most-vulnerable/> ("Do we need more videos of black girls dragged across school floors and front lawns to know that this is how black women are treated when they have the misfortune of encountering the police and the white male rage that so often seems part and parcel of the job?").

38. COMPELLED TO CRIME, *supra* note 33, at 8 ("By most accounts, the consequences of being arrested and incarcerated result in marginalization and feelings of alienation, even if the accused individual is acquitted. The detainee must ask for everyday items like toilet paper, and they must get permission for such simple, everyday activities as turning their lights on or off.").

39. *Id.* at 7.

40. Julia Sudbury, *Gender Violence and the Prison Industrial Complex: Interpersonal and State*

2003⁴¹ was designed to combat sexual abuse of prisoners, many incarcerated women continue to experience physical and sexual violence from staff. Because many women enter jail or prison with a history of past abuse,⁴² incarceration can aggravate past trauma and mirror some prisoners' pre-incarceration experiences.⁴³ To make matters worse, most institutions are not equipped with the treatment and programming necessary to help women recover from past or current victimization and trauma.⁴⁴ Nor are the medical facilities of women's prisons and jails sufficiently accessible despite the fact that women prisoners often struggle with undiagnosed and untreated physical and mental health issues that affect them both in jail and in the community.⁴⁵

Violence Against Women of Color, in *Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture*, *supra* note 8, at 102, 108–09 (“slashing, suicide, the proliferation of HIV, strip searches, medical neglect, and rape of prisoners has largely been ignored by anti-violence activists.”) (citations omitted).

41. 42 U.S.C. § 15601 (2012).

42. *See infra* Section I.D.

43. *See BHATTACHARJEE, supra* note 29, at 37 (“Most women prisoners and detainees are survivors of physical and sexual violence. Prisons and detention centers are seldom equipped to support women in recovering from such trauma, and in fact are far more likely to aggravate it with additional sexual violence.”); *see also* Angela Davis, *The Color of Violence Against Women*, COLORLINES (Oct. 10, 2000), <http://www.colorlines.com/articles/color-violence-against-women> (“Prisons . . . render women vulnerable in an even more systematic way to the forms of violence they may have experienced in their homes and in their communities. Women’s prison experiences point to a continuum of violence at the intersection of racism, patriarchy, and state power.”); Stephanie Covington, *The Relational Theory of Women’s Psychological Development: Implications for the Criminal Justice System*, in *FEMALE OFFENDERS: CRITICAL PERSPECTIVES AND EFFECTIVE INTERVENTIONS* 135, 148 (Ruth T. Zaplin ed., 2008) (1998) (“[C]urrent correctional settings often recreate women’s relationships of disconnection and violation on a system level. Our criminal justice system, which is based on power and control, reflects the dominant/subordinate model of our patriarchal society.”).

44. Beth E. Richie, *Challenges Incarcerated Women Face as They Return to Their Communities: Findings from Life History Interviews*, 47 *CRIME & DELINQUENCY* 368, 375 (2001) [hereinafter *Challenges Incarcerated Women Face*] (“Given the lack of attention to PTSD and violence issues in most correctional settings, it should be expected that women returning from jails and prisons will continue to have unresolved issues related to trauma and abuse.”). For a description of this phenomenon by a returning citizen, see WOMEN’S PRISON ASS’N, *IMPROVING OUTCOMES FOR WOMEN IN REENTRY: A POLICY STATEMENT BY THE WOMEN’S ADVOCACY PROJECT* 3 (2006) (“Women come into prison or jail with histories of trauma and abuse. Our interactions with correctional officers too often recreate these dynamics. And, there are few programs available to us to deal with past trauma and substance abuse.”).

45. *Challenges Incarcerated Women Face, supra* note 44, at 373–74 (“In addition to urgent needs for care, the long-term consequences of drug and alcohol abuse, chronic poor nutrition, and untreated minor health problems (such as dental problems) . . . significantly complicated the women’s health and well-being once they were released from correctional facilities. . . . The majority of [prisoners interviewed] described how even acute major psychological problems were not diagnosed, let alone cases of depression, behavioral disorders, or learning and developmental disabilities. Without any treatment in prison, the women return to their communities with serious and persistent diagnostic and treatment needs for mental health problems.”). It should also be noted, however, that while women prisoners struggle to access the care they need, they may also experience unnecessary care in addition to inadequate care. One Native-American returning female citizen describes her experience with ubiquitous over-medication of female prisoners:

Most of the women I knew in county jail and prison were medicated. Some

Some prisoners even continue to experience domestic violence while incarcerated. One reentering survivor recounted her experience:

I thought being here [in jail] would keep me safe, at last. But no, he is still controlling me. He gets on the phone and won't let me talk with my sister who is trying to help me reach my lawyer. He refuses to bring my kids to see me, and tells them all kinds of things about me. He has threatened to hurt my mom if I say something in court about him.⁴⁶

Another woman described physical violence she experienced from her abuser while incarcerated:

Even these guards can't protect me. Do you know that he had the nerve to push me against the wall and twist my arm behind my back during a visit? It hurt so much! That was the arm he broke last year. They saw him, too, but no one helped. He just won't let up.⁴⁷

Some abusive partners continue to exert their control by deciding whether to give women the money they need to make phone calls, obtain personal hygienic products, or buy items from the commissary. For many women, not even incarceration can break the cycle of violence they have experienced—which they could also reasonably expect to encounter upon their release.

Women's jails and prisons are often much farther away from their communities than are men's.⁴⁸ This makes it more difficult for women to retain close ties with their support networks and their children,⁴⁹ or to receive release planning services from their local service organizations.⁵⁰ In addition, women's

prison staff may believe that women are more vulnerable to emotional upsets and are in need of medical treatment, but the stark reality of psychiatry in prison is that it has everything to do with control and management, and nothing to do with effective treatment or healing.

Stormy Ogden, *Pomo Woman, Ex-Prisoner, Speaks Out*, in *THE COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY*, *supra* note 29, at 164, 167.

46. *Challenges Incarcerated Women Face*, *supra* note 44, at 376.

47. *Id.*

48. Deseriee A. Kennedy, "The Good Mother": Mothering, Feminism, and Incarceration, 18 WM. & MARY J. WOMEN & L. 161, 178 (2012) ("Prison facilities for women are frequently placed further from their homes than prisons for men. In fact, most incarcerated mothers are imprisoned more than 100 miles from their families, while federal prisoners are housed at far greater distances not infrequently in states other than their home state.").

49. *See id.* ("This adds to the high cost of staying in touch by making it more expensive and time consuming to visit a female prisoner. In addition, prison and jail facilities are designed with security as a primary goal and do not typically provide convenient and family-friendly visiting areas. Telephone contact is maintained through collect calls at exorbitant rates, and visiting is often made so difficult, expensive, and time consuming that many families cannot afford to do so often."); *see also* Ruth T. Zaplin & Joyce Dougherty, *Programs That Work: Mothers*, in *FEMALE OFFENDERS: CRITICAL PERSPECTIVES AND EFFECTIVE INTERVENTIONS*, *supra* note 43, at 463, 466 ("What can make the burdens of motherhood even worse for these females is the fact that most of them have very limited contact with their children while they are institutionalized.").

50. *See* Christy A. Visser, *Returning Home: Emerging Findings and Policy Lessons About Prisoner Reentry*, 20 FED. SENTENCING REP. 92, 99 (2007) ("There are a number of barriers

correctional institutions often do not offer the same kind of rehabilitative services that men's institutions do, such as vocational training, job opportunities, and pre-release programming, further hampering women's ability to acquire skills and prepare for their release.⁵¹ Many women thus return to the community with unmet physical, psychological, and emotional needs and lacking the coping mechanisms and concrete skills necessary for successful reentry.

Experiencing abuse during reentry can aggravate preexisting injuries and trauma. Domestic violence can also cause new physical and psychological afflictions that can impede reentry. Despite the abuse, a reentering survivor's past experiences with law enforcement and incarceration may make her less willing or able to invite state involvement into her life again. For instance, Lauren Walker was incarcerated 200 miles away from home. While in prison, she participated in a drug treatment program, but this program addressed neither her co-occurring mental health diagnosis nor her trauma from having been physically and sexually abused throughout her life. She received minimal vocational training and limited release planning. Although she had been sentenced to be released directly into an in-patient drug treatment facility before living in the community, this transfer was never arranged and she was told to just go home. While incarcerated, Lauren was unable to obtain the skills necessary to navigate her depression, her addiction, and her abuse. Her attempts to get the help she needed once she was released also proved insufficient in the face of barriers in the community and at a home. Yet Lauren also felt she could not turn to the police in her myriad attempts to free herself from domestic violence. Worried about how John Baldwin's arrest might undermine her financial stability, expose her to violence from the police or from John, or result in her own reincarceration, Lauren did not see turning to law enforcement for help as a viable option. Because her previous interactions with the police had resulted in her own arrest and incarceration, Lauren, like many returning citizens and reentering survivors, was unwilling to jeopardize her freedom—even for her safety.

B. Collateral Consequences

Along with increasingly harsh sentences and community supervision, the

to coordinating prisoner and community-based services. The simple fact that prisons are far removed from the communities to which prisoners return poses considerable logistical difficulties. The missions and cultures of the two service networks are often at odds with a reintegration objective.”).

51. See Ruth T. Zaplin, *Female Offenders: A Systems Perspective*, in FEMALE OFFENDERS: CRITICAL PERSPECTIVES AND EFFECTIVE INTERVENTIONS, *supra* note 43, at 77, 83 (“It is also troubling that, although rehabilitation programs may exist for women and delinquent girls in institutions, they are usually not comparable in quality to those provided to male offenders and delinquent boys.”); see also Myrna S. Reader, *A Primer on Gender-Related Issues that Affect Female Offenders*, 20 CRIM. JUST. 4, 19 (2005) (“Due to their lesser numbers, women offenders have often been given less access to programming and services.”).

scope of collateral consequences of criminal convictions has also expanded. Collateral consequences are “invisible”⁵² legal restrictions limiting the rights and privileges of individuals who have been convicted of crimes.⁵³ While collateral consequences are not a new concept, they were not particularly severe until they were expanded in the 1980s as part of the “tough on crime” movement.⁵⁴ During this time, Congress and state legislatures severely limited returning citizens’ eligibility for welfare and food stamps, public housing, driver’s licenses, employment licenses, and student loans.⁵⁵ They also expanded limitations on employment, parenting, and voting rights.⁵⁶ Such far-reaching and interrelated⁵⁷ restrictions have made it increasingly difficult for individuals returning from jail or prison to successfully reenter their communities, especially given the deficit of services available to them.⁵⁸

For reentering women, especially those with children, federal and state restrictions on cash and food assistance programs—like the 1996 Temporary Aid to Needy Families (“TANF”)⁵⁹ program and the Supplemental Nutrition Assistance Program (“SNAP”)⁶⁰—can make both self-sufficiency and family reunification extremely difficult.⁶¹ Losing access to these benefits can severely

52. See TRAVIS, *supra* note 32, at 64 (“Such sanctions are ‘invisible’ in three ways. First, they operate largely beyond public view. . . . Second . . . they typically take effect outside the traditional sentencing framework. In other words, they are imposed by operation of law rather than by decision of the sentencing judge. . . . Finally, these sanctions are rarely visible in the legislative debates on sentencing policy.”).

53. *Id.* at 63.

54. Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 511 (2010).

55. LEGAL ACTION CTR., AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS 8 (2004).

56. *Id.*

57. *Id.* at 23 (“Without a job, it is impossible to provide for oneself and one’s family. Without a driver’s license, it is harder to find a job. Without affordable housing or food stamps or federal monies to participate in alcohol or drug treatment, it is harder to lead a stable, productive life. Without the right to vote, the ability to adopt or raise foster children, or access to a college loan, it is harder to become a fully engaged citizen in the mainstream of society.”).

58. *Id.* at 8–9; see also MARC MAUER & VIRGINIA MCCALMONT, THE SENTENCING PROJECT, A LIFETIME OF PUNISHMENT: THE IMPACT OF THE FELONY DRUG BAN ON WELFARE BENEFITS 6 (2013) (observing that collateral consequences “would be difficult to manage under any circumstances . . . ; for people who are trying to reenter society after a period of incarceration, they are particularly damaging[.]”).

59. 42 U.S.C. §§ 601–619 (1997).

60. 7 U.S.C. §§ 2011–2036 (2012).

61. MAUER & MCCALMONT, *supra* note 58, at 8 (estimating that, between 1996 and 2011, “180,100 women in the states that fully enforce the ban’s provisions may be affected by these provisions at some point in their lives. Including women in the states with partial bans, or men who are impacted by the policy, would clearly raise this number substantially.”). For further discussion on the impact of eligibility bans on public assistance, see Allard, *supra* note 29, at 158, where Allard observes that an inability to obtain public assistance “results in limited access to, and in many cases outright denial of, education and job training programs, child-care support, and drug treatment programs linked to receipt of welfare benefits.” Further, Allard observes that “it is estimated that between 1996 and 1999, over 96,000 women, 48% of whom were African American or Latina, were subject to the ban, affecting

jeopardize the stability of not just the reentering woman but her entire family.⁶² Restrictions on access to public housing mean that a woman with certain drug-related convictions may not be able to either acquire independent subsidized housing or reside with family members in their government-funded housing.⁶³ Moving into private housing also presents many challenges for reentering women: from availability and cost to background checks and emerging crime free rental ordinances, renting private housing or staying with friends or family in private units may prove onerous.⁶⁴ These restrictions leave women with few housing choices.⁶⁵ Because homeless shelters often have extensive waitlists⁶⁶

the well-being of 250,000 children.” *Id.*

62. MAUER & MCCALMONT, *supra* note 58, at 4–5 (“For this disproportionately lower-income population, the sudden loss of a job or a change in family circumstances can move an otherwise self-supporting household into a situation whereby the loss of federal benefits can make the difference between stability and vulnerability in one’s life prospects.”).
63. Scott-Hayward, *supra* note 18, at 426 (“Finding such housing can be difficult, in part because of the legal impediments facing people with criminal records; under federal legislation passed in 1996 and 1998, people with drug or violent felony convictions can be prohibited from living in public housing. Additionally, an increasing number of landlords in the private sector conduct criminal background screenings and decline to offer leases to people with criminal records.”); MAGGIE MCCARTY ET AL., CONG. RES. SERV., DRUG TESTING AND CRIME-RELATED RESTRICTIONS IN TANF, SNAP, AND HOUSING ASSISTANCE 21 (2013) (“[T]he background of all the members of the household is taken into account when determining household eligibility and screening households for suitability. Generally, if one member of the household is deemed ineligible or unsuitable, the entire household is deemed ineligible or unsuitable, unless the offending member is removed from the household.”). Although the Department of Housing and Urban Development (HUD) released new guidelines to public housing authorities in November 2015 clarifying some of its policies regarding justice-involved tenants and potential tenants, these guidelines are not likely to result in increased access to public housing for individuals with criminal convictions. See U.S. DEP’T OF HOUS. & URBAN DEV., OFFICE PUB. & INDIAN HOUS., NOTICE PIH 2015–19, at 2 (Nov. 2, 2015) (“The purpose of this Notice is to inform PHAs and owners of other federally-assisted housing that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants, to remind PHAs and owners that HUD does not require their adoption of ‘One Strike’ policies, and to remind them of their obligation to safeguard the due process rights of applicants and tenants.”).
64. See, e.g., KATHERINE CORTES & SHAWN ROGERS, BUREAU OF JUSTICE ASSISTANCE, REENTRY HOUSING OPTIONS: THE POLICYMAKERS’ GUIDE, at vii (2010) (noting that “[p]rivate market rental housing, for instance, is closed to many individuals transitioning from prison or jail either because they lack sufficient funds for move-in costs or because landlords are unwilling to rent to people with criminal records”); EMILY WERTH, THE COST OF BEING “CRIME FREE”: LEGAL AND PRACTICAL CONSEQUENCES OF CRIME FREE RENTAL HOUSING AND NUISANCE PROPERTY ORDINANCES 3 (2013) (describing how municipalities that have enacted crime free ordinances “typically require landlords to participate in a crime free housing training . . . [in which] topics of discussion include crime prevention through property design and maintenance, criminal background screening of potential tenants, and eviction of tenants for criminal activity.”).
65. See, e.g., *Challenges Incarcerated Women Face*, *supra* note 44, at 377 (“Trouble is, they [my family] are over me now, so I don’t know how long I can stay there. But the only other place I know is to go back to the crack house. No homeless shelter will take me, and I don’t have any ID [identification] for public aid. I just hope there’s room for me at my mom’s or else I’ll be right back here in general pop [general population at the jail].”).
66. See, e.g., Rita Price, *Homeless Shelters Deal with Waiting Lists in the Midst of Summer Heat*, THE COLUMBUS DISPATCH (July 19, 2013) (noting that “waiting lists . . . are leaving some people—especially women—with as long as a two-week wait for emergency shelter”); Darryl Fears, *Need for More Beds at D.C. Homeless Shelters Prompts Hearing Hosted by*

and eligibility criteria,⁶⁷ getting a space at a shelter may be difficult for women trying to find housing before being released from jail or prison.

Returning citizens also face considerable obstacles when looking for employment—often in the form of mandated background checks and conviction-related restrictions on obtaining professional licenses.⁶⁸ Although some jurisdictions across the United States have adopted different forms of “ban the box” legislation that restricts certain employers’ abilities to discriminate against potential hires based on their criminal records,⁶⁹ these laws are often narrowly applied and weakly enforced.⁷⁰ The inability to find employment or earn a sufficient income, especially when coupled with ineligibility for public assistance or public housing, can pressure women into returning to illegal activity in order to acquire basic necessities.⁷¹

Because expungement of criminal convictions is unavailable in the federal system and extremely limited at the state level, individuals with criminal convictions or arrest records continue to suffer from the lasting effects of collateral consequences well beyond the expiration of their sentences.⁷² For some women, there is no way to recover from informal collateral consequences generated by, for instance, women’s lack of acceptance by their communities and even their families.⁷³ These informal consequences can have an effect as

Wells, WASH. POST (July 18, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/17/AR2009071703385.html> (observing that the District’s “network of homeless shelters has started to overflow, with space especially tight for women and families, who have been turned away by the hundreds and are sleeping on friends’ couches, on sidewalks, in cars and in parks.”).

67. See, e.g., 100,000 HOMES, COMMON ELIGIBILITY CRITERIA FOR EMERGENCY SHELTERS: BEST PRACTICES FOR ENTRY INTO EMERGENCY SHELTERS (2013) (discussing how onerous eligibility criteria create barriers to entry for many vulnerable individuals).

68. Pinard, *supra* note 54, at 492.

69. For a comprehensive list of the varying forms of anti-discrimination legislation that have been adopted at different locations and jurisdictions, see NAT’L EMP. LAW PROJECT, BAN THE BOX: MAJOR U.S. CITIES AND COUNTIES ADOPT FAIR HIRING POLICIES TO REMOVE UNFAIR BARRIERS TO EMPLOYMENT OF PEOPLE WITH CRIMINAL RECORDS (2015). In November 2015, President Obama announced several measures to facilitate successful reentry, including directing the Office of Personnel Management to delay asking applicants for federal jobs about their criminal history until later in the job selection process. The White House, Office of the Press Sec’y, Fact Sheet: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly-Incarcerated (Nov. 2, 2015), <https://www.whitehouse.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation>.

70. Pinard, *supra* note 54, at 493.

71. BHATTACHARJEE, *supra* note 29, at 49 (“On the street, homelessness, drug addiction, and prostitution can often form a continuum of desperate strategies for economic survival. . . .”); *id.* at 50 (“The underground economy of drug trafficking and sex work, coupled with the lack of ‘legal’ job opportunities, help maintain the cycle of violence, incarceration, and social breakdown that is devastating many urban communities of color.”); see also LISA GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 105 (2008) (discussing an Ohio study in which women’s lack of access to TANF pushed them into illegal behavior).

72. Pinard, *supra* note 54, at 505–06.

73. See *id.* at 473–74 (“They are ‘informal’ in the sense that they are not rooted in law. Informal consequences can include the ways in which neighbors, family members, prospective

devastating and destabilizing as the formal collateral consequences created by law.⁷⁴ One reentering woman described living with these formal and informal barriers as having to live “with an X on [her] back”.⁷⁵

People don’t want to hire you, no one wants to rent you an apartment, you can’t count on your family because they have given up on you, your church calls you a sinner, and no one trusts you. I’ve done my time. But coming home is like having to do it again in your own community where folks just won’t forgive you or lend you a helping hand.⁷⁶

Collateral consequences significantly curtail reentering women’s abilities to make and effectuate decisions concerning major aspects of their post-incarceration lives. How they provide for themselves and their families, where they live, and whether and how they earn a living are just a few of the choices upon which these consequences greatly encroach.⁷⁷

When reentering women experience domestic violence, the structural barriers created by collateral consequences vastly reduce their options for addressing that abuse. Ineligibility for public assistance or inability to earn a decent living forces some reentering survivors to remain dependent on their abusive partners for financial assistance.⁷⁸ Similarly, inability to find stable housing may make staying with an abusive partner a reentering survivor’s best or only option.⁷⁹ For a reentering survivor seeking to leave an unsafe home, these

landlords, or employers treat the individual upon his or her return. They can also include the ways in which community members treat the family of the returning individual.”).

74. Ann Cammett, *Expanding Collateral Sanctions: The Hidden Costs of Aggressive Child Support Enforcement Against Incarcerated Parents*, 13 GEO. J. POVERTY L. & POL’Y 313, 317 (2006) (“For people in low-income communities of color, in particular, the scope of the barriers to successful reintegration amount to more than the merely legal: the stigma of incarceration, racial discrimination in employment, low levels of education, minimal job skills, and poor mental and physical health are all challenges facing those reentering society.”).

75. *Challenges Incarcerated Women Face*, *supra* note 44, at 382.

76. *Id.*

77. For an extensive analysis of all of the collateral consequences affecting returning citizens, see generally LEGAL ACTION CTR., *supra* note 55.

78. GOODMAN & EPSTEIN, *supra* note 71, at 105 (describing an Ohio study in which participants expressed that the federal ban on receiving TANF for more than five years forced them to be more financially reliant on abusive partners and engage in illegal activities). The study of TANF’s lifetime limit suggests how outright ineligibility for TANF may push women into unsafe or criminalized behavior. See *id.* Similarly, “women in the Maine Coalition for Family Crisis Services study said that they feared poverty and that the fear of poverty as a result of the TANF time limits made them more fearful of leaving their abusive partners.” Jyl Josephson, *The Intersectionality of Domestic Violence and Welfare in the Lives of Poor Women*, 6 J. POVERTY L., 12 (2002).

79. As will be discussed *infra* Section II.B, reentering survivors’ criminal histories often make it incredibly difficult for them to access domestic violence shelters. See also LINDA SYDNEY, NAT’L INST. OF CORR., U.S. DEP’T OF JUSTICE, GENDER-RESPONSIVE STRATEGIES FOR WOMEN OFFENDERS: SUPERVISION OF WOMEN DEFENDANTS AND OFFENDERS IN THE COMMUNITY 15 (2005) (recognizing that “[w]ithout the ability to support themselves and their children, women offenders may feel economically or socially bound to partners or others in unhealthy or even abusive relationships.”).

same restrictions may pressure her to engage in activities that are dangerous or illegal, and may violate her community supervision.

Even Lauren, who was relatively fortunate in having both an apartment and a job waiting for her after she was released from incarceration, was affected by the collateral consequences of her convictions. After losing her job due to her abusive partner's behavior, she was unable to find employment due to her criminal background. She had no source of income aside from food stamps⁸⁰ and had to rely on John for supplemental financial assistance. Because of the formal restrictions on finding housing, Lauren did not want to give up or jeopardize her apartment and instead opted to deal with John's abuse until she could end the relationship and get him to leave on his own.

C. Community Supervision

As the criminal legal system became less focused on rehabilitation than punishment, so too did the parole system that governs the lives of returning citizens.⁸¹ The system that emerged was built primarily to accommodate the growing number of men on community supervision.⁸² Several factors contributed to this change in the dynamics of community supervision. First, the increase in the prison population resulted in a much larger group of individuals on community supervision.⁸³ With no commensurate expansion in parole program resources, parole officers adopted a surveillance-based, law-enforcement model.⁸⁴ The increased population also caused a deterioration in the personal relationships between supervisors and supervisees; with more people to monitor, parole officers were not able to form the individual connections that had been crucial to the relative success of the previous system.⁸⁵ At the same time, technological advances like electronic monitoring further contributed to officers' ability to remotely oversee the individuals for whom they were responsible, and with whom they had limited relationships.⁸⁶ Taken together, these systemic

80. Ms. Walker was also lucky to reside in a jurisdiction that had opted out of the federal food stamps ban for drug offenders. For more information on which jurisdictions have opted out, enacted partial bans, or implemented a complete ban on both food stamps and cash assistance, see MAUER & MCCALMONT, *supra* note 58, at 2.

81. Scott-Hayward, *supra* note 18, at 438; *see also* Visher, *supra* note 50, at 98 ("In the late 1970s, parole officers often coordinated postrelease services for those on their caseload by linking them with job opportunities, arranging appointments with service providers, and even providing small amounts of cash for emergencies. Absent the recent focus on reentry services, today's parole officer is primarily focused on surveillance and control functions.").

82. *See* SYDNEY, *supra* note 79, at 2–3.

83. THE SENTENCING PROJECT, *supra* note 15, at 2 (estimating that there were nearly 3.5 million more people on probation and parole in 2012 than there were in 1980).

84. *See* Brown, *supra* note 23, at 633–34.

85. *See* Scott-Hayward, *supra* note 18, at 439.

86. Larkin, *supra* note 17, at 33–34. In some jurisdictions, the costs of technological surveillance like electronic monitoring are paid directly by the returning citizen. *See* HUMAN RIGHTS WATCH, PROFITING FROM PROBATION: AMERICA'S "OFFENDER-FUNDED" PROBATION INDUSTRY (2014). For a discussion of how these costs impact reentry, *see id.*

changes resulted in a substantial increase in the number of individuals whose community supervision has been revoked (a process often referred to as one's parole "being violated").⁸⁷

Women who do not comply with the terms of their community supervision risk being caught and reincarcerated.⁸⁸ Individuals on community supervision must comply with an extensive list of often boilerplate conditions created and enforced by their jurisdiction's supervision agency,⁸⁹ as well as with any special conditions imposed by the judge and any sanctions imposed by the supervision officer.⁹⁰ Supervision violation allegations are common, as are sanctions and revocation.⁹¹ Violations range from technical violations, in which a supervisee fails to comply with the terms of her release, to a new arrest or conviction.⁹²

Complying with supervision often entails multiple obligations over the course of a week, or even a day. Not only does a woman on community supervision typically have to obtain a stable home address, meet with her supervision officer (potentially multiple times a week), take a drug test (potentially multiple times a week), seek employment, and fulfill community service obligations, but she may also have to attend mental health counseling, vocational skills training, and substance abuse treatment. Many women struggle to meet all of the requirements of their community supervision. One reentering woman describes the ways in which the demands of community supervision

87. See, e.g., Brown, *supra* note 23, at 633 ("The introduction of surveillance technology, including electronic monitoring, provided enhanced capacity to detect violations and increase parole revocations. In 1985, 70% of parolees successfully completed supervision; by 1997, the completion rate plummeted to 44%."); Scott-Hayward, *supra* note 18, at 438–39 ("The larger caseloads, combined with increased punitiveness in corrections generally, have shifted the focus from 'restoring offenders to the community' to 'closely monitoring offenders to catch them when they fail to meet all required conditions.'").

88. Although most forms of community supervision consist of similar requirements and are overseen by variations of local parole officers and agencies, it is worth briefly noting their differences. An individual can be sentenced to probation in misdemeanor or felony cases. An individual placed on probation is told by her sentencing judge the length of her term of probation as well as the maximum length of incarceration if her probation is revoked. She may receive a "split sentence" wherein she serves some jail time before her probation begins. LAURA M. MARUSCHAK & THOMAS P. BONCZAL, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES, 2012, at 2 (Dec. 2013). The judge also decides what requirements the individual is to fulfill. *Id.* Once she has been released, if the probationer's supervision officer alleges that she has violated the terms of her probation, she goes back in front of the sentencing judge, who, if a violation is found, can decide how to address the violation. See *id.* An individual is typically placed on parole or supervised release by her trial court judge after a felony conviction in conjunction with a prison term to be served before the parole begins. *Id.* While the sentencing judge can outline the terms of the individual's release, any alleged violations are submitted by the supervision officer to a parole agency rather than to the judge. *Id.* If a violation is found, the agency usually has extensive discretion in determining how to respond, including deciding on a new term of incarceration followed by a new term of supervision. See TRAVIS, *supra* note 32.

89. TRAVIS, *supra* note 32.

90. See, e.g., Scott-Hayward, *supra* note 18, at 435–36 (listing common community supervision requirements).

91. TRAVIS, *supra* note 32, at 47; Scott-Hayward, *supra* note 18, at 436.

92. See, e.g., TRAVIS, *supra* note 32, at 49.

intersect and compete with each other:

I start my day running to drop my urine [drug testing]. Then I go see my children, show up for my training program, look for a job, go to a meeting [Alcoholics Anonymous] and show up at my part-time job. I have to take the bus everywhere, sometimes eight buses for 4 hours a day. I don't have the proper outer clothes. I don't have money to buy lunch along the way, and everyone who works with me keeps me waiting so that I am late to my next appointment. If I fail any one of these things and my PO [probation officer] finds out, I am revoked I am so tired that I sometimes fall asleep on my way home from work at 2 a.m. and that's dangerous given where I live. And then the next day I have to start over again. I don't mind being busy and working hard . . . that's part of my recovery. But this is a situation that's setting me up to fail. I just can't keep up and I don't know where to start. I want my kids. I need a place to stay. I have to have a job, meetings keep me clean, and I am required to be in job training.⁹³

The physical, emotional, and logistical difficulties of complying with community supervision described above are compounded by the fact that doing so is rarely a reentering woman's only obligation: as soon as she gets home, she may have to undertake the arduous processes of family reunification, applying for public benefits, and obtaining social and medical services.⁹⁴ In addition, the criminal legal system often intersects with other systems that reentering survivors find themselves forced to navigate, including, for example, the child neglect system and the welfare system.⁹⁵ The overlapping rules and requirements of multiple systems of state control may first force a woman to prioritize compliance with one set over another and then punish her for not being able to comply across the board.⁹⁶ For example, if a reentering woman is unable to comply with the child welfare system's separate obligations, she may lose her

93. *Challenges Incarcerated Women Face*, *supra* note 44, at 380–81.

94. *See, e.g.*, MERRY MORASH, WOMEN ON PROBATION AND PAROLE: A FEMINIST CRITIQUE OF COMMUNITY PROGRAMS AND SERVICES 5 (2010) ("They struggle to meet their own and family members' basic needs; to access substance abuse treatment; and to obtain social welfare, employment, education, mental health services, and housing.") (citations omitted); *see also Challenges Incarcerated Women Face*, *supra* note 44, at 380 ("The challenges women who are returning to their communities from jail or prison face are more complicated than the list of service needs would suggest. In fact, the demands and needs form a complex web of concerns and stressors that often compete with and exacerbate one another.").

95. *See, e.g.*, SYDNEY, *supra* note 79, at 17 (noting that reentering women are perceived as being difficult to supervise because "[w]omen face demands that most men do not, including child or other dependent care, mandates from providers of public assistance benefits, and, in many cases, child protective system involvement. These demands may compete with or even contradict community corrections directives.").

96. *See* Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418, 1447 (2013) [hereinafter *From Private Violence to Mass Incarceration*]; *see also Challenges Incarcerated Women Face*, *supra* note 44, at 380 (noting how many returning female citizens "describe the co-occurrence of multiple demands as one of the most profound challenges they face when they are first released; this is a time characterized by fear, apprehension, lack of information about resources, and limited access to social support.").

parental rights even if her failure was due to her efforts to remain in full compliance with her community supervision.⁹⁷ Few services exist to help women manage or streamline these requirements, and their failure to juggle them all makes relapse and reincarceration constant threats.⁹⁸

Reentering survivors may struggle to leave an abusive relationship or unsafe home, both for the wide range of reasons that can affect all survivors and for the reasons directly related to their community supervision.⁹⁹ There are many reasons why a reentering woman might choose to live with someone she knows to be, or who becomes, violent.¹⁰⁰ For instance, a reentering survivor may rely on an abusive partner to help comply with requirements like having a stable address and getting to mandatory appointments. Living at her abusive partner's residence may make it possible for a reentering survivor to travel to all of her appointments via walking or public transportation, or it may be the only way she

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97. *Challenges Incarcerated Women Face*, *supra* note 44, at 381 ("The woman will need an apartment to regain custody of her children, she will need a job to get an apartment, she will need to get treatment for her addiction to be able to work, and initial contact with her children may only be possible during business hours if they are in custody of the state. The demands multiply and compound each other, and services are typically offered by agencies in different locations.").
 98. Covington, *supra* note 10, at 86 ("The need to navigate a myriad of systems that often provide fragmented service can impede successful prisoner reintegration. For example released women must comply with conditions of probation or parole, achieve financial stability, access health care, locate housing, and attempt to reunite with their families. In addition, they must obtain employment (often with few skills and a sporadic work history), find safe and drug-free housing, and, in many cases, maintain recovery from addiction. However, many women find themselves either homeless or in environments that do not support sober living. Without strong community support in dealing with multiple systems and agencies, many offenders fall back into a life of substance abuse and criminal history."); MORASH, *supra* note 94, at 11 ("The myriad of programs may be fragmented and distant, have conflicting requirements, or interfere with keeping supervision appointments."); Reader, *supra* note 51, at 8 ("Conditions of her release, such as work and drug treatment, typically take no account of her child care responsibilities, resulting in ever increasing numbers of women being incarcerated for technical violations, not new crimes.").
 99. See, e.g., EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 115 (2007) ("Economic and related disadvantages often combine with traditional beliefs to inhibit women's desire to break off any relationship as well as their capacity to manage on their own. Intimacy is a cherished value to millions of women, some of whom will admit they will 'take a beating' if they think things will eventually work out."); LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 85 (2012) [hereinafter A TROUBLED MARRIAGE] ("The number of shelters in the United States is still insufficient to house the thousands of women who seek their services. In rural areas, the nearest shelter space may be counties away, inaccessible without transportation and other resources. Women may be unable to seek refuge with friends or family, either because those supports don't exist or are unwilling to get involved or because women fear endangering friends who offer to help."); ELIZABETH SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 77 (2000) ("For many women, leaving only intensifies the risk of harm. Many women who are battered have little money, no child care, no employment; they may be financially and emotionally dependent on the men who batter them; they believe that it is better to stay with the men because of their children, or they don't want to leave because they love the men and want to maintain whatever intimacy and sense of connection they can.").
 100. See, e.g., COURTNEY CROSS, THE NAT'L CLEARINGHOUSE FOR THE DEF. OF BATTERED WOMEN, VICTIMIZED AGAIN: HOW THE REENTRY PROCESS PERPETUATES VIOLENCE AGAINST SURVIVORS OF DOMESTIC VIOLENCE 19 (2013).

can live with her children, of whom the abusive partner may have custody. A reentering woman may not be able to live with friends or family in public housing because of statutory bars.¹⁰¹ She may face similar problems in private housing if her friends or family members have criminal convictions, since her community supervision may prevent her from living with other returning citizens. In addition, the terms of her supervision may prevent her from returning to specific residences or areas where she would otherwise be able to live. For example, she may be ordered to stay away from her or a relative's home or from a specific block or area where friends or family members live. Even without these barriers, she may not have friends or family willing or able to take her in. In light of these limitations, choosing to live with an abusive partner may be a reentering survivor's best (or only) option if she wants to remain compliant with her community supervision and avoid reincarceration.

Like many returning citizens, a reentering survivor may not feel comfortable telling her supervision officer about her abusive situation for fear of jeopardizing either her reentry or her relationship.¹⁰² Without assistance from her parole officer or an outside case manager, a reentering survivor's options may be limited in terms of obtaining services and safe housing—especially in light of collateral consequences of her conviction that may also be restricting her.¹⁰³ Finally, reentering survivors may feel unsafe or uncomfortable with their supervision officers or the dynamic of their supervision.¹⁰⁴

Lauren Walker found herself relying on John Baldwin in order to comply with her community supervision. Lauren became completely financially dependent on John after she was fired from her job. She needed him to take her to all of her required appointments. He also became her primary source of social interaction. Yet his abusive behavior contributed to her relapse, and her lack of sobriety was cited as one reason for her reincarceration. Ironically, Lauren's decision to enter a second drug treatment program to become clean and get away from John was also a violation of her supervision and contributed to her reincarceration. Although Lauren was eventually successful in separating from John, she was unable to reach a point where she could maintain both her safety and her liberty.

101. See Scott-Hayward, *supra* note 18, at 425–26.

102. See *id.* at 445 (“For example, when Angela was asked whether she felt like she could talk to her officer about her problems or things she was going through, she answered: ‘I wouldn’t . . . Nah—I don’t have comfortability [sic] with her like that.’ . . . Marie responded: ‘She’s a parole officer. She’s not a friend.’ Isabel described the relationship as being ‘like a business relationship.’ Participants’ responses suggested a variety of reasons for this finding, but two frequently cited explanations were a lack of trust on the part of participants and a lack of time on the part of the parole officer.”).

103. The National Institute of Corrections has suggested for over a decade that women's community supervision play a much more active role in helping women obtain comprehensive services to improve their socioeconomic position. See SYDNEY, *supra* note 79, at 15–17.

104. See *id.* at 11–13 (recognizing the potential for reentering women to feel uncomfortable and suggesting ways to create a safe and respectful supervision environment).

D. The Special Problem of Domestic Violence and Reentry

The structure of the criminal legal system renders reentering women vulnerable to domestic violence, as do many other challenges affecting reentering women.¹⁰⁵ Incarcerated women (and hence many women on community supervision) suffer from mental illness at significantly higher rates than the general population and their male counterparts.¹⁰⁶ These challenges are compounded by the fact that those who suffer from mental illness are more likely to experience domestic violence.¹⁰⁷ Further, incarcerated women and reentering survivors often have extensive histories of abuse, yet most do not receive adequate trauma-informed care while incarcerated or in the community. Without access to appropriate care in correctional facilities and the community, reentering survivors continue to struggle with past traumas and are often more vulnerable to further violence.

A 2006 study compared victimization among respondents to the National Crime Victim Study ("NCVS") with the victimization of women incarcerated in Baltimore.¹⁰⁸ This study found that, overall, the incarcerated women were more likely than the NCVS respondents to be victims of assault, to experience multiple attacks, and to be assaulted by someone who was using drugs or alcohol.¹⁰⁹ In fact, the incarcerated women were almost twice as likely to have been assaulted as the NCVS respondents.¹¹⁰ More specifically, the study found that the incarcerated women had experienced far more violence: they were over thirty-three times more likely to have been attacked by an intimate partner during the six months before being incarcerated than the NCVS women during any six-

105. Although much of the violence discussed here consists of violence committed by reentering women's intimate partners, these are not the only people who use violence and manipulation against them. MORASH, *supra* note 94, at 41 ("Partners are not the only abusive people women try to escape. Stepparents, parents, children, or siblings also may be abusive. Moving does not always mean safety, because new residences often present their own dangers and drawbacks.").

106. Henry J. Steadman et al., *Prevalence of Serious Mental Illness Among Jail Inmates*, 60 PSYCHIATRIC SERVS. 761, 761 (2009) (noting that in a study of over 200,000 men and women entering five local jails, researchers found serious mental illnesses in 14.5% of men and 31% of women); Kennedy, *supra* note 48, at 169 ("Mothers in prison are often dealing with addiction and report higher rates of substance abuse than incarcerated men. Incarcerated women are more likely than imprisoned fathers to be struggling with mental health issues."). See generally SHANNON M. LYNCH ET AL., WOMEN'S PATHWAYS TO JAIL: THE ROLES & INTERSECTIONS OF SERIOUS MENTAL ILLNESS & TRAUMA, *submitted to BUREAU OF JUSTICE ASSISTANCE* (2012).

107. See Kylee Trevillion et al., *Experiences of Domestic Violence and Mental Disorders: A Systematic Review and Meta-Analysis*, 7 PLOS ONE 1, 9 (2012) (reviewing forty-one studies and finding "consistent evidence that both men and women with all types of mental disorders report a high prevalence and increased odds of domestic violence compared to people without mental disorder, with women more likely to experience abuse than men.").

108. Laura Dugan & Jennifer L. Castro, *Predictors of Violent Victimization: National Crime Victimization Survey Women and Jailed Women*, in GENDER AND CRIME: PATTERNS OF VICTIMIZATION AND OFFENDING 171 (Karen Heimer & Candace Kruttschnitt eds., 2006).

109. *Id.* at 181.

110. *Id.* at 183.

month period.¹¹¹ This study's results are not unique.

A 2002 study in Chicago's Cook County jail found that 67% of the women reported acts of domestic violence within the last year.¹¹² Among women who had been consistently involved in sex work, the figure rose to 82%.¹¹³ The study also found that female prisoners had been victims of child abuse, sexual assault, and domestic violence at rates two and three times the national average.¹¹⁴ A 2000 study of women on probation and parole in Lane County, Oregon, found that the vast majority of reentering citizens have been victims of domestic violence at some point in their lives: 85% experienced physical violence, including pushing, slapping, shoving, or grabbing; 79% experienced physical violence in the form of punching, kicking, strangling, or hitting; and 46% had been raped or forced to have unwanted sex.¹¹⁵ Although the study in Lane County, Oregon did not differentiate between violence experienced before or during community supervision, an analysis of women involved in all stages of the criminal system in Multnomah County, Oregon noted in passing that "[l]ocal data indicate that more than a quarter of women under probation supervision report being emotionally or physically abused, usually by a close friend, family member or intimate partner."¹¹⁶ These studies provide a strong indication that many reentering women will continue to experience higher rates of domestic violence than women with no criminal histories, although research has yet to be conducted to determine the precise relationship between community supervision and domestic violence.

Moreover, these studies of pre-incarceration abuse demonstrate how women released from incarceration are particularly vulnerable to abuse in the community.¹¹⁷ Without access to trauma-informed care during and after incarceration, these women risk returning to past patterns of abuse and harmful coping mechanisms like substance abuse.¹¹⁸ Women involved in illegal activities or who have had negative experiences with law enforcement are "desirable

111. *Id.* at 187 (noting a concern that "violence against these highly marginalized women rarely appears in official crime and victimization statistics. As suspected, only a small percentage of these women report their victimization to the police. Instead, they are more likely to take matters into their own hands by attacking or threatening the perpetrator. Without intervention or prevention, this pattern will serve to perpetuate an ongoing and destructive cycle of violence.").

112. Samir Goswami, *Unlocking Options for Women: A Survey of Women in Cook County Jail*, 2 U. MD. L.J. RACE RELIG. GENDER & CLASS 89, 96 (2002).

113. *Id.* at 106.

114. *Id.* at 93.

115. JEAN DAUGHERTY ET AL., OREGON COUNCIL ON CRIME & DELINQUENCY, EXPERIENCES OF DOMESTIC VIOLENCE AMONG WOMEN ON PROBATION OR PAROLE IN LANE COUNTY, OREGON 2 (2002).

116. MULTNOMAH CTY. FAM. VIOLENCE COORDINATING COUNCIL, BATTERED WOMEN OFFENDERS IN THE CRIMINAL JUSTICE SYSTEM: ANALYSIS OF NEEDS AND RESPONSE FOR MULTNOMAH COUNTY 4 (2002).

117. Dugan & Castro, *supra* note 108, at 172.

118. *Id.*

targets of violence”¹¹⁹ because their abusive partners know they are unlikely to seek help from the police.¹²⁰ That is, reentering survivors are especially vulnerable to forms of domestic violence that target their status as reentering citizens.¹²¹

Like other marginalized populations, reentering survivors experience abuse directed at the source of their marginalization.¹²² This can manifest itself in an abusive partner regularly threatening to call a reentering woman’s supervision officer and claim that she has violated her supervision. An abusive partner might pretend to call the police after an argument or may directly tell a reentering woman, “I can get you sent back to jail,” “If I get you sent back to jail, I’m getting custody of the kids,” “If you don’t sell these drugs, I’m going to call your supervision officer,” or engage in any other threat or coercive act that implicates a reentering survivor’s ability to remain in the community.¹²³ In addition, an abusive partner may take direct action to undermine successful reentry. This may consist of an abusive partner endangering a woman’s sobriety by providing her with drugs, demanding that she engage in criminalized behavior, not allowing her to attend her required appointments, causing noticeable injuries so that she does not report to her appointments, or taking any other action that causes her to violate the terms of her release.¹²⁴

Similar challenges in which abusive partners undermine survivors’ abilities to comply with other forms of state-mandated requirements have received extensive scholarly and policy attention. In the context of public assistance, for example, attention has been paid to the fact that many abusive partners intentionally sabotage women’s attempts to comply with the job training and work requirements imposed on them by welfare programs.¹²⁵ For example, abusive partners have been found to prevent women from attending or doing

119. *Id.* (further hypothesizing that “the proportion of unreported violence among female offenders is likely much higher than among nonoffenders, which is substantial when one considers that only half of all nonoffender victimizations are ever reported.”).

120. *Id.* at 186. The study comparing incarcerated women’s abuse with non-incarcerated women’s abuse confirmed that, instead of calling the police, the incarcerated population was more likely to use self-help: “More than 70 percent of the Baltimore women retaliated either with an attack (52.1 percent) or a threat (20.9 percent). In contrast, less than 10 percent of the women from the general population retaliated (9.9 percent). Instead, most of these women contact the police (52.3 percent).” *Id.*

121. See CROSS, *supra* note 100, at 16–17.

122. See Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 18 (2007) (observing that “[v]ictims of color, gay, lesbian, bisexual, or transgender (GLBT) victims, and victims who are disabled are coerced by tactics specifically targeted to take advantage of their marginalized status.”).

123. These examples are a small sample of the threats I encountered during my practice with both women seeking protection orders and women reincarcerated for allegedly violating their supervision.

124. These, too, are examples taken from my practice.

125. See Josephson, *supra* note 78, at 13 (“Women in many of the studies reported direct controlling behaviors related to their attendance at work training activities required by AFDC/TANF programs.”).

well on important tests and interviews by assaulting them or keeping them up all night; or they may undermine women's abilities to keep their employment by harassing them on the job.¹²⁶ Under these circumstances, a survivor's inability to comply is not a side effect of being abused; rather, her abusive partner targets and intentionally sabotages her efforts to comply.¹²⁷ Women who cannot meet the requirements for public assistance are subject to increasing sanctions and may become ineligible for continued assistance—yet they are also rendered incapable of getting or keeping a job to support themselves. Undermining women's ability to obtain employment has long been seen as problematic because preventing a woman from working “not only separates her from economic resources, but it also relegates her to a highly stigmatized position in society, subject to control and abuse from governmental bureaucracies that contribute to her further disempowerment.”¹²⁸ Scholars and social scientists have argued that states are complicit with batterers who sabotage survivors' ability to comply with public assistance requirements when state welfare agencies ignore these abusive relationships.¹²⁹

Analogous issues unfold in the community supervision context. For example, an abusive partner may prevent a woman from complying with the terms of her supervision despite her efforts to successfully reenter the community. Here, too, the state is often complicit with the batterer by allowing the abusive partner's actions to result in the survivor's reincarceration for violating the conditions of her release. The state is also complicit in the abuse when the conditions and requirements it imposes and enforces make it more difficult for a reentering survivor to leave her abusive partner. Although the manipulation of women on public benefits has been the subject of scholarly inquiry, the parallel situation facing women on community supervision has not received comparable attention. Arguably, this difference is due to reentering

126. See Jody Raphael, *Domestic Violence and Welfare Receipt: The Unexplored Barrier to Employment*, 3 GEO. J. FIGHTING POVERTY 29, 30 (1995) (“The night before a key test, entrance exam, or job interview, boyfriends will engage their partners in night-long quarrels, leaving the women sleep-deprived and unable to perform well or causing them to oversleep altogether. Over time these women become worn down and agree to devote themselves solely to the relationship and drop out of school or job training.”); see also Josephson, *supra* note 78, at 13 (“Abusive partners tried to sabotage women's work by coming to their workplace or calling the workplace constantly, or physically abusing them on the day before a test or an interview.”).

127. Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 L. & POL'Y 205, 220 (1997) (arguing that “abuse among the welfare population does not just pose ‘one more disadvantage’ among the many disadvantage suffered by poor people. Rather, abuse often is aimed at and succeeds in stopping women from working or participating in education or training programs. It is important to note, however, that this does not suggest that battered women do not want to or are unable to work; but rather that abuse frequently disrupts and sabotages their employment.”).

128. Jody Raphael, *Battering Through the Lens of Class*, 11 J. GENDER SOC. POL'Y & L. 368, 370 (2003).

129. Meier, *supra* note 127, at 239 (“If they do not acknowledge the role of the abuser, state welfare agencies may become the unwitting colluders with batterers who seek to ‘punish’ their partners or former partners.”).

survivors' transgressive status: they have been involved with the criminal legal system and therefore are less sympathetic and do not fit very well into traditional notions of victimhood.

Lauren Walker experienced multiple forms of reentry-specific abuse. John Baldwin threatened to get her reincarcerated if she forced him to leave her apartment; he bought her drugs thereby jeopardizing her drug tests; he monitored her meetings with her supervision officer to ensure she did not mention the abuse; and, he injured her so badly and so frequently that she eventually stopped reporting to these meetings at all. Despite this abuse, Lauren had nowhere to go and no way to support herself, so she became increasingly isolated and reliant on John while she struggled to comply with her community supervision. For much of the time between her periods of incarceration, Lauren chose to endure John's abuse in part because their relationship also enabled her to comply with her community supervision. Eventually, however, John's abuse chipped away at her ability to remain compliant and ultimately played a large role in her non-compliance and reincarceration. In deciding to revoke her parole and reincarcerate her for one year, the parole board saw as irrelevant the ways in which John's behavior undermined and sabotaged Lauren's compliance and chose not to mitigate her violations of community supervision.

II. THE DOMESTIC VIOLENCE MOVEMENT: FROM ACTIVISM TO INSTITUTION

As the criminal legal system moved from rehabilitation toward (increasingly) retributivist policies, so too did the domestic violence movement transition from a woman-centered approach to a greater focus on "tough on crime" advocacy. In doing so, the domestic violence movement left behind many of its founding political principles. Part of this transformation has included a close alliance with the state, premised upon crime control (of batterers) as the primary means of combatting domestic violence. The narrowing of the movement's goals and services has resulted in the systematic exclusion of marginalized women from the domestic violence movement's purview. This exclusion, combined with the adoption of "tough on crime" approaches to domestic violence, has meant that many reentering survivors are not only overlooked by the movement, but also endangered by it.

A. Grassroots to Government

The domestic violence movement was born out of the larger feminist movement of the 1960s. It focused the larger movement's opposition to men's social and political subordination of women in the home.¹³⁰ The domestic

130. G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 Hous. L. Rev. 237, 248–49 (2005) ("The battered women's movement of the 1970s to the 1980s was the product of the social movements of the 1960s that challenged conceptions of power based on race, sex, and sexual

violence movement grew out of the recognition that domestic violence was affecting substantial numbers of women behind closed doors.¹³¹ In response to this growing awareness, activists began advocating for domestic violence to be recognized as a social issue, which would require broad societal reform to remedy the subordination of women that made battering with impunity possible and even acceptable.¹³² These early activists, including many survivors of abuse, established battered women's shelters that prioritized women's self-determination and respect for their choices.¹³³ Respect for women's autonomy was the hallmark of these shelters, which prioritized empowerment and helped survivors accomplish the goals that they set for themselves.¹³⁴ The shelter staffs were typically organized non-hierarchically, which reflected these values.¹³⁵

Early battered women's advocates were extremely effective at creating both services for battered women and awareness of domestic violence in the public eye.¹³⁶ There was a rapid increase in stories about battered women in the media, indicating how quickly the battered women's movement was gaining

orientation. This movement was integral to the women's liberation movement because it challenged male hegemony over women's bodies in the home.").

131. See GOODMAN & EPSTEIN, *supra* note 71, at 31 (discussing the role of consciousness-raising groups in breaking the silence about domestic violence in the late 1960s and early 1970s). When survivors recognized that they "were not alone in enduring violence at home and that responsibility lay at least in part with the larger society rather than with them as individuals, they felt an enormous sense of relief, connection, and healing." *Id.* (citations omitted).
132. See *id.* at 32 (noting that "a broad social consensus grew around the idea that domestic violence could no longer be dismissed as a private matter even though it typically takes place at home behind closed doors. Activists now understood that because the problem was rooted in social and economic inequality, it could be solved only through societal reform.").
133. See Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1125 (2009) [hereinafter *Redefining Harm*].
134. See GOODMAN & EPSTEIN, *supra* note 71, at 35 ("Advocates carefully avoided imposing predetermined criteria for success or timetables for change on survivors. In shelters, support groups, hotlines, and courtrooms, advocates focused on the specific needs of individual women, helping them to articulate their goals, support each other, and achieve greater economic stability.") (citations omitted).
135. Miccio, *supra* note 130, at 259 ("Hierarchical conceptions of power were rejected for consensus and collective decision making so as to infuse an egalitarian ethic into the operation of the shelters"); GOODMAN & EPSTEIN, *supra* note 71, at 35 ("[T]he organizations that emerged from the early days of the battered women's movement were structured to empower their staff members as well as the battered women seeking their help. Throughout the 1960s and 1970s, numerous feminist organizations were committed to decentralized nonhierarchical power structures that included consensual decision making, job rotation and sharing, and equal salary distribution.") (citation omitted).
136. See GOODMAN & EPSTEIN, *supra* note 71, at 34 ("By 1982, 6 years after the first U.S. shelter opened its doors, estimates placed the number of shelters and safe home projects somewhere between 300 and 700 and NCADV had established the first national toll-free domestic violence hotline.") (citation omitted); see also Davis, *supra* note 43, at 2 ("The first national organization addressing domestic violence was founded in 1978 when the United States Civil Rights Commission Consultation on Battered Women led to the founding of the National Coalition Against Domestic Violence. In 1980, the Washington, D.C. Rape Crisis Center sponsored the First National Conference on Third World Women and Violence. The following year a Women of Color Task Force was created within the National Coalition Against Domestic Violence.").

traction.¹³⁷ In only a few years during the mid-1970s, activists transformed domestic violence in the United States from a private phenomenon to a widely recognized social problem that received widespread attention from activists, politicians, and the media.¹³⁸

This first cohort of anti-battering shelters and organizations existed without state-sponsored support or funding. These politicized organizations insisted upon independence from state institutions because of the state's historical complicity in domestic violence; activists did not trust the government due to its reluctance to address or even acknowledge domestic violence and initially rejected government funding.¹³⁹ Without funding from the government or large donors, these organizations relied on women in their communities for support.¹⁴⁰ As the number of survivors seeking services continued to grow in the late 1970s, however, this model became unsustainable and advocates began to look to the government for both funding and state adoption of the movement's goals.¹⁴¹ Once anti-battering organizations began soliciting and accepting state funding, the movement traded its radical momentum for political staying power.¹⁴²

B. Changing Structures

In the early 1980s, the conservative right led by Ronald Reagan began taking steps to undo the achievements that the movement had already accomplished. Reagan closed the Office on Domestic Violence and the National Center on Rape and opposed all social programs that challenged his conservative agenda.¹⁴³ In order to acquire government funding and influence policies, many

137. See ELIZABETH PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO PRESENT* 182 (1987) ("Newspapers did not begin to report on abuse of wives until 1974. The next year, however, women activists organized conferences in several cities to establish shelters for battered women, demand arrest of wife beaters by the police, and draft new legislation. In 1977, the *New York Times* carried forty-four articles on wife beating, ranging from stories about hotlines and shelters to the trials of women who had murdered abusive husbands.").

138. GOODMAN & EPSTEIN, *supra* note 71, at 34 (describing how "[t]he United States had moved from an era where no term for intimate abuse existed in the national lexicon to one of substantial public awareness of the problem, a growing perception that such abuse is unacceptable, and increasing political will to intervene.").

139. *Id.* at 36.

140. Miccio, *supra* note 130, at 258 ("Unable to garner money from states or large funding sources, the advocates turned to women within their community for economic, social, emotional, and political support. What is characteristic about the movement at this stage of development is its self-reliance. Community women created the power base for shelters.") (citation omitted).

141. See GOODMAN & EPSTEIN, *supra* note 71, at 36 ("[A]s the movement successfully illuminated the scope of domestic violence, it became clear that the problem was far too serious and widespread to be resolved solely in the private realm. Shelter workers were overwhelmed by an ever-increasing demand for space, and the resources they could offer were inadequate to meet women's needs. . . . Reluctantly, activists began to look to the state for financial assistance as well as for legal and programmatic interventions.") (citations omitted).

142. See *id.*

143. Kathleen J. Ferraro, *The Dance of Dependency: A Genealogy of Domestic Violence*

activists in the battered women's movement decided to adapt to the administration's conservative outlook.¹⁴⁴ Joining forces with the state proved effective as domestic violence services expanded in terms of both number of programs and types of services. Social and legal organizations providing direct services and local, state, and federal policy responses joined the ranks of women's shelters and hotlines to form an expansive nationwide domestic violence network.¹⁴⁵ This strategy changed the course and structure of the domestic violence movement.

In order to obtain funding from both the government and mainstream private donors, organizations were pressured to conform to these funders' expectations regarding both the structure of their staff and the substance of the work they performed, which made their political agendas more peripheral.¹⁴⁶ There was a push to professionalize the staff at these organizations, such that life experience became less valuable than a specific degree and demonstrable skill set.¹⁴⁷ With more funding opportunities available, advocacy for battered women became embedded in state-run settings including police stations, hospitals, and prosecutors' offices.¹⁴⁸ As domestic violence advocacy expanded, however, the services offered at any individual location became increasingly specialized, and advocates focused on what limited services they could provide instead of what their clients actually needed.¹⁴⁹ For example, advocates located at a prosecutor's office could only provide a survivor with information and support related to the

Discourse, 11 HYPATIA 77, 84 (1996) [hereinafter *The Dance of Dependency*] ("The decade of the eighties involved a rapid devolution of the U.S. economy and social programs. Trillions of dollars were spent on 'Star Wars' military technology, while multinational corporations moved manufacturing jobs to export processing zones in developing nations. Blue-collar and semi-skilled jobs were decimated in the 1980s."). For a more in-depth analysis of how these policies affected low-income individuals, see Sudbury, *supra* note 31, at 13 ("With well-paying unionized skilled trade jobs in decline, women and men in urban communities faced unemployment or dead-end jobs that did not pay enough to support a family. Cut-backs and trickle-down economics were a double-pronged tool that governments in advanced industrialized nations used to reduce the potential economic burden of a growing population that was surplus to the needs of global capital. And criminalization and warehousing were the weapons of choice for minimizing the potential for social unrest and dissent.") (citations omitted).

144. *The Dance of Dependency*, *supra* note 143, at 85–86.

145. GOODMAN & EPSTEIN, *supra* note 71, at 38.

146. *See id.* at 40–41; *see also* Miccio, *supra* note 130, at 286–87 ("[T]he infusion of money from nonfeminist organizations or from funding sources devoid of a feminist consciousness resulted in key structural changes.") (citations omitted).

147. Miccio, *supra* note 130, at 292 ("Professionalization of staff and specialization in the delivery of services were consequences of the funding lottery. Shelters were required to demonstrate that staff were credentialed in specialized areas, and 'credentialed' was synonymous with having a professional degree. Knowledge and expertise gained through life, work experience, or both often failed to satisfy this requirement.") (citations omitted).

148. GOODMAN & EPSTEIN, *supra* note 71, at 41–42.

149. *See id.*; *see also* Miccio, *supra* note 130, at 291 ("Accompanying the shift in ideology was a reallocation in programs and services. Now, a heavy institutional emphasis was placed on individual therapy and counseling. Advocacy and group support were supplanted by individualized programs, and political analysis was viewed as unprofessional and outside the purview of shelter service and concern.") (citations omitted).

case against her abuser and would not be able to assist her if she did not want to go forward with the prosecution. Similarly, a domestic violence housing case manager might be able to provide advice to a survivor looking for housing but may not have any insight into enforcing civil protection orders. Because of this “service-defined approach,” survivors may not be able to get assistance for what they deem to be their most pressing needs.¹⁵⁰

As the shelters and service organizations were becoming more specialized, they were also experiencing a push to meet concrete benchmarks demonstrating success in order to continue to receive funding in an increasingly competitive environment.¹⁵¹ With success now both defined and required by outside funding sources, the need to achieve these prepackaged results replaced the concept of allowing survivors to determine their own goals.

This outcome-focused process can be both disempowering and dangerous for survivors whose needs and priorities do not align with those of the program.¹⁵² Those survivors seeking services who cannot comply with the requirements of the program (or appear to be unable to comply) are deemed ineligible or simply not selected by the program to participate. For example, homeless women and women with substance abuse problems or mental health diagnoses are often viewed as having needs too complex to be successful in outcome-oriented programming.¹⁵³ Instead, women who are seen as “less likely to cause trouble, less likely to have retaliated against her abusive partner, and more likely to want to end her relationship with the abusive partner”¹⁵⁴ are most likely to be found eligible for programming. As such, it is harder for more marginalized women, especially reentering women, to find a program that meets their needs and accepts them as clients. Even if they can facially meet the program’s eligibility requirements, many reentering survivors may still have

150. GOODMAN & EPSTEIN, *supra* note 71, at 42 (“By its very nature, a service-defined approach requires a woman to ignore certain aspects of her situation, such as economic dependency on the batterer, to focus on the narrow need that can be met by a particular provider.”) (citation omitted). This setup may prove especially frustrating to survivors who are facing barriers both within and outside of the domestic violence system. One survivor, Paula, described this situation: “My victim advocate, I forget her name, she would ask me questions, go on and on. I was like, ‘Lady, leave me alone. I’m dealing with trying to pay my rent.’” HILLARY POTTER, *BATTLE CRIES: BLACK WOMEN AND INTIMATE PARTNER ABUSE* 142 (2008).

151. GOODMAN & EPSTEIN, *supra* note 71, at 44 (“They maintained data on the percentage of program clients who were able to access additional services, leave their abusers, obtain a protection order, or find alternative shelter. Other important indicators, such as the degree to which women were able to gain control over their own lives, were no longer deemed as relevant.”) (citation omitted).

152. *Id.* at 45 (“In many contemporary domestic violence advocacy programs, a woman’s commitment to change is measured primarily by her willingness and ability to conform to the program’s set expectations and priorities—even though this may be costly, risky, or out of step with her own goals.”) (citation omitted).

153. *Id.* at 46.

154. *Id.* (citations omitted); see also STARK, *supra* note 99, at 76 (“By the mid-1990s, hundreds of shelters had been transformed from resident-run, radical alternatives into staff-dominated players in a social service game that deploy restrictive definitions of victims to discourage inappropriate utilization and highlight individual correction.”).

trouble being able to participate. For instance, many domestic violence programs insist that the program's address remain confidential,¹⁵⁵ which is problematic because those on community supervision are often required to give their addresses to their supervision officers who may visit unannounced. Moreover, many domestic violence programs are intentionally isolated to keep participants safe, yet this isolation (sometimes combined with program requirements that participants stay on the premises) may not allow women to fulfill the requirements of their supervision.

C. Changing Definitions

Another aspect of the shift in battered women's advocacy was the decision to depict domestic violence as a phenomenon that affects women of all social classes equally rather than acknowledging the links between poverty, race, and domestic violence.¹⁵⁶ Some advocates took this position because they worried that associating domestic violence with poor women and women of color would make it nearly impossible for the movement to gain political traction or funding.¹⁵⁷ This decision was made in recognition of the reality that "[w]hile politicians may not have been terribly interested in the problems of poor black women, it was easier to sell them on the need to protect their own mothers, sisters, and daughters."¹⁵⁸ This strategy was also at least partially intended to avoid pathologizing poor women and women of color,¹⁵⁹ but the result has been the ascendance of a default victim of domestic violence who, by virtue of being a reflection of the lives of white politicians, must be a white, middle-class woman.¹⁶⁰ While this strategy was effective in promoting the cause of domestic violence within mainstream politics, it has also further marginalized those

155. GOODMAN & EPSTEIN, *supra* note 71, at 4.

156. See Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 88 (2008) [hereinafter *When She Fights Back*] ("While there is little doubt that domestic violence does, in fact, affect women of all age groups, races, ethnic and religious groups, educational levels, and socioeconomic groups, it is equally true that all of these groups experience battering differently, and that women of color, poor women, and lesbians face a number of obstacles not encountered by straight, white, middle-class women as they seek safety—obstacles that may cause them to react differently to the violence.") (citations omitted).

157. Deborah M. Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL'Y 221, 231 (2013); see also PLECK, *supra* note 137, at 194 (observing that a government official who worked on federal domestic violence policies in the 1970s noted the effectiveness of this decision: "[T]here was a federal response because the problem cuts across class and race. If domestic violence affected only poor women, it would have been dismissed.") (citation omitted).

158. See A TROUBLED MARRIAGE, *supra* note 99, at 24.

159. See Meier, *supra* note 127, at 225.

160. A TROUBLED MARRIAGE, *supra* note 99, at 54–55 ("Over the past 30 years, the public, the media, and the legal system have coalesced around a stereotypical image of women subjected to abuse. . . . The image of the victim of domestic violence morphed from a low-income woman of color to a passive, middle-class, white woman cowering in the corner as her enraged husband prepared to beat her again.").

women who do not fit neatly into the narrow victim category¹⁶¹ and further restricted the scope of organizations operating in the field.¹⁶²

Consistent with the choice to depict domestic violence as monolithic across classes and races, mainstream domestic violence advocates also gave in to political pressures to portray domestic violence as being gender-neutral as opposed to being perpetrated primarily against women.¹⁶³ Instead, “woman abuse” became “spouse abuse” which became known simply as “family violence.”¹⁶⁴ By allowing domestic violence to be understood as something that not only could affect all women equally regardless of race and class, but also could affect all people equally regardless of gender, domestic violence advocates homogenized and depoliticized the movement to gain mainstream appeal.¹⁶⁵ By aligning the movement with a generalized depiction of victims instead of with women specifically, advocates overlooked the gender-based realities of domestic violence. Because of this gender-neutral victim/perpetrator binary, reentering survivors are more likely to be lumped into the perpetrator category due to their criminal records than be granted victim status because of their gender.

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161. Bograd, *supra* note 8, at 30 (“Social action strategies often focus on white, middle-class women in efforts to challenge stereotypes of poor, minority, battered women. These strategies not only draw attention to the plight of all women but can unwittingly defocus concern from poor women of color who remain unseen or defined as dehumanized Other and undeserving of services.”) (citation omitted).
 162. GOODMAN & EPSTEIN, *supra* note 71, at 38–39 (“[T]he continued pressure for service expansion, combined with the strategic disregard of the role of poverty in domestic violence, new demands from government, and more mainstream funding sources, dramatically changed the movement’s original, feminist focus on individual empowerment and shared power within organizations.”) (citations omitted).
 163. See Miccio, *supra* note 130, at 288 (arguing that “key feminists de-gendered the violence by adopting the lexicon of the dominant culture”).
 164. *Id.* at 287. Susan Schechter also discusses how the government’s redefinition of battering women as “family violence” further separated the movement from its roots. See SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT 185–89* (1982).
 165. This shift toward the concept of family violence diverted attention away from the victimization of women. See SCHECHTER, *supra* note 164, at 185–89. However, the focus of this broader campaign remained largely on violence between heterosexual partners; much early research did not include same-sex partners or individuals identifying outside of the gender binary. See, e.g., Joan C. McClennen, *Domestic Violence Between Same-Gender Partners: Recent Findings and Future Research*, 20 J. INTERPERSONAL VIOLENCE 149, 149 (2005) (“Although empirical studies on domestic violence between opposite-gender partners has steadily increased since the 1970s, similar research on same-gender partners remained virtually nonexistent until 20 years later.”) (citation omitted); Leigh Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R.-C.L. L. REV. 51, 59–60 (2013) (explaining that there is very little research (domestic violence-related and otherwise) specific to the trans community because “[t]o the extent that scholarship exists, it sometimes uses the term ‘LGBT’ as a proxy for ‘same-sex’ and focuses on same-sex domestic violence. It frequently fails, however, to discuss specifically transgender people subjected to abuse; the ‘T’ is appended to the ‘LGB’ without any meaningful consideration of the issues particular to the ‘T’ community.”) (citations omitted).

D. Changing Goals

Many activists encouraged alliance with the state for more than mere funding; these activists believed that the government needed to directly address a problem it helped create and support.¹⁶⁶ Because the domestic violence movement was an outgrowth of the feminist movement, which often used legal strategies to chip away at women's subordination,¹⁶⁷ these activists saw the law as an area ripe for reform. They began advocating for increased responsiveness in the criminal legal system so that survivors would have greater control and abusers would receive the message that their behavior was no longer allowed by the state.¹⁶⁸ Since law enforcement and courts had for so long refused to take domestic violence seriously and often sided with abusers, early advocates were committed to making the law and its enforcement more responsive to victims.¹⁶⁹ This advocacy focused primarily on implementing mandatory arrest laws and no-drop prosecution policies in order to equalize the state's response to domestic violence with its response to stranger violence.¹⁷⁰ These mandatory policies focused on removing discretion both from survivors, who the advocates believed were too often coerced into not pressing charges or dropping cases, and from law enforcement, who very rarely made arrests or took criminal charges through to convictions.¹⁷¹

Prior to this push in favor of mandatory policies, arrest was seen by some activists as one of several available tools to hold abusive partners accountable for their conduct.¹⁷² However, because many early activists viewed the state as conspiring to support abusers, invoking the criminal system was not initially considered the only or even the primary means to combat domestic violence.¹⁷³ In fact, as early as 1978, as part of a report sponsored by the U.S. Commission on Civil Rights, activists were warning against overreliance on the police to combat domestic violence rather than employing a broader, more political approach.¹⁷⁴ Yet despite these early calls for a restrained relationship with law

166. GOODMAN & EPSTEIN, *supra* note 71, at 36.

167. A TROUBLED MARRIAGE, *supra* note 99, at 2.

168. GOODMAN & EPSTEIN, *supra* note 71, at 37. For a discussion disputing the presumption that domestic violence is similar to or should be treated the same as stranger violence, see STARK, *supra* note 99, at 367–68.

169. GOODMAN & EPSTEIN, *supra* note 71, at 71–73.

170. *Id.* at 37.

171. For an in-depth discussion of the goals and mechanisms of mandatory arrests and no-drop prosecutions, see generally Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996).

172. Miccio, *supra* note 130, at 264–65.

173. *Id.* at 267 (“Feminists appreciated that the police, as agents of the state, should be held accountable for failing to protect battered women. Yet they were also cognizant of the misuse of police power in marginalized communities and how these communities may respond to policies mandating arrest in domestic violence cases. Finally, feminists understood that ‘police action cannot by itself stem the tide of violence against women.’”) (citations omitted).

174. U.S. COMM’N ON CIVIL RIGHTS, BATTERED WOMEN: ISSUES OF PUBLIC POLICY 70 (1978) (“[W]e must caution ourselves not to overemphasize the role of the police in the eradication

enforcement, mandatory arrest soon became the first mandatory intervention advocated by the movement and supported by the state,¹⁷⁵ and several variations on no-drop prosecution policies soon followed.¹⁷⁶ This coordinated advocacy was prioritized over measures that might address gender inequality on a larger scale.¹⁷⁷

The logic behind the rallying cry for mandatory policies against perpetrators of domestic violence appeared reasonable.¹⁷⁸ Initial research around the idea of mandatory arrests indicated that survivors may be safer with these policies in place.¹⁷⁹ Subsequent research has cautioned against and limited that perspective.¹⁸⁰ In hindsight, these policies have actually been detrimental to numerous populations of survivors by undermining their safety, their autonomy, and their liberty. The mandatory prosecution policies have undoubtedly benefited some survivors, but these achievements have not been felt equally among all survivors.¹⁸¹ The author of the original study advocating for mandatory arrest, Lawrence Sherman, found in a later study with others that being arrested makes “some kinds of people more frequently violent” toward their partners than others, especially depending on the class and race of the batterer.¹⁸² They found that low-income and black men were more likely to re-abuse their partners if they were arrested than were higher-income white batterers.¹⁸³ The victims of post-arrest violence were much more likely to also be

of spouse abuse and work on the elimination of violence as a means of enforcing the dominant power relationship of men over women.”).

175. See Miccio, *supra* note 130, at 265.

176. *Id.* at 265–66 (discussing the ad hoc manner in which local district attorney’s offices have incorporated varying no-drop prosecution policies).

177. See *The Dance of Dependency*, *supra* note 143, at 87; see also KATHLEEN J. FERRARO, NEITHER ANGELS NOR DEMONS 12–13 (2006) [hereinafter NEITHER ANGELS NOR DEMONS] (“By 1990 . . . the criminal processing system became the primary focus of activism and funding. Women’s needs for housing, health care, income, transportation, education, and childcare were submerged in the focus on treating domestic violence as a crime.”) (citations omitted).

178. See *The Dance of Dependency*, *supra* note 143, at 86 (describing how the initial study presenting mandatory arrest in a positive light “represented the confluence of faith in scientific expertise, reactionary political defense of ‘family values,’ and feminist demands for enhanced protection for battered women.”).

179. See Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOC. REV. 261, 270 (1984) (“Our results . . . suggest[] that arrest and initial incarceration alone may produce a deterrent effect . . . and that arrest makes an independent contribution to the deterrence potential of the criminal justice system.”).

180. See, e.g., Lawrence W. Sherman, *Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction*, 30 J. RES. CRIME & DELINQ. 445, 468 (1993) (“Until recently, the science of sanction effects has been short on facts and even shorter on theory[.]”).

181. Lawrence W. Sherman et al., *The Variable Effects of Arrest on Criminal Careers: The Milwaukee Domestic Violence Experiment*, 83 J. CRIM. L. & CRIMINOLOGY 137, 139 (1992) [hereinafter *The Milwaukee Domestic Violence Experiment*] (“Just as the Minneapolis study’s authors feared, the Milwaukee, Wisconsin domestic violence arrest experiment provides substantial evidence that arrest makes some kinds of people more frequently violent against their cohabitants.”).

182. *Id.*

183. *Id.* at 168 (“Employed, married, high school graduate and white suspects are all less likely to

low-income and/or black than higher-income and/or white.¹⁸⁴ This information is particularly sobering given the higher levels of police contact in low-income neighborhoods, especially those populated by people of color.¹⁸⁵ Despite these findings, mandatory policies remain in place nationwide and continue to impact certain survivors' safety and self-determination.

Taking the discretion to press charges and prosecute away from survivors diminishes their autonomy.¹⁸⁶ Survivors may choose to call the police or initiate a prosecution for many reasons, not only because they wish to have their abuser convicted of a crime. For example, they may want to end the current violence, show their abusers that they take the violence seriously, teach the abusers a lesson, or gain a stronger position in negotiating the relationship.¹⁸⁷ Even if they want their partner to be arrested, survivors may be financially dependent on them and unable to support themselves if their partner is incarcerated or alienated from them.¹⁸⁸ Moreover, they may decide that they do not want the state's continued involvement in their life or their relationship because, for example, the abuse has not happened repeatedly or the abusive partner has agreed to pay for child support, attend counseling, or get a divorce.¹⁸⁹ Removing a survivor's ability to decide whether and how to proceed with criminal legal action strips her of the right to negotiate the terms of her relationship with her abusive partner.¹⁹⁰

have any incident of repeat violence reported to the domestic violence hotline if they are arrested than if they are not. Unemployed, unmarried, high school dropouts and black suspects, on average, are reported much more frequently to the domestic violence hotline if they are arrested than if they are not."); *see also* ENG & DASGUPTA, *supra* note 6, at 6 ("Those more critical of the legal system express concerns over the unintended negative consequences of a powerful and perhaps over-zealous law enforcement presence, particularly in poor, immigrant, and communities of color. They posit that the very policies advocates have worked hard to implement may have had unintended, negative consequences for some survivors.").

184. *The Milwaukee Domestic Violence Experiment*, *supra* note 181, at 168.

185. *See generally* K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271 (2009) (discussing the high costs of aggressively policing low-level law-and-order misdemeanors in high-crime neighborhoods); *see also* Davis, *supra* note 43, at 2–3 ("Other analyses emphasize a greater incidence of misogynist violence in poor communities and communities of color, without necessarily acknowledging the greater extent of police surveillance in these communities—directly and through social service agencies.").

186. *See* A TROUBLED MARRIAGE, *supra* note 99, at 132 ("Mandatory policies are disempowering because they deprive women subjected to abuse of the ability to control their use of tools like arrest, prosecution, and mediation. Women subjected to abuse turn to the legal system in an attempt to regain control from their partners.").

187. *Id.* at 133.

188. GOODMAN & EPSTEIN, *supra* note 71, at 76 ("Beyond the fear of retaliation, women may have many other reasons for wanting to drop criminal charges against their abusive partners. Chief among the reasons is a lack of sufficient economic resources to survive without them. Victims may well seek to drop charges so that the fathers of their children can continue to work and provide them with financial support.").

189. A TROUBLED MARRIAGE, *supra* note 99, at 133.

190. *See id.* ("Women call police not only because they want their partners arrested, but also to interrupt an incident of abuse or to show their partners that they are willing to reach out to others and to invoke the power of the state to stop the abuse. Women participate in prosecutions against their partners not only because they want those partners punished, but

Just as mandatory arrest policies undermine marginalized women's safety and empowerment, so too do they threaten these same women's liberty; the risk of survivors being arrested increases when mandatory policies are in place.¹⁹¹ Mandatory arrest policies direct police to focus primarily on whether the law has been broken and, if so, determine who is the perpetrator and who is the victim and arrest accordingly, rather than investigating the circumstances surrounding the violence.¹⁹² For example, if an officer only sees injuries on an abusive partner, a survivor risks being arrested regardless of whether she was acting in self-defense.¹⁹³ Once a woman is arrested, the consequences are extensive and can include legal ramifications, job loss, and humiliation.¹⁹⁴ Women's identities as victims are also undermined by arrest: when a survivor is arrested, she becomes labeled as the perpetrator and loses the substantial benefits and presumptions inherent in her actual victim status.¹⁹⁵ Survivors who are arrested are also exposed to the violence inherent in the criminal legal system, "including use of force during arrest, threats to remove and removal of children into state custody, abusive strip searches, and other violent and degrading conditions of

also to teach them a lesson, to secure counseling for their partners, or to get support payments.").

191. Osthoff, *supra* note 35, at 1533 ("One of the unintended consequences of intensive arrest policies has been the arrest of large numbers of battered women, especially women of color."); see also Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1043 (2000) [hereinafter *Shifting Power for Battered Women*] ("The percentage of women arrested for domestic violence increases sharply when arrest encouraging policies are adopted."); SUSAN L. MILLER, VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN'S VIOLENCE IN RELATIONSHIPS 9 (2005) [hereinafter VICTIMS AS OFFENDERS] ("[A]s more stringent arrest policies have been adopted to target domestic violence offenders, the widening net has resulted in more and more women finding themselves arrested. A disproportionate number of battered women are now ensnared in the policies of arrest, despite research that shows that men who batter women account for 95 percent of domestic violence incidents.") (citations omitted).
192. Simiao Li, Ani Levick, Adelaide Eichman, & Judy C. Chang, *Women's Perspectives on the Context of Violence and Role of Police in Their Intimate Partner Violence Arrest Experiences*, 30 J. INTERPERSONAL VIOLENCE 400, 411 (2015) (finding that, in a study of women arrested for domestic violence, "[a]rrest decisions often reflect a limited understanding of the context of the conflict and impact women's use of law enforcement in the future").
193. See *id.* at 407. The authors of this study interviewed eighteen women arrested for domestic violence and described the reasons for the arrests as using self-defense, being driven to violence, proving a point, or protecting others—all of which took place within the context of the survivors' victimization. *Id.* at 406–09.
194. *Id.* at 412–13 (describing the multitude of negative consequences arising from a survivor's arrest, including humiliation, job loss, legal consequences, and loss of confidence in law enforcement, as well as some positive outcomes, including becoming motivated to leave an abusive partner and getting support from court-ordered groups).
195. VICTIMS AS OFFENDERS, *supra* note 191, at 10–11 ("[W]hen battered women are arrested, numerous deleterious consequences can accrue, such as losing their rights as victims (which could include transportation to a safe location, temporary refuge, and help from victim service workers), losing employment, incurring financial hardship, or losing custody of children. In addition, women could be more reluctant to report subsequent battering episodes to police . . .").

confinement.”¹⁹⁶ These risks and consequences of arrest may prevent survivors from calling the police for help.¹⁹⁷

Many women arrested pursuant to a mandatory arrest policy are arrested for using violence regardless of the context of their behavior.¹⁹⁸ Most of the women arrested for committing domestic violence are survivors and not abusers,¹⁹⁹ who use force for particular, contextualized reasons.²⁰⁰ These reasons are distinctly gendered: where men tend to use violence to exert control, women typically use violence to defend themselves, fight back, or escape.²⁰¹ Yet only some of these actions fall into the narrow legal definition of self-defense. For example, a survivor may be convicted of using disproportionate force against her abusive partner when trying to protect herself or get away. A woman who grabs a pitcher and hits her abuser with it while she is being beaten may not be able to succeed on a theory of self-defense, because her use of a “weapon” is not seen as a proportional response.²⁰² This outcome is not uncommon when women use weapons (frequently in the form of any object within reach) to defend themselves against a beating, but it ignores both the psychological dynamics and physical strength differentials often present in battering relationships. For a survivor who is unable to succeed on a self-defense claim, her motivation will play no role in an incident-based criminal system that focuses only on whether

196. *Law Enforcement Violence Against Women of Color*, *supra* note 34, at 140.

197. *See id.* at 150–51 (“Often, police brutality against women of color and their families occurs when they seek assistance in the context of domestic violence or sexual assault. As a result, ‘law and order’ agendas and ‘tough on crime’ policies have not necessarily increased women of color’s safety from violence—instead, fear of police violence or of inappropriate responses to interpersonal violence by law enforcement agents, combined with the lack of alternative responses, often leaves women of color with nowhere to turn when we face violence in our homes and communities.”); *see also* Li et al., *supra* note 192, at 412 (describing arrested women’s loss of faith in the police).

198. *See* VICTIMS AS OFFENDERS, *supra* note 191, at 12 (arguing that women who use violence in self-defense should not be subject to arrest and mandated batterer treatment programs).

199. It is critical to note that some women who use force against their intimate partners are genuinely committing domestic violence. Although note 191 indicates that the vast majority of batterers are men, it must be acknowledged that women do batter as well, in both heterosexual and same-sex relationships. *See* Osthoff, *supra* note 35, at 1533.

200. For an overview of numerous studies of women arrested for domestic violence, *see* VICTIMS AS OFFENDERS, *supra* note 191, at 29–30. Women’s use of any kind of force may also contribute to their arrest, as “[w]hen women use violence, they may evoke different reactions from authorities because their behavior contradicts gender role assumptions of submissiveness.” *Id.* at 11–12.

201. *Id.* at 23 (noting how “other studies revealed other motivations for women’s use of force, such as retaliation, punishment for past hurt, expression of anger, stress or frustration, or to gain emotional attention.”); *see also* Osthoff, *supra* note 35, at 1534 (“But some battered women use violence against their batterers in ways that cannot (easily) be characterized as self-defense (even by me). Sometimes, these women, who are ongoing victims of battering, use violence against their partners in a way that constitutes illegal assault. They are the victims of ongoing abuse; they are usually on the receiving end of much of the violence and other controlling tactics. But, in a particular instance, they assault their partner and do not do so in self-defense.”).

202. For a general discussion of the self-defense doctrine *see* STARK, *supra* note 99, at 148–51.

the law was technically broken.²⁰³ As a result, these women are convicted and risk being sentenced no differently from perpetrators acting in the absence of any mitigating circumstances. The reasoning behind the choice to use violence remains unimportant in our current criminal legal system.²⁰⁴

Some women arrested for domestic violence did not commit any act of violence against their intimate partner; these cases often involve abusers who manipulate the system, causing the survivor to be arrested.²⁰⁵ Professor Susan Miller conducted in-depth research on the topic of women arrested under mandatory policies: she found that, among social, legal, and correctional service providers, none of the respondents believed that women were becoming increasingly violent, despite increasing arrests of women.²⁰⁶ They indicated that abusive male partners were manipulating the system.²⁰⁷ This manipulation was accomplished by “men self-inflicting wounds so that police would view the woman as assaultive and dangerous; men being the first ones to call 911.”²⁰⁸ A supervisor in a state family court’s domestic violence project explained that survivors sometimes tell him their abusers have threatened to have them arrested.²⁰⁹ He described a situation in which an abuser cut himself with a knife “because [the survivor] had been arrested for scratching him, but this was after he had initiated it . . . [and] said ‘Go ahead, call the police, because you’re just gonna get arrested.’”²¹⁰ The director of a treatment facility shared his experiences with abusive partners using justice-involved women’s criminal court cases to manipulate the survivors: “They will threaten the women with it—if they are still in the relationship, they will use it against her [saying]: ‘I’m going to call 911; I’m gonna call your probation officer; so you better do what I say.’”²¹¹ When abusive partners are involved in (or the source of) survivors’ criminal involvement, they have an even greater ability to take advantage of a victim’s vulnerability.

These harmful effects of mandatory domestic violence policies on women of color and low-income women are often characterized as unintended

203. See VICTIMS AS OFFENDERS, *supra* note 191, at 9–10 (“[A] single act of a woman’s violence eclipses her entire history of victimization.”).

204. See Osthoff, *supra* note 35, at 1524 (“Counting violent acts does not give us enough information to determine whether someone is a batterer or an ongoing victim of battering. To ascertain if battering is occurring and who is doing it, one needs to know a lot about the people in the relationship and the dynamics, especially the power dynamics, of the relationship itself.”); *id.* at 1535–36 (“When battered women come into the criminal legal system for assaulting their partners, especially when they did not act in self-defense (as legally defined), the system is ill-equipped to deal with the rich complexities that many of us believe it should consider when deciding how (or if) to respond.”).

205. *Id.* at 1533; see also VICTIMS AS OFFENDERS, *supra* note 191, at 81–82; Li et al., *supra* note 192, at 411.

206. VICTIMS AS OFFENDERS, *supra* note 191, at 77.

207. *Id.* at 80.

208. *Id.*

209. *Id.* at 81.

210. *Id.*

211. *Id.*

consequences.²¹² While they were not intended, they were anticipated by many activists (particularly women of color) who warned the movement about the effects that adopting a “tough on crime” approach would have on marginalized women and communities.²¹³ Mandatory policies’ negative effects on women, men, and communities of color were foreseeable before they were widely adopted.²¹⁴ According to these activists, focusing on criminalization was a departure from the movement’s goals and would increase arrests and assaults of women of color.²¹⁵ Yet mainstream domestic violence activists believed that mandatory state intervention would improve the lives of all survivors.²¹⁶ As a result of this assumption, women of color and low-income women “are subject to a dual vulnerability: the private coercion and violence of abusive men and the public coercion and violence of the state.”²¹⁷

As many scholars and activists have demonstrated, mandatory domestic violence policies rely on a one-size-fits-all model that deprioritizes a survivor’s circumstances, actions, or desires.²¹⁸ This is true whether she or her abuser is arrested. It is also important to note that, although some communities experience extremely high arrest rates (of batterers and/or survivors using violence), other communities and individuals still struggle to achieve any police intervention.²¹⁹ Such differentials across communities point to the ways in which these policies have failed to meet the goal of keeping survivors safe. The movement has yet to develop policies for ensuring that state actors respond when called and take domestic violence seriously, without subjecting survivors to unwanted state control.²²⁰

212. See, e.g., *Law Enforcement Violence Against Women of Color*, *supra* note 34, at 150.

213. Osthoff, *supra* note 35, at 1533 (“Since women began to organize to end violence against women back in the 1970s, women of color have warned White advocates about the dangers and pitfalls, especially for communities of color, of relying so heavily on the criminal legal system as the primary method of assisting victims of violence. Some advocates, particularly many advocates of color, have not been surprised by the large numbers of women being arrested in recent years.”).

214. Holly Maguigan, *Wading into Professor Schneider’s “Murky Middle Ground” Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. U. J. GENDER SOC. POL’Y & L. 427, 431 (2003) (“The negative impacts on communities of color, of all classes, and on poor people, of all ethnicities, were entirely predictable many years ago. Racial disparities were already well established throughout the criminal justice system at the time battered women’s advocates started working for more reliance on the system. They are starker now.”).

215. *From Private Violence to Mass Incarceration*, *supra* note 96, at 1453.

216. Miccio, *supra* note 130, at 293–94.

217. Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. L. REV. 801, 858 (2001) [hereinafter *Crime Control and Feminist Law Reform*].

218. GOODMAN & EPSTEIN, *supra* note 71, at 75.

219. See Osthoff, *supra* note 35, at 1532–35.

220. *Crime Control and Feminist Law Reform*, *supra* note 217, at 807.

E. Changed Focus

The battered women's movement, which began as a grassroots social and political advocacy movement, has focused much of its energy on crime control.²²¹ Although it is not unusual for progressive social movements to become more moderate when they become mainstream,²²² this transformation was particularly damaging, as demands to take domestic violence as seriously as stranger violence were used to justify a crime control model at the expense of the movement's broader goals.²²³ Several factors coalesced to catalyze this transformation, including more resources for "tough on crime" tactics, a debate within the movement over whether to focus on domestic violence as a crime or as a manifestation of gender inequality, some tension between activists and scholars over the roles of race and class, and the declining importance of radical feminism as a force within the movement.²²⁴ As a result, the national response to domestic violence prioritizes resources to meet the state's law enforcement needs rather than to meet the survivors' needs for housing and financial assistance.²²⁵

This turn to the legal system as the primary solution to domestic violence was exemplified in the 1994 passage and subsequent reauthorization of the Violence Against Women Act ("VAWA"), which confirmed the state's priorities in addressing domestic violence: "law-related services, particularly within the criminal justice system, received exponentially greater funding than counseling, shelters, transitional housing, or other non-legal assistance for women subjected to abuse."²²⁶ These priorities reflect many of the values of the predominantly white women who led the movement, for whom increasing state intervention trumped broader reform.²²⁷ Although multiple members of Congress have attempted to address the economic needs of survivors, such remedies have not been included in VAWA reauthorizations, despite increases in funding for court-

221. SCHNEIDER, *supra* note 99, at 183–84 ("As this issue has moved from one raised on the margins to one that has been appropriated by government, feminist liberatory discourse challenging patriarchy and female dependency, which shaped this work, has been replaced by discourse emphasizing crime control. Many battered women's activists have moved from a view that rejected state engagement to one that supports state and federal legislative reform as well as both the pro-criminalization stance of VAWA and mandatory arrest.").

222. See VICTIMS AS OFFENDERS, *supra* note 191, at 6 (discussing the comparable watering down of the reproductive rights movement).

223. *The Dance of Dependency*, *supra* note 143, at 85–86.

224. *From Private Violence to Mass Incarceration*, *supra* note 96, at 1453–54.

225. VICTIMS AS OFFENDERS, *supra* note 191, at 140–41.

226. A TROUBLED MARRIAGE, *supra* note 99, at 2; see also Weissman, *supra* note 157, at 226 ("Once the civil rights remedy was nullified, VAWA developed into a statute primarily focused on criminal prosecution. Furthermore, subsequent reauthorizations continued to expand VAWA's criminal justice strategy."); Robin R. Runge, *The Evolution of a National Response to Violence Against Women*, 24 HASTINGS WOMEN'S L.J. 433, 435 (2013) ("VAWA 1994 authorized congress to appropriate \$1.6 billion . . . to improve the criminal justice system's response to violence against women through enforcement of existing law, the enforcement of new federal legal protections, and funding social programs, training, and public education to prevent violence against women.").

227. See A TROUBLED MARRIAGE, *supra* note 99, at 25 (arguing that white women assumed increased state intervention would be positive for all women subject to abuse).

based programs.²²⁸ By providing increased funding to government-based and government-housed legal services, VAWA also contributed to the specialization and professionalization of the domestic violence movement.²²⁹

The consequences for survivors of prioritizing a criminal response to domestic violence have been extensive. The movement has strayed from its political origins and invested in the state's "tough on crime" philosophy to the exclusion of advocating for more holistic overhauls that would be required to achieve genuine gender equity: "Women's needs for housing, health care, income, transportation, education, and childcare were submerged in the focus on treating domestic violence as a crime."²³⁰ In exchange for funding and mainstream support, the movement has become a proxy for expanded state control. The consequences of this choice are borne primarily by marginalized survivors, who have been punished by these policies while also being pushed out of the movement's definition of a "real" or "good" victim.

III. VICTIMHOOD: FROM UNIVERSAL TO UNOBTAINABLE

For a reentering survivor who is already extremely vulnerable to state control by virtue of her community supervision, the risks of involving the criminal legal system to help her escape her abusive partner are high. Calling the police could result in either her or her abusive partner being arrested—and either outcome may come at a high price. The abusive partner's arrest could result in her becoming unable to comply with the conditions of her supervision, just as her own arrest could result in her supervision being violated. Proactively seeking social or legal services may result in her being disempowered, disbelieved, or turned away due to her involvement with the criminal legal system. Reentering survivors face extensive challenges when trying to fit into the image of the "model victim" adopted by the domestic violence movement. In order to fully demonstrate how and why this is the case, one must first understand the evolution of domestic violence victimhood. A critical analysis reveals that reentering survivors fall outside of the accepted definition. Next, it is important to explore how this narrow definition of victimhood harms many survivors seeking social or legal services, and how these harms are acute for reentering survivors. Finally, this section reviews an effort by lawyers and psychologists within the domestic violence movement to expand the concept of victimhood to incorporate a particular subgroup of justice-involved survivors: women who attack or kill their abusers. Careful analysis reveals how this effort, though well-intentioned, actually serves to reinforce the stereotypes surrounding "real"

228. Weissman, *supra* note 157, at 227–28; Runge, *supra* note 226, at 455.

229. See A TROUBLED MARRIAGE, *supra* note 99, at 25 ("VAWA also hastened a trend that some in the battered women's movement viewed with alarm from the moment that the first infusions of federal money arrived: the professionalization of the movement in response to government funding.").

230. NEITHER ANGELS NOR DEMONS, *supra* note 177, at 12–13; VICTIMS AS OFFENDERS, *supra* note 191, at 141.

victimhood.

A. Victimhood Defined

The domestic violence movement did not promote the archetypal victim—the “passive, middle-class, white woman cowering in the corner”²³¹—in a vacuum. The mainstream understanding of domestic abuse was grounded more in a traditional conception of femininity than in an accurate portrayal of victimization. The centuries-old popular understanding of the good woman as “a white, propertied [woman,] . . . the devoted, submissive middle-class wife,”²³² readily lent itself to an understanding of what was required in order to also be a good victim. In order to make sense of how a good woman could find herself victimized, society has depicted victims as mentally ill, broken, and helpless.²³³ “‘Ideal victims’ are also meek and distraught, innocent of provoking their victimization, and possessing a body that symbolizes these qualities. Young, white, middle-class, attractive (but not overly sexy) women embody cultural notions of deserving victims.”²³⁴ There are multiple ways to fall outside of the scope of the good victim.

The first characteristic seen as problematic is race, because “[v]ictimhood is intimately tied to traditional notions of womanhood, notions that have been largely defined by a white norm. . . . The word implies whiteness, a connotation that deprives women of color of victim status and its associated protections.”²³⁵ The archetypal white survivor is considered the “essential battered woman because society imagines that she is who needs protection.”²³⁶ This conception reflects both the stereotype that black battered women can protect themselves and the low value that society places on women of color’s safety.²³⁷ Although all

231. See *When She Fights Back*, *supra* note 156, at 77 (describing why women who fight back are at a disadvantage in the legal system).

232. See NEITHER ANGELS NOR DEMONS, *supra* note 177, at 1–2 (“Historically, the Madonna-whore binary in the United States defined heterosexual, monogamous, and sexually modest women as good women. Bad women were identified by transgressions of sexual propriety, and were considered impure.”).

233. See *id.* at 19.

234. *Id.*

235. A TROUBLED MARRIAGE, *supra* note 99, at 70–71.

236. Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1078 (2005).

237. See, e.g., *id.* at 1084–85 (“Because of racial stereotyping, women of color are seen as too powerful or too uncontrollable to be dominated by anyone. Therefore they cannot be victims.”); NEITHER ANGELS NOR DEMONS, *supra* note 177, at 2 (“This angel was not consistent with the controlling images of women of color or working-class women who were defined as highly sexual, physically strong, and impure.”). For a broader discussion of stereotypes that undermine black women’s victim status, see Sharon Angella Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, in DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE CLASS, GENDER, AND CULTURE, *supra* note 8, at 194, 198 [hereinafter *Rethinking Battered Woman Syndrome*] (discussing the way all black women get characterized as Sapphire, Jezebel, or Sojourner); see also Marilyn Yarbrough with Crystal Bennett, *Cassandra and the “Sistahs”: The Peculiar Treatment of African American Women in the Myth of Women as Liars*, 3 J. GENDER RACE & JUST. 625,

survivors must prove their credibility when attempting to access services, women of color experience the most disbelief and hostility.²³⁸ This is obviously problematic for non-white survivors because not being considered battered means they are denied the services and presumptions afforded to “real” victims, leaving them with fewer resources to address their abuse.²³⁹ By virtue of their skin color alone, non-white survivors are at a disadvantage when it comes to accessing appropriate domestic violence services.

The stereotypically good victim is not just white, however; she is “white, straight, middle-class, meek, weak, passive, and dependent.”²⁴⁰ Low-income women and women who are not heterosexual or cisgender also experience similar denials of their experiences and identities.²⁴¹ Reentering survivors may struggle to establish themselves as good victims based on their race, sexuality, mental or physical health, or socioeconomic status. Any and all of these characteristics can and do overlap.²⁴² Moreover, these layered identities and relationships to power affect how survivors experience and respond to violence and abuse.²⁴³ The more marginalized a reentering survivor is, the harder it will be for her to overcome each of these barriers to obtain resources and achieve victim status.²⁴⁴

636-40 (2000) (discussing a similar categorization of black women as Mammy, Jezebel, and Sapphire and exploring the historical roots of the contrasts between black and white women).

238. Leigh Goodmark, *Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal*, 31 WASH. U. J.L. & POL'Y 39, 47 (2009) [hereinafter *Reframing Domestic Violence Law and Policy*]. Even women of color who have been assaulted by intimate partners may not be seen as experiencing domestic violence per se. See Morrison, *supra* note 236, at 1084-85 (“Domestic violence is ‘a pattern of [power seeking] behavior where one person tries to control the thoughts, beliefs or actions of a partner.’”).
239. See Morrison, *supra* note 236, at 1084-85.
240. *Reframing Domestic Violence Law and Policy*, *supra* note 238, at 45.
241. White women from marginalized groups, however, may benefit if they appear to fit the description of the ideal victim. See, e.g., Morrison, *supra* note 236, at 1088 (“Whether the first encounter is with a 911 operator or a court clerk, a battered woman must appear to be ‘The Battered Woman,’ which means able to be read as white victim.”).
242. For a nuanced discussion of intersectionality theory and how it operates in the context of violence against women, see generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity, Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).
243. See, e.g., Sokoloff & Dupont, *supra* note 8, at 3-4 (discussing how “the trauma of domestic violence is amplified by further victimization outside the intimate relationship, including racism, heterosexism, and class oppression.”); see also Bograd, *supra* note 8, at 26 (“We exist in social contexts created by the intersections of systems of power (for example, race, class, gender, and sexual orientation) and oppression (prejudice, class stratification, gender inequality, and heterosexist bias). In practice, social dimensions are not merely abstract descriptions as they are suffused with evaluations that have social consequences. . . . These systems are not mutually exclusive, static, or abstract. They operate independently or simultaneously, and the dynamics of each may exacerbate and compound the consequences of another.”).
244. See, e.g., U.S. DEP’T OF JUSTICE, NAT’L INST. OF CORR., GENDER-RESPONSIVE STRATEGIES FOR WOMEN OFFENDERS: SUPERVISION OF WOMEN DEFENDANTS AND OFFENDERS IN THE COMMUNITY 18-19 (2005) (recognizing that “[r]acism, classism, sexism, and gender stereotypes combine to create a societal perception of women offenders as contributing less value and therefore being less deserving of resources.”).

A survivor may also be excluded from victim status based on her behavior and attitude as well as her various identities. That survivors must be passive (during the violence and any interactions with law enforcement) is especially problematic for women who use force to defend themselves or who fight back.²⁴⁵ “Real” battered women must be overcome by their partner’s violence and abuse;²⁴⁶ women who fight back are less likely to be seen as victims.²⁴⁷ Because women of color are more likely to fight back than to call the police,²⁴⁸ some women of color find it even harder to prove their worthiness as victims to system agents. Survivors who have been charged with or convicted of using violence against their abusers are even less likely to be seen as victims because of the binary nature of the victim/offender dichotomy in which women deemed offenders cannot also be recognized as victims.²⁴⁹

Reentering survivors face yet another barrier between themselves and victimhood: reclaiming their gender. Women who have committed crimes are seen as having transgressed gender expectations²⁵⁰ and so face the additional burden of having to overcome being seen as less than women. As such, survivors who have participated in “‘mutual combat,’ and other ‘unfeminine’ conduct, such as drug abuse, prostitution, and other forms of criminality” stand in stark opposition to “real battered women.”²⁵¹ In addition, trans women, women involved in the child neglect system, women engaging in non-monogamous sex or sex work, and women struggling with addiction are all stripped of the benefits and presumptions afforded to other women simply by virtue of failing to

245. A TROUBLED MARRIAGE, *supra* note 99, at 64 (“The passivity stereotype creates particular problems for women who fight back against their partners. Studies of women who use force against their partners indicate that overwhelmingly large numbers of those women have been subjected to abuse.”).

246. NEITHER ANGELS NOR DEMONS, *supra* note 177, at 44.

247. See Bograd, *supra* note 8, at 30 (“Women who fight back are often judged as undeserving of protection because they violate social definitions of the helpless or passive victim. . . . Less empathy is afforded battered individuals who are prostitutes, substance abusers, incarcerated, or HIV positive.”) (citation omitted).

248. VICTIMS AS OFFENDERS, *supra* note 191, at 9; COMPELLED TO CRIME, *supra* note 33, at 119 (“The African American battered women acted in a more aggressive, self-protective manner, and therefore they were not considered ‘real’ battered women or treated as ‘victims of crimes.’”); *From Private Violence to Mass Incarceration*, *supra* note 96, at 1454–55 (“[R]esearch suggests that women of color are more likely to be arrested themselves for behavior that may be consistent with self-defense but interpreted through the lens of stereotypes as overly aggressive.”).

249. NEITHER ANGELS NOR DEMONS, *supra* note 177, at 1 (“She is a victim of intimate partner violence, a woman who has been harmed. She is a criminal offender, a woman who has harmed others. Superficially, it seems she is two separate women. The category of victim appears distinct from and incompatible with that of offender. It is impossible to be both at the same time. Victim and offender are binary categories used within law, social science, and public discourse to describe social experiences with a moral dimension. Like other binary categories, each term constitutes reciprocally the meaning of the other.”).

250. JUDITH A. WARNER, WOMEN AND CRIME 38 (2012) (observing how “[i]n recent decades, there has been critical public reaction to women who commit homicide, girls who use weapons in fights, female drug users, and other infractions of the law committed by girls and women.”).

251. NEITHER ANGELS NOR DEMONS, *supra* note 177, at 45.

conform to their gender's stereotypes.²⁵² Not only are these gender-nonconforming survivors marginalized in terms of accessing assistance, their transgressive status may intensify their experiences of abuse since domestic violence often reinforces gender norms.²⁵³ Survivors who violate gender norms are also subject to increased interference by law enforcement.²⁵⁴ Thus, women who do not conform to gender stereotypes experience a greater risk of both violence and arrest in conjunction with being abused.²⁵⁵ These arrests further marginalize nonconforming survivors, exposing them to the potential for more abuse from intimate partners and the state while at the same time augmenting their perceived status as bad victims.

B. Victimhood Applied

This restrictive concept of the "real" victim became widely accepted after the movement depicted domestic violence as something affecting all women in the same way. Although the intention was to universalize domestic violence, the result has been to focus primarily on domestic violence among middle-class white women.²⁵⁶ Moreover, this universalizing approach has caused non-white women and trans women to be pushed to the margins; their experiences are validated only in terms of how well they align with classic white victimhood.²⁵⁷ This strategy was admittedly successful in helping domestic violence earn both public and political recognition.²⁵⁸ The focus on white women and the creation

252. These women are not recognized as being "real" women due to their sex assignment, their perception as being bad mothers, their engagement in promiscuous or high-risk behavior, and their lack of temperance, respectively—all of which fall outside of traditional gender stereotypes.

253. Goodmark, *supra* note 165, at 97 ("Intimate partner abuse often serves to reinforce gender norms."). The experiences of transgender people are especially informative of how survivors who transgress gender norms and expectations may be exploited and punished. *See id.* at 64 ("Transgender people are uniquely vulnerable to abuse due to their marginalization within mainstream culture. Non-trans[gender] perpetrators are acutely aware of the individual and institutional vulnerabilities faced by trans[gender] people and these vulnerabilities feature explicitly in the abuse tactics and harm done."). Many trans individuals are further hindered by their status as returning citizens because "[t]ransgender people are disproportionately involved in the court system, particularly the criminal justice system." *Id.* at 78.

254. Susan L. Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 VIOLENCE AGAINST WOMEN 1339, 1348 (2001) ("In general, research conducted about arrest and domestic violence has found that women who contradict female stereotypes have a greater risk of arrest for domestic violence, particularly Black and younger women.").

255. *Id.*

256. Crenshaw, *supra* note 242, at 1259–60 ("While it is unlikely that advocates and others who adopt this rhetorical strategy intend to exclude or ignore the needs of poor and colored women, the underlying premise of this seemingly univer[s]alistic appeal is to keep the sensibilities of dominant social groups focused on the experiences of those groups.").

257. *See id.* at 1260; *see also* Bograd, *supra* note 8, at 30.

258. A politician who worked on developing federal domestic violence policies in the 1970s reflected that "there was a federal response because the problem cuts across class and race. If domestic violence affected only poor women, it would have been dismissed." PLECK, *supra* note 137, at 193–94 (citations omitted).

of the good victim did not just affect those outside of the movement: social service organizations, survivors themselves, and the legal system also began adopting and applying good-victim analyses.

As increased funding and expanded services were becoming unable to meet the needs of the ever-increasing numbers of survivors coming forward to seek assistance, organizations began to make determinations about who they could (and should) serve.²⁵⁹ The movement to universalize domestic violence played a role in these decisions. In domestic violence shelters, “images of victimization initially devised for outside consumption were imported into the shelter experience, they were used to exclude as unworthy applicants for shelter those who threatened to disrupt operations.”²⁶⁰ When speaking with potential clients, staff began to seek out and require confirmation that the woman with whom they were speaking met the requirements of the real victim and thus the appropriate client.²⁶¹ One study of shelter workers found that a battered woman seeking assistance must be able to convey a congruent and compelling story in order to receive services.²⁶² Yet not all survivors have an equal ability or desire to convey their stories in the manner the shelter worker requires. Survivors whose narratives do not align either substantively or rhetorically risk being seen as ineligible for, or not deserving of, services.

Shelter workers considered potential clients’ demeanors, life histories, and needs in determining their eligibility. By excluding “difficult” women—that is, women who were aggressive or hard to interact with—shelter workers were able to both free up space for the so-called more “deserving” victims and ensure that shelters ran smoothly.²⁶³ Inherent in these eligibility decisions were judgments about race and class.²⁶⁴ These policies endangered and isolated low-income women, as poverty both increases their vulnerability to abuse and decreases their

259. GOODMAN & EPSTEIN, *supra* note 71, at 46 (“Faced with a flood of victims seeking their services, shelter staff members were forced to prioritize some groups of women for admission over others. They began to develop criteria for assessing which clients were ‘appropriate.’”) (citations omitted).

260. STARK, *supra* note 99, at 76.

261. DONILEEN R. LOSEKE, *THE BATTERED WOMAN AND SHELTERS: THE SOCIAL CONSTRUCTION OF WIFE ABUSE* 93 (1992).

262. Michelle VanNatta, *Constructing the Battered Woman*, 31 FEMINIST STUD. 416, 424–25 (2005).

263. See STARK, *supra* note 99, at 78 (“[I]n suggesting these women lack a credible claim to assistance, the labels help staff avoid the special challenges posed to the smooth functioning of shelter life by women who are agitated, aggressive, terrified, and emotionally demanding.”); see also LOSEKE, *supra* note 261, at 75 (“Workers also were oriented to selecting ‘appropriate’ clients. In practice, the meaning of this term shifted in relation to workers’ evaluations of space availability. An ‘appropriate client’ was a woman who workers felt *could be* and *should be* served given current ‘space availability.’”).

264. *Shifting Power for Battered Women*, *supra* note 191, at 1025 (“[P]rograms for battered women sometimes fail to address the needs of the very poor, particularly those that are perceived as ‘deviant.’ For example, some battered women’s shelters refuse admission to ‘homeless’ women because they are believed to be too manipulative, ‘street-wise,’ or anti-social. Women with substance addictions may find it particularly difficult to obtain shelter that is safe and that treats addiction.”).

ability to access meaningful and appropriate services.²⁶⁵ Shelter workers' own assessments often reveal these priorities. According to one shelter worker, a potential client was "an extremely young woman with [a] 'ruff attitude'—if he hits me I always hit him back."²⁶⁶ This client was excluded because of her attitude and her desire to stand up for herself. Another shelter worker has summed up her take on excluding aggressive-seeming women as follows:

If you bring in someone who's, like violent, and disturbing other people, if they're off the wall and women are scared, they might go back to the battering man because at least they know what that's like versus living with a complete stranger you feel scared of and don't know what they might do.²⁶⁷

Here, the rationale for excluding difficult clients is based on the potential effect that not doing so might have on other residents. The worker thus appears to be working under an unfounded assumption that other residents would feel the same way that she does about certain women, and that they might respond the way she would. Another advocate, who had been working in the shelter system for years, commented that she was not sure who the shelter system still admitted, as

the list of "we don't shelter those women" just keeps growing: women with substance abuse issues, homeless women, women with mental illnesses, women who are HIV-positive, women who won't attend parenting classes, women with physical disabilities, women who don't want protective orders, [and] women who won't submit to drug tests and searches.²⁶⁸

Initially used strategically for creating widespread appeal, the image of the good victim now operates as a rationale for shrinking the pool of deserving and eligible survivors to better fit the available resources.

Survivors have confirmed that these biases have impacted their experiences with domestic violence shelters and social services organizations. One survivor with a history of sex work described her experience staying at a shelter in the mid-1990s:

I constantly felt the policing gaze of shelter workers across the half-open door, and feared "warnings" and punishments that seemed to be issued arbitrarily. No, to describe the practice as "arbitrary" would be inaccurate; it was clearly selective in terms of who got them most frequently—the poor Black and Latina women with children, especially if they were in recovery from alcohol or drug "abuse."²⁶⁹

265. *Id.*

266. STARK, *supra* note 99, at 77.

267. LOSEKE, *supra* note 261, at 73.

268. patty neal dorian, *So Who's Left?*, 31 OFF OUR BACKS 24, 24 (2001).

269. Emi Koyama, *Disloyal to Feminism: Abuse of Survivors Within the Domestic Violence Shelter System*, in THE COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY, *supra* note 29, at

Scholar Beth E. Richie interviewed many incarcerated black women who had similarly negative experiences, especially battered black women who had internalized the popular depiction of the good victim and either did not seek out services or encountered barriers when they tried.²⁷⁰ Richie reported that few of the battered black women she interviewed sought domestic violence services and most of those who did were disappointed in the way the service providers minimized their experiences and were unresponsive, not culturally competent, and, on occasion, overtly racist.²⁷¹

Not only do reentering survivors have to face all of these judgments when seeking out services, but they may also be denied assistance because of their criminal records. According to Sue Osthoff, the director of the National Clearinghouse for the Defense of Battered Women, "We all too frequently hear about community-based battered women's programs that will not assist battered women charged with crimes (especially if the alleged crime is an assault against her partner) because, they say, they cannot or will not work with 'perpetrators.'"²⁷² This exclusion often involves no analysis of the causes behind women's criminal records, including the violence they are currently experiencing. Of course, like many marginalized survivors, reentering citizens may be excluded from services based on their attitudes, demeanors, storytelling

208, 209.

270. COMPELLED TO CRIME, *supra* note 33, at 94 ("Some African American women recalled not feeling like the problem warranted outside intervention, that they could handle it by themselves. Others tried to reach out to services only to find that they were categorically excluded because of their drug use or other circumstances. One African American battered woman who disclosed that she was sexually attracted to a woman, which was the excuse her boyfriend gave for beating her, was denied assistance from a religious-based program for battered women. Most felt, for one reason or another, that their experiences did not fall within the category of deserving of services."). By contrast, the white battered women in Richie's cohort both identified more readily as battered women and were more easily able to acquire services. *See id.* at 146 ("Without overstating the availability of services for the white battered women in this study, when they sought assistance, service providers tended to be more responsive to their plight. The white battered women did not feel as stigmatized or as misunderstood as the African American battered women did, and they were more likely than the African American battered women to have episodic encounters with agencies or programs that were trying to help them."). The white battered women

identified as 'battered women' and sought out the services that were available. In particular, the white battered women were much more likely than the African American battered women to use criminal justice agencies or other public services, although they were not necessarily any more likely to get an effective response.

Id. at 97.

271. *Id.* at 146.

272. Osthoff, *supra* note 35, at 1527. In her work with reentering women, Beth E. Richie found that many of the same kinds of organizations Osthoff is discussing also deny services to women who are involved in any kind of criminal activity. *See Challenges Incarcerated Women Face*, *supra* note 44, at 376–77 ("This poses a serious barrier to services for women who cannot access services provided by antiviolenace programs because of their illegal activity. There are disturbing accounts of such from victim advocates across the country whose funding will not allow them to serve women with an arrest record. The examples of institutional barriers to service permeate my research findings and point to the systemic nature of barriers to reintegration.").

abilities, language skills, and responses to abuse. In addition, the very existence of their criminal record (be it related or unrelated to the abuse they currently experience) may also render them less eligible for services or sympathy.

Although the capricious eligibility criteria and enforcement in domestic violence shelters and nonprofits are striking, many law enforcement officers, attorneys, and judges also rely on and perpetuate victim stereotypes.²⁷³ In law enforcement and judicial trainings, domestic violence advocates continue to educate system advocates about battered woman syndrome and depict victims as passive and afraid.²⁷⁴ These tropes are straightforward and easy to explain and they resonate with state actors' beliefs about how domestic violence works. These beliefs and biases affect survivors both as plaintiffs and as complaining witnesses.²⁷⁵ Survivors represented in civil or criminal cases are counseled differently about how to present themselves and their cases depending on how accurately they reflect the "real" victim. In the criminal context, for example, "[i]ncarcerated, black, battered women are tutored not to mention their children in court to avoid confirming stereotypes of the welfare mother, while incarcerated, white, battered women are taught to weep about their children to capitalize on images of conventional white motherhood."²⁷⁶ In the civil and criminal context, survivors must decide how much to reveal to the judge and jury about fighting back against their abusers, since decision makers may assume they are violent without seeking to understand the circumstances surrounding the violence and any possible justifications.²⁷⁷

When survivors have to choose whether and how to edit or recast their stories in order to meet the expectations of the court system, they are being told that their past and their choices are not appropriate and are thereby alienated from their own existences in ways not dissimilar from the dynamics of abuse they experience at home.²⁷⁸ The consequences of judges assuming that domestic violence looks identical in its effects on all women can be devastating for

273. A TROUBLED MARRIAGE, *supra* note 99, at 76 (noting that these actors "have seen victims represented as white women, with all of the historical baggage that designation carries. The legal system is still predominantly white, male, and middle class, more likely to envision and sympathize with the women they know—their daughters, their sisters.").

274. *Id.* ("System actors who internalize these messages are looking for a particular kind of victim telling a particular kind of story: a white woman telling a story of passivity, dependency, fear, and inability to address the abuse without the assistance of the legal system.").

275. *See, e.g., Morrison, supra* note 236, at 1083–84 ("There is no better plaintiff than a white, married, church-going, tee-totaling, homemaker, with no criminal record—not even a parking ticket. The law loves a perfectly constructed plaintiff.").

276. Bograd, *supra* note 8, at 32.

277. *When She Fights Back, supra* note 156, at 117.

278. Bograd, *supra* note 8, at 32; *see also When She Fights Back, supra* note 156, at 118 ("Those whose stories are believed have the power to create fact; those whose stories are not believed live in a legally sanctioned 'reality' that does not match their perceptions. . . . [T]here are few things more disempowering in law than having one's own self-believed story rejected, when rules of law (however fair in the abstract) are applied to facts that are not one's own, when legal judgments proceed from a description of one's own world that one does not recognize.").

women whose stories do not resonate with the court, as those women are denied access to systems ostensibly created for their protection.²⁷⁹

Although experiences of domestic violence are far from universal, the image of the good battered woman promoted by the domestic violence movement has gained mainstream acceptance among the public, politicians, domestic violence advocates, and even survivors. In opposition to this real victim are “the unworthy, such as ‘bad’ mothers, ‘bad’ girls, and unruly youth” who cannot achieve victim status and instead become further entrapped in systems of state control and punishment.²⁸⁰

C. Victimhood Expanded?

Despite the extremely limited applicability of the good victim image, the domestic violence movement has made a concerted effort to carve out an exception for certain individuals who would otherwise fall outside the boundaries of the good victim: survivors who attack or kill their abusers. Although this development has allowed some justice-involved survivors to seek refuge under the banner of the domestic violence movement, it has not substantially broadened the definition of victimhood, nor has it challenged the assumptions therein. Rather, the way that defendants and courts have utilized and analyzed the battered woman defense has perpetuated the same narrow conception of the good victim that has permeated domestic violence law and policy.

The battered woman defense is an outgrowth of battered woman syndrome, which was developed by Leonore Walker.²⁸¹ Battered woman syndrome attempted to explain why women remain in abusive relationships using the concept of learned helplessness; that is, when victims’ attempts to stop the violence are unsuccessful, they come to see intentional inaction as a more effective response.²⁸² Walker also described a cycle of violence (consisting of a tension-building stage, an acute battering incident, and a loving attrition stage) which she claimed repeats throughout the relationship, giving victims false hope of living violence-free.²⁸³ Together, these forces result in women being unsure and unable to leave the relationship. Since its inception, battered woman syndrome has been heavily critiqued for making overbroad claims about how domestic violence really operates.²⁸⁴

279. *Reframing Domestic Violence Law and Policy*, *supra* note 238, at 44–45.

280. Dianne L. Martin, *Retribution Revisited: A Reconsideration of Feminist Criminal Law Reform Strategies*, 36 OSGOODE HALL L.J. 152, 158 (1998) (further observing that “social and economic policies that would reduce crime generally and provide women with the means to improve their own lives, such as adequate day care or affordable housing, or youth the reason to live theirs within accepted norms, such as meaningful work, are scaled back or eliminated entirely.”).

281. *See generally* LEONORE WALKER, *THE BATTERED WOMAN* (1979).

282. *Id.* at 42–54.

283. *Id.* at 55–70.

284. GOODMAN & EPSTEIN, *supra* note 71, at 53–54.

In order to exonerate or mitigate the sentences of women who kill their abusers, battered woman syndrome has been frequently employed in homicide cases brought against survivors.²⁸⁵ Application of battered woman syndrome in the criminal context is typically based around the battered woman defense. This legal strategy presents testimony from the defendant about her abuse alongside testimony from expert witnesses about the defendant's mental state to support claims such as justification and mitigation.²⁸⁶ Lawyers introduce expert psychological testimony at trial with the goal of informing and educating the judge and jury about the details of the defendant's history of abuse and how her history would influence her state of mind and her behavior. Use of the battered woman defense is premised on the idea that a survivor's own experiences are critical to interpreting both the act that she is on trial for and the law itself.²⁸⁷

The major drawback of this defense is that it relies on the same victimhood stereotypes that often exclude marginalized survivors from receiving services in other contexts.²⁸⁸ That is, for a battered woman to successfully avail herself of this defense, she must demonstrate that, despite being on trial, she nonetheless embodies the stereotypical victim but for the single action in question. The battered woman defense poses problems similar to those raised by the use of a narrow standard of victimhood.²⁸⁹ Like the stereotypical image of a good victim, the battered woman defense relies on and reinforces stereotypes about women's "fragility and passivity" by arguing that these weak characteristics were both a result of the abuse and a major component of why the defendant could not leave her abuser but was instead compelled to kill him.²⁹⁰ In order to be successful, a survivor must convince a jury or judge that she is fragile, fearful, and trapped in order to justify her action.²⁹¹ If the jury or judge does not believe that the defendant was passive and powerless, then she will not be able to benefit from the defense.²⁹²

In using the battered woman defense, the defendant attempts to explain why her behavior is reasonable in light of her experiences. In doing so, the defense relies on a definition of womanhood that is based on what is considered

285. Battered woman's syndrome does have utility outside of criminal cases; it can also be employed in civil and custody cases. *See* STARK, *supra* note 99, at 134–35.

286. *See id.*

287. *See* SCHNEIDER, *supra* note 99, at 40 ("[F]eminist lawmaking generally has involved the use of experience as a starting point and guide, the creative use of both political and social contexts, and the exploration of the human impact and context of the case in concrete terms.").

288. STARK, *supra* note 99, at 134.

289. *See id.* at 134–35 (observing "how little [the battered woman defense] serves the women who need it most: abuse victims whose history, class, or racial status places them beyond the reach of the dominant victimization narrative."). This is not a new phenomenon, as legal defenses have rarely been accessible to nonconforming or "rough" women. *See id.* at 143–49.

290. A TROUBLED MARRIAGE, *supra* note 99, at 61.

291. *Rethinking Battered Woman Syndrome*, *supra* note 237, at 198.

292. *Id.*

to be appropriate behavior for white women, which has never mapped effectively onto the lived experiences of women of color.²⁹³ Nonconforming women, especially women of color, have a harder time convincing a jury that the stock story they present is credible and consistent with the requirements of battered woman syndrome.²⁹⁴ The battered woman defense attempts to rehabilitate defendants by normalizing them in the jury's eyes and fitting their stories to the jury's expectations of a battered woman. But women of color have a more difficult time being viewed as passive or subdued, just as non-white men are rarely considered the assertive partner in their relationships²⁹⁵—yet both her helplessness and her abusive partner's dominance are requisite elements of battered woman syndrome. Therefore, defendants who cannot remake themselves into “good” victims cannot benefit from the defense created ostensibly for them.²⁹⁶

Furthermore, survivors who have fought back against abuse in the past or who have been arrested on other charges, whether related or unrelated to the abuse, often find difficulty in presenting their stories in a way that is consistent with the requirements of battered woman syndrome.²⁹⁷ These women are often

293. *Id.* at 197.

294. *See id.* at 199–200 (“[N]ot only does the theory perpetuate dominant gender role stereotypes, but it does so to the exclusion of Black women. Therefore, when a jury hears a story of a downtrodden woman completely overwrought by the circumstances of her situation and in fear for her life, it is less likely that they will accept this story as applied to women whose history and present day images deny their need for protection. It is true that white women may face this risk due to the ‘good’ woman/‘bad’ woman dichotomy. However, while white battered women have to transcend one set of stereotypes to achieve the ‘good’ woman status, Black women, who are in a sense twice removed from this status, have a far heavier burden.”).

295. *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 140 U. CHI. LEGAL F. 139, 155 (1989) (“Black men and women live in a society that creates sex-based norms and expectations which racism operates simultaneously to deny. Black men are not viewed as powerful, nor are Black women seen as passive.”).

296. *See Rethinking Battered Woman Syndrome*, *supra* note 237, at 206 (“To the extent that battered woman syndrome restores a battered woman’s image to that of a ‘good’ woman, the theory implicitly embraces the notion that there are ‘good’ women and ‘bad’ women. This dichotomy necessarily implies there is an ‘other’ who can be pointed to as lacking in the characteristics of ‘true womanhood.’ Therefore, to assert battered woman syndrome successfully, a woman must avoid association with any of the images of ‘other.’ Such avoidance is especially difficult for a Black woman, who is viewed as ‘other’ simply by virtue of her skin color. Thus, battered woman syndrome fails as a viable theory for *all* battered women.”); *see also* SCHNEIDER, *supra* note 99, at 82 (“Indeed, the overall impact of the stereotype of battered woman syndrome may be to limit rather than expand the legal options of women who cannot conform to this stereotype. Many women’s actions are likely to depart significantly from both the traditional ‘male’ model of self-defense and the passive ‘battered woman’ model because the women are too assertive, aggressive, or insufficiently remorseful. . . . Because racial stereotypes of cultural aggression or passivity exacerbate these problems, women of color may face special hurdles.”).

297. *See* Sudbury, *supra* note 31, at 19 (asserting that the battered woman defense “is not effective if the accused woman . . . does not fit cleanly into the ‘innocent’ category—meaning she is innocent of any other ‘offenses’ besides the act of self-defense against the abuser.”).

judged more harshly for their past actions. If they cannot be seen as entirely innocent, they are not likely to prevail under this theory: "battered women who kill are analyzed in terms of their 'moral purity' as a victim of male violence prior to their fall into criminal homicide. Legal justification of their offense often turns on perceptions of their innocence prior to their use of lethal violence."²⁹⁸ In order to preserve the good woman image, women who kill are often categorized as pure evil or as good women overcome by mental illness; either categorization undermines women's depiction as rational decision-makers responsible for their choices.²⁹⁹ This dichotomy between good and evil killers preserves women's traditional roles as passive reactors as opposed to active agents.³⁰⁰

Just as defendants who cannot successfully invoke the battered woman defense are punished for failing to comply with its rigorous requirements, so too are all incarcerated women harmed by its implication that there is a blanket distinction between female offenders and "real" battered women. This distinction "obscures the histories of violence and abuse experienced by most women prisoners, reinforcing the legitimacy of incarcerating the silent prison majority."³⁰¹ Reentering survivors who were not able to assert or benefit from the battered woman's defense are viewed as undeserving criminals rather than as potential victims. Although battered woman syndrome and its related defense underscore the importance of understanding a defendant's experiences of violence when considering her own violent acts, its utility is limited by its reliance on specific kinds of acts (typically variations of self-defense) committed by specific kinds of survivors (the good victims) against specific kinds of abusers (all-powerful, typically white male, monsters).

IV. CONCLUSION

As "tough on crime" laws and policies have been implemented, enforced, and observed, many scholars and activists within the domestic violence movement have come to recognize the frequency with which marginalized survivors are systematically ignored and excluded. Many in the movement now recognize that survivors experience and respond to abuse differently due to differences in identity.³⁰² For example, some survivors, particularly white,

298. NEITHER ANGELS NOR DEMONS, *supra* note 177, at 158–59 (comparing this injustice to that faced by victims of sexual violence in criminal prosecutions against their attackers).

299. BELINDA MORRISSEY, WHEN WOMEN KILL: QUESTIONS OF AGENCY AND SUBJECTIVITY 167 (2003).

300. *See id.* at 170 ("If a woman can be found to have been so victimized that she did not know what she was doing when she killed, or if she is portrayed as a mythic, inhuman personification of wickedness, then the radical implications of her acts are muffled, her challenge to oppression nullified, at least as far as the dominant purveyors of cultural meaning are concerned. She is returned to her place of passivity and silence.").

301. Sudbury, *supra* note 31, at 21.

302. *See* A TROUBLED MARRIAGE, *supra* note 99, at 71 ("Race, sexual orientation, immigration status, class, disability status, and location all shape women's experiences with abuse,

middle-class, heterosexual survivors with no criminal record, may affirmatively wish to have their batterers arrested, prosecuted, and ordered to stay away. For other survivors, particularly more economically and socially marginalized women, this kind of “divorce by prosecutorial demand”³⁰³ may be undesirable and detrimental to themselves and their families.

The experiences of reentering survivors illustrate that potential domestic violence reforms intended to include extremely marginalized survivors must incorporate changes outside the movement as well. Marginalized survivors experience multiple forms of violence and coercion, including state, community, and interpersonal violence.³⁰⁴ Developing responses to domestic violence that combine “the feminist critique of violence against women with the critique of state violence”³⁰⁵ would enable the domestic violence movement to acknowledge and include those women who have thus far been pushed out and negatively affected by the movement’s focus on promoting state intervention.

It is not enough to add reentering women to the ever-growing list of survivors whose backgrounds and life experiences affect their experiences of domestic violence.³⁰⁶ Nor is it sufficient to simply recognize previously unseen victims of the “tough on crime” policies that have been embraced by both the criminal legal system and the domestic violence movement. Truly incorporating the experiences of reentering survivors and all marginalized survivors into the domestic violence movement requires coming to terms with the inadequacy and injustice of these myopic policies, as well as the need for more holistic reform. Reentering survivors are a compelling case study because of the previously unexplored double-bind they face: the requirements of community supervision imposed on them by the state makes them more vulnerable to domestic violence, while their exclusion from the domestic violence movement exposes them to increased state and interpersonal violence and excludes them from many social and legal services. Reentering survivors’ experiences at the intersection of state control and domestic violence are consonant with the realities of many survivors

reinforcing their disempowerment and dictating their needs.”); see also SCHNEIDER, *supra* note 99, at 62 (“Many feminist critics have written powerfully about the way the notion of womanhood has been described as a single uniform experience, thereby excluding a multiplicity of experiences based on race, class, ethnicity, age, sexual orientation, and other dimensions.”); GOODMAN & EPSTEIN, *supra* note 71, at xv (“Particularly for battered women who are poor, immigrants, members of minority cultures or racial groups, in same-sex relationships, or who choose to remain in abusive relationships, current mainstream interventions actually may do more harm than good by failing to respond sufficiently to a woman’s individual needs.”).

303. Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 56–60 (2006). Suk notes that “state-imposed de facto divorce is so class-contingent that it could be called poor man’s divorce.” *Id.* at 59.

304. *Law Enforcement Violence Against Women of Color*, *supra* note 34, at 156.

305. BHATTACHARJEE, *supra* note 29, at 51.

306. See, e.g., GOODMAN & EPSTEIN, *supra* note 71, at 3 (“Although gender is a critical force shaping women’s opportunities and experiences, its impact is modulated by its intersection with other self- and socially defining characteristics, such as ethnicity, culture, class, age, sexual orientation, ability, immigration status, and personal history.”).

at the margins of the domestic violence movement, including survivors navigating the child abuse and neglect system and the welfare system, both of which similarly impose stringent requirements and staggering repercussions for failure to comply. These state systems and myriad others do not operate independently or in isolation. Rather, they are intertwined and often overlapping, but rarely coordinated.

The challenges faced by reentering survivors are largely invisible to both the criminal legal system and the domestic violence movement. Notwithstanding some advocacy around training parole and probation officers on domestic violence among female supervisees,³⁰⁷ there has yet to be a meaningful discussion regarding how the structure of supervision itself interacts with domestic violence. Nor is there widespread understanding among domestic violence advocates about the obstacles reentering survivors may encounter if they are able to access help. For example, a reentering survivor may be hesitant to file for a protection order if doing so will require an admission that she has violated her community supervision (perhaps by going somewhere she is not allowed to go or seeing someone she was ordered to stay away from).³⁰⁸ Without a deeper understanding of the intersection between the criminal legal system and the domestic violence advocacy movement, both systems will continue to endanger an already marginalized population.

The solution, however, is not for reentering survivors to be treated more leniently than other returning citizens who are not experiencing domestic violence. A back-end fix providing mitigation or exoneration for those returning citizens who can prove that their supervision violations were caused by or related to domestic violence³⁰⁹ would undoubtedly become as imbued with stereotypes about real victimhood as the battered woman defense. Instead, the criminal legal system must enact concrete reforms that will ameliorate the unique issues affecting reentering survivors in ways that would positively affect all returning citizens. This might include: moving toward decriminalization of low-level drug offenses like marijuana possession;³¹⁰ expanding not just alternatives to

307. See, e.g., SHERRY FROHMAN & CONNIE NEAL, MINN. CTR. AGAINST VIOLENCE & ABUSE, THE PROBATION RESPONSE TO SUPERVISION OF WOMEN WHO ARE ABUSED (2005); SYDNEY, *supra* note 79; Connie Neal, *Women Who Are Victims of Domestic Violence: Supervision Strategies for Community Corrections Professionals*, CORRECTIONS TODAY, Aug. 1, 2007, at 38; PHYLLIS MODLEY & RACHELLE GIGUERE, REENTRY CONSIDERATIONS FOR WOMEN OFFENDERS (2010). Much of the mainstream corrections literature on domestic violence, however, focuses on male offenders on community supervision rather than female survivors on community supervision. See, e.g., AM. PROB. & PAROLE ASS'N, COMMUNITY CORRECTIONS RESPONSE TO DOMESTIC VIOLENCE: GUIDELINES FOR PRACTICE (2009).

308. For more examples, see CROSS, *supra* note 100.

309. The 2000 reauthorization of the Violence Against Women Act ("VAWA") included a narrow exception to its good moral character requirement for VAWA self-petitioners when the act or crime barring a self-petitioner's eligibility "was connected to the alien's having been battered or subjected to extreme cruelty." 8 U.S.C. § 1154(a)(1)(C) (2000).

310. As a few states have experimented with decriminalization of marijuana, this movement is gaining momentum. See, e.g., Editorial, *Repeal Prohibition, Again*, N.Y. TIMES (Jul. 27, 2014), <http://www.nytimes.com/interactive/2014/07/27/opinion/sunday/high-time-marijuana->

incarceration but also alternatives to conviction programs;³¹¹ improving access to programming and reentry planning in jails and prisons;³¹² refocusing community supervision on reintegration as opposed to surveillance;³¹³ and minimizing collateral consequences of criminal convictions while expanding opportunities for expungement and record sealing.³¹⁴ These changes would both reduce the number of individuals on community supervision and better allow all those being supervised to achieve successful outcomes. The domestic violence movement must also build alliances with those advocating for these changes and join the broader movement campaigning for criminal justice reform.

There have been a handful of initiatives in which localized criminal legal systems have shifted their focus to community-building in order to prevent crime.³¹⁵ For the most part, however, “a guaranteed minimum annual wage, broad-based changes in our economic system, revaluing women’s work, and elimination of male privilege within the family are goals which have no language

legalization.html (“The social costs of the marijuana laws are vast. There were 658,000 arrests for marijuana possession in 2012, according to F.B.I. figures, compared with 256,000 for cocaine, heroin and their derivatives. Even worse, the result is racist, falling disproportionately on young black men, ruining their lives and creating new generations of career criminals.”).

311. See, e.g., Alexandra Bell & Leche, *Alternatives: ATI in New York City*, in *INTERRUPTED LIFE: EXPERIENCES OF INCARCERATED WOMEN IN THE UNITED STATES* 402 (Rickie Solinger et al. eds., 2010); Charles J. Hynes, *Prosecutor Seeks Alternatives to Incarceration*, 16 CRIM. JUST. 48, 50 (2001) (“The difficulties that these mothers and children endure cry out for substantial reform, beginning with community-based alternatives to incarceration that would avoid these evils while offering real hope of rehabilitation, instead of only retribution.”); WOMEN’S PRISON ASS’N, WOMEN’S ADVOC. PROJECT, 2010 POLICY RECOMMENDATIONS: PRE-ENTRY: EXPANDING ALTERNATIVES TO INCARCERATION TO INCLUDE ALTERNATIVES TO CONVICTION 3 (2010) (“The criminal justice system must expand alternatives to incarceration to include alternatives to conviction. Avoiding a criminal conviction by participating in community-based programs to address underlying issues women face prior to arrest, will result in fewer barriers to women fully achieving their goals for self-efficacy and self-sufficiency.”).
312. See TRAVIS, *supra* note 32, at 161 (“The disparity between the current situation and full employment represents lost opportunities for prisoners themselves to develop a work ethic, learn skills, and create a track record of job experience, all of which are valuable to potential employers.”); Visher, *supra* note 50, at 99 (“Policies that foster coordination between state corrections agencies and local community service providers could enhance the likelihood of connecting returning prisoners to needed transition services.”).
313. See Visher, *supra* note 50, at 98 (“In the 1970s, parole officers often coordinated postrelease services for those on their caseload by linking them with job opportunities, arranging appointments with service providers, and even providing small amounts of cash for emergencies. Absent the recent focus on reentry services, today’s parole officer is primarily focused on surveillance and control functions.”).
314. See, e.g., AM. BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE: COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS § 19-2.5 (2004).
315. See, e.g., Weissman, *supra* note 157, at 243 (“The relationship between economic strain and domestic violence suggests new criminal justice models to address structural concerns, including unemployment, poverty, and neighborhood infrastructure. Law-enforcement strategies that shift from *post hoc* responses to preventative initiatives with a focus on community problem-solving provide one alternative to arrest and prosecution. These models are designed to *prevent* the commission of a criminal act that would otherwise necessitate conventional law enforcement responses.”).

within the system of criminal law.”³¹⁶ The domestic violence movement cannot rely on the criminal legal system (or any other arm of the state) to play an active role in pre- or post-incarceration crime prevention or individual or community economic development. Thus, only by committing to financial empowerment and economic development can the domestic violence movement ensure that even the most marginalized survivors can access programs and services that cultivate their independence.

In order to implement changes that reach marginalized survivors—including reentering survivors—the domestic violence movement must also return to its explicitly political roots, this time emphasizing the subordination of marginalized women rather than the subordination of women generally.³¹⁷ It should focus on the survivors who were once at the movement’s periphery,³¹⁸ and create space for individualized, survivor-centered narratives of victimization.³¹⁹ This would have a positive impact on all survivors, not just those who have long been on the outside.³²⁰ In conjunction with returning to a focus on the social and political subordination of women, the movement must also shift its focus away from state intervention and onto economic empowerment of marginalized survivors.

Emphasizing economic empowerment of survivors would mark a radical transition away from state intervention because “[w]omen’s needs for housing, health care, income, transportation, education, and childcare were submerged in the focus on treating domestic violence as a crime . . . [which] excludes the needs of many and is directly punitive to significant numbers of women.”³²¹ The current focus on state intervention reflects society’s lack of trust in low-income survivors’ decision-making abilities.³²² Transforming the movement to emphasize the importance of economic empowerment would thus re-center the movement on survivors and acknowledge their strengths and abilities.³²³

316. *The Dance of Dependency*, *supra* note 143, at 89.

317. *See* Morrison, *supra* note 236, at 1101.

318. *See generally* BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* (2000).

319. Morrison, *supra* note 236, at 1103 (“Making the discursive shift to tell a survivor’s narrative in which the focus is on what the woman did to endure reconstructs the battered woman identity as survivor, casts her in a more positive light, and places the emphasis on the violence of the man.”).

320. *See id.* at 1106 (“The construct of the multi-cultural survivor consists of images illustrating what it means for women of many cultures to survive. The identity allows for a range of the behaviors women find necessary in order to protect themselves and their children. Centering women of color simply means that the aspects of any given culture race, or ethnicity become part of the core identity.”).

321. NEITHER ANGELS NOR DEMONS, *supra* note 177, at 12–13.

322. *See* Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1, 31 (2009) (“But empowerment must mean more than simply substituting advocates or the state for the abusive partner as the arbiter of choices for women who have been battered.”).

323. *See* Dorothy Roberts, *Feminism, Race, and Adoption Policy*, in *THE COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY*, *supra* note 29, at 42, 50 (“More fundamentally, it is the public’s mistrust of poor women, especially women of color, and its unwillingness to put money directly in their hands that underlie the emphasis on coercive state intervention to address

Empowering survivors by providing access to material resources,³²⁴ as well as to financial education³²⁵ and employment assistance,³²⁶ would enable survivors (including reentering survivors) to determine their own course of action in response to abuse³²⁷ with less fear of a punitive response from the state.

Lauren Walker's story illuminates just some of the challenges of women's reentry. Although the barriers she faced proved insurmountable, Lauren was relatively better off than many reentering women: she did not have to look for housing, she was able to quickly obtain employment, she did not have children to support, and she was able to get herself into multiple drug treatment programs. Yet many women must tackle these obstacles, and more, and are similarly reincarcerated for being unable to comply with the terms of their community

both violence against women and child maltreatment. A social welfare system that improved women's economic status would enable them to discard violent partners and to take better care of their children. Feminists shouldn't be fighting for increased state separation of mothers and children as part of a campaign against domestic violence. We should be fighting for affordable housing and generous supports for struggling mothers as a more effective and just strategy to reduce both battery of women and neglect of children.").

324. See *Shifting Power for Battered Women*, *supra* note 191, at 1021–22 ("Inadequate material resources render women more vulnerable to battering. Inadequate resources increase the batterers' access to women who separate, and inadequate resources are a primary reason why women do not attempt to separate.").

325. See, e.g., JUDY L. POSTMUS ET AL., EVALUATING THE IMPACT OF THE "MOVING AHEAD THROUGH FINANCIAL MANAGEMENT" CURRICULUM: A RANDOMIZED CONTROL STUDY (2013) (finding that survivors who received both advocacy services and a financial curriculum experienced improved financial literacy, financial attitude, and economic self-sufficiency over survivors who received only advocacy. Survivors who received both services also experienced less financial strain and less difficulty living on their annual household income than their counterparts. Overall, the group of survivors who participated in the financial curriculum reported a higher quality of life than those who did not).

326. See generally Neil Websdale & Byron Johnson, *Reducing Woman Battering: The Role of Structural Approaches*, in DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE CLASS, GENDER, AND CULTURE, *supra* note 8, at 389.

327. See *id.* Examining the outcomes of a federally funded program in Kentucky confirms the effectiveness of this approach. This job readiness program ("JRP") was designed specifically "to reduce the revictimization of battered women by providing battered women with job training, employment, independent living skills, independent housing, assistance with negotiating the welfare system, education, legal support, childcare, and a multitude of other services." *Id.* at 391. These other services included "a comprehensive range of preventative interventions, including economic self-sufficiency, emotional empowerment, autonomous living skills, and practical support." *Id.* at 394. The results of this program were very positive:

Our analysis of the 153 cases indicates that all battered women who participated in the JRP took advantage of job training services, 67.3 percent of participants secured employment . . . and 86.5 percent of clients secured housing and lived independently of their abusers. . . . Perhaps most significantly, 82 percent of battered women experienced no revictimization.

Id. at 402. This study found that those participants who acquired independent housing but no employment were less likely to be revictimized than those who obtained employment but continued to reside with their abuser. *Id.* at 404–05. The study "strongly suggests that a multifaceted community response is potentially a much more effective way of reducing or preventing revictimization of battered women." *Id.* at 412. These findings are critically important for returning female survivors, who return to their communities facing deficits in the many services provided by this program. See generally *id.*

supervision. The abuse Lauren experienced at home undermined every advantage from which she might have benefited; she did not receive the kind of support that might have facilitated successful reentry and a violence-free life. Had she been released to an individually tailored combination of safe and independent housing with cash assistance, drug and mental health counseling, and trauma-informed community supervision, Lauren may have been better equipped to overcome the many obstacles still inherent in the reentry process. Although there is no quick fix to ensure successful reintegration, reentering survivors would benefit greatly from being able to access appropriate public benefits, social and legal services, and state supervision designed to foster successful outcomes. Without recognizing the many ways in which “tough on crime” policies undermine individuals’ and communities’ safety and long-term stability, even reforms designed to protect domestic violence survivors risk further marginalizing those survivors already on the periphery. In order to promote truly inclusive reform, domestic violence activists must advocate within both the domestic violence movement and the larger criminal legal system for a returned focus to individuals’ needs and strengths.