

WBASNY Sex Trafficking Committee CLE Webinar

"Revictimizing the Victim: The Child Sex Crimes Victims Protection Act"

December 1, 2025

Course materials

Yasmin Vafa

Course materials

CRIMINALIZED SURVIVORS: TODAY'S ABUSE TO PRISON PIPELINE FOR GIRLS

Yasmin Vafa &
Rebecca Epstein



CENTER ON
**GENDER JUSTICE
& OPPORTUNITY** 
GEORGETOWN LAW

Acknowledgments

We are indebted to many who contributed their time, resources, and expertise to this report:

- **Annie Balck**, Annie Balck Consulting, who provided invaluable research;
- The law firm **Baker McKenzie**, which, through the efforts of Colin Murray, William Devaney, and JeanMarie Campbell, generously supported Law Associate **Chehak Gogia** in providing us critical assistance in completing the report;
- And the dedicated staff of the Georgetown Center on Gender Justice & Opportunity, all of whom are students at (or, by time of publication, alumnae of) Georgetown University:
 - Research Assistants (Georgetown University Law Center):
Sierra Campbell, Nabintou Doumbia, Elizabeth Hadley, Natalie Jean, Eva Niedmeyer, Kaitlyn Powell; and Rhea Shinde
 - Interns (Georgetown undergraduate programs):
Emily Gorny and Maddi Larmore; and
 - Youth Engagement Coordinator **Toella Pliakas**.

We also extend special gratitude to the **Ms. Foundation for Women**, whose support made this report possible, as well as the Skoll Foundation for providing additional resources; and to **Richard Ross** for providing such powerful photos.

AUTHORS

Yasmin Vafa, Rights4Girls and Rebecca Epstein, Georgetown Center on Gender Justice & Opportunity

ABOUT THE AUTHORS' ORGANIZATIONS

The Center on Gender Justice & Opportunity works to uncover and eliminate gender and racial disparities across public systems — including education, healthcare, and the legal system. Their work starts with the root causes of injustice and is directly informed by girls and women—ensuring that the Center's groundbreaking research and innovative policy recommendations are rooted in lived experiences. The Center's work is in service of a just world where all girls experience a childhood that is truly free. In 2022, the Center was honored to be named as a champion of gender equity by Prince Harry and Meghan's Archewell Foundation. See more at www.genderjusticeandopportunity.georgetown.edu.

Rights4Girls is a national human rights organization that advocates for the dignity and rights of young women and girls so that every girl can be safe and live a life free of violence and exploitation. We work to change the narrative and policies that allow girls to be criminalized when they experience violence and advocate for approaches that provide girls and young women with safety, justice, and support. Our work includes policy development and advocacy at the federal and state levels as well as public education campaigns, coalition building, research, and training and technical assistance. We center the voices and needs of our most marginalized girls to ensure that all of our work is far-reaching and intersectional. See more at www.rights4girls.org.

Suggested citation: YASMIN VAFa & REBECCA EPSTEIN, **CRIMINALIZED SURVIVORS: TODAY'S ABUSE TO PRISON PIPELINE FOR GIRLS** (2023).

Table of Contents

Introduction	4
State of the Pipeline: Girls who Survive Abuse Are Still Pushed Into the Legal System	7
• Girls are Blamed and Criminalized for Being Sex Trafficked	8
• Girls are Criminalized for Acting in Self-Defense Against Abusers	9
• Girls are Criminalized for Reporting Abuse	13
Disrupting the Abuse to Prison Pipeline: Progress in Policy and Legislation Since 2015	17
• The White House and Federal Agencies	18
• Federal Policy and Leadership	18
• States' Safe Harbor Laws: Eliminating Prostitution Charges for Children	21
• Survivor Justice in the States: Protecting Survivors Who Commit Offenses in Connection with Sexual Abuse	22
Recommendations	24
Endnotes	28



Introduction

“My spirit has been burned but still glows through the flames. Hear me roar, see me glow, and watch me grow.”

These are the words of Pieper Lewis, who, at 15 years old, was sold to a 37-year-old man. Pieper’s statement was made in court; not as a plaintiff, a complainant, a survivor, or even a victim, but as a defendant. She was charged with first-degree murder of the man she killed after he drugged and repeatedly raped her over the course of three days while she faded in and out of consciousness.¹

Pieper’s criminalization is just one example of the abuse to prison pipeline for girls, a cycle we identified in 2015—and, as this report establishes, still persists. In this cycle, girls—especially girls of color—are punished for the gender-based violence they endure, sent into the prison system without access to critical support.

The roots of this cycle reach far and run deep. Public systems, entrusted with authority over girls’ lives, not only fail to protect the safety of survivors; they affirmatively criminalize them. This injustice is particularly egregious when viewed against the backdrop of the sheer scale of sexual violence against girls in the US: girls aged 16-19 are four times more likely than the general population to be victims of rape, attempted rape, or sexual assault.² And according to data released by the Centers for Disease Control and Prevention in 2022, one in four women in the United States (26.8 percent, or 33.5 million) reported “completed” or attempted rape at some point in their lifetime.³ The Covid pandemic has served as an exacerbating factor, causing marked increases in domestic violence⁴ and severity of child abuse.⁵

These rates are even higher for women and girls of color,⁶ resulting in inequitable patterns of impact.⁷ According to the Rape, Abuse, Incest National Network (RAINN), the nation’s largest anti-sexual violence organization, Native girls run the highest risk of sexual violence of all girls. On average, Native people aged 12 and older experience 5,900 sexual assaults per year. They are twice as likely to be raped and/or sexually assaulted compared to all other races/ethnicities.⁸ Meanwhile, the Youth Risk Behavior Survey (YRBS) revealed that 13.9 percent of Native Hawaiian high schoolers in that state reported that they had been forced to engage in sexual acts by someone they were dating within the past 12 months, compared to 6.8 percent of white high schoolers.⁹ Black girls also face extremely high rates of sexual violence. Ujima, the National Center on Violence Against Women in the Black Community, reported that one in four Black girls are sexually abused before the age of 18. In a study Ujima conducted on a national sample of high school students, 11 percent of Black girls reported having been raped.¹⁰

One cause of the high rates of sexual violence against girls of color—as well as the disproportionate degree of punishment imposed on them in response to that violence—is the adults who dehumanize them. In previous reports, we have documented the distorted lens through which adults view Black girls, perceiving them as older than white girls of the same age, more promiscuous, and undeserving of the same protection.¹¹ Further, we have exposed a pattern of disproportionate sexual exploitation of girls of color by white men, as well as inequitable rates of arrests on prostitution charges.¹²

To elevate awareness of the criminalization of survivors, our organizations, together with the Ms. Foundation, published *The Sexual Abuse to Prison Pipeline: The Girls’ Story* in 2015,¹³ which highlighted the hidden pattern that routes survivors like Pieper—who are often girls of color—into the legal system despite the fact that they present little, if any, risk to public safety.¹⁴

Since that time, the concept of the abuse¹⁵ to prison pipeline for girls has spread widely, influencing policy, research, and the public narrative—most notably championed by President Obama in 2015. The *Sexual Abuse to Prison Pipeline* report has been cited in hundreds of peer-reviewed journals, law review articles, and reports; and it has been referenced in support of legislation and policies designed to decriminalize survivors and increase the use of trauma-informed practices and community-based programs for survivors of gender-based violence.¹⁶

Subsequent research, too, has produced findings that substantiate the correlation between girls' and women's experience of sexual violence and their involvement in the legal system.¹⁷ This body of work points to the need for a range of further studies, including examinations of the specific factors at play in the cycle, as well as the pipeline's effects on subgroups of girls and women.¹⁸

The press has also widely recognized the abuse to prison pipeline in the wake of our report. Articles about gender-based violence have increasingly questioned why girls who have histories of sexual victimization are sent into the prison system¹⁹ and shined a light on the harms of incarcerating survivors.²⁰

These developments have taken place against a cultural backdrop that has changed considerably since our report was published. Seismic points of inflection include the rise of the Black Lives Matter movement, the Covid pandemic, the #MeToo movement, and the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,²¹ which eliminated the constitutional right to abortion.

Of these touchpoints, the rise of the #MeToo movement has been uniquely influential in expanding mainstream recognition of the prevalence of sexual violence against women and girls, challenging conventional biases against claims of sexual abuse and prompting us to do better in hearing, believing, and supporting survivors. As more and more women and girls have publicly acknowledged their survivorship, the hashtag #MeToo has stood for a movement to end the nation's complicity in perpetuating sexual harassment and abuse.²²

Although the #MeToo movement continues to evolve, its focus has changed from the original intent, which was to provide safe spaces for women and girls of color to connect and heal from sexual violence.²³ Its explosion into the mainstream was marked by increased attention to the experiences of affluent white women—a focus that persisted despite the disproportionately higher rates of sexual violence against girls and young women of color.²⁴ Tarana Burke, the founder of #MeToo, recognized this phenomenon as part of a historical pattern, noting that “sexual violence knows no race, class, or gender—but the response to it does.”²⁵

In light of the changes that have taken place since the publication of our 2015 report, we set out to examine the current state of the pipeline for girls. Here, we provide new analyses of the most significant paths that funnel survivors into the system, points of progress made in law and policy reform, and the challenges that persist. Finally, we offer a set of principles to guide systemic change.

Solutions are possible, if only we choose to act. The top priority must be the prevention of gender-based violence itself. But as long as that violence persists, we must end the criminalization of victims. Through systemic, structural change, we can achieve justice for survivors.





**State of the Pipeline:
Girls who Survive
Abuse Are Still Pushed
Into the Legal System**

Despite clear evidence and increasing awareness of the prevalence of gender-based violence, girls are still pushed into the legal system in three main ways as a direct result of the violence they experience:

Girls are blamed and criminalized for being sex trafficked;

Girls are criminalized for acting in self-defense against abusers; and

Girls are punished or criminalized for reporting abuse.

These categories are not intended to represent an exhaustive list of all routes into the system for survivors of gender-based violence. As we highlighted in our original report, there are many other unique pathways into the system for girls, such as the criminalization of status offenders who run away from home to escape abuse or are forced to be truant because they are being sex trafficked. We highlight the three paths above as among the most urgent to address.

Girls are Blamed and Criminalized for Being Sex Trafficked

Awareness of the prevalence of child sex trafficking and the injustice of criminalizing survivors has grown tremendously in recent years. Arrests of children on charges related to prostitution and “commercialized vice”²⁶ have declined at rates that exceed the decline in total juvenile arrest rates.²⁷ In addition, thanks to the leadership of survivors, use of the term child prostitute—itself a legal oxymoron, since children cannot legally consent to sex—has begun to wane in recent years.²⁸ In an influential development, the Associated Press revised its Stylebook—the foundational guideline for journalists and other writers on language, usage, style, spelling, and punctuation—to discourage use of the term when referring to child victims of sexual exploitation.²⁹ This trend, as well as the legal reforms we detail in the next section, are helping re-shape perceptions of child survivors in ways that are more legally accurate and ethically just.

Yet the criminalization of child survivors continues. The US Department of Justice has reported that 110 children were arrested nationwide on prostitution charges and commercialized vice in 2020,³⁰ but local reports indicate that number is a vast underestimate.³¹ In states that report a reduction in arrests of children related to prostitution, survivors may simply be arrested on different charges—a practice known as proxy or masking charges³²—including loitering; trespass; drug possession; or status offenses, such as truancy or running away.³³ These arrests are overwhelmingly of girls: in 2019, 71 percent of youth arrested on charges of prostitution and commercialized vice were girls, far exceeding their proportion of the population.³⁴ The arrests are also disproportionately of Black youth: According to the US Department of Justice, in 2019—the latest year for which data has been released—Black children were over five times more likely to be arrested for prostitution and commercialized vice than white children. Overall, children of color were over three and a half times more likely to be arrested on these charges than white children.³⁵

As we emphasized in our original report, the arrest and criminalization of child sex trafficking victims, whether on prostitution charges or other charges related to their exploitation, is both ethically and legally wrong. Under federal law, any child under the age of 18 engaged in a commercial sex act³⁶ is a victim of a “severe form” of human trafficking.³⁷ Criminalizing child victims as if they were offenders undermines that legally protected status; it also perpetuates abuse by directing focus away from adult exploiters and masking structural, systemic failures to provide community safety and accountability. And the failure to screen youth who come into contact with the system upon intake to identify whether they are victims of trafficking—a common failure in many states—is inconsistent with federal guidance set forth in the Juvenile Justice Reform Act.³⁸ As a result, many child trafficking victims remain unidentified, without critical services or support, and without the benefit of context when placement and treatment options are assessed.

Still deeper criminalization occurs when more serious charges are brought against survivors. One example: child sex trafficking victims who are charged with recruiting other victims.³⁹ This practice, which holds child victims liable as traffickers or co-conspirators, fails to recognize the broader circumstances: that is, the violence, coercion, threats, manipulation, and other forms of control that traffickers use to force their victims to exploit other children. It also discounts the harmful effect of survivors’ ongoing trauma on their sense of agency and decision-making.

An example in Florida provides a case in point:

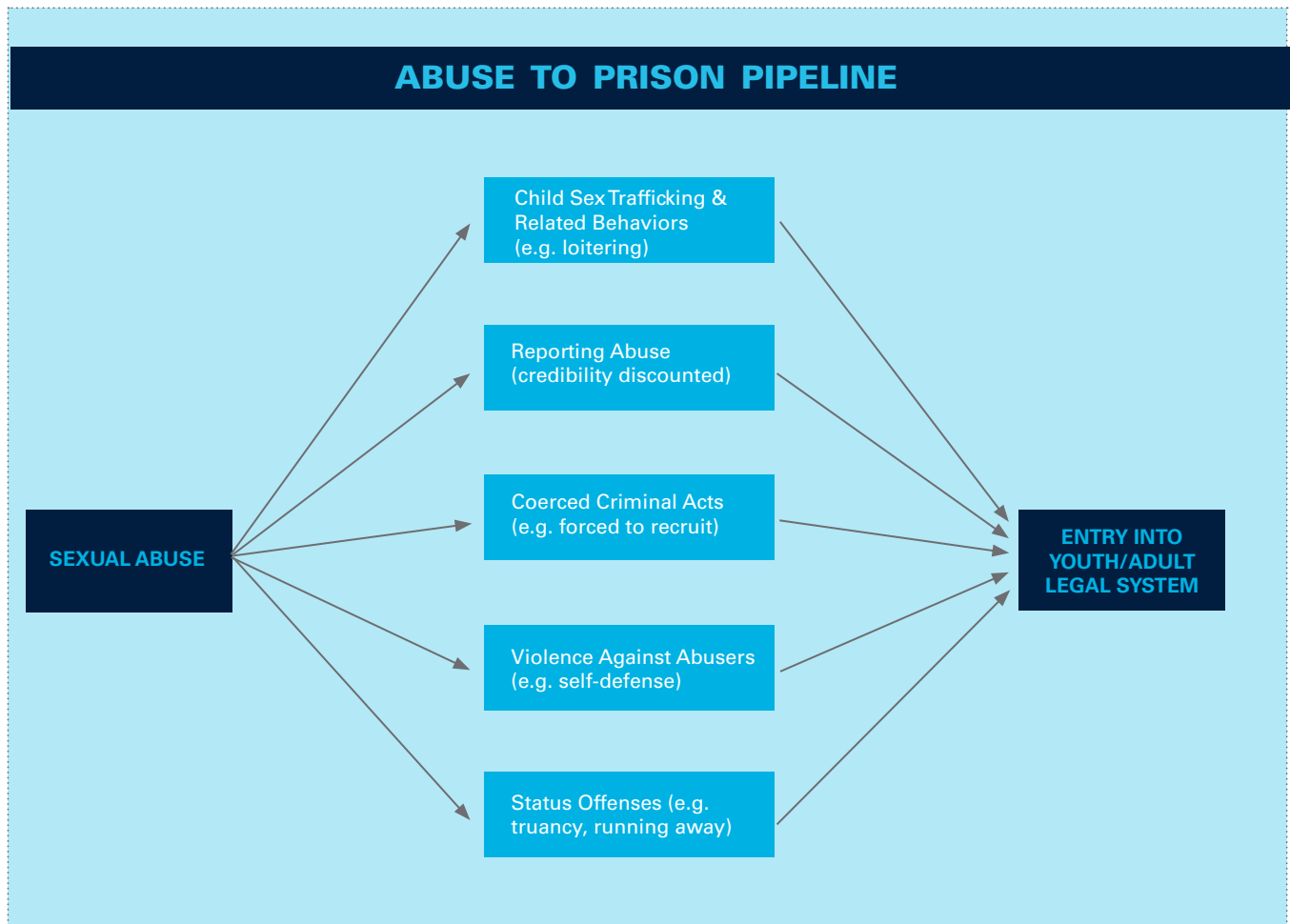
Multiple traffickers were recently arrested and tried for running a drug and human trafficking ring. At trial, prosecutors identified one witness as a victim.⁴⁰ Yet to force that survivor to cooperate, they charged her as a co-conspirator, offering her a plea deal that required her to testify against her exploiters and attend a program for victims.⁴¹

Treating survivors as offenders—even if they are simultaneously acknowledged as victims—reveals a fundamental disregard of the effects of being charged as a criminal after surviving a human rights violation, as well as the burden of living with a criminal record.

Girls are Criminalized for Acting in Self-Defense Against Abusers

Despite the emergence of reforms, samples of which we discuss in the next section, girls continue to be funneled into the youth—and sometimes adult—legal system for acts that are rooted in attempts to escape the men who rape, sell, and abuse them, including acts of self-defense that sometimes require violence. In these cases, police, prosecutors, and judges often fail to consider the role of underlying victimization. As a result, victims often face a catch-22: they can comply with their exploiter and run the risk of arrest on prostitution or related offenses, or they can use the force necessary to escape, which risks criminal punishment for harming their abusers.

Sentencing girls to years, even decades, of imprisonment for acting in self-defense against abusers is common across the country. But punishing survivors for acting against their exploiters without considering the trauma they have endured or the context of traffickers' coercion is not only unjust; it deprives girls of their freedom and the treatment and support needed to heal and end cycles of violence and harm.



INCREASING PROTECTIONS FOR CRIMINALIZED CHILDREN

Until the 21st century, American children could be sentenced to die or spend the rest of their lives behind bars. Through a series of holdings over the last two decades, the US Supreme Court has gradually increased legal protections for children accused of serious crimes:

- In 2005, the Court ruled that sentencing children to death for crimes they committed before the age of 18 violates the Eighth Amendment's prohibition against cruel and unusual punishment.⁴²
- In 2010, the Court abolished the sentence of life without the possibility of parole for children convicted of crimes other than homicide.⁴³
- In 2012, *Miller v. Alabama* held that mandatory sentences of life without parole for children convicted of homicide are unconstitutional.⁴⁴ While life sentences could be imposed, Justice Kagan wrote: "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."⁴⁵ The decision invalidated mandatory life sentencing provisions in 29 states.⁴⁶
- In 2016, *Montgomery v. Louisiana* held that *Miller* applies retroactively, requiring states to allow individuals to be considered for parole for crimes they committed as children.⁴⁷

According to the Equal Justice Initiative, which argued the *Miller* case before the Supreme Court, more than one thousand people who had been sentenced to die behind bars for acts committed as children have been resentenced pursuant to that holding, and hundreds released.⁴⁸

These cases represent important progress. However, children—including, as demonstrated by the case studies outlined in this report, child survivors of exploitation—are still being tried as adults and sentenced to *decades* in adult prison for acts of self-defense against exploiters. The federal government and states have the authority—and, we would argue, the duty—to enact legislation that provides greater protection to children than the standard established by the Constitution, as the Supreme Court has noted.⁴⁹ Yet, as this report makes clear, bills have often failed to pass even when they prohibit sentences of life without parole for children only after youth have served at least 20 years.⁵⁰



CASE STUDIES OF PROSECUTED SURVIVORS: THE PIPELINE IN THE REAL WORLD

Below, we describe a handful of representative cases of the criminalization of girls who act in self-defense. Significantly, the defendant in every incident is a girl of color. What makes these cases unusual is that they are known at all. Only the most egregious cases garner national attention and outrage,⁵¹ and even then, awareness is raised only because of heroic efforts by families, friends, lawyers, advocates, and journalists—and, in some cases, the extraordinary involvement of public figures.⁵² Although most of these survivors were ultimately released, far more often, survivors—especially girls of color—stay in the shadows of the system.

CYNTOIA BROWN (TENNESSEE)

Cyntoia Brown was 16 years old when she was imprisoned for killing a 43-year-old man who paid to rape her.⁵³ According to a court opinion in her case, “the victim showed [Cyntoia] some guns, and they got into bed together. The victim whispered to and touched [Cyntoia] and reached underneath the bed. [Cyntoia] thought the victim was reaching for a gun, so she pulled a ... handgun out of her purse and shot him.”⁵⁴

Cyntoia was tried as an adult; the jury rejected her claim of self-defense. She was found guilty of first-degree premeditated murder, first-degree felony murder, and aggravated robbery, and she was sentenced to 51 years to life in prison.⁵⁵

After a documentary was aired about her case, Cyntoia was granted clemency by Governor Bill Haslam and released, having served 15 years.⁵⁶

CHRYSTUL KIZER (WISCONSIN)

At 17, Chrystul Kizer shot and killed Randall Volar, who had previously been charged—then released without bail—for sexually exploiting numerous Black girls. According to the *Washington Post*, police had seized videos in Volar’s home showing him abusing several underage Black girls, including Chrystul, and “hundreds” of other videos of child sexual abuse.⁵⁷ According to Chrystul, after a year of complying with his demands, she finally rejected Volar, and he tried to rape her. She shot him with a gun her boyfriend had given her. Chrystul was charged with first-degree intentional homicide, which carries a mandatory sentence of life in prison.⁵⁸

In July 2022, the state Supreme Court ruled that Wisconsin’s affirmative defense law, which applies to victims of sex trafficking for any offense committed as a direct result of trafficking,⁵⁹ could provide a complete defense to Chrystul’s charge of first-degree homicide.⁶⁰ Now, after the delay that stretched on for years as her case made its way through the courts, Chrystul may present evidence to support the application of this defense to her case, which would allow her to be released.⁶¹

PIEPER LEWIS (IOWA)

Pieper Lewis, a 15-year-old girl, was trafficked by a 28-year-old man claiming to be her boyfriend. In 2020, her trafficker forced her to go home with a 37-year-old sex buyer who drugged and raped her multiple times over a three-day period. She used a knife on the nightstand to kill him.

Charged with his murder, she faced 20 years in prison. She pled guilty to voluntary manslaughter and willful injury. After being held in a juvenile detention facility for two years, prosecutors recommended probation. Pieper was sentenced to five years’ probation in women’s transitional facility without the possibility of early release and was required to wear an ankle monitor. The court warned her: “[T]his is the second chance you asked for. You don’t get a third.” The judge ordered her to serve 200 hours of community service, pay more than \$4,000 in civil penalties, and pay \$150,000 in restitution to the rapist’s estate.⁶² But Pieper, who has said that she plans to become a youth justice advocate,⁶³ broke her ankle monitor and fled the center soon after her trial. She was returned to jail; in March 2023, she pled guilty to an escape charge. A hearing to determine if she will be forced to go to prison is pending.⁶⁴

ALEXIS MARTIN (OHIO)

Alexis Martin, 15, helped plan a robbery of her 36-year-old trafficker, Angelo Kerney, who had forbidden her from attending school. According to news reports, Martin said

she had agreed to participate in the robbery to escape Kerney and go to school: “[Education] was my only hope that I ever would leave behind the ghettos—that abuse.”⁶⁵ Things went wrong, and the robbery turned into a homicide.

Alexis was charged with felony murder, despite her status as a child victim. Prosecutors argued that Alexis was a “manipulator;” that she had played a key role in the robbery; and that she should be tried as an adult. Her lawyer, three years out of law school, was unaware of the safe harbor law that had been enacted 17 months earlier.⁶⁶ As a result, the availability of safe harbor protections was not raised.

The judge characterized Alexis as “working” for Kerney, stating: “It is almost beyond comprehension to think that a 15-year-old child would be involved in that kind of work.”⁶⁷ Tried and convicted, Alexis was sentenced to 21 years to life in adult prison.⁶⁸

Governor Mike DeWine later commuted Alexis’ sentence—after advocates raised awareness about her case—as part of a broader effort to limit the spread of Covid in prisons. In a statement about his decision, the governor noted: “Alexis was 15 years of age when she committed the crime; 17 when she went to prison. She is a child sex trafficking survivor. She will be sent to an appropriate group home and she will be under supervision for an extensive period of time.”⁶⁹ Alexis had already served seven years. As a condition of the commutation, she was required to wear an ankle monitor, forbidden from leaving the state, and placed on parole—which included being subjected to random checks by parole officers—for the remainder of her sentence: 14 years.⁷⁰

In 2021, a parole officer conducted an unscheduled visit of Alexis’ apartment and found drugs and weapons in moving boxes belonging to her boyfriend. Although her lawyers argued that Alexis was not aware of them, she was held to have violated the terms of her parole. In response, the parole board chose the harshest punishment possible: it revoked Alexis’ commutation and reinstated her prior sentence in its entirety. The governor did not intervene. Alexis is now scheduled to be released in November 2034.⁷¹

BRESHA MEADOWS (OHIO)

Bresha Meadows ran away twice to escape her home, where she had witnessed her father repeatedly and violently abusing her mother and threatening the rest of the family. At the age of 14, after she was forced to return home, she shot him, and was charged with aggravated murder. She pled guilty to involuntary manslaughter. She served a year in a juvenile detention center, then another six months in a residential treatment center. Amid public outcry and with the support of advocates, Bresha was released under her family’s supervision for two more years.⁷²

PATRICE SMITH (NEW YORK)

Patrice Smith was a 15-year-old girl when, according to court records, she was repeatedly raped by a 71-year-old man in exchange for money and gifts. In an incident in which she refused his demand for sex, he threatened to kill her and began pushing her toward the bedroom. A physical fight ensued in which Patrice feared she would be killed. She fought back, ultimately killing him. She was charged with homicide and robbery.⁷³ She was convicted and sentenced to concurrent indeterminate terms of 25 years to life on two second-degree murder counts and 10 years on a robbery count. The conviction was unanimously affirmed on appeal.⁷⁴

Decades later, while Patrice was still incarcerated, New York enacted the Domestic Violence Survivors Justice Act.⁷⁵ The law provides discretion to judges to depart from mandatory minimum sentences in cases of domestic violence if those sentences would be “unduly harsh” in light of the nature and circumstances of the crime and the defendant’s history, character, and condition. The law defines domestic violence broadly to include acts committed by anyone in an “intimate relationship” with the victim.⁷⁶ A related provision of criminal procedure establishes that the law can serve as a basis for resentencing survivors who are serving at least eight years for offenses committed before the effective date of the law.⁷⁷ Patrice requested resentencing under this provision, which the district attorney opposed. The court held that the law applied to Patrice’s case, based on its finding that Patrice had been subjected to substantial physical, sexual, and psychological abuse that significantly contributed to her committing the offense. Patrice had served over 20 years before her sentence was vacated; she was released in 2020.⁷⁸

Girls are Criminalized for Reporting Abuse

Law enforcement officers are charged with protecting victims of crime; but they, themselves, perpetuate the abuse to prison pipeline when they file false reporting charges against girls who report assault or trafficking.⁷⁹ Charging survivors with false reporting reflects the lack of credibility often afforded to victims of gender-based violence.⁸⁰ A recent ethnographic study found that detectives' determination that a survivor has filed a false report involves a complex combination of factors, including "the institutional frames of the department and the individual-level attitudes of the detective including adherence to rape myths." It concluded:

[W]e found that detectives' construction of false reports is not only an individual-level phenomenon, but speak[s] to wider structural issues such as policing culture and societal views about rape....

The findings do not suggest that detectives believe all sexual assault cases are false reports, but they do hold the belief that false reporting occurs more frequently than the statistics indicate, suggesting that the rape myth of the lying victim/false report continues to be salient in [the jurisdiction], and potentially policing culture. Adherence to the myth of the lying victim continues to shape how detectives view, understand, and respond to sexual assault and victims.⁸¹

Despite guidance issued by the FBI and the International Association of Chiefs of Police recommending against filing false reporting charges in these cases,⁸² women and girls are significantly vulnerable to this form of criminalization. According to Deborah Tuerkheimer, former assistant district attorney and author of *Credible: Why We Doubt Accusers and Protect Abusers*:

Most women who come forward with an abuse allegation against a man will confront the credibility discount. Judging credibility is a mighty power—because credibility is itself a form of power. Whenever we judge credibility, we are in a position to value, or to devalue, the speaker. ... The most vulnerable women experience credibility discounting at its most extreme, while men who are protected by greater status or position are the beneficiaries of massive credibility boosts.⁸³

A leading researcher on the prosecution of rape victims has observed that "the vulnerability of the complainant is a key factor in determining who gets charged with falsely reporting a rape. Vulnerable complainants are easier targets because they have fewer resources—both social and financial—with which to challenge the police's treatment of them."⁸⁴



Girls are a particular target of the “credibility discount.” Research shows that interviewers often engage in “characterological victim blaming” of girls.⁸⁵ In fact, adolescent girls, who experience particularly high rates of sexual assault, paradoxically are also more likely to be discredited than *both* older and younger victims. Research has shown that adults view teenagers who allege sex abuse as less credible than younger children “in part because ... adults view children as losing their sexual naiveté, and thus become capable of instigating lies about sexual abuse, at around 12 years old.”⁸⁶ At the same time, adolescents are viewed as less credible than adult survivors: “Adult stereotypes of adolescents may lead them to perceive adolescents’ stories as less credible than adults’, particularly when the victim was involved in illegal or experimental adolescent behavior (e.g., drinking alcohol).”⁸⁷ According to the authors of a study on police refusal to submit sexual assault kits:

Adolescents are often singled out by police as being particularly less credible, as law enforcement believe that their claims of rape are fabricated to cover up for “bad behavior” (being out late, drinking) and to try to avoid getting into trouble with their parents for those behaviors.⁸⁸

Treating victims with undue skepticism and hostility creates disincentives for victims to report abuse which, in turn, reduces opportunities for them to receive critical forms of support.⁸⁹ It can also bias investigations and thwart the investigation of gender violence—and, by extension, place more women and girls in the community at risk of harm.⁹⁰

In addition, disbelieving survivors can traumatize them as victims⁹¹ in what has been described as “‘secondary victimization’: insensitive, victim-blaming treatment that makes survivors feel as though they are being [re-victimized] by the systems that are supposed to help them.”⁹² This treatment can exacerbate girls’ culturally imposed tendency to blame themselves for the abuse they experience, which, studies show, can lead to anxiety, depression, PTSD, and suicidal ideation.⁹³

SIDEBAR

MARIE’S STORY

The story of Marie, an 18-year-old resident of Washington State, illustrates police officers’ tendency to doubt the accounts of young people who report sexual assault and investigate cases in ways that confirm their bias.

Marie reported that she had been bound, gagged, and raped at knifepoint by a man who had secretly surveilled her. Within a week, police picked her up and took her to the station, where they confronted her with inconsistencies in her story—a common occurrence among victims who experience trauma.⁹⁴ Marie recanted her claim under pressure by the detectives. She then reinstated it, and again recanted, in circumstances that she later characterized as duress. She was charged and pled guilty to filing a false report.⁹⁵ After agreeing to a sentence of a year of probation and \$500 in court costs, the charges were dropped.⁹⁶

In the next several years, the same person raped five other women.⁹⁷

The police chief later requested reviews of the investigation. These reviews determined that the detectives had “bullied,” “hounded,” and “coerced” Marie; ignored evidence of the crime; and focused on “minor inconsistencies” in her story, despite the well-established frequency of such inconsistencies among sexual assault survivors. The conclusion: the detectives had purposely elicited a confession of false reporting. According to a sex-crimes unit supervisor, their actions amounted to “nothing short of the victim being coerced into admitting that she lied about the rape,” which compounded the trauma of her assault.⁹⁸

The case gained national attention when a Pulitzer Prize-winning article was published in 2015 by Pro Publica and The Marshall Project; it also became the subject of a Netflix documentary.⁹⁹ As of the time of this publication, the detectives have not been disciplined.¹⁰⁰

Many survivors have attested to the profound harm inflicted by authorities' hostile responses to their pursuit of accountability.¹⁰¹ Chanel Miller describes her decision to press charges against Brock Turner, who raped her behind a dumpster while she was unconscious, as naive:

I didn't know that if a woman was drunk when the violence occurred, she wouldn't be taken seriously. I didn't know that if he was drunk when the violence occurred, people would offer him sympathy.... I didn't know that being a victim was synonymous with not being believed.¹⁰²

Women and girls who are viewed as promiscuous—a common gender stereotype that is often levied against marginalized girls—are even less likely to be perceived as credible. One study, for example, found that detectives “dismissed rape allegations by women they believed were involved in [the sex trade] as ‘economic crimes’” In other words, they believed that the women only “alleged rape when they were not paid.”¹⁰³

Discrediting survivors is especially common for girls with intersectional identities.¹⁰⁴ According to Tuerkheimer:

When women belong to groups that are marginalized, subordinated, or otherwise vulnerable, their allegations are even less likely to be credited. Class matters. Line of work matters. Immigration status matters. Drug and alcohol use matters. Sexual history matters. Sexual orientation matters. Nowhere are the particulars more important than when it comes to race, which is ‘inextricable from gender’....¹⁰⁵

Black girls, in particular, are targeted by stereotypes that portray them as hypersexualized, seductive, and exploitative of men's weaknesses.¹⁰⁶ These deeply racist perceptions are firmly ingrained in American culture. Anita Hill described her experience testifying before the Senate Judiciary Committee in 1991 about being sexually harassed by now-Justice Clarence Thomas: “Falsely casting me as an erotomaniac ... fit neatly within the myth of [B]lack women's sexuality.”¹⁰⁷

Age matters too. Stereotypes of Black girls warp adults' perception of them; they tend to view Black girls as young as 5-9 years old as more adult-like and more knowledgeable about sex than their white peers.¹⁰⁸ In the context of sexual abuse, this adultification bias may translate into authorities' dismissal of Black girls' reports. In fact, one study showed that in some circumstances, “even 6-year-old Black girls are perceived as less credible (and perhaps more sexual) than 6-year-old [w]hite girls,” and less traumatized by their victimization than white girls.¹⁰⁹

[I]nterrogators fail to recognize [Black girls] as ... [victims], but instead see them as mature, competent, and self-reliant ... [because] of adultification bias. The dominant narrative depicting [Black girls] as mature women, competent about sex and capable of consent, provides a readily available explanation for their traumatic experience.¹¹⁰

Ultimately, the practice of retaliating against women and girls who report sexual abuse excuses—and in so doing, perpetuates—gender-based violence.¹¹¹ In the words of Chanel Miller:

Victims are often, automatically, accused of lying. ... Why is it that we're wary of victims making false accusations, but rarely consider how many men have blatantly lied about, downplayed, or manipulated others to cover their own actions?¹¹²

GIRLS ARE CRIMINALIZED OR PUNISHED AT SCHOOL FOR REPORTING SEXUAL HARASSMENT AND ABUSE

Schools should function as safe havens that nurture and protect youth; but they contribute to the abuse to prison pipeline for girls when they punish students who report sexual abuse and harassment. In an echo of police officers' discounting of girls' claims of sexual abuse, schools sometimes discipline girls who report harassment or abuse despite the protections offered by Title IX, the federal law that bans sex discrimination in federally funded schools. Schools have been shown to have suspended, expelled, and otherwise disciplined girls who have reported sexual assault, turning blame for the abuse onto the victims.¹¹³ And exclusion increases survivors' risk of involvement in the legal system.¹¹⁴

This pattern ripples across the country. In Georgia, for example, a 16-year-old Black girl was suspended and then expelled in 2017 for "sexual impropriety" after reporting sexual assault.¹¹⁵ That same year, a 14-year-old Latina girl was suspended in Florida for "inappropriate sexual behavior" after reporting that she was raped. In New Jersey, a Black high-school girl was suspended for "disorderly conduct" in 2016 after reporting she was sexually assaulted on a bus.¹¹⁶

Racial bias further increases the risk of punishment for students of color who report abuse. According to Shiwali Patel of the National Women's Law Center,

[D]iscriminatory responses from schools are far too common, particularly towards girls of color and especially [B]lack girls, who—because of harmful race and sex stereotypes—are too often disbelieved, misperceived as the initial aggressor when they defend themselves against harassment, face minimization of their harm, or are blamed for their victimization.¹¹⁷

The role of schools in the sexual abuse to prison pipeline points to the need for policies that end school pushout for girls who experience sexual violence and harassment. Instead, schools must meet their obligation to students by investigating claims fairly; providing support to young people who experience sex discrimination, harassment, and abuse; and providing opportunities for healing and safety to girls and youth.¹¹⁸





Disrupting the Abuse to Prison Pipeline: Progress in Policy and Legislation Since 2015

Progress in developing systemic reform to end the criminalization of survivors has been slow.¹¹⁹ Still, in the last several years, policies and laws adopted at both the federal and state level have begun to meaningfully reduce the criminalization of sexual abuse survivors.

The White House and Federal Agencies

In 2015, the White House adopted the language of the abuse to prison pipeline report and called for reducing its harms. In President Obama's speech to the Congressional Black Caucus that year, for example, which showcased his administration's commitment to expanding its youth-justice work, he recognized that work to reduce youth pipelines into the prison system should not focus only on Black boys:

[A]lthough in these discussions a lot of my focus has been on African American men and the work we're doing with My Brother's Keeper [an initiative launched in 2014 to support boys and young men of color], we can't forget the impact that the system has on women, as well. The incarceration rate for [B]lack women is twice as high as the rate for white women. Many women in prison ... have been sexually assaulted, both before they got to prison and then after they go to prison. ... **[W]hile boys face the school-to-prison pipeline, a lot of girls are facing a more sinister sexual abuse-to-prison pipeline.** ... So we're focusing on boys, but we're also investing in ways to change the odds for at-risk girls—to make sure that they are loved and valued.¹²⁰

President Obama later emphasized his administration's prioritization of disrupting the pipeline for girls when he proclaimed January as National Slavery and Human Trafficking Prevention Month, noting, "[W]e have worked to address the sexual abuse to prison pipeline that disproportionately affects those especially vulnerable to sex trafficking—including young women and girls of color."¹²¹ His administration convened a meeting entitled "Girls of Color and Intervening Public Systems: Interrupting the Sexual Abuse to Prison Pipeline," which invited young women and girls and national experts to discuss strategies to dismantle the sexual abuse to prison pipeline and promote better outcomes for girls of color.¹²² Further, in 2015, the White House Council on Women and Girls acknowledged the role that status offenses—violations that often are indicators of underlying abuse—play in increasing girls' routes into the system:

The most common offenses for which girls are arrested include running away and truancy. These behaviors are also the most common symptoms or outcomes of trauma and abuse. Once in the system, girls may be treated as offenders rather than girls in need of support, perpetuating a vicious cycle that is increasingly known as the 'sexual abuse to prison pipeline.'¹²³

Other federal agencies, including the US Department of Justice's Office on Violence Against Women¹²⁴; its Office of Justice Programs;¹²⁵ and its Office of Juvenile Justice and Delinquency Prevention (OJJDP),¹²⁶ as well as the Federal Interagency Reentry Council,¹²⁷ have also recognized the pipeline and taken action to break the cycle. In discussing funding directed at increasing the availability of programs focused on girls in the youth legal system, OJJDP highlighted that trafficked girls often become caught up in the system and that 73 percent of girls in the system "had past histories of physical and sexual abuse."¹²⁸

Federal Policy and Leadership

Federal lawmakers have addressed—and continue to address—the pipeline through legislation and leadership. We describe below some of the most promising and noteworthy examples.

In 2015, former Congresswoman and current Los Angeles Mayor Karen Bass hosted a congressional briefing on Capitol Hill on legislative strategies to help curb the abuse to prison pipeline and better protect survivors of violence and exploitation.¹²⁹ Several current and former Members of Congress made remarks at the briefing, including Representatives Barbara Lee, Bonnie Watson Coleman, Judy Chu, Hank Johnson, Bobby Scott, and Ted Poe.¹³⁰ In 2017, the Senate Judiciary Committee held a hearing in which formerly incarcerated girls and experts on the abuse to prison pipeline testified about the need for federal and state reform to dismantle the harmful cycle for girls.¹³¹ The hearing contributed to the introduction and eventual passage of bipartisan legislation explicitly addressing the criminalization of girls and survivors of abuse and exploitation: the *Juvenile Justice Reform Act of 2018 (JJRA)*.¹³²

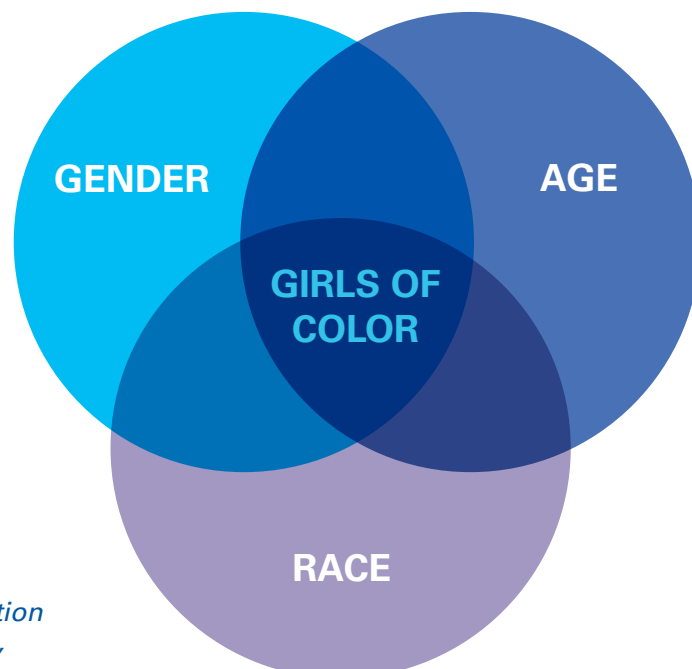
The JJRA includes several provisions that align with recommendations in our 2015 report. For example, it requires states to develop policies and procedures to screen all youth upon intake at juvenile justice facilities for human trafficking, document the number identified, and refer those children to appropriate services.¹³³ The law also follows two of our recommendations to reduce inappropriate treatment of pregnant girls in the system. First, it requires facilities to collect data on the number of pregnant girls in secure detention and, perhaps most critically, it requires states to implement plans to eliminate the use of restraints on pregnant girls in correctional facilities during labor, delivery, and post-partum recovery, barring evidence of an immediate and serious threat to hurting herself or others.¹³⁴ In addition, the law echoes our report's call for states to create "a plan to provide alternatives to detention for status offenders [and] survivors of commercial sexual exploitation . . . such as home-based or community-based services or treatment."¹³⁵ Finally, the JJRA follows our recommendation that at least one member of each State Advisory Group have expertise in sexual abuse and sexual exploitation.¹³⁶

More recently, in 2022, President Biden signed the *Violence Against Women Reauthorization Act (VAWA)* into law, which includes several important provisions that will help prevent the pipeline for survivors. After years of advocacy, the law expands tribal courts' jurisdiction over non-Natives who commit crimes—including sexual assault, child abuse, sex trafficking, and stalking—against Native people.¹³⁷ The law also increases support and services to survivors of gender-based violence from marginalized communities, among other important updates.¹³⁸

Also of note, the Senate passed a resolution in 2015 to promote the principle that trafficked children should not be viewed as prostitutes. Senate Resolution 81 expresses "the sense of the Senate that children trafficked for sex in the United States should not be treated or regarded as child prostitutes because there is no such thing as a 'child prostitute'— only children who are victims or survivors of rape and sex trafficking" and encourages federal agencies to treat them as such.¹³⁹

Other bills related to the pipeline have been introduced but have not passed. For example, the *First Step Implementation Act of 2021* sought to retroactively end juvenile life sentences and *de facto* life sentences without parole. The legislation would have allowed individuals who

THE CREDIBILITY DISCOUNT FOR GIRLS OF COLOR



* *Girls of color stand at the intersection of anti-credibility bias against youth, women, and people of color.*

were convicted of crimes as minors to petition the court for sentencing review after serving at least 20 years.¹⁴⁰ The bill also outlined a process for sealing and expunging certain nonviolent juvenile records.¹⁴¹ When deciding whether to reduce prison terms, the bill instructed courts to consider “the family and community circumstances of the defendant at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system.”¹⁴²

In addition, the *Childhood Offenders Rehabilitation & Safety Act* was introduced in 2021 to limit the transfer of youth into the adult legal system.¹⁴³ The legislation established a minimum age of 12 to hold children criminally liable and the minimum age for a child to be tried as an adult to 16.¹⁴⁴ The bill also sought to eliminate the felony murder rule—which allows defendants accused of committing a violent felony to be charged with murder if the felony resulted in death—for minors, and it forbid placing children in federal adult correctional facilities.¹⁴⁵ The legislation also required data to be collected on children who are adjudicated in federal criminal courts or detained in federal custody.¹⁴⁶ Finally, the bill established a grant program to promote greater collaboration between child welfare and juvenile justice systems to improve outcomes for at-risk youth, including victims of commercial sexual exploitation.¹⁴⁷

Also in 2021, legislation was introduced in Congress that would allow trauma-informed sentencing for young survivors accused of harming their abusers. The bill provided discretion to federal judges to deviate from mandatory minimum sentencing guidelines to reduce sentences in cases where the defendant was under 18.¹⁴⁸ This bill, known as *Sara’s Law and the Preventing Unfair Sentencing Act*, sought to provide important protections for child sex crime survivors by allowing judges to take into account a defendant’s age, trauma history, and reduced culpability in sentencing.¹⁴⁹ It was named in honor of Sara Kruzan, who was 16 years old when she shot and killed a man 20 years her senior who began sexually abusing and exploiting her at the age of 13.¹⁵⁰ She was tried as an adult and was prohibited from presenting evidence about her abuse. Sara was sentenced to life without parole. After a campaign was launched in her behalf, Sara was released after serving 18 years and later pardoned.¹⁵¹ If passed, the bill would represent significant progress at the federal level for survivors of sexual abuse. In Sara’s words:

I was an 11-year-old child when I was approached by a man I thought was safe. He exploited my innocence, and he set into motion a two-year process of grooming defined by repeated physical, psychological and sexual violence. When I turned 13, he began sex-trafficking me. Three years later, I shot and killed my abuser while he was again attempting to rape me in a hotel room. I was only 16. I was arrested and prosecuted, and by the time I was 17, I had been sentenced to life without the possibility of parole plus four years. I was wounded by an abusive system, incarcerated for almost 20 years and relegated to the shadows of our society.¹⁵²

Finally, the *Prohibiting Detention of Youth Status Offenders Act of 2022* was designed to ban the “valid court order” (VCO) exception, a legal loophole that allows children who commit noncriminal status offenses, like running away or truancy, to be incarcerated in juvenile detention facilities.¹⁵³ The bill included the finding that the VCO has led to “thousands of youth being placed in secure detention” for these nonviolent violations.¹⁵⁴ It further found that girls are more often sent into the legal system for these acts than boys, and that girls often commit these offenses in response to abuse or trauma.¹⁵⁵

States' Safe Harbor Laws: Eliminating Prostitution Charges for Children

In recent years, more states have enacted “safe harbor” laws, which protect youth from arrest or prosecution on prostitution and related charges. While approximately 12 states had safe harbor laws in 2015, a majority of states have some form of this legislation today.¹⁵⁶ The provisions of these laws range from prohibiting the arrest of any minor on a charge of prostitution—the most protective mechanism¹⁵⁷—to permitting youth to assert an affirmative defense to a prostitution charge, to proscribing or mandating diversion for children prosecuted on charges of prostitution in lieu of adjudication.¹⁵⁸

Some state laws go further, protecting survivors from a broad array of charges so long as the acts were committed while the child was being trafficked or was directly related to their exploitation. Ohio, for example, enacted a series of protections for child victims charged with crimes during the period of exploitation. The Ohio Supreme Court has directed juvenile courts to interpret these protections broadly regardless of the child’s criminal history or the charges filed against them.¹⁵⁹

Despite the progress that safe harbor statutes represent, they offer little practical protection from criminalization if unaccompanied by mechanisms that support implementation. Data on safe harbor implementation is limited, but studies have found limited improvement in the rates of arrests of trafficked children after many of these laws have gone into effect.¹⁶⁰ According to the *Washington Post*, for example, in Nevada alone, at least 110 children were arrested on prostitution-related offenses in 2019, despite the state’s safe harbor law.¹⁶¹

Robust implementation of safe harbor laws can be limited by many factors, such as failure to commit to enforcement or lack of awareness, cross-system communication, training, or effective screening tools for first responders and other system actors.¹⁶² Minnesota provides an example: according to a 2017 evaluation of the implementation of its safe harbor law, the legislation increased awareness of sexual exploitation among service providers, school officials, and law enforcement, resulting in greater understanding of what constitutes child sex trafficking and how to identify and respond to victims.¹⁶³ The law also led to expansion in available services, including housing beds. Despite these gains, however, enforcement varied widely,¹⁶⁴ in part due to communications challenges when coordinating services across agencies.¹⁶⁵

Limited resources and intervention options can also undermine enforcement of safe harbor laws. Often, authorities decide to detain survivors because they believe it is the only means of keeping them safe. This approach sacrifices victims’ freedom in the name of “protection,” despite their status as crime victims.¹⁶⁶ To create grounds to justify locking them up, sexually



exploited children are brought into the system on prostitution or proxy charges.¹⁶⁷ The injustice inherent in this treatment of child survivors was recognized by the Nevada Supreme Court in 2016, when it decried the practice of charging youth with offenses “just to get the child off the street.”¹⁶⁸

In addition to depriving young people of their liberty, this approach also operates on the false premise that detention necessarily offers children safety. Detention is far from safe, especially for girls who have experienced abuse: according to one study, children who had experienced prior abuse were 52 percent more likely to experience sexual violence in detention. Meanwhile, those who have been previously abused in another detention center were 697 percent more likely to experience sexual abuse in subsequent facilities.¹⁶⁹

Enforcement and application of safe harbor laws are also vulnerable to authorities’ race and gender bias,¹⁷⁰ which can contribute to the disproportionate punishment of exploited Black girls as criminals rather than victims of sexual violence.¹⁷¹ Studies show that Black girls are more likely to be arrested for prostitution, more likely to be adjudicated, and more likely to be detained in a locked facility than white girls, even after being identified as victims of trafficking.¹⁷²

Survivor Justice in the States: Protecting Survivors Who Commit Offenses in Connection with Sexual Abuse

Growing recognition of the injustice of criminalizing trafficking survivors for coerced criminal acts has led to the adoption of vacatur and expungement laws in almost every state.¹⁷³ Though most states provide some degree of criminal-record relief for trafficking survivors, the extent of the support they provide varies widely. In some states, for example, vacatur laws only apply to minor victims of trafficking.¹⁷⁴ Despite the variance among these statutes, their widespread adoption across the country is a promising step toward addressing the harms of the pipeline for survivors of trafficking by clearing criminal records and allowing victims the chance to move forward with their lives. Of course, vacatur laws represent a limited form of justice because they are premised on victims’ having entered the legal system; ideally, survivors would not have a criminal record in the first place.

More “upstream” protection has come in the form of state laws that protect child survivors of sexual abuse from being charged, sentenced, or incarcerated for extreme periods for crimes stemming from their exploitation, including for harming their abusers. Below, we highlight four examples of state approaches to reduce the criminalization of child survivors:

- In California, the *Justice for Survivors Act*¹⁷⁵ went into effect on January 1, 2022. This law provides an affirmative defense to defendants charged with non-violent offenses¹⁷⁶ for actions that were committed as a direct result of trafficking and sexual violence.¹⁷⁷ The law requires prosecutors to consider the impact of sexual violence and trafficking on victims and their age in plea negotiations. It also encourages judges to consider whether trauma, age, or sex trafficking contributed to the offenses when sentencing and re-sentencing.

The law was inspired by a Black teenage girl who was sentenced as an adult to almost 10 years for offenses committed while she was being trafficked. According to State Assemblywoman Sydney Kamlager, who introduced the bill, the legislation represents “an opportunity to correct unjust outcomes of the past and provide full context of the experiences that might impact a person’s actions and use a more humanizing and trauma-informed response to criminal adjudication.”¹⁷⁸ When the bill passed committee, Assemblywoman Kamlager stated: “[T]oday brings us closer to acknowledging the role sexual abuse plays in criminal behavior and ending the abuse to prison pipeline.”¹⁷⁹

- In Virginia, a child sex-crime victims protection act was passed in 2020 that prohibits all mandatory minimum sentences for children and requires judges to consider adverse childhood experiences, childhood trauma, child welfare involvement, and the differences between children and adults in sentencing youth.¹⁸⁰ The legislation's lead sponsor, Delegate Vivian Watts, explained the drive behind the legislation: "A life sentence for a young girl who kills her sex trafficker is anything but trauma-informed or age-appropriate. Under our new law, after the judge considers the child's exposure to trauma, he or she can depart from any mandatory minimum and suspend any sentence that would otherwise be required for an adult....[W]e've created a paradigm shift that should prevent tragic injustices...from ever happening in Virginia."¹⁸¹
- In New York, the *Domestic Violence Survivors Justice Act (DVSJA)*,¹⁸² passed in 2019, authorizes courts to impose alternative sentences for survivors of domestic violence—broadly defined to include any intimate relationship—if the underlying offense was committed against the abuser and was influenced by abuse when offense was committed.¹⁸³ Though the law does not specifically mention youth, courts have applied the law to adults who were convicted as minors: Patrice Smith, for example, whose case is detailed above, was released in 2020 pursuant to the law.¹⁸⁴
- In Wisconsin, an affirmative defense law enacted in 2018 protects trafficking survivors from being prosecuted for "any offense" committed as a direct result of trafficking.¹⁸⁵ Child trafficking survivor Chrystul Kizer, whose story is outlined above, successfully argued before the Wisconsin State Supreme Court that this statute can apply to her case and provide a complete affirmative defense to the murder charges pending against her.¹⁸⁶

These efforts represent significant progress in reducing the abuse to prison pipeline for girls; but much work remains to end it. Whenever a child is charged with offenses against his or her abuser, courts should have the information, resources, and authority to respond in a manner that is trauma-informed and developmentally appropriate for youth survivors.





Recommendations

Below, we offer a set of principles to guide action to end the pipeline. In all cases, reform must be informed by survivors' own experiences, perspectives, and input. We hope these concepts will move researchers, policymakers, and others to engage in the critical systems change needed to build a world where all girls can live their lives to their full potential without fear of violence or exploitation.

1. **Prevent Gender-Based Violence.** Gender-based violence in the US remains pervasive. In fact, a recent survey by Thomson Reuters revealed that the US was the only Western nation to rank in the top ten most dangerous countries for women, measured by the risk of sexual violence and harassment.¹⁸⁷ And violence starts early for many. Childhood abuse, in turn, increases the risk of poorer long-term health and wellness.¹⁸⁸ We must invest in preventing gender-based violence so that all girls and young women can live in freedom and safety.

“The abuse of women and girls is the most pervasive and unaddressed human rights violation on earth.”

—President Jimmy Carter¹⁸⁹

2. **End the Credibility Discount Against Girls and Hold Law Enforcement Accountable for Disregard of Abuse Claims.** In light of the evidence that unambiguously shows the pervasiveness of sexual violence against young women and girls,¹⁹⁰ it is time to end the discrediting of girls who report sexual abuse. This cultural change must be anchored in structural, systemic reform that treats claims fairly and provides girls with safety, accountability, and healing.

This means ending the practice of filing false reporting charges against survivors who report abuse. Unwarranted suspicion of girls who report abuse creates disincentives to seek justice, interferes with fair investigations, sows mistrust in the legal system, and perpetuates a culture in which rape is normalized. Most importantly, it exacerbates survivors' existing trauma, compounding the harm they have already experienced and depriving them of the resources needed to heal.

“[O]ne of the most overlooked yet effective ways to create social change is to just believe the stories that girls and young women of color tell us.”

—Salamishah Tillet & Scheherazade Tillet¹⁹¹

3. **Decriminalize and Support Girls who have been Sexually Abused and End the Punishment of Children Who Act Against Abusers in Self-Defense.** The abuse to prison pipeline is driven by behavior that is rooted in responses to sexual violence—including violent or defensive behaviors to protect against sexual violence or exploitation. Girls who survive gender-based violence should be recognized as victims of crime and protected from prosecution and harsh sentences for acts related to their victimization. Punishing victims reinforces the message that survivors receive from their abusers: that they are responsible for what has happened to them; that no one will believe them if they try to escape or seek help; that they will be punished for the abuse they survived; that their lives do not matter. Reforms must be enacted to expressly ban the arrest and incarceration of victims for offenses related to the gender-based violence they have survived; to educate and train authorities about the pipeline; and to build systems of support to address the trauma inflicted by sexual abuse.¹⁹²

“I can’t tell you how many times I was arrested. And I’m standing there in handcuffs and the ‘john’... has a little talk with the police and they say, ‘Go on home now, let’s not see you out here anymore tonight.’ And I go to jail. You know, as a young person, I’m standing there with handcuffs on looking at the situation thinking, ‘Why am I the criminal? Why isn’t he getting in trouble?’”

—Noel¹⁹³

4. **Address the Disproportionately High Rates of Sexual Abuse Against Girls with Intersecting Identities.** Girls of color, girls with disabilities, LGBTQI+ and gender expansive youth, immigrant girls, and other girls who experience adversity continue to experience violence at disproportionate rates and are more likely to be blamed and punished for the abuse they have survived. While all youth who experience violence deserve to be supported as child victims of crime, inequities rooted in discrimination and bias merit special consideration.

“Everybody loves to throw around the term intersectionality. And for valid reason...we need to have an intersectional approach and an intersectional lens when we talk about any form of gender-based violence, especially when it’s on the premise of race. But what I want people to understand is that many of our current, what I call the injustice systems, they don’t have that intersectional lens. And if you don’t understand the intersectionality between race, between capitalism, between patriarchy and misogyny, specifically when it comes to sexual violence, you’re not going to understand why our system isn’t working.”

—Melanie Thompson¹⁹⁴

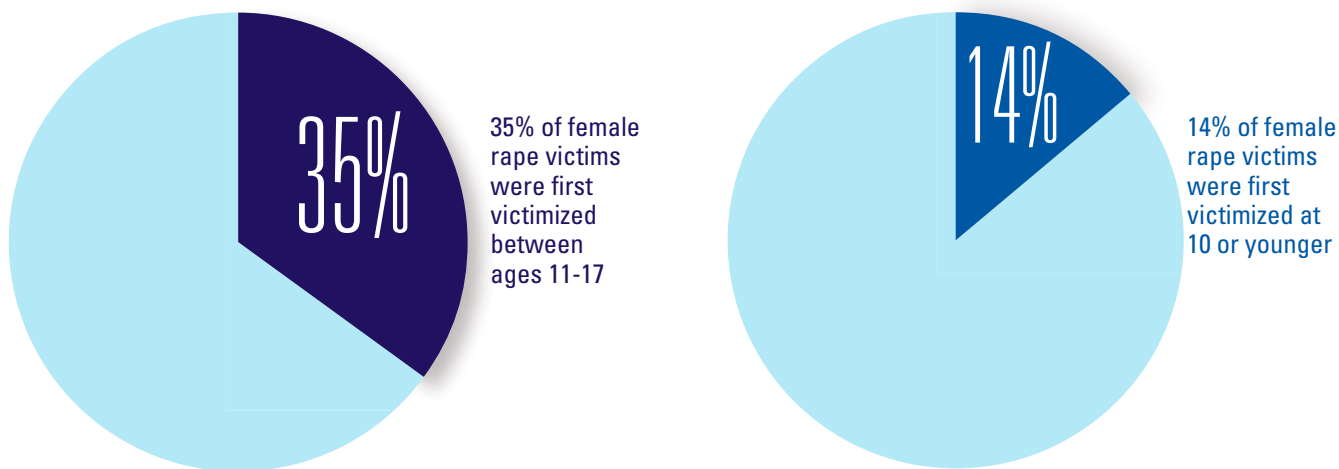
5. **Ensure that Efforts to Address Gender-Based Violence Account for the Unique Experiences and Vulnerabilities of Adolescent Girls.** Gender-based violence is committed against even the youngest girls.¹⁹⁵ According to the CDC, nearly 35 percent of female rape victims were first victimized between ages 11 and 17; 14 percent were age 10 or younger.¹⁹⁶ The impact is long lasting and generational, tending to repeat in future patterns of adversity.¹⁹⁷ Yet despite the unique factor of age, children, and particularly adolescent girls—who experience the highest rates of sexual violence—are often grouped with women in research, reports, and policy reform. Young girls and adolescents must be recognized as distinct and explicitly protected against sexual abuse.

“My stepdad was an abusive person. Both to my mom and to me and my sister. Physically and sexually to me and my sister. I would say when I look back now there was a pattern going on. Little patterns, you know, starting out with the bathing at six; ‘Don’t worry I have the kids, you can go to the store’. At eight, there were road trips that my mom didn’t come on. So the pattern started building. I know that my sister protected me a lot of the times, and she endured more than I did just to protect me. So, growing up in it, I assumed it was normal.”

—Bobette¹⁹⁸

Acting on these principles can help bridge remaining gaps in ending the abuse to prison pipeline. It is our hope that this report will illuminate harmful patterns of unjust criminalization and provide guidelines that promote action in eliminating this inequitable treatment of girls.

GIRLS ARE RAPED AT YOUNG AGES



First Victimization of Female Rape Victims by Age

* KATHLEEN C. BASILE ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON SEXUAL VIOLENCE 3-5 (2022).

ENDNOTES

- ¹ Vanessa Romo, *A Teen Ordered to Pay \$150,000 to the Family of Her Rapist is Flooded With Donations*, NPR (Sept. 16, 2022, 7:41 AM), <https://www.npr.org/2022/09/16/1123354393/pieper-lewis-gofundme-iowa-human-trafficking>.
- ² RAPE, ABUSE & INCEST NAT'L NETWORK, VICTIMS OF SEXUAL VIOLENCE: STATISTICS, <https://www.rainn.org/statistics/victims-sexual-violence> (last visited Jan. 5, 2023).
- ³ CTRS. FOR DISEASE CONTROL AND PREVENTION, FAST FACTS: PREVENTING SEXUAL VIOLENCE, <https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html>.
- ⁴ Miriam Berger, *The Pandemic Caused a Global Surge in Domestic Violence. For Victims with Few Options, Abuse Has Become the New Normal*, WASH. POST (Dec. 29, 2021, 11:48 AM), <https://www.washingtonpost.com/world/2021/12/29/coronavirus-domestic-violence/>.
- ⁵ Sarah D. Sparks, *Child Abuse Cases Got More Severe During COVID-19. Could Teachers Have Prevented It?*, EDUC. WEEK (June 1, 2021), <https://www.edweek.org/leadership/child-abuse-cases-got-more-severe-during-covid-19-could-teachers-have-prevented-it/2021/06>.
- ⁶ KATHLEEN C. BASILE ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON SEXUAL VIOLENCE 3-5 (2022).
- ⁷ MALIKA SAADA SAAR, REBECCA EPSTEIN, LINDSAY ROSENTHAL, AND YASMIN VAFA, THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY (2015).
- ⁸ RAPE, ABUSE & INCEST NAT'L NETWORK, *supra* note 2.
- ⁹ ASIAN PACIFIC INST. ON GENDER-BASED VIOLENCE, FACT SHEET: DOMESTIC VIOLENCE, SEXUAL VIOLENCE, & HUMAN TRAFFICKING IN NATIVE HAWAIIAN COMMUNITIES (2020), https://www.niwc.org/sites/default/files/images/resource/factsheet_violence_native_hawaiians-2020.pdf.
- ¹⁰ THE NAT'L CTR. ON VIOLENCE AGAINST WOMEN IN THE BLACK CMTY., BLACK WOMEN & SEXUAL ASSAULT (2018), <https://ujimacommunity.org/wp-content/uploads/2018/12/Ujima-Womens-Violence-Stats-v7.4-1.pdf>.
- ¹¹ See generally REBECCA EPSTEIN, JAMILIA J. BLAKE & THALIA GONZÁLEZ, GEORGETOWN L., CTR. ON POVERTY & INEQUALITY, GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS' CHILDHOOD (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.
- ¹² RIGHTS4GIRLS, RACIAL & GENDER DISPARITIES IN THE SEX TRADE (2019), <https://rights4girls.org/wp-content/uploads/2019/05/Racial-Disparities-FactSheet-Jan-2021.pdf>.
- ¹³ SAAR ET AL., *supra* note 7. Because we do not view the juvenile justice system as just, and because we seek to humanize young people rather than label them as "juveniles," we do not use the term juvenile justice system except where strictly necessary. Instead, we use the term youth legal system.
- ¹⁴ See, e.g., Nina Papalia, James R. P. Ogloff, Margaret Cutajar & Paul E. Mullen, *Child Sexual Abuse and Criminal Offending: Gender-Specific Effects and the Role of Abuse Characteristics and Other Adverse Outcomes*, 23 CHILD MISTREATMENT 399 (2018); Terri Lewis, Erika McElroy, Nicole Harlaar & Desmond Runyan, *Does the Impact of Child Sexual Abuse Differ from Maltreated but Non-Sexually Abused Children? A Prospective Examination of the Impact of Child Sexual Abuse on Internalizing and Externalizing Behavior Problems*, 51 CHILD ABUSE & NEGLECT 31 (2016); Jessica J. Asscher, Claudia E. Van der Put & Geert Jan J. M. Stams, *Gender Differences in the Impact of Abuse and Neglect Victimization on Adolescent Offending Behavior*, 30 J. FAM. VIOLENCE 215 (2015); Nicole Tribold, Marc T. Swogger, Zach Walsh & Catherine Cerulli, *Childhood Sexual Abuse and Perpetration of Violence: The Moderating Role of Gender*, 24 J. AGGRESSION, MALTREATMENT & TRAUMA 381 (2015), <https://doi.org/10.1080/10926771.2015.1022288>. Shortly after the *Sexual Abuse to Prison Pipeline* report was published in 2015, the Department of Justice Office on Violence Against Women convened a roundtable meeting of "survivors, scholars, advocates, and community activists who focus on sexual assault and intimate partner violence against women" to "examine how criminalization policies impact the lives of African American women and girls . . . [because] they are disproportionately survivors of gender-based violence and also are over-represented among women in criminal and juvenile carceral facilities." U.S. DEP'T OF JUST. OFF. ON VIOLENCE AGAINST WOMEN, THE IMPACT OF INCARCERATION AND MANDATORY MINIMUMS ON SURVIVORS: EXPLORING THE IMPACT OF CRIMINALIZING POLICIES ON AFRICAN AMERICAN WOMEN AND GIRLS (2017), <https://www.justice.gov/ovw/page/file/926631/download>.
- ¹⁵ We use the word "abuse" throughout this report to refer to the spectrum of violence that girls experience at disproportionately high rates, including sexual violence, gender-based violence, and sexual abuse.
- ¹⁶ See, e.g., DeAnna Baumle, *Creating the Trauma-to-Prison Pipeline: How the U.S. Justice System Criminalizes Structural and Interpersonal Trauma Experienced by Girls of Color*, 56 FAM. CT. REV. 695, 695-708 (Oct. 2018); Jeremy Thompson & Chanelle Artilles, Note, *Dismantling the Sexual-Abuse-to-Prison Pipeline: Texas's Approach*, 41 T. MARSHALL L. REV. 239 (2016); Marjory Anne Henderson Marquardt, Note, *Fallacious Reasoning: Revisiting the Roper Trilogy in Light of the Sexual-Abuse-to-Prison Pipeline*, 72 STAN. L. REV. 749 (2020); Lisa Rapp, *Delinquent-Victim Youth—Adapting a Trauma-Informed Approach for the Juvenile Justice System*, 13 J. EVIDENCE-INFORMED SOC. WORK 492 (2016); Mekeila C. Cook, Ryan D. Talbert & Breanna Thomas, *A Longitudinal Study of Justice Characteristics among Girls Participating in a Sex Trafficking Court Program*, 9 HEALTH AND JUST. 1 (2021).
- ¹⁷ See, e.g., Cook et al., *supra* note 16 (finding that the younger the age of the first citation received significantly increases the amount of bench warrants and citations while youth participate in specialty, anti-trafficking court programs); Patricia K. Kerig, *Polyvictimization and Girls' Involvement in the Juvenile Justice System: Investigating Gender-Differentiated Patterns of Risk, Recidivism, and Resilience*, 33 J. OF INTERPERSONAL VIOLENCE 5, 789-809 (2018) (identifying gender differences related to polyvictimization as girls may have higher sources of risks and youth outcomes); Veena Subramanian, *Beyond Detention-as-Protection for Child Sex Trafficking Victims*, 35 U.C. BERKELEY J. GENDER, L. & JUST. 1, 137-167 (2020) (arguing that detaining child sex trafficking victims as a method of protection from outside harms exacerbates trauma and imposes lasting consequences; instead, a public health approach can target the cause of child trafficking and prevent court involvement); Jessica J. Asscher, Claudia E. Van der Put, and Geert Jan J. M. Stams, *Gender Differences in the Impact of Abuse and Neglect Victimization on Adolescent Offending Behavior*, 30 J. OF FAM. VIOLENCE 2, 215-225 (2015) (finding a relationship between sexual abuse and sexual

offenses and physical abuse to violent offenses); Krystel Tossone, Madison Wheeler, Fredrick Butcher & Jeff Kretschmar, *The Role of Sexual Abuse in Trauma Symptoms, Delinquent and Suicidal Behaviors, and Criminal Justice Outcomes among Females in a Juvenile Justice Diversion Program*, 24 *VIOLENCE AGAINST WOMEN* 8 973-993 (2018) (finding that female juvenile justice-involved youth experience more sexual abuse than non-juvenile justice-involved youth and their male juvenile justice-involved youth counterparts, yet despite this, sexually abused females have the same odds of successfully completing behavioral health diversions than non-sexually abused females); Shannon D. Chaplo, Patricia K. Kerig, et al., *Gender Differences in the Associations Among Sexual Abuse, Posttraumatic Stress Symptoms, and Delinquent Behaviors in a Sample of Detained Adolescents*, 10 *J. OF CHILD & ADOLESCENT TRAUMA* 1 29-39 (2017), <https://psycnet.apa.org/doi/10.1007/s40653-016-0122-z> (studying the effects of post-traumatic stress symptoms in detained youth with histories of sexual abuse); Jasmyn Sanders, Alexandra R. Hershberger, et al., *PTSD Symptoms Mediate the Relationship between Sexual Abuse and Substance Use Risk in Juvenile Justice-Involved Youth*, 23 *CHILD MALTREATMENT* 3 226-233 (2018) (determining that high sexual abuse rates in juvenile justice involved youth increases the risk of post-traumatic stress disorder and substance abuse, which decreases long-term outcomes); DeAnna Baumle, *Creating the Trauma-to-Prison Pipeline: How the U.S. Justice System Criminalizes Structural and Interpersonal Trauma Experienced by Girls of Color*, 56 *FAM. CT. REV.* 4 695-708 (2018) (describing how the juvenile justice system criminalizes girls because of their experiences with trauma, including racism and poverty related trauma); Jeremy Thompson & Channele Ariles, *Dismantling the Sexual-Abuse-to-Prison Pipeline: Texas's Approach*, Note, 41 *T. MARSHALL L. REV.* 2, 239-269 (2016) (analyzing Texas's reduction in prostitution related arrests after implementing alternatives for sex trafficked juveniles); Marjory Anne Henderson Marquardt, Note, *Fallacious Reasoning: Revisiting the Roper Trilogy in Light of the Sexual-Abuse-to-Prison Pipeline*, 72 *STAN. L. REV.* 749, 749-790 (2020) (arguing that criminal culpability standards should be altered to better account for girls with histories of sexual abuse); Valerie R. Anderson & Brinn M. Walerych, *Contextualizing the Nature of Trauma in the Juvenile Justice Trajectories of Girls*, 47 *J. PREVENTION & INTERVENTION IN THE CMTY.* 2, 138-153 (2019), <https://doi.org/10.1080/10852352.2019.1582141> (indicating that trauma, family violence, neglect, and sexual abuse are connected to juvenile justice trajectories).

¹⁸ See, e.g., Cook et al., *supra* note 16.

¹⁹ Hannah Critchfield, *Raped, Then Thrown in Jail: A Teen's 'Abuse-to-Prison Pipeline'*, PHOENIX NEW TIMES (Sept. 26, 2019, 10:34 AM), <https://www.phoenixnewtimes.com/news/raped-then-thrown-in-jail-a-teens-abuse-to-prison-pipeline-11357497>.

²⁰ See e.g., Char Adams, *These Women Survived Abuse and Assault. Now They're Behind Bars. Should They Be?*, VOX (Aug. 30, 2019, 11:36 AM), <https://www.vox.com/the-highlight/2019/8/23/20828367/cyntoia-brown-sexual-domestic-abuse-prison-pipeline>.

²¹ 142 S. Ct. 2228 (2022).

²² See STEPHANIE R. LARSON, WHAT IT FEELS LIKE: VISCERAL RHETORIC AND THE POLITICS OF RAPE CULTURE 136-54 (2021).

²³ Tarana Burke, *#MeToo Was Started for Black and Brown Women and Girls. They're Still Being Ignored.*, WASH. POST (Nov. 9, 2017, 8:04 PM), <https://www.washingtonpost.com/news/post-nation/wp/2017/11/09/the-waitress-who-works-in-the-diner-needs-to-know-that-the-issue-of-sexual-harassment-is-about-her-too/> ("I founded the 'me too' movement in 2006 because I wanted to find a way to connect with the black and brown girls in the program I ran." (citing to Me Too., <https://metoomvmt.org/>)).

²⁴ Jamillah Bowman Williams, *Maximizing #MeToo: Intersectionality & The Movement*, 62 *B.C. L. REV.* 1797, 1836 (2021) ("[T]he phrase 'Me Too' went from having an intersectional focus on the unique issues facing women of color to becoming mainstream, more elite, and overwhelmingly white."); Gillian B. White, *The Glaring Blind Spot of the 'Me Too' Movement*, THE ATLANTIC (Nov. 22, 2017), <https://www.theatlantic.com/entertainment/archive/2017/11/the-glaring-blind-spot-of-the-me-too-movement/546458/>.

²⁵ Burke, *supra* note 23 ("What history has shown us time and again is that if marginalized voices—those of people of color, queer people, disabled people, poor people—aren't centered in our movements then they tend to become no more than a footnote.").

²⁶ The Department of Justice's Office of Juvenile Justice & Delinquency Prevention defines prostitution and commercialized vice as "sex offenses of a commercialized nature, such as prostitution, keeping a bawdy house, procuring, or transporting women for immoral purposes. Attempts are included." U.S. DEP'T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, GLOSSARY, <https://www.ojjdp.gov/ojstatbb/glossary.html>.

²⁷ Youth arrest rates on these charges declined 51 percent overall between 2015 and 2019. CHARLES PUZZANCHERA, U.S. DEP'T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, JUVENILE ARRESTS 2019, 3 (2021). <https://ojjdp.ojp.gov/publications/juvenile-arrests-2019.pdf>.

²⁸ Yasmin Vafa, *We Changed The Language, Now Let's Change the Laws!*, HUFFINGTON POST (Apr. 6, 2016, 12:37 PM), https://www.huffpost.com/entry/we-changed-the-language-n_b_9624534 (advocating to eliminate the phrase "child prostitute" and "child sex worker" in both language and law as it unfairly implies children are able to consent to sell sex).

²⁹ Merrill Perlman, *A Matter of AP Style*, COLUM. J. REV. (Apr. 4, 2016), http://www.cjr.org/language_corner/a_matter_of_ap_style.php (announcing that the AP Stylebook recommends avoiding using phrases like "child prostitute" and "teenage prostitute" as it implies a child is voluntarily trading sex for money, which a child cannot do); see also ASSOCIATED PRESS STYLEBOOK (56th ed. 2002) ("Avoid terms like child prostitute, underage prostitute or teenage prostitute . . . [t]he phrasing can suggest that a child is voluntarily trading sex for money. Minors are not able to consent.").

³⁰ *Estimated Number of Juvenile Arrests, 2020, OJJDP Statistical Briefing Book*, U.S. DEP'T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION (2022), <https://www.ojjdp.gov/ojstatbb/crime/qa05101.asp>.

³¹ See, e.g. Jessica Contrera, *Sex-Trafficked Kids Are Crime Victims. In Las Vegas They Still Go to Jail.*, WASH. POST (Aug. 26, 2021), https://www.washingtonpost.com/dc-md-va/interactive/2021/vegas-child-sex-trafficking-victims-jailed/?hpid=hp_jessicacontrera.

³² See Brendan M. Conner, *In Loco Aequitatis: The Dangers of 'Safe Harbor' Laws for Youth in the Sex Trades*, 12 *STAN. J. CIV. RIGHTS & CIV. LIBERTIES* 43 (2016).

- ³³ According to OJJDP, “[t]rafficked girls also become involved in the juvenile justice system for offenses other than prostitution that are committed as a direct result of their exploitation, such as trespass or loitering or for status offenses such as truancy and running away.” U.S. DEP’T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, OJJDP FY 2019 SPECIALIZED SERVICES & MENTORING FOR CHILD & YOUTH VICTIMS OF SEX TRAFFICKING & SEXUAL EXPLOITATION, FY 2019 COMPETITIVE GRANT SOLICITATION 11 (2019), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/OJJ-DP-2019-14988.PDF>.
- ³⁴ See PUZZANCHERA, *supra* note 27; KIDS COUNT DATA CTR., CHILD POPULATION BY GENDER IN THE U. S., 2019 (2021), <https://datacenter.kidscount.org/data/tables/102-child-population-by-gender#detailed/1/any/false/1729/14,15,65/421,422>.
- ³⁵ U.S. DEP’T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, JUVENILE ARREST RATES BY OFFENSE & RACE, 2019 2020, https://www.ojjdp.gov/ojstatbb/special_topics/qa11501.asp?qaDate=2019&text=yes.
- ³⁶ Under the definition of “commercial sex act” in 22 U.S.C. § 7102(4), sex trafficking does not require proof of a third-party exploiter; nor proof of force, fraud or coercion; nor proof of monetary transaction.
- ³⁷ 22 U.S.C. § 7102 (11)(a).
- ³⁸ Juvenile Justice Reform Act of 2018, Pub. L. No. 115-385, 132 Stat. 5123 (2018) (aiming to assist governments in reducing juvenile crime rates through research, training, and enacting evidence-based programming).
- ³⁹ Thomas Kika, *Teen Girl Charged with Kidnapping, Trafficking of 13-Year-Old: Police*, NEWSWEEK (June 25, 2022, 12:13 PM), <https://www.newsweek.com/teen-girl-charged-kidnapping-trafficking-13-year-old-police-1719184>.
- ⁴⁰ Spencer Norris & Brittany Wallman, *Innocence Sold: Florida’s Legal System Blurs The Line Between Sex Trafficking Survivor And Criminal, Leaving Lives Ruined*, SOUTH FLORIDA SUN SENTINEL, (Dec. 4, 2022, 6:00 a.m.), <https://www.sun-sentinel.com/local/trafficking-investigation/fl-ne-sex-trafficking-investigation-revictimizing-vic-tims-20221204-ut7qpypgpderbqn4vax3o6ahi-story.html>
- ⁴¹ *Id.*
- ⁴² *Roper v. Simmons*, 543 U.S. 551, 578 (2005).
- ⁴³ *Graham v. Florida*, 560 U.S. 48, 82 (2010).
- ⁴⁴ *Miller v. Alabama*, 567 U.S. 460, 479 (2012).
- ⁴⁵ *Id.* at 480.
- ⁴⁶ *Id.* at 486.
- ⁴⁷ *Montgomery v. Louisiana*, 577 U.S. 190, 197-98 (2016).
- ⁴⁸ See Equal Justice Initiative, *Ten Years After Miller v. Alabama*, (Jun. 24, 2022), <https://eji.org/news/ten-years-after-miller-v-alabama/>.
- ⁴⁹ *Jones v. Mississippi*, 593 U.S. ____ , 21 (2021).
- ⁵⁰ See, e.g., First Step Implementation Act of 2021, H.R. 3510, 117th Cong. (2021); see also H.R. 2858, 117th Cong. (2021).
- ⁵¹ A series of articles in *The Washington Post*, for example, has examined the criminalization of girls who are sex trafficked and cases in which girls have been criminally charged for acts of violence committed in self-defense against sexual abusers. See, e.g., Jessica Contrera, *He Was Sexually Abusing Underage Girls. Then, Police Said, One of Them Killed Him*, WASH. POST (Dec. 17, 2019), <https://www.washingtonpost.com/graphics/2019/local/child-sex-trafficking-murder/>; Contrera, *supra* note 31; Jessica Contrera, *The State of Ohio vs. a Sex-Trafficked Teenager*, WASH. POST (June 1, 2021), <https://www.washingtonpost.com/dc-md-va/interactive/2021/child-sex-trafficking-alexis-martin-ohio/>.
- ⁵² *Me Facing Life: Cyntoia’s Story* (PBS television broadcast Mar. 1, 2011); see also MURDER TO MERCY: THE CYNTOIA BROWN STORY (Netflix 2020); *Kim Kardashian West: The Justice Project* (Oxygen television broadcast Apr. 5, 2020); Survived & Punished, a national coalition formed in 2016 comprised of survivors, formerly incarcerated people, advocates, and others, organizes to support and free criminalized survivors and abolish gender violence, policing, prisons, and deportations.
- ⁵³ Ron Allen, *Cyntoia Brown, Sentenced at 16 to Life in Prison, to Plead for Leniency in Federal Court*, NBC NEWS (June 10, 2018, 4:49 PM), <https://www.nbcnews.com/news/us-news/cyntoia-brown-sentenced-16-life-prison-plea-leniency-federal-court-n881586>.
- ⁵⁴ *Brown v. Tennessee*, 2014 Tenn. Crim. App. LEXIS 1014*, No. M2103-00825-CCA-R3-PC, at *2 (Nov. 6, 2014).
- ⁵⁵ See Michel Martin, *Advocates Say Cyntoia Brown’s Case is Part of the ‘Sexual Abuse-to-Prison’ Pipeline*, NPR (Dec. 3, 2017, 6:53 PM), <https://www.npr.org/2017/12/03/567850542/advocates-say-cyntoia-browns-case-is-part-of-the-sexual-abuse-to-prison-pipeline>; Daniel Victor, *Why Celebrities Have Rallied Behind Cyntoia Brown, a Woman Spending Life in Prison*, N.Y. TIMES (Nov. 22, 2017), <https://www.nytimes.com/2017/11/22/us/cyntoia-brown-sex-trafficking.html>.
- ⁵⁶ Bobby Allyn, *Cyntoia Brown Released after 15 Years in Prison for Murder*, NPR (Aug. 7, 2019), <https://www.npr.org/2019/08/07/749025458/cyntoia-brown-released-after-15-years-in-prison-for-murder?t=1649842293691>; Christine Hauser, *Cyntoia Brown Is Freed from Prison in Tennessee*, N.Y. TIMES Aug. 7, 2019, 12:24 PM), <https://www.nytimes.com/2019/08/07/us/cyntoia-brown-release.html>.
- ⁵⁷ Jessica Contrera, *Sex Trafficking Victim Chrystul Kizer Wins Key Wisconsin Court Ruling*, WASH. POST (July 6, 2022, 11:53 AM), <https://www.washingtonpost.com/dc-md-va/2022/07/06/kizer-wisconsin-supreme-court-sex-trafficking>.
- ⁵⁸ Jessica Contrera, *Kenosha Police Under Scrutiny for 2018 Case of Chrystul Kizer, Black Teen Jailed for Killing Abuser*, DEMOCRACY NOW (Sept. 1, 2020), https://www.democracynow.org/2020/9/1/chrystul_kizer_kenosha_police_district_attorney; see also, Contrera, *supra* note 31.
- ⁵⁹ WIS. STAT. § 939.46(1m) (2019-20).
- ⁶⁰ *Id.*
- ⁶¹ *Wisconsin v. Kizer*, 963 N.W.2d 136 (Wis. 2022).

- ⁶² Rekha Basu, *Rekha Basu: The Justice System Should Punish Child Sex Trafficking, Not Victimize Pieper Lewis Again*, DES MOINES REG. (Dec. 3, 2021, 10:34 AM), <https://www.desmoinesregister.com/story/opinion/columnists/rekha-basu/2021/12/03/child-sex-trafficking-teen-guilty-plea-underage-victim-racial-disparity-pieper-lewis/8835758002/>; Remy Tumin, *Trafficked Teenager Who Killed One of Her Abusers Ordered to Pay Restitution*, N.Y. TIMES (Sept. 13, 2022) <https://www.nytimes.com/2022/09/13/us/pieper-lewis-sex-trafficking-iowa.html>; Dakin Andone, *What We Know About Pieper Lewis and Her Escape From an Iowa Residential Corrections Facility*, CNN (Nov. 7, 2022), <https://www.cnn.com/2022/11/07/us/iowa-pieper-lewis-what-we-know/index.html>; Romo, *supra* note 1.
- ⁶³ Philip Joens, *Des Moines Teen Pieper Lewis, Who Killed Alleged Rapist, Gets Probation, Deferred Judgment*, DES MOINES REG. (Sept. 13, 2022, 1:46 PM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2022/09/13/pieper-lewis-speaks-sentencing-killing-alleged-rapist-des-moines-sex-trafficking/1035899002/>.
- ⁶⁴ Andone, *supra* note 62.
- ⁶⁵ Aaron Rasmussen, *Child Sex-Trafficking Survivor Recently Freed From Prison Vows to Help Other At-Risk Youth*, INVESTIGATIVE DISCOVERY CRIMEFEED (July 28, 2021), <https://www.investigativediscovery.com/crimefeed/survivor-stories/child-sex-trafficking-survivor-recently-freed-from-prison-vows-to-help-other-at-risk-youth>; see also Contrera, *The State of Ohio vs. a Sex-Trafficked Teenager*, *supra* note 51.
- ⁶⁶ Contrera, *The State of Ohio vs. a Sex-Trafficked Teenager*, *supra* note 51; see also Jessica Contrera, Alexis Martin, *Sex Trafficking Survivor and Activist, is Back in Prison*, WASH. POST (Apr. 6, 2022, 8:30 AM), <https://www.washingtonpost.com/dc-md-va/2022/04/06/alexis-martin-prison-sex-trafficking-kardashian/>; Adam Ferrise, *Girl Faces Life Sentence After Guilty Plea in Fatal Home Invasion*, CLEVELAND.COM (Feb. 17, 2015, 7:17 PM), https://www.cleveland.com/akron/2015/02/girl_16_faces_life_in_prison_a.html.
- ⁶⁷ *Id.*
- ⁶⁸ *Id.*
- ⁶⁹ Natasha Anderson, *DeWine Commutes Sentence of Child Sex Trafficking Victim Alexis Martin, Whose Release Was Championed by Kim Kardashian West*, NBC4 OHIO (Apr. 17, 2020, 5:36 PM), <https://www.nbc4i.com/news/state-news/dewine-commutes-sentence-of-child-sex-trafficking-victim-alexis-martin-convicted-in-the-murder-of-her-pimp/>.
- ⁷⁰ Jessica Contrera, *Alexis Martin, Sex Trafficking Survivor and Activist, is Back in Prison*, *supra* note 66.
- ⁷¹ Contrera, *The State of Ohio vs. a Sex-Trafficked Teenager*, *supra* note 51.
- ⁷² MELISSA JELTSEN, *Bresha Meadows Thought You'd Understand*, HUFFINGTON POST (Oct. 17, 2019) https://www.huffpost.com/entry/bresha-meadows-thought-you-d-understand_n_5da48081e4b087efdbb23973; JONAH ENGEL BROMWICH, *Bresha Meadows, Ohio Teenager Who Fatally Shot Her Father, Accepts Plea Deal*, N.Y. TIMES, (May 23, 2017) <https://www.nytimes.com/2017/05/23/us/bresha-meadows-father-killing.html>; MELISSA JELTSEN, *Bresha Meadows, Teen Who Killed Allegedly Abusive Father, Is Finally Free*, HUFFINGTON POST, (Feb. 6, 2018) https://www.huffpost.com/entry/bresha-meadows-home_n_5a794b8be4b00f94fe945e10.
- ⁷³ *People v. Smith*, 132 N.Y.S.3d 251 (Erie Cnty. Ct. 2020).
- ⁷⁴ *People v. Smith*, 808 N.E.2d 333 (N.Y. 2004).
- ⁷⁵ N.Y. PENAL LAW § 60.12 (Consol. 2019).
- ⁷⁶ N.Y. CRIM. PROC. LAW § 530.11(1)(e) (Consol. 2020).
- ⁷⁷ N.Y. CRIM. PROC. LAW § 440.47 (Consol. 2019).
- ⁷⁸ *Smith*, 132 N.Y.S.3d at 257.
- ⁷⁹ See, e.g., Shannon Malone Gonzalez, *Making it Home: An Intersectional Analysis of the Police Talk*, 33 GENDER & SOC'Y 3 (2017) (an intersectional analysis of interviews with Black mothers discussing role of policing and socialization and determining the need for structural reform to combat police violence against Black women and girls); JOANNE ARCHAMBAULT, KIMBERLY A. LONSWAY & LISA AVALOS, *END VIOLENCE AGAINST WOMEN INT'L, RAPED, THEN JAILED: THE RISKS OF PROSECUTION FOR FALSELY REPORTING ASSAULT* (2022), https://evawintl.org/wp-content/uploads/2019-5_TB_Raped-Then-Jailed.pdf; Megan R. Greeson, Rebecca Campbell, and Giannina Fehler-Cabral, *'Nobody Deserves This': Adolescent Sexual Assault Victims' Perceptions of Disbelief and Blame from Police*, 44 J. OF CMTY. PSYCH. 90 (2016) (finding that negative treatment by police when reporting rape leads to feelings of skepticism, blame, judgment, and disbelief).
- ⁸⁰ See Deborah Epstein, *Discounting Credibility: Doubting the Stories of Women Survivors of Sexual Harassment*, 51 SETON HALL L. REV. 2, 289, 305 (2020) ("Our assessment of women's personal trustworthiness suffers from skepticism rooted in (1) uneducated expectations regarding a survivor's "appropriate" demeanor; (2) prejudicial stereotypes regarding the false motives of women seeking material assistance; and (3) the long-standing cultural tendency to disbelieve women simply because they are women."). Rates of charges of false reports of abuse are likely undercounted because the underlying reported offense is rarely tracked. Lisa R. Avalos, *Policing Rape Complaints: When Reporting Rape Becomes a Crime*, 20 J. GENDER, RACE & JUST. 459, 459-508 (2017).
- ⁸¹ STACEY DEWALD, KATHERINE LORENZ, *Lying About Sexual Assault: A Qualitative Study Of Detective Perspectives On False Reporting*, 179—199 at 179, 193, 194 (Mar. 5, 2021) <https://doi.org/10.1080/10439463.2021.1893725>.
- ⁸² INT'L ASSOC. OF CHIEFS OF POLICE, NAT'L LAW ENF. LEADERSHIP INIT. ON VIOLENCE AGAINST WOMEN, SEXUAL ASSAULT RESPONSE POLICY & TRAINING CONTENT GUIDELINES (2015), <https://evawintl.org/wp-content/uploads/IACP-Sexual-Assault-Response-Policy-and-Training-Content-Guidelines.2017.3.23.pdf>.
- ⁸³ DEBORAH TUEKHEIMER, *CREDIBLE: WHY WE DOUBT ACCUSERS AND PROTECT ABUSERS* 3, 11 (2021).
- ⁸⁴ Avalos, *supra* note 80, at 486.
- ⁸⁵ See generally Megan R. Greeson, Rebecca Campbell & Giannina Fehler-Cabral, *Cold or Caring? Adolescent Sexual Assault Victims' Perceptions of their Interactions with Police*, 29 VIOLENCE AND VICTIMS 4, 636-51 (2014); see also Jessica Shaw and Rebecca Campbell, *Predicting Sexual Assault Kit Submission Among Adolescent Rape Cases Treated in Forensic Nurse Examiner Programs*, 28 J. OF INTERPERSONAL VIOLENCE 3400 (2013), <http://dx.doi.org/10.1177/0886260513504496>; Avalos, *supra* note 80, at 486.; U.S. DEP'T OF JUST. CIV. RIGHTS DIV., *INVESTIGATION OF THE BALTIMORE CITY POLICE DEP'T* (2016), <https://www.justice.gov/opa/file/883366/download>.
- ⁸⁶ Deborah Alley, Gent Silberkleit, Daniel Bederian-Gardner & Gail S. Goodman, *Race-Based Sexual Stereotypes*

Influence Ratings of Child Victims in Sexual Abuse Cases, 2 INT'L J. ON CHILD MALTREATMENT: RESEARCH, POLICY & PRACTICE 287, 300 (2019).

⁸⁷ Greeson et al., *supra* note 85 (showing how police interact with youths after sexual assault cases impacts adolescents' emotional well-being and engagement in the criminal justice system).

⁸⁸ Rebecca Campbell & Giannina Fehler-Cabral, *Why Police "Couldn't or Wouldn't" Submit Sexual Assault Kits for Forensic DNA Testing: A Focal Concerns Theory Analysis of Untested Rape Kits*, 52 L. & SOC'Y REV. 73, 78 (2018).

⁸⁹ See Greeson et al., *supra* note 85 (revealing that interpersonal interaction with police directly impacts emotional well-being and criminal justice system engagement amongst adolescent sexual assault victims); Avalos, *supra* note 80, at 503-506 (explaining that charging victims with false reporting discourages victims from reporting, focuses police efforts elsewhere, and contributes to poor investigatory practices).

⁹⁰ *Id.*

⁹¹ See Deborah Epstein & Lisa Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility And Dismissing Their Experiences*, 167 U. PENN LAW REV. 399-461, at 446-453 (2019) (outlining the psychological harms and harms related to access to justice and safety created by the credibility discount); T. Christian Miller and Ken Armstrong, *An Unbelievable Story of Rape*, PROPUBLICA & THE MARSHALL PROJECT (Dec. 16, 2015), <https://www.propublica.org/article/false-rape-accusations-an-unbelievable-story>; Catalina Carpan, *The Adultification of Black Girls as Identity-Prejudicial Credibility Excess*, 25 ETHICAL THEORY & MORAL PRAC. 793, 1 (2022), <https://doi.org/10.1007/s10677-022-10324-6> ("The identity-prejudicial credibility excess denies the victims a meaningful opportunity to make sense of their traumatic experiences of sexual assault.").

⁹² Campbell & Fehler-Cabral, *supra* note 88 at 79.

⁹³ See Stephanie Alix, Louise Cossette, Martine Hebert, Mireille Cur, and Jean-Yves Frappier, *Posttraumatic Stress Disorder and Suicidal Ideation Among Sexually Abused Adolescent Girls: The Mediating Role of Shame*, 26 J. CHILD SEX ABUSE 158 (2017) (stating that show that child sex abuse leads to depressive symptoms, PTSD, and suicidal ideation, especially during adolescence); see also Rochelle F. Hanson et al., *Relations Among Gender, Violence Exposure, & Mental Health: The National Survey of Adolescents*, 78 AM J. ORTHOPSYCHIATRY 313 (2008) (stating that sexual abuse was significantly associated with a Major Depressive Episode or PTSD, with adolescents at greater risk for both).

⁹⁴ See Epstein & Goodman, *supra* note 91, at 410 ("Psychological trauma can operate similarly to neurological trauma in undermining the internal consistency of a survivor's story...it commonly produces memory lapses or dissociative states. Research shows that a majority of survivors meet diagnostic criteria for Post-Traumatic Stress Disorder (PTSD), and many more women exhibit serious symptoms of psychological trauma, though not enough to reach the threshold of a formal diagnosis.") (internal citations omitted).

⁹⁵ Marie's case and the five subsequent rapes of other women took place between 2008 and 2011; however, the case didn't gain national attention until a Pulitzer Prize-winning article was published in late 2015 by *ProPublica* and *The Marshall Project*. Miller and Armstrong, *supra* note 91.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*; T. CHRISTIAN MILLER AND KEN ARMSTRONG, A FALSE REPORT: A TRUE STORY OF RAPE IN AMERICA (2018); UNBELIEVABLE (Netflix 2019).

⁹⁹ UNBELIEVABLE (Netflix 2019); Miller and Armstrong, *supra* note 91.

¹⁰⁰ *Id.*

¹⁰¹ See, e.g., CHANEL MILLER, KNOW MY NAME: A MEMOIR, 170-74 (2019).

¹⁰² *Id.* at 167, 171.

¹⁰³ Campbell & Fehler-Cabral, *supra* note 88, at 78 (2018).

¹⁰⁴ Laura L. Rubino, Valerie R. Anderson & Nicole C. McKenna, *Examining the Disconnect in Youth Pathways and Court Responses: How Bias Invades Across Gender, Race/Ethnicity, and Sexual Orientation*, 16 FEMINIST CRIMINOLOGY 4, 480-503 (2021) (finding that biases affect ways courts respond to girls with intersectional identities); Kim Taylor-Thompson, *Girl Talk—Examining Racial and Gender Lines in Juvenile Justice*, 6 NEV. L. J. 1137, 1137-1164 (2006) (finding that girls of color make up nearly two thirds of the juvenile justice population and receive the most severe sentences); FRANCINE T. SHERMAN & ANNIE BALCK, GENDER INJUSTICE: SYSTEM-LEVEL JUVENILE JUSTICE REFORMS FOR GIRLS (2015) (advocating for the importance of reforming the juvenile justice system to account for gender justice); Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584, 1584-1628 (2012) (noting that policymakers must better account for intersectionality's effect on why girls enter the juvenile justice system); BARBARA M. BRENZEL, DAUGHTERS OF THE STATE: A SOCIAL PORTRAIT OF THE FIRST REFORM SCHOOL FOR GIRLS IN NORTH AMERICA, 1856-1905 (1983) (exploring institutional biases towards young, poor women in nineteenth century Massachusetts); ANNE MEIS KNUFFER, REFORM & RESISTANCE: GENDER, DELINQUENCY, AND AMERICA'S FIRST JUVENILE COURT (2001); Jill Leslie Rosenbaum & Meda Chesney-Lind, *Appearance and Delinquency: A Research Note*, 40 CRIME & DELINQUENCY 2, 250-261 (1994) (finding that appearance, physical attractiveness, and masculine or racialized characteristics affect judges and juvenile courts' perception of girls); Mary E. Odem & Steven Schlossman, *Guardians of Virtue: The Juvenile Court and Female Delinquency in Early 20th Century Los Angeles*, 37 CRIME & DELINQUENCY 2, 186-203 (1991) (finding that girls with intersectional backgrounds were not adequately protected by 20th century laws surrounding "sexual deviancy"); Meda Chesney-Lind, *Girls' Crime and Woman's Place: Toward a Feminist Model of Female Delinquency*, 35 CRIME & DELINQUENCY 1, 5-29 (1989) (arguing that existing delinquency theories inadequately address girls' victimization in a class and race context, thereby reinforcing historical oppression).

¹⁰⁵ TUEKHEIMER, *supra* note 83, at 15.

¹⁰⁶ EPSTEIN, *supra* note 11, at 5.

¹⁰⁷ TUEKHEIMER, *supra* note 83, at 19.

¹⁰⁸ EPSTEIN, *supra* note 11, at 8; Alley, et al., *supra* note 86, at 300 ("Our results ... shed light on how a negative sexual stereotype that is generally associated with Black adult females may be generalized to young Black girls.").

¹⁰⁹ Alley et al., *supra* note 86, at 300-01.

¹¹⁰ Carpan, *supra* note 91.

¹¹¹ See Tuerkheimer, *supra* note 83, at 11 (“In a patriarchal society where male sexual prerogatives are at stake, discounting operates with special potency.”)

¹¹² Miller, *supra* note 101, at 191.

¹¹³ See, e.g., Caroline Kitchener, *She Reported Her Sexual Assault. Her High School Suspended Her for ‘Sexual Impropriety.’* THE LILY & WASH. POST (Aug. 26, 2019), <https://www.thelily.com/she-reported-her-sexual-assault-her-high-school-suspended-her-for-sexual-impropriety/>; Press Release, NAT’L WOMEN’S L. CTR., NWLC Sues Georgia High School for Expelling Student Who Reported She Was Sexually Assaulted After School, (Aug. 23, 2019), <https://nwlc.org/press-release/nwlc-sues-georgia-high-school-for-expelling-student-who-reported-she-was-sexually-assaulted-after-school/>. Some school districts have tackled this problem; Seattle Public Schools and the Seattle Police Department agreed to an MOU in 2018 supporting “effective, timely, and cooperative response to incidents of sexual abuse and assault.” The MOU recognizes “the severity and impact that an incident of sexual abuse and/or assault can have on the life of a student and the school community, and the need for an effective, timely, and cooperative response in these situations.” The MOU includes a “response protocol” to be followed by the district Title IX coordinator upon receipt of information about a possible sexual assault involving a student. SEATTLE SCH. DIST. NO. 1 & SEATTLE POLICE DEP’T, MEMORANDUM OF UNDERSTANDING (2021), https://www.seattleschools.org/wp-content/uploads/2021/07/4-Memorandum-of-Understanding-SPS-and-SPD_Sexual-Assault-Investigations.pdf.

¹¹⁴ MINER P. MARCHBANKS III, JAMILIA J. BLAKE, U.S. DEP’T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, ASSESSING THE ROLE OF SCHOOL DISCIPLINE IN DISPROPORTIONATE MINORITY CONTACT WITH THE JUVENILE JUSTICE SYSTEM: FINAL TECHNICAL REPORT 34 (2018), <https://ojdp.ojp.gov/library/publications/assessing-role-school-discipline-disproportionate-minority-contact-juvenile> (noting research that shows that “school discipline is associated with both higher juvenile justice encounters”).

¹¹⁵ Kitchener, *supra* note 113 (detailing how a girl who was sexually assaulted and coerced into performing oral sex on a male classmate was expelled after reporting the incident to administrators).

¹¹⁶ Tyler Kingkade, *Schools Keep Punishing Girls—Especially Students of Color—Who Report Sexual Assaults, and the Trump Administrations Title IX Reforms Won’t Stop It*, 74 MILLION (Aug. 6, 2019), <https://www.the74million.org/article/schools-keep-punishing-girls-especially-students-of-color-who-report-sexual-assaults-and-the-trump-administrations-title-ix-reforms-wont-stop-it/>.

¹¹⁷ *Id.*

¹¹⁸ KAYLA PATRICK & NEENA CHAUDHRY, NAT’L WOMEN’S L. CTR., LET HER LEARN: STOPPING SCHOOL PUSHOUT FOR GIRLS INVOLVED IN THE JUVENILE JUSTICE SYSTEM (2017), <https://nwlc.org/resource/stopping-school-pushout-for-girls-involved-in-the-juvenile-justice-sytem/#> (highlighting that girls in the juvenile justice system face additional barriers, how lack of access to education affects girls, and how to help them receive necessary educational services); KAYLA PATRICK & NEENA CHAUDHRY, NAT’L WOMEN’S L. CTR., LET HER LEARN: STOPPING SCHOOL PUSHOUT FOR GIRLS WHO HAVE SUFFERED HARASSMENT AND SEXUAL VIOLENCE (2017), https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_HarassmentViolence-1.pdf (examining how higher rates of sexual harassment and violence in girls impacts their education).

¹¹⁹ Tuerkheimer, *supra* at note 83 (explaining how hidden biases distort perceptions of credibility, which harms survivors by continuing to marginalize them); see also BRITTANY DAVIS, CTR. FOR CT. INNOVATION, CRIMINALIZATION OF BLACK GIRLS IN THE JUVENILE LEGAL SYSTEM: OVERVIEW OF PATHWAYS TO CONFINEMENT AND STRATEGIES FOR SUPPORTING SUCCESSFUL REENTRY (2020), https://www.courtinnovation.org/sites/default/files/media/documents/2020-11/Monograph_Criminalization_Black_Girls_09092020.pdf (noting that Black girls are the fastest growing population in the juvenile justice system).

¹²⁰ President Barack Obama, *Remarks by the President at the Congressional Black Caucus 45th Annual Phoenix Awards Dinner*, (Sept. 20, 2015), (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2015/09/21/remarks-president-congressional-black-caucus-45th-annual-phoenix-awards>).

¹²¹ Proclamation No. 9561, 82 Fed. Reg. 3 (Jan. 5, 2017).

¹²² Press Release, U.S. DEP’T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, OJJDP Releases Policy Guidance on Girls and the Juvenile Justice System (Oct. 2015), https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/newsletter/archives/249506/sf_1.html.

¹²³ WHITE HOUSE COUNCIL ON WOMEN AND GIRLS, ADVANCING EQUITY FOR WOMEN AND GIRLS OF COLOR (2015), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/ADVANCING_EQUITY_FOR_WOMEN_AND_GIRLS_OF_COLOR_REPORT.pdf.

¹²⁴ U.S. DEP’T OF JUST. OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 14, at 11 (“[A]nalysis also needs to consider the victimization that occurs prior to adulthood that places many girls and young women on pathways to detention and incarceration, such as the heightened risks of commercial sexual exploitation.”).

¹²⁵ *From Child Welfare to the Juvenile Justice System: Disrupting the Abuse to Prison Pipeline for Girls (Webinar)*, U.S. DEP’T OF JUST. OFF. OF JUST. PROGRAMS (Oct. 3, 2019), <https://www.ojp.gov/events/child-welfare-juvenile-justice-system-disrupting-abuse-prison-pipeline-girls-webinar>.

¹²⁶ U.S. DEP’T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, *supra* note 122.

¹²⁷ FED. INTERAGENCY REENTRY COUNCIL, A RECORD OF PROGRESS AND A ROADMAP FOR THE FUTURE (2016), <https://www.cdfifund.gov/sites/cdfi/files/documents/firc-reentry-report.pdf> (“[M]any justice-involved women struggle with both mental health and substance use disorders—often linked to histories of physical or sexual abuse that may start in childhood and continue through adolescence into adulthood, and trauma histories that often played a significant role in the pathway to the criminal or juvenile justice system.”).

¹²⁸ The OJJDP noted that “[g]irls and young women constitute a majority of youth arrested for prostitution and commercialized vice. In 2016, 73 percent of the estimated 500 juveniles arrested for prostitution and commercialized vice were girls. Trafficked girls also become involved in the juvenile justice system for offenses other than prostitution that are committed as a direct result of their exploitation, such as trespass or loitering or for status offenses such as truancy and running away.” U.S. DEP’T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, *supra* note 122.

¹²⁹ Congressmember Karen Bass, *Justice for Girls, October 8, 2015*, YouTube (Oct. 8, 2015), <https://www.youtube.com/playlist?list=PL2rWKKCMFOOFZs2aZrgqPiafnepvQAOx>.

¹³⁰ *Id.*

¹³¹ *Improving Outcomes for Youth in the Juvenile Justice System: Hearing on H.R. 6964 Before the S. Comm. On the Judiciary*, 115th Cong. (2017).

¹³² The Juvenile Justice Reform Act of 2018 was sponsored by Rep. Jason Lewis (R-MN-2) and Rep. Robert Scott (D-VA-3) and enacted on December 21, 2018. H.R. 6964, 115th Cong. (2018) (codified as Pub. L. No. 115-385).

¹³³ SAAR ET AL., *supra* note 7, at 16; Juvenile Justice and Delinquency Prevention Act Reauthorization of 2018, Pub. L. No. 93-415, §26, 88 Stat. 1109.

¹³⁴ SAAR ET AL., *supra* note 7, at 16, 17; the JJRA provides: “(K) the number of juveniles in the custody of secure detention and correctional facilities operated by a State or unit of local or tribal government who report being pregnant.” Juvenile Justice and Delinquency Prevention Act Reauthorization of 2018, *supra* note 132, § 207(1)(G).

Further, the JJRA provides that “(ix) not later than 1 year after the date of enactment of the Juvenile Justice Reform Act of 2018, a plan which shall be implemented not later than 2 years after the date of enactment of the Juvenile Justice Reform Act of 2018, to— “(I) eliminate the use of restraints of known pregnant juveniles housed in secure juvenile detention and correction facilities, during labor, delivery, and post-partum recovery, unless credible, reasonable grounds exist to believe the detainee presents an immediate and serious threat of hurting herself, staff, or others; and “(II) eliminate the use of abdominal restraints, leg and ankle restraints, wrist restraints behind the back, and four-point restraints on known pregnant juveniles, unless— “(aa) credible, reasonable grounds exist to believe the detainee presents an immediate and serious threat of hurting herself, staff, or others; or “(bb) reasonable grounds exist to believe the detainee presents an immediate and credible risk of escape that cannot be reasonably minimized through any other method;”; (F) in paragraph (8), by striking “existing” and inserting “evidence-based and promising”; Juvenile Justice and Delinquency Prevention Act Reauthorization of 2018, *supra* note 133, § 204(2)(B)(5).

¹³⁵ See SAAR ET AL., *supra* note 7, at 20; see also Juvenile Justice and Delinquency Prevention Act Reauthorization, *supra* note 133, § 7(A)(iv).

¹³⁶ See SAAR ET AL., *supra* note 7, at 15; see also Juvenile Justice and Delinquency Prevention Act Reauthorization, *supra* note 133, § 223(5).

¹³⁷ S. 3623, 117th Cong. § 813 (2022).

¹³⁸ *Id.* § 201.

¹³⁹ S. Res. 81, 114th Cong. (2015).

¹⁴⁰ First Step Implementation Act of 2021, H.R. 3510, 117th Cong. (2021).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ H.R. 2908, 117th Cong. (2021).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ H.R. 2858, 117th Cong. (2021).

¹⁴⁹ The bill would also codify the prohibition on life without parole for minors as decided in *Miller v. Alabama*, 567 U.S. 460 (2012). *Id.* The bill was referred to the Subcommittee on Crime, Terrorism, and Homeland Security in October of 2021. *Id.*

¹⁵⁰ Sara Kruzan, *Woman Who Killed Pimp in 1994 When She Was a Teen, Pardoned By California Gov. Gavin Newsom*, CBS NEWS (July 4, 2022, 7:01 AM), <https://www.cbsnews.com/news/sara-kruzan-pardoned-woman-killed-pimp-1994-california/>.

¹⁵¹ Advocates brought attention to her case, and in 2011, then-Governor Arnold Schwarzenegger commuted her prison term to 25 years with the possibility of parole. In 2013, after Sara had served over 18 years, Governor Jerry Brown allowed her to be released from prison. In July 2022, Governor Gavin Newsom issued a formal pardon of Sara. Libor Jany, *Newsom Pardons Sara Kruzan, Imprisoned as a Teen for Killing Man Who Trafficked Her*, L.A. TIMES (July 2, 2022, 8:03 PM), <https://www.latimes.com/california/story/2022-07-02/newsom-pardons-sara-kruzan-woman-sent-to-prison-for-killing-man-who-sex-trafficked-her>; Johnny Diaz, *California Woman Pardoned 27 Years After Killing Abuser as a Teen*, N.Y. TIMES (July 5, 2022), <https://www.nytimes.com/2022/07/05/us/gavin-newsom-pardons-kruzan.html?smtyp=cur&smid=tw-nytimes>.

¹⁵² Sara Kruzan, *Opinion: Why Wisconsin Should Drop Murder Charges Against a Sex Trafficking Victim*, WASH. POST (Aug. 1, 2022, 1:49 PM), <https://www.washingtonpost.com/opinions/2022/08/01/chrystul-kizer-wisconsin-sex-trafficking-victims/>.

¹⁵³ S. 4362, 117th Cong. (2022).

¹⁵⁴ *Id.* at § 2(2).

¹⁵⁵ *Id.* at § 2(6)-(7).

¹⁵⁶ CHRISTINE RAINO, SARAH ROBERTS, SARAH BENDTSEN & SAMANTHA HEALY VARDAMAN, SHARED HOPE INT’L, REPORT CARDS ON CHILD AND YOUTH SEX TRAFFICKING: 2021 TOOLKIT (2021), <https://reportcards.sharedhope.org/wp-content/uploads/2021/10/2021Toolkit.pdf>.

¹⁵⁷ See, e.g., ALA. CODE § 13A-12-123 (2019) (providing that a “sexually exploited child” alleged to have committed a violation of prostitution or solicitation may not be prosecuted); 720 ILL. COMP. STAT. 5/11-14 (2015). (providing that a child under age eighteen is immune from a charge of prostitution and will be subject to temporary protective custody and an investigation into potential child abuse or neglect must occur within 24 hours from when an officer takes the minor into custody). See generally Safe Harbor Laws: What is Safe Harbor?, SHARED HOPE INT’L, <https://reportcards.sharedhope.org/safeharbor/>.

¹⁵⁸ RAINO ET AL., *supra* note 156.

¹⁵⁹ SUP. CT. OF OHIO, JUVENILE HUMAN TRAFFICKING, OHIO LAWS & SAFE HARBOR RESPONSE (2017), <https://www.supremecourt.ohio.gov/JCS/CFC/resources/juvenileHumanTrafficking.pdf>.

¹⁶⁰ Priscila Borges Marques dos Santos, Thesis, “*Safer Harbor: The Impact of Different Models of Safe Harbor Laws on the Criminalization of Commercially Sexually Exploited Children in the United States*,” MARSHALL U. (Aug. 2016) (finding in an analysis of juvenile arrest data between 1995 and 2014 after the implementation of safe harbor laws in 18 states that the laws had little to no discernible effect on juvenile arrest rates for prostitution-related offenses); Kimberly B. Mehlman-Orozco, *Safe Harbor Legislation for Juvenile Victims of Sex Trafficking: A Myopic View of Improvements in Practice*, 3 SOC. INCLUSION 52, 58 (2015). See also Brendan M. Conner, *In Loco Aequitatis: The Dangers of ‘Safe Harbor’ Laws for Youth in the Sex Trades*, 12 STANFORD J. C.R. & C.L. 43, 52 (2016), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2968&context=facpubs> (noting that arrests of children for prostitution-related offenses increased almost tenfold in the first year of the law’s implementation, from 14 arrests in 2010 to 136 arrests in 2011). This study also found a small reduction in the number of children arrested for prostitution after the bill was signed into law in 2008 but before it went into effect in 2010, suggesting a possible “announcement effect.” *Id.*; Alexa Bejinariu et al., “*They said they were going to help us get through this ...*”: *Documenting Interactions Between Police and Commercially Sexually Exploited Youth*, J. CRIME & JUST. 2, 59 (2020); Jennifer Cole & Ginny Sprang, *Post-Implementation of a Safe Harbor Law in the U.S.: Review of State Administrative Data*, 101 CHILD ABUSE & NEGLECT 4-5 (2020) (finding that fewer children were charged with prostitution-related offenses in the years immediately after Kentucky enacted its first anti-human trafficking law in 2007, but declines did not follow the enactment of the state’s safe harbor law in 2013), <https://www.sciencedirect.com/science/article/abs/pii/S014521341930496X>.

¹⁶¹ Bejinariu et al., *supra* note 160.

¹⁶² *Id.*

¹⁶³ LAUREN SCHAUBEN ET AL., WILDER RSCH., SAFE HARBOR: EVALUATION REPORT 13-20 (2017), https://www.wilder.org/sites/default/files/imports/SafeHarbor_EvaluationReport_10-17.pdf.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ E.g. Elizabeth S. Barnert et al., *Identifying Best Practices for ‘Safe Harbor’ Legislation to Protect Child Sex Trafficking Victims: Decriminalization Alone is Not Sufficient*, 51 CHILD ABUSE & NEGLECT 249, 251, 258 (2016) (in study of jurisdictions with limited placement, diversion programs, or service options, 32 experts were interviewed; findings revealed the common perception that the only means of keeping child sex trafficking victims safe was to detain them).

¹⁶⁷ *Id.* at 258.

¹⁶⁸ A.J. v. Eighth Jud. Dist. Ct., 394 P.3d 1209, 1214 (Nev. 2017).

¹⁶⁹ Eileen M. Ahlin, *Risk Factors of Sexual Assault and Victimization Among Youth in Custody*, 36 J. INTERPERSONAL VIOLENCE 2164 (2021). See also U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., PRISON RAPE ELIMINATION ACT OF 2003: PREA DATA COLLECTION ACTIVITIES, 2022 (2022), <https://bjs.ojp.gov/content/pub/pdf/pdca22.pdf>; see also U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., NATIONAL SURVEY OF YOUTH IN CUSTODY, 2018: SEXUAL VICTIMIZATION REPORTED BY YOUTH IN JUVENILE FACILITIES, 2018 (2019), <https://bjs.ojp.gov/content/pub/pdf/svryjf18.pdf> (finding that 6.6% of incarcerated girls reported sexual victimization in juvenile facilities within the prior 12 months.).

¹⁷⁰ See e.g., *State v. Martin*, 116 N.E.3d 127, 134 (Ohio 2018) (affirming a lower court’s conviction and sentence of a juvenile and holding that the juvenile court did not commit plain error by failing to appoint a guardian ad litem to the juvenile who experienced childhood abuse and was involved in the child welfare system, attempted suicide at age 12, was trafficked around age 14, and pled guilty in adult court to aggravated murder related to a burglary she was part of at age 15, after finding that the juvenile failed to raise an objection in juvenile court and failed to show that her aggravated murder charge was related to her status as a human trafficking victim); *In re Bobby P.*, 907 N.Y.S.2d 540, 545-49 (N.Y. Fam. Ct. 2010) (denying motion to substitute a PINS petition for a juvenile delinquency petition filed by a juvenile in the foster care system who was forced into the sex trade beginning at age 12 and charged with committing acts which would have constituted crimes of prostitution and other charges at age 15, relying on the lower court’s finding that the child expressed a current unwillingness to cooperate with specialized services for sexually exploited youth, and finding the court was within its discretion under Family Court Act § 311.4, which provides that courts have discretion to proceed with delinquency proceedings rather than PINS petition when the respondent “expresses a current unwillingness to cooperate with specialized services for sexually exploited youth”); cf. OHIO REV. CODE ANN. § 2152.021(F)(1)-(4) (2021) (requiring the appointment of a guardian ad litem when a juvenile court has reason to believe that the child is a victim of trafficking and that the charge is related to the child’s victimization and permitting the juvenile court to “make any orders regarding placement, services, supervision, diversion actions, and conditions of abeyance, including, but not limited to, engagement in trauma-based behavioral health services or education activities, that the court considers appropriate and in the best interest of the child”).

¹⁷¹ Priscilla A. Ocen, *(E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1639 (2015); see also, EPSTEIN, *supra* note 11, at 8.

¹⁷² SENTENCING PROJECT, INCARCERATED WOMEN AND GIRLS (2022), <https://www.sentencingproject.org/app/uploads/2022/11/Incarcerated-Women-and-Girls.pdf> (finding Black girls are more than three times likely as their white peers to be incarcerated).

¹⁷³ ERIN MARSH, BRITTANY ANTHONY, JESSICA EMERSON, KATE MOGULESCU, *State Report Cards: Grading Criminal Record Relief Laws for Survivors Of Human Trafficking* (Mar. 2019), 10 <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf>.

¹⁷⁴ *Id.*

¹⁷⁵ ASSEMB. BILL 124, 2021-2022 Reg. Sess. (Cal. 2021).

¹⁷⁶ The original bill would have allowed affirmative defenses for violent acts committed as a direct result of trafficking and/or sexual violence as well as non-violent acts, but it was amended to apply only to non-violent offenses.

¹⁷⁷ *Id.*

¹⁷⁸ Katie Licari, *New Bill Protects Abuse Survivors Who Fight Back — But Experts Warn It’s Not Enough*, BLACKVOICE NEWS (Jan. 23, 2022), <https://blackvoicenews.com/2022/01/23/new-bill-protects-abuse-survivors-who-fight-back-but-experts-warn-its-not-enough/>.

- ¹⁷⁹ Sydney Kaplan and Genesis Guzman, *California Senator Creates Reform Legislation to Aid Those Childhood Trauma Victims*, DAVIS VANGUARD (Aug. 5, 2021), <https://www.davisvanguard.org/2021/08/california-senator-creates-reform-legislation-to-aid-those-childhood-trauma-victims/>.
- ¹⁸⁰ VA. CODE ANN. § 16.1-272 (2020).
- ¹⁸¹ Del. Vivian Watts, *Justice System Reforms Will Protect Children*, THE VIRGINIAN PILOT (May 6, 2020), <https://www.pilotonline.com/opinion/columns/vp-ed-column-watts-0506-20200506-huanalzapfehxfyfyk3rakou4-story.html>.
- ¹⁸² S. 1077, 2021-2022 Reg. Session (N.Y. 2021).
- ¹⁸³ N.Y. CRIM. PROC. LAW § 530.11(1)(e) (Consol. 2020).
- ¹⁸⁴ *Smith*, 132 N.Y.S.3d at 257. Smith was 37 years old when resentencing was requested and served over 20 years upon her release in 2020. Ashley Rowe, *Judge Grants Patrice Smith Freedom After Serving 21 Years for Murder, Thanks to New Law*, ABC 7 BUFFALO (Sept. 17, 2020, 11:23 AM), <https://www.wkbw.com/news/local-news/judge-grants-patrice-smith-freedom-after-serving-21-years-for-murder-thanks-to-new-law>.
- ¹⁸⁵ WIS. STAT. § 939.46(1m) (2018) (“A victim of a violation of [human trafficking or child trafficking] has an affirmative defense for any offense committed as a direct result of the violation of [human trafficking or child trafficking] without regard to whether anyone was prosecuted or convicted for the violation of [human trafficking or child trafficking]”).
- ¹⁸⁶ *Kizer*, 963 N.W.2d at 136; see also Contrera, *supra* note 51 (detailing Wisconsin Supreme Court ruling).
- ¹⁸⁷ Ellen Wulffhorst, *Exclusive: U.S. Among 10 Most Dangerous Countries for Women Amid #MeToo Campaign - Poll*, REUTERS (June 25, 2018, 8:39 PM), <https://www.reuters.com/article/us-women-dangerous-poll-usa-exclusive/exclusive-u-s-among-10-most-dangerous-countries-for-women-amid-metoo-campaign-poll-idUSKBN1JM02G>.
- ¹⁸⁸ See generally VJ Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults. The Adverse Child Experiences (ACE) Study*, 14 AM. J. PREV. MED. 245 (1998).
- ¹⁸⁹ The Elders, *Women live in a profoundly different, more dangerous world*, (Nov. 25, 2013), <https://theelders.org/news/women-live-profoundly-different-more-dangerous-world>.
- ¹⁹⁰ “More than 80% of female victims (83.4%, or nearly 49.5 million victims) of unwanted sexual contact reported that it first occurred before age 25, including 1 in 2 (56.9% or 33.8 million) who first experienced unwanted sexual contact before turning 18.” BASILE ET AL., *supra* note 6.
- ¹⁹¹ Salamishah Tillet & Scheherazade Tillet, *After the ‘Surviving R. Kelly’ Documentary, #MeToo Has Finally Returned to Black Girls. Let’s Keep It There.*, N.Y. TIMES (Jan. 10, 2019), <https://www.nytimes.com/2019/01/10/opinion/r-kelly-documentary-metoo.html>.
- ¹⁹² E.g., ALISA BIERRIA ET AL., SURVIVED & PUNISHED, DEFENDING SELF-DEFENSE: A CALL TO ACTION BY SURVIVED AND PUNISHED (2022), <https://survivedandpunished.org/wp-content/uploads/2022/03/DSD-Report-Mar-21-final.pdf> (identifying problems in criminalizing survivors in self-defense cases, providing recommendations to end the practice, and sharing legal resources for survivors).
- ¹⁹³ Noel, *Law Enforcement*, LIFE STORY, <https://thelifestory.org/law-enforcement>.
- ¹⁹⁴ Skoll.org, *Melanie Thompson - The Importance of an Intersectional Approach to Gender Based Violence*, YOUTUBE (May 11, 2021), <https://www.youtube.com/watch?v=XYipBjAdhBo>.
- ¹⁹⁵ BASILE ET AL., *supra* note 6.
- ¹⁹⁶ BASILE ET AL., *supra* note 6, at 11.
- ¹⁹⁷ Ayanna Runcie, *#MeToo for Youth: #GirlsToo Focuses on Teens’ Sexual Trauma*, CBS NEWS (Apr. 2, 2019, 4:43 PM), <https://www.cbsnews.com/news/girlstoo-movement-metoo-for-young-women-girls-inc/> (“There hasn’t been a lot of discussion in the media about how this really affects our kids and how young this starts, and what we can do as a society to change that trajectory so we don’t end up repeating these cycles over and over again” (quoting Laura Kaufmann, Girls Inc.)).
- ¹⁹⁸ Bobette, *Child Sexual Abuse: Childhood Sexual Abuse Can Prime Girls for Future Exploitation*, LIFE STORY, <https://thelifestory.org/child-sexual-abuse>.

To learn more about our organizations, please visit
www.genderjusticeandopportunity.georgetown.edu
and www.rights4girls.org





THE YOUTH JUSTICE SYSTEM AND CHILD SEX TRAFFICKING

WHAT IS CHILD SEX TRAFFICKING?

Child Sex Trafficking occurs any time a person under the age of 18 exchanges any sex act for anything of value (e.g., food, shelter, money, etc.).ⁱ Unfortunately, due to a lack of consistent screening across justice systems, survivors who are often criminalized due to behaviors related to their exploitation are placed behind bars when they are in fact victims of crime.

WHAT MAKES A YOUTH VULNERABLE TO TRAFFICKING?

The following factors make youth vulnerable to sex trafficking and exploitation.ⁱⁱ Many of these characteristics are also risk factors for girls' involvement in the youth justice system.ⁱⁱⁱ

- A history of sexual and/or physical abuse
- Community or family instability
- Child welfare involvement, especially out-of-home foster care placement
- Being a runaway or homeless youth
- Disconnection from the education system
- Poverty

CHILD SURVIVORS ARE STILL ARRESTED FOR PROSTITUTION

- Though they are often too young to legally consent to sex and are considered trafficking victims under most state and federal laws, child survivors are still charged with prostitution in some states.
- According to the Office of Juvenile Justice and Delinquency Prevention, more than 100 children are arrested in the United States for prostitution-related charges,^{iv} though local reports indicate this to be a gross underestimate.^v
- Girls are disproportionately affected by these practices as they comprise nearly 71% of child arrests for prostitution.^{vi}
- Racial disparities cannot be ignored as children of color are over 3.5x more likely to be arrested on these charges than white youth, while Black children are 5x more likely.^{vii}
- Despite the growing existence of "safe harbor" laws or laws prohibiting the prosecution of child trafficking victims for prostitution offenses, children continue to be arrested for these crimes despite "safe harbor" protections.^{viii}

SURVIVORS ARE ARRESTED FOR BEHAVIORS DIRECTLY TIED TO THEIR EXPLOITATION

Trafficked girls also become involved in the youth justice system for offenses other than prostitution that are committed as a direct result of their exploitation.

- For example, victims of child sex trafficking are frequently arrested for offenses such as trespass or loitering, or for status offenses like truancy, alcohol use, or running away.^{ix}
- Runaway youth are at increased risk for child sex trafficking.^x
- A national survivor study^{xi} found that 62% of trafficking survivors surveyed had been cited, arrested, or detained by law enforcement, and 80% stated those arrests were for crimes committed while they were being trafficked.^{xii}
- Many adult survivors have spoken out about charges they incurred while being trafficked as girls.^{xiii}



-
- ⁱ As defined in the Trafficking Victims Protection Act, sex trafficking is the “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(12). Sex trafficking that involves someone under the age of 18 is considered a “severe form of trafficking in persons” § 7102(11)(a). A commercial sex act is defined as “any sex act on account of which anything of value is given to or received by any person.” § 7102(4).
- ⁱⁱ Kinnish, K., Barba, A., Blacker, D., Dierkhising, C., Garret, R., Grady J.B., Greenbaum, V.J., Griffin, D., Rubiales, R., Spring, G., Wozniak, J., and Child Sex Trafficking Collaborative Group. [*Child Sex Trafficking: Who is Vulnerable to Being Trafficked?*](#) National Center for Child Traumatic Stress. (2021).
- ⁱⁱⁱ Yasmin Vafa & Rebecca Epstein, [*Criminalized Survivors: Today’s Abuse to Prison Pipeline for Girls*](#) (2023).
- ^{iv} Office of Juvenile Justice and Delinquency Prevention. [*Arrest by Offense, Age, and Gender.*](#)
- ^v Yasmin Vafa & Rebecca Epstein, [*Criminalized Survivors: Today’s Abuse to Prison Pipeline for Girls*](#) (2023).
- ^{vi} Id.
- ^{vii} Yasmin Vafa & Rebecca Epstein, [*Criminalized Survivors: Today’s Abuse to Prison Pipeline for Girls*](#) (2023).
- ^{viii} Department of State, Trafficking in Persons Report 20th Edition, (2020), p. 516.
- ^{ix} Jennifer Cole & Ginny Sprang. [*Post-implementation of a Safe Harbor Law in the U.S.: Review of State Administrative Data.*](#) The International Journal of Child Abuse & Neglect. (2020).
- ^x See National Center for Missing and Exploited Children, [*Child Sex Trafficking in America: A Guide for Child Welfare Professionals*](#) (June 2017), p.1.
- ^{xi} Data included both individuals trafficked as adults and minors and 86% of the survey respondents identified as female.
- ^{xii} Polaris. [*In Harm’s Way: How Systems Fail Human Trafficking Survivors: Survey Results from the First National Survivor Study.*](#) 2023.
- ^{xiii} Polaris. [*Study Confirms Trafficking Victims Like Zephi Trevino Are Being Consistently Criminalized.*](#) 2023.

Ross Kramer
Course Materials

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D66871
T/htr

_____AD3d_____

Argued - April 22, 2021

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
SYLVIA O. HINDS-RADIX
COLLEEN D. DUFFY, JJ.

2020-02485

OPINION & ORDER

The People, etc., respondent,
v Nicole Addimando, appellant.

(Ind. No. 74/18)

APPEAL by the defendant from a judgment of the County Court (Edward T. McLoughlin, J.), rendered February 11, 2020, in Dutchess County, convicting her of murder in the second degree and criminal possession of a weapon in the second degree, upon a jury verdict, and sentencing her to an indeterminate term of imprisonment of 19 years to life on the conviction of murder in the second degree and a concurrent determinate term of imprisonment of 15 years to be followed by 5 years of postrelease supervision on the conviction of criminal possession of a weapon in the second degree.

Sullivan & Cromwell, LLP, New York, NY (Garrard R. Beeney, Timothy J. Weinstein, James J. Browne, Samantha R. Briggs, Amanda F. Davidoff, Kamil R. Shields, Alexander M. Self, and Jennifer B. Lee of counsel), for appellant.

Robert V. Tendy, Special District Attorney, Carmel, NY (Larry Glasser of counsel), for respondent.

Frankfurt Kurnit Klein & Selz, P.C., New York, NY (Tyler Maulsby of counsel), Walden Macht & Haran, LLP, New York, NY (Jeffrey A. Udell of counsel), Rubin Law, PLLC, New York, NY (Denise A. Rubin of counsel), and Joseph Hage Aaronson, LLC, New York, NY (Christopher J. Stanley of counsel), for amicus curiae New York City Bar Association (one brief filed).

Davis Polk & Wardwell, LLP, New York, NY (Marissa K. Perry, Maura Douglas, and Brianne Holland-Stergar of counsel), for amici curiae Sanctuary for Families, Day One New York, National Network to End Domestic Violence, Safe Horizon, Inc., Her Justice, Urban Resource Institute, Urban Justice Center, Empire Justice Center, Legal Momentum, New York Legal Assistance Group, New York City Alliance Against Sexual Assault, and Lawyers Committee Against Domestic Violence.

Duane Morris, LLP, New York, NY (Sharon L. Caffrey and Leah A. Mintz, pro hac vice, and Eric R. Breslin of counsel), for amici curiae Jeffrion L. Aubry, Brian A. Benjamin, Alessandra Biaggi, David Carlucci, Andrew Gounardes, Brad Hoylman, Monica R. Martinez, Shelley B. Mayer, Zellnor Myrie, Kevin S. Parker, Roxanne J. Persaud, Gustavo Rivera, Diane J. Savino, and Luis R. Sepúlveda.

RIVERA, J. On the instant appeal, this Court is presented, *inter alia*, with the question of whether the County Court properly applied the Domestic Violence Survivors Justice Act (L 2019, ch 31; L 2019, ch 55, § 1, part WW), effective May 14, 2019, which amended Penal Law § 60.12 (hereinafter the DV Survivor’s Act or Penal Law § 60.12). The DV Survivor’s Act permits courts to impose reduced alternative sentences in certain cases involving defendants who are victims of domestic violence. This case appears to be the first time that an appellate court has the opportunity to address the DV Survivor’s Act.

For the reasons now set forth, we hold that the County Court did not properly apply the DV Survivor’s Act when sentencing the defendant. Upon considering the plain language of the DV Survivor’s Act, the legislative history of the statute, and the particular circumstances of this case, we modify the judgment, on the facts and as a matter of discretion in the interest of justice, by reducing (1) the term of imprisonment imposed on the conviction of murder in the second degree from an indeterminate term of imprisonment of 19 years to life to a determinate term of imprisonment of 7½ years to be followed by 5 years of postrelease supervision, and (2) the term of imprisonment imposed on the conviction of criminal possession of a weapon in the second degree from a determinate term of imprisonment of 15 years to be followed by 5 years of postrelease supervision to a determinate term of imprisonment of 3½ years to be followed by 5 years of postrelease supervision, which terms shall run concurrently with each other.

Sometime during the night of September 27, 2017, and the morning of September 28, 2017, the defendant fatally shot Christopher Grover, who was her domestic partner and the father of her two children. According to the defendant and several others who testified at the

approximately one-month jury trial, the defendant had been repeatedly subjected to brutal physical and sexual abuse at the hands of Grover for many years. The jury rejected the defendant's battered women's syndrome justification defense, and found her guilty of murder in the second degree and criminal possession of a weapon in the second degree.

The defendant moved to be sentenced under the DV Survivor's Act. Following a hearing at which the defendant adduced additional evidence that she had been abused, the County Court denied her motion and sentenced the defendant to an indeterminate term of imprisonment of 19 years to life on the conviction of murder in the second degree and a concurrent determinate term of imprisonment of 15 years to be followed by 5 years of postrelease supervision on the conviction of criminal possession of a weapon in the second degree.

I. The DV Survivor's Act/Penal Law § 60.12

As long-recognized, “[w]hen presented with a question of statutory interpretation, our primary consideration is to ascertain and give effect to the intention of the Legislature” (*People v Wallace*, 31 NY3d 503, 507 [internal quotation marks omitted]; see *Kuzmich v 50 Murray St. Acquisition LLC*, 34 NY3d 84, 91; *Samiento v World Yacht Inc.*, 10 NY3d 70, 77-78; *Matter of DaimlerChrysler Corp. v Spitzer*, 7 NY3d 653, 660). As the statutory text is the clearest indicator of legislative intent (see *People ex rel. Negron v Superintendent, Woodbourne Corr. Facility*, 36 NY3d 32, 36; *Matter of New York County Lawyers' Assn. v Bloomberg*, 19 NY3d 712, 721), the starting point of interpretation must always be the language of the text itself (see *Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583). The text is interpreted “according to its natural and obvious sense, without resorting to an artificial or forced construction” (McKinney's Cons Laws of NY, Book 1, Statutes § 94).

Penal Law § 60.12(1) provides:

“the court, upon a determination following a hearing that (a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the defendant as such term is defined in subdivision one of section 530.11 of the criminal procedure law; (b) such abuse was a significant contributing factor to the defendant's criminal behavior; (c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to section 70.00, 70.02, 70.06 or subdivision

two or three of section 70.71 [of the Penal Law] would be unduly harsh may instead impose a sentence in accordance with this section.”

The language of the DV Survivor’s Act clearly and unambiguously sets forth three factors for a court to consider, namely: (1) whether the defendant was a victim of domestic violence inflicted by a member of the same family or household; (2) whether the abuse was a significant contributing factor to the defendant’s criminal behavior; and (3) whether, having regard for the nature and circumstances of the crime and the history, character, and condition of the defendant, a sentence in accordance with the customary statutory sentencing guidelines would be unduly harsh.

The statute does not expressly set forth the standard of proof or the appropriate evidentiary burden that must be borne by the defendant, as the movant. Utilizing as comparison the evidentiary standard applicable on a motion to vacate a judgment and set aside a sentence (*see* CPL 440.30[6] [at a hearing on a motion to vacate a judgment and set aside a sentence, the defendant has the burden of proving by a preponderance of the evidence every fact essential to support the motion]), we apply the preponderance of the evidence standard to our review and analysis herein. At the commencement of the subject hearing, the parties agreed that this was the appropriate standard of proof, and the County Court applied this standard. The preponderance of the evidence standard requires enough evidence to “produce a reasonable belief in the truth of the facts asserted” (*Jarrett v Madifari*, 67 AD2d 396, 404 [internal quotation marks omitted]). “A party who has the burden of proof by a preponderance of the evidence must prove his or her contention by the greater weight of evidence” (8 Carmody-Wait 2d § 56:14).

Although the strongest indication of the statute’s meaning is in its plain language, “the legislative history of an enactment may also be relevant and is not to be ignored, even if words be clear” (*People v Badji*, 36 NY3d 393, 399 [internal quotation marks omitted]). The legislative history reveals that the statute sought to address harsh punishment received by victims of domestic violence who commit crimes against their abusers. “[A]ll too often in our court system when women are defending themselves against domestic violence, instead of being met with a judge with compassion and assistance and help, the judge is just putting forth punishment” (Stenographic Record at 1572, NY Senate Bill S1077, Mar. 12, 2019 [statement of Senator Carlucci]).

The sponsors of this law intended for a sentencing court to exercise discretion in its analysis of the aforementioned three factors:

“We are not saying that you throw out what they’ve done out of the window in the sentencing. The judge still has the discretion. We’re asking the judge to take into consideration what they have gone through, what they were living with” (Stenographic Record at 1570, NY Senate Bill S1077, Mar. 12, 2019 [statement of Senator Persaud]).

“MR. RA: Okay. Now you mentioned earlier that there are certain exceptions in terms of crimes that this would not apply to, but there are some violent offenses that this still would apply to like manslaughter, first degree assault, battery, robbery; it would apply to those crimes?

“MR. AUBRY: Yes and, again, because we’re giving the judge discretion, he or she can look at those issues and determine whether or not eligibility has been met and whether it’s in the interest of justice” (Chamber Video/Transcript at 12-13, 2019 NY Assembly Bill A03974).

“MR. AUBRY: [A]gain, the bill is subject to the discretion of the judge” (Chamber Video/Transcript at 13, 2019 NY Assembly Bill A03974).

“MR. RA: Okay. So in terms of proving the abuse. What—what is the procedure for the—for the victim of domestic violence? Does there have to be formal documentation, formal charges having been filed regarding the domestic violence? How do they go about proving that they are a victim of domestic violence?

“MR. AUBRY: There are three tests that has [sic] to be required. The application for this—and, again, this is—gives the judge the discretion to provide this relief. That—this is not an automatic situation. This gives the judge an opportunity to look at the evidence that will be provided to determine whether relief should be granted or not. One form of the evidence to be provided is a court record, a Social Service record, hospital record, sworn statement from a witness of the domestic violence, law enforcement record or an order of protection or domestic incident report.*

* At the trial, the defendant testified, at length, regarding the abuse inflicted upon her by Grover. She described going to Vassar Brothers Hospital in September of 2014, and identified photographs taken by a forensic nurse depicting, among other things, injuries to her face and body, as well as burns to her breasts, labia, and thighs caused by Grover. Multiple trial witnesses described their observations, during various times from 2014 to 2017, of bruises, wounds, and/or burns to the defendant’s face and body. The defendant’s midwife testified regarding her examination of the

“MR. RA: Okay. And then once—once they’ve—once the court has determined that the person is a victim of domestic violence and qualifies for this reduced sentence, what—what is the sentencing range for that individual then?

“MR. AUBRY: It would depend on the type of crime. Again, we’re leaving that to the judge to make that determination. Looking at this—individual cases as these kind of cases are going to be individually looked at.

“MR. RA: Now, is it correct, though, that once the person is deemed to have qualified by—by the judge that they then can be—essentially the minimum sentence becomes the maximum they can be sentenced to?

“MR. AUBRY: Right. It does reduce the sentences greatly, but the judge has the discretion to establish that. We’re not—we are empowering the judge in this case, not commanding the judge” (Chamber Video/Transcript at 11-12, 2019 NY Assembly Bill A03974).

Significantly, the exercise of discretion of a sentencing court does not translate into unfettered judgment. Our role as an intermediate appellate court in reviewing sentences imposed is “an important responsibility to assure that sentences in given cases are not ‘unduly harsh or severe under the circumstances’” (*People v Janvier*, 186 AD3d 1247, 1250, quoting *People v Delgado*, 80 NY2d 780, 783). CPL 470.15(3) confers upon this Court the authority to modify sentences in the exercise of discretion in the interest of justice (*see People v Suite*, 90 AD2d 80, 85-86).

Against this backdrop, we evaluate the determination of the County Court to deny the defendant’s motion for sentencing under Penal Law § 60.12. The County Court authored a decision, purporting to apply the three-part factors and reviewing aspects of the evidence presented at the trial which it deemed significant. Upon doing so, the court ultimately determined that the defendant failed to sustain her burden of proof pursuant to Penal Law § 60.12 and thus, denied the defendant’s motion pursuant to that statute.

defendant on three separate occasions in 2017, when she observed that the defendant’s vulva and rectum were bruised, swollen, and bleeding. Indeed, the midwife testified that she had a “hard time looking” at the defendant’s injuries. The defendant reported to her therapist accounts of the violence and abuse. The defendant testified that her therapist urged her to meet with the police, and that they discussed safety plans on how the defendant could leave Grover.

The County Court recognized that the “defendant present[ed] a compelling story of abuse, with horrific allegations that include repeated, sadistic sexual violence and physical abuse, complete with pictures and eyewitnesses viewing the results of her abuse” (*People v Addimando*, 67 Misc 3d 408, 438 [Dutchess County Ct]). Nevertheless, the court indicated that the People raised “critical questions about the defendant’s testimony regarding her alleged abuse, the identity of her abuser and her violent acts and decisions on September 27, 2017” (*id.* at 438).

The County Court identified “four factual bases” to support its decision (*id.* at 439). First, it found that the abuse history presented by the defendant was “undetermined and inconsistent regarding the extent of the abuse, as well as the identity of her abuser(s)” (*id.*). Second, it stated that the “nature” of the alleged abusive relationship between the defendant and Grover was “undetermined,” based on the demeanor and behavior of Grover on the day of and prior to his death (*id.*). Third, it concluded that the defendant had “a tremendous amount of advice, assistance, support, and opportunities to escape her alleged abusive situation,” and thereby could have “avoid[ed]” the decision to take Grover’s life (*id.*). Fourth, the court considered “most importantly” the specific facts of the homicidal act itself, where the defendant shot Grover “point-blank” in his temple as he laid “supine, with his eyes closed” (*id.* at 440).

Essentially, the County Court found that while it was presumed the defendant may have been abused in her life, the choice she made that night and the manner in which the murder occurred outweighed what the court referred to as the defendant’s “undetermined abusive history” (*id.* at 442).

Upon our extensive review of the evidence, we reject the County Court’s methodology, approach, application, and analysis of the three factors, as set forth under Penal Law § 60.12(1).

First, contrary to the County Court’s determination, the abuse history was *not* “undetermined.” Instead, the defendant established, through her lengthy testimony, photographs, and other evidence that Grover repeatedly abused her physically and sexually. The defendant testified that Grover burned her with a metal spoon that he heated on the stove. In December 2014, Grover forced her to have sex by strangling her with the belt of her bathrobe. A photograph taken in February 2015, the day after the defendant’s second child was born, depicted a visible bruise on her breast. According to the defendant, Grover watched violent pornography and demanded that the

defendant reenact the scenes that he viewed. During 2016 and 2017, Grover burned her numerous times, “always in the kitchen and always from a spoon,” hit her leaving bruises, and forcibly penetrated her vaginally and anally with a wine bottle and “fake knives” made of PVC.

Second, the County Court’s determination that there was insufficient proof that the abuse was a significant contributing factor in the defendant’s acts is unfounded. Specifically, the court found that the “choices the defendant made on September 27, 2017, and the choices the defendant did not make on or before September 27, 2017, combined with the undetermined abuse history and the decedent’s personality profile, provide insufficient evidence to sustain the defendant’s burden that her act was caused by abuse that was a ‘significant contributing factor’” (*People v Addimando*, 67 Misc 3d at 441). The court stated that “[t]he factual scenario surrounding the homicide and the events within several days therein create a question as to whether the purported abuse was a significant contributing factor. In other words, because the defendant had numerous opportunities to avoid any further abuse and was capable of communicating ‘direct’ sentiments to Grover, it is unknown what motive compelled the defendant” (*id.*). Basically, the court premised its analysis on a presumption or notion that the defendant could have avoided further abuse at the hands of Grover. We will not engage in any such presupposition. The evidence, which included a detailed history of repeated sexual, physical, and psychological abuse by Grover against the defendant, expert testimony regarding the impact of that abuse on the defendant, and the defendant’s testimony regarding the events prior to the subject shooting, established that the abuse was a significant contributing factor to the defendant’s criminal behavior. Among other things, the defendant testified that she was “pretty sure [Grover] was going to kill” her. On the night of the subject shooting, Grover told the defendant that “he could kill [her] in [her] sleep,” asking whether “someone would wake up first or just die right away.” According to the defendant, Grover then showed her diagrams of a human brain on his telephone, stating “I could shoot you in this part and you would die right away. But if I killed you in this part, you wouldn’t be able to talk or remember things.” When the defendant retreated to the bathroom, Grover followed her and threatened that he “could shoot [her] in the shower, but it would echo.” Thereafter, according to the defendant, Grover pushed her down, shoved his penis into her mouth, pulled her by her throat, and raped her, causing her to bleed vaginally. Further, just prior to the subject shooting, Grover menaced, “I’m going to kill you, I’m going to kill myself, and then your kids have no one.” The defendant described that, “[a]s

soon as he said that,” she “took one last step towards him, . . . lunged, and . . . pulled the trigger.”

Third, we disagree with the County Court’s finding that “having regard for the nature and circumstances of the crime and . . . history, character and condition of the defendant,” a sentence within the normal statutory sentencing guidelines would not be “unduly harsh” (*id.* at 411). In effect, the court engaged in a weight of the evidence analysis. The court again based this finding on, *inter alia*, an arcane belief/suggestion that the defendant could have avoided the murder by withdrawing from her apartment, which are antiquated impressions of how domestic violence survivors should behave (*see id.* at 441). It appears that the court found that because the defendant could have withdrawn from her apartment or escaped from Grover, a reduced sentence under Penal Law § 60.12 was unwarranted. Clearly, if the defendant had not committed the fatal shooting, or had she escaped prior thereto, or had her actions been found to be legally justified, Penal Law § 60.12 would have no application or effect in this case. When assessing this factor, the court failed to fully take into account the impact of physical, sexual, and/or psychological abuse on the defendant as a domestic violence survivor. In fact, it all but discounted the defendant’s evidence and proof, repeatedly referring to the abuse the defendant and others testified to as “undetermined.” This approach simply runs afoul of the spirit and intent of the statute. It is unacceptable that, in reflecting the views of a more enlightened society, the Legislature saw fit to enact the DV Survivor’s Act, only to have the court frustrate that legislative intent by applying outdated notions regarding domestic violence issues.

Upon consideration of the nature and circumstances of the crime, as well as the history, character, and condition of the defendant, we conclude that a sentence in accordance with the DV Survivor’s Act is warranted. The defendant is a 32-year-old mother of two young children, and has no known prior arrests or convictions. The defendant testified that she was repeatedly physically and sexually abused by Grover, as well as by other men in her past, and reportedly was sexually assaulted at the age of five. However, our examination under this factor does not end there. We also consider, among other things, the details of the crimes, including that the defendant shot Grover in the head as he was lying on the couch. Grover’s fatal injury was described as a hard contact wound in which the gun fired by the defendant was pressed against Grover’s skin, leaving a muzzle imprint.

Based on the foregoing, we modify the judgment, on the facts and as a matter of discretion in the interest of justice, to the extent indicated herein (*see* CPL 470.15[6][b]; Penal Law

§ 60.12[2], [3]).

II. Additional Issues Raised by the Defendant

A. Disqualification of the Defendant's Counsel

The defendant asserts that the County Court erred in granting the People's motion to disqualify the Dutchess County Public Defender (hereinafter the Public Defender) from representing her on the ground that an attorney from the office of the Public Defender previously represented a potential witness at the defendant's trial, and apparently advised that witness that he was not obligated to speak to the prosecution's investigator regarding the defendant's case. The potential witness was someone whom the defendant alleged also had abused her and could have been called by the People to refute the defense of battered women's syndrome.

"[A] court commits reversible error where it interferes with an established attorney-client relationship without making 'threshold findings that [the attorney's] participation would have delayed or disrupted the proceedings, created any conflict of interest, or resulted in prejudice to the prosecution or the defense'" (*People v Espinal*, 10 AD3d 326, 329, quoting *People v Knowles*, 88 NY2d 763, 767). Here, the County Court providently exercised its discretion in granting the People's motion to disqualify the Public Defender upon its finding that the defendant's continued representation by the Public Defender created a conflict of interest.

Generally, "[a] conflict of interest is involved if there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person" (Restatement [Third] of the Law Governing Lawyers § 121; *see* Rules of Professional Conduct [22 NYCRR 1200.0] rules 1.7, 1.9). "The Code of Professional Responsibility establishes ethical standards that guide attorneys in their professional conduct, and its importance is not to be diminished or denigrated by indifference" (*S & S Hotel Ventures Ltd. Partnership v 777 S.H. Corp.*, 69 NY2d 437, 443, citing *Matter of Weinstock*, 40 NY2d 1, 6). However, when raised in litigation, "which in addition to matters of professional conduct directly involves the interests of clients and others[,] the Code provisions cannot be applied as if they were controlling statutory or decisional law" (*S & S Hotel Ventures Ltd. Partnership v 777 S.H. Corp.*, 69 NY2d at 443):

"When we agree that the Code applies in an equitable manner to a matter before us, we should not hesitate to enforce it with vigor. When we find an area of uncertainty, however, we must use our

judicial process to make our own decision in the interests of justice to all concerned” (*id.*, quoting *J.P. Foley & Co., Inc. v Vanderbilt*, 523 F2d 1357, 1360 [2d Cir] [Gurfein, J., concurring]).

Thus, where the Rules of Professional Conduct (22 NYCRR 1200.0) are invoked in litigation, courts “are not constrained to read the rules literally or effectuate the intent of the drafters, but look to the rules as guidelines to be applied with due regard for the broad range of interests at stake” (*Midwood Chayim Aruchim Dialysis Assoc., Inc. v Brooklyn Dialysis, LLC*, 82 AD3d 1177, 1178 [internal quotation marks omitted]; *see also Gabel v Gabel*, 101 AD3d 676, 676-677).

A determination to substitute or disqualify counsel falls within the trial court’s discretion (*see People v Watson*, 26 NY3d 620, 624; *People v Carncross*, 14 NY3d 319, 330; *People v Tineo*, 64 NY2d 531, 536). “That discretion is especially broad when the defendant’s actions with respect to counsel place the court in the dilemma of having to choose between undesirable alternatives, either one of which would theoretically provide the defendant with a basis for appellate review” (*People v Watson*, 26 NY3d at 624, quoting *People v Tineo*, 64 NY2d at 536; *see People v Carncross*, 14 NY3d at 330). Criminal courts faced with counsel who allegedly suffer from a conflict of interest must balance two conflicting constitutional rights: (1) the defendant’s right to effective assistance of counsel; and (2) the defendant’s right to be represented by counsel of his or her own choosing (*see US Const 6th Amend*; *People v Watson*, 26 NY3d at 624; *People v Carncross*, 14 NY3d at 327; *People v Gomberg*, 38 NY2d 307, 312-313). Thus, a court confronting a conflict of interest faces the prospect of having its decision challenged no matter how it rules—if the court permits the attorney to continue and counsel’s advocacy is impaired, the defendant may claim ineffective assistance due to counsel’s conflict; whereas, if the court relieves counsel, the defendant may claim that he or she was deprived of counsel of his or her own choosing (*see Wheat v United States*, 486 US 153, 161; *People v Watson*, 26 NY3d at 624; *People v Carncross*, 14 NY3d at 330).

“[I]t is often difficult to assess these conflicts prospectively, before the court is fully aware of ‘the evidence to be adduced, the strategies to be followed and all defenses that may be plausibly asserted’” (*People v Carncross*, 14 NY3d at 327, quoting *People v Gomberg*, 38 NY2d at 314). Thus, a defendant’s willingness to waive the conflict at an early stage does not end the inquiry (*see People v Carncross*, 14 NY3d at 327), and it is within the court’s authority to decline to accept such a waiver (*see People v Watson*, 26 NY3d at 627; *People v Carncross*, 14 NY3d at 327-328).

As such, the trial court ““must be allowed substantial latitude in refusing waivers of conflicts of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses’” (*People v Carncross*, 14 NY3d at 328, quoting *Wheat v United States*, 486 US at 163; see *People v Watson*, 26 NY3d at 627). “[D]oubts as to the existence of a conflict of interest are resolved in favor of disqualification in order to avoid even the appearance of impropriety” (*Matter of Janczewski v Janczewski*, 169 AD3d 795, 797).

Under the circumstances of this case, had the witness been called by the People, the Public Defender would not have been ethically permitted to cross-examine the witness as to the underlying facts of the prior case, creating a conflict of interest. The County Court was in an unwinnable position, one the court providently resolved in favor of disqualification.

B. Hearsay Testimony Before the Grand Jury

The defendant contends that the County Court erred in denying her motion to dismiss the indictment based upon certain hearsay testimony presented to the grand jury by a detective who tested the firearm utilized by the defendant.

The “exceptional” remedy of dismissal of an indictment is warranted only where prosecutorial misconduct, fraudulent conduct, or errors created a possibility of prejudice (*People v Huston*, 88 NY2d 400, 409; see *People v Burch*, 108 AD3d 679, 680). Typically, the submission of some inadmissible evidence during the grand jury proceeding will be deemed fatal only when the remaining evidence is insufficient to sustain the indictment (see *People v Huston*, 88 NY2d at 409; *People v Avant*, 33 NY2d 265, 271; *People v Miles*, 76 AD3d 645).

In the context of grand jury procedure, “legally sufficient evidence means proof of a prima facie case, not proof beyond a reasonable doubt” (*People v Gordon*, 88 NY2d 92, 95-96). A court reviewing the legal sufficiency of evidence presented to the grand jury must determine whether that evidence, when viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction by a petit jury (see *People v Jensen*, 86 NY2d 248, 251; *People v Campbell*, 69 AD3d 645).

Here, the admission of the subject hearsay testimony, while improper, did not impair the integrity of the grand jury proceeding to the extent that dismissal of the indictment was required (see *People v Carncross*, 59 AD3d 1112, 1114, *affd* 14 NY3d 319; *People v Smith*, 289 AD2d 597).

The grand jury proceeding did not fail to conform to the requirements of CPL article 190 to such a degree that the integrity thereof was impaired and, in view of the sufficiency of the independent, admissible proof which supported the indictment, no prejudice to the defendant could have resulted from the improperly elicited testimony (*see People v Kappen*, 142 AD3d 1106; *People v Simon*, 101 AD3d 908, 909; *People v Miles*, 76 AD3d 645).

C. The Defendant's Belated Exercise of a Peremptory Challenge

The defendant argues that the County Court erred in rejecting her belated request to exercise a peremptory challenge as to juror number 10.

CPL 270.15(2) provides:

“Upon the completion of [questioning] by both parties, . . . [t]he people must exercise their peremptory challenges first and may not, after the defendant has exercised his peremptory challenges, make such a challenge to any remaining prospective juror who is then in the jury box. . . . The prospective jurors who are not excluded from service must retain their place in the jury box and must be immediately sworn as trial jurors.”

“Under CPL 270.15, . . . the decision to entertain a belated peremptory challenge is left to the discretion of the trial court, in recognition that the voir dire process can often be time-consuming and requires practical limitations” (*People v Jabot*, 93 AD3d 1079, 1081). A court may deny a belated peremptory challenge to an unsworn prospective juror “where the challenge would interfere with or delay the process of jury selection” (*id.* at 1081; *see People v Monroe* 118 AD3d 916; *People v Leakes*, 284 AD2d 484).

Here, as noted by the People in their brief, by the time of the defendant's belated challenge as to juror number 10, the County Court and the parties had considered two additional sets of prospective jurors, the People had exercised four additional peremptory challenges, the defendant had exercised three more challenges, and an additional juror had been selected. Accordingly, under the circumstances of the instant case, the court providently exercised its discretion in denying the defendant's peremptory challenge (*see People v Monroe*, 118 AD3d at 916; *People v Brown*, 52 AD3d 248, 248; *People v Leakes*, 284 AD2d at 484; *People v Smith*, 278 AD2d 75, 76).

D. The Defendant's Remaining Contention

The defendant's remaining contention, regarding the County Court's exclusion of certain internet website user profile information from evidence, does not warrant reversal.

III. Conclusion

The DV Survivor's Act/Penal Law § 60.12 was passed in recognition that less harsh sentences may be imposed in certain appropriate cases involving domestic violence survivors. We are persuaded that the instant case is such an appropriate case. Accordingly, we give the DV Survivor's Act its intended effect, consistent with the reasons for its implementation, and reduce the sentences imposed accordingly.

MASTRO, J.P., HINDS-RADIX and DUFFY, JJ., concur.

ORDERED that the judgment is modified, on the facts and as a matter of discretion in the interest of justice, by reducing the sentence imposed on the conviction of murder in the second degree from an indeterminate term of imprisonment of 19 years to life to a determinate term of imprisonment of 7½ years to be followed by 5 years of postrelease supervision, and the sentence imposed on the conviction of criminal possession of a weapon in the second degree from a determinate term of imprisonment of 15 years to be followed by 5 years of postrelease supervision to a determinate term of imprisonment of 3½ years to be followed by 5 years of postrelease supervision, which sentences shall run concurrently; as so modified, the judgment is affirmed.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Aprilanne Agostino
Clerk of the Court

Hon. Fernando Camacho

Course materials

STATE OF NEW YORK

6358

2025-2026 Regular Sessions

IN SENATE

March 11, 2025

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to enacting the "child sex crime victims protection act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "child sex
2 crime victims protection act" or "Sara's law."

3 § 2. Legislative intent. This act shall be construed as prioritizing
4 the successful treatment and rehabilitation of child sex crime victims
5 who commit acts of violence against their abusers, or who committed a
6 crime as the direct result of being a victim of trafficking. It is the
7 legislature's preference that such persons be viewed as child victims
8 and provided with treatment and services rather than transferred into
9 the adult system.

10 § 3. The penal law is amended by adding a new section 60.38 to read as
11 follows:

12 § 60.38 Authorized dispositions; child sex crime victims.

13 Notwithstanding any other provision of law to the contrary, when a
14 person is convicted as an adult of an offense that such person committed
15 when such person was under the age of twenty, and the court finds that
16 either:

17 (a) the individual against whom such person committed such offense
18 trafficked such person as defined by section 230.34 or 230.34-a of this
19 chapter, compelled such person to engage in prostitution as defined by
20 section 230.33 of this chapter, promoted the prostitution of such person
21 in the first degree as defined by section 230.32 of this chapter,
22 promoted the prostitution of such person in the second degree as defined
23 by section 230.30 of this chapter, or committed a sex offense against
24 such person as defined by article one hundred thirty of this chapter
25 prior to or during the commission of such offense; or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD00619-04-5

(b) the individual who committed such offense did so as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34-a, or 230.34 of this chapter;
the court may:

1. depart from any mandatory minimum sentence, maximum sentence, or sentencing enhancement;

2. suspend any portion of an otherwise applicable sentence; or

3. if the individual was under the age of eighteen at the time of the commission of the offense, transfer such person back to the jurisdiction of the family court for disposition pursuant to article seven hundred twenty-five of the criminal procedure law.

§ 4. Section 722.22 of the criminal procedure law is amended by adding a new subdivision 1-a to read as follows:

1-a. After a motion by a juvenile offender, pursuant to subdivision five of section 722.20 of this article, or after arraignment of a juvenile offender upon an indictment:

(a) the juvenile offender may request a hearing to determine:

(i) if the individual against whom such juvenile offender committed such offense committed a child sex crime against such juvenile offender prior to or during the commission of such offense; or

(ii) if the juvenile offender committed such offense as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34, or 230.34-a of the penal law; and

(b) the court shall, on motion of any party or on its own motion, order removal of the action to the family court pursuant to the provisions of article seven hundred twenty-five of this title, if, after such hearing, it is proven by a preponderance of the evidence that:

(i) the individual against whom such juvenile offender committed such offense trafficked such juvenile offender as defined by section 230.34 or 230.34-a of the penal law, compelled such juvenile offender to engage in prostitution as defined by section 230.33 of the penal law, promoted the prostitution of such juvenile offender in the first degree as defined by section 230.32 of the penal law, promoted the prostitution of such juvenile offender in the second degree as defined by section 230.30 of the penal law, or committed a sex offense against such juvenile offender as defined by article one hundred thirty of the penal law prior to or during the commission of such offense; or

(ii) the juvenile offender committed such offense as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34-a, or 230.34 of the penal law.

§ 5. Section 722.23 of the criminal procedure law is amended by adding a new subdivision 2-a to read as follows:

2-a. Following the arraignment of a defendant charged with an offense committed when such defendant was under eighteen years of age:

(a) the defendant may request a hearing to determine if, prior to or during the commission of such offense:

(i) the individual against whom the defendant committed such offense committed a child sex crime against the defendant; or

(ii) the defendant committed such offense as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34, or 230.34-a of the penal law; and

(b) the court shall order removal of the action to the family court pursuant to the provisions of article seven hundred twenty-five of this title, if, after such hearing, it is proven by a preponderance of the evidence that, prior to the commission of such offense by such defendant;

1 (i) the individual against whom the defendant committed such offense
2 trafficked such defendant as defined by section 230.34 or 230.34-a of
3 the penal law, compelled such defendant to engage in prostitution as
4 defined by section 230.33 of the penal law, promoted the prostitution of
5 such defendant in the first degree as defined by section 230.32 of the
6 penal law, promoted the prostitution of such defendant in the second
7 degree as defined by section 230.30 of the penal law, or committed a sex
8 offense against such defendant as defined by article one hundred thirty
9 of the penal law; or

10 (ii) that the defendant committed such offense as a direct result of
11 being a victim of trafficking as defined by section 135.35, 230.30,
12 230.32, 230.33, 230.34, or 230.34-a of the penal law.

13 § 6. The criminal procedure law is amended by adding a new section
14 440.48 to read as follows:

15 § 440.48 Motion for resentencing; child sex crime victims.

16 1. (a) Notwithstanding any other provision of law to the contrary, any
17 person who is confined in an institution operated by the department of
18 correction and community supervision and serving a sentence for an
19 offense committed prior to the effective date of this section may submit
20 to the judge or justice who originally sentenced such person for such
21 offense an application to be resentenced to a determinate sentence
22 pursuant to section 60.38 of the penal law if such person is eligible
23 for an alternative sentence as a person convicted as an adult of an
24 offense committed when such person was under twenty years of age pursu-
25 ant to section 60.38 of the penal law; and

26 (i) the individual against whom such person committed such crime traf-
27 ficked such person as defined by section 230.34 or 230.34-a of the penal
28 law, compelled such person to engage in prostitution as defined by
29 section 230.33 of the penal law, promoted the prostitution of such
30 person in the first degree as defined by section 230.32 of the penal
31 law, promoted the prostitution of such person in the second degree as
32 defined by section 230.30 of the penal law, or committed a sex offense
33 against such person as defined by article one hundred thirty of the
34 penal law; or

35 (ii) the defendant committed such offense as a direct result of being
36 a victim of trafficking as defined by section 135.35, 230.30, 230.32,
37 230.33, 230.34, or 230.34-a of the penal law.

38 (b) An application to be resentenced to a determinate sentence submit-
39 ted pursuant to paragraph (a) of this subdivision shall include documen-
40 tation proving that such person is:

41 (i) confined in an institution operated by the department of
42 corrections and community supervision and is serving a sentence for an
43 offense committed prior to the effective date of this section; and

44 (ii) eligible for an alternative sentence as a person convicted as an
45 adult of an offense committed when such person was under eighteen years
46 of age pursuant to section 60.38 of the penal law.

47 (c) If, at the time of such person's request to apply for resentencing
48 pursuant to this section, the judge or justice who originally sentenced
49 such person is a judge or justice of a court of competent jurisdiction,
50 but such court is not the court in which such person was originally
51 sentenced, then the request shall be randomly assigned to another judge
52 or justice of the court in which such person was originally sentenced.
53 If the judge or justice who originally sentenced such person is no long-
54 er a judge or justice of a court of competent jurisdiction, then the
55 request shall be randomly assigned to another judge or justice of the
56 court in which such person was originally sentenced.

1 (d) If the court finds that such person is eligible to apply for
2 resentencing pursuant to this section, the court shall notify such
3 person that such person may submit an application for resentencing. Upon
4 such notification, the person may request that the court assign an
5 attorney to such person for the preparation of and proceedings on the
6 application for resentencing submitted pursuant to this section. The
7 attorney shall be assigned pursuant to the applicable provisions of
8 section seven hundred twenty-two and article eighteen-A of the county
9 law.

10 (e) If the court finds that such person is not eligible to apply for
11 resentencing pursuant to this section, the court shall notify such
12 person of such ineligibility and dismiss such person's request to apply
13 for resentencing without prejudice.

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

17 (b) If the judge or justice who receives such person's application for
18 resentencing is not the judge or justice who originally sentenced such
19 person, such application may be referred to the judge or justice who
20 originally sentenced such person; provided, however, that the judge or
21 justice who originally sentenced such person is a judge or justice of a
22 court of competent jurisdiction; and provided, further, that the person
23 applying for resentencing and the district attorney agree that such
24 application should be referred.

25 3. (a) If the court finds that such person has met the requirements of
26 this section, the court shall conduct a hearing to determine whether to
27 approve or deny such person's application for resentencing. At such
28 hearing, the court shall determine any controverted issue of fact rele-
29 vant to the issue of sentencing. Reliable hearsay shall be admissible at
30 such hearings.

31 (b) If the court denies such person's application for resentencing,
32 the court shall notify such person of such denial and shall enter an
33 order to that effect.

34 (c) If the court approves such person's application for resentencing,
35 the court shall notify such person that, unless such person withdraws
36 the application or appeals from such approval, the court shall enter an
37 order vacating the sentence originally imposed and impose the new
38 sentence pursuant to section 60.38 of the penal law. Such approval may
39 be based on the grounds that any order issued by a court pursuant to
40 this subdivision must include written findings of fact and the reasons
41 for such order.

42 4. (a) An appeal may be taken as of right pursuant to this chapter:

43 (i) from an order denying such person's application for resentencing;

44 (ii) from a new sentence imposed pursuant to paragraph (c) of subdivi-
45 sion three of this section on the grounds that the term of the new
46 sentence is harsh or excessive or is unauthorized as a matter of law; or

47 (iii) from an order specifying and informing such person of the term
48 of the determinate sentence the court would impose upon resentencing on
49 the ground that the term of the proposed sentence is harsh or excessive.

50 (b) Upon remand to the sentencing court following such appeal, the
51 person applying for resentencing shall be given an opportunity to with-
52 draw such application before any sentence is imposed. Such person may
53 request that the court assign an attorney to such person for the prepa-
54 ration of and proceedings on any appeals regarding such person's appli-
55 cation for resentencing pursuant to this section. The attorney shall be

1 assigned pursuant to the applicable provisions of section seven hundred
2 twenty-two and article eighteen-A of the county law.

3 5. In calculating the new term to be served by such person applying
4 for resentencing pursuant to section 60.38 of the penal law, such person
5 shall be credited for any period of incarceration credited toward:

6 (a) the subject conviction; and

7 (b) the sentence originally imposed.

8 § 7. This act shall take effect immediately.

Sexually Exploited Youth: A View From the Bench

by Hon. Fernando Camacho

In the winter of 1985, during the early morning hours of the “lobster” arraignment shift at 100 Centre Street, amid chuckles from the audience, the scantily-clad kids with the sad faces would walk out of the holding pens and face the judge. I, as the Assistant District Attorney, would recommend thirty days in jail. My friend Mike Piniero, the Legal Aid attorney, would ask for ten days. Judge Herb Adlerberg would peer down at the trembling teenagers and, as the mascara streaked down their tear-stained faces, he would offer them twenty days in jail. In a barely audible whisper they would take the plea. As they were being led back to the cells, I would avoid their gaze so as not to look into vacant eyes that reflected an innocence lost and a soul in turmoil.

Twelve years later, in Brooklyn Criminal Court, I saw the same young faces all over again as I presided over their arraignment as a Criminal Court Judge. The same script was repeated and I reluctantly played my part: “The Court’s offer is twenty days in jail.”

I have since come to appreciate that this approach to cases involving teenagers charged with prostitution is, to a large degree, shaped by certain misconceptions that continue to impact the criminal justice system’s treatment of sexually exploited youth.

Many of us assume that the overwhelming majority of women engaged in street prostitution in New York City are mature adults. In truth, many are not. Children’s advocates estimate that there are roughly five thousand youths involved in prostitution in New York City and the average age of entry into prostitution in the city is between twelve and thirteen years old.¹ New York City is home to more than two thousand sexually exploited youngsters under the age of eighteen.² Outreach workers report that they have come across children as young as eight years old who are forced into prostitution.³

Recent prosecutions of alleged pimps by the Queens District Attorney for charges including Promoting Prostitution, Kidnapping, and Endangering the Welfare of a Child included the following alleged victims: a twelve year old; another twelve year old girl who had turned twelve a mere four days earlier; thirteen and fourteen year old runaways; a thirteen year old; another thirteen year old; a fifteen year old runaway who was locked in a basement for one month; another fifteen year old kidnapped by a “Bloods” gang member, allegedly forced to have sex with strangers until she was able to escape by running naked into the street; and a twelve and seventeen year old who were allegedly forced into prostitution.

Over the last several years, I vacated numerous criminal convictions of girls who were eleven, twelve, and thirteen years old when they took adult pleas. They lied about their ages on the instructions of pimps who found it difficult to secure their release from the juvenile justice system. The ugly truth is that many of those charged with prostitution are in fact kids, not mature adults, and their decisions are far from knowing and intelligent.

In the past we have based our criminal justice policies on the false assumption that all women who enter the world of prostitution are free to leave at any time. This is rooted in a lack of understanding of who many of these women are, where they come from, and what they face once they enter the “game.” In fact, many are throwaways and runaways from dysfunctional homes where they suffered physical, psychological, and sexual abuse.⁴ As one survivor explained:

We’ve all been molested. Over and over, and raped. We were all molested and sexually abused as children. Don’t you know that? We ran to get away. . . . We were thrown out, thrown away. We’ve been on the streets since we were twelve, thirteen, fourteen.”⁵

Young, frightened, and homeless, many find themselves in unfamiliar places — bus and train stations, homeless shelters, and group homes, where they are driven into the arms of an older male, a pimp, who promises them, sometimes for the first time in their young lives, friendship, security, and a sense of belonging to a family.

Comparisons between pimps and batterers are inescapable. Some years ago, a defendant in a domestic violence case pending in my court was the victim’s pimp. The victim was sitting in the first row of the courtroom waiting to speak to the prosecutor. When the case was called the defendant calmly walked toward the bench and, as he reached the first row, stopped by the victim, cocked his fist

and knocked her unconscious. She lay motionless on the floor as dozens of court officers, attorneys, litigants, and one bewildered judge looked on. He could have done this to her on the street but instead he chose to do it in the courtroom, to send a message — *I own you and no one can protect you from me* — not the police, not the prosecutor, and certainly not the person in the black robe sitting under the sign that reads In God We Trust. Just like victims of domestic violence, many sexually exploited youth do not have the ability to walk away.

By its very nature, the world of street prostitution makes it difficult for a young woman to escape. She is put to work on the “track,” a desolate stretch of road where on any given night she has sex with a dozen or more total strangers. Some are nice, some are not. She is told how much to charge and what the “quota” is — the amount of money she is expected to bring in every night. She is under the supervision of the “bottom bitch,” a more experienced girl who trains the younger ones. Discipline is imposed by the “gorilla pimp,” the enforcer who walks the “track” swinging a chain. She better meet her “quota” because, if she does not, she is “out of pocket” and subject to discipline. She is sometimes given a new name and is often tattooed. A pimp nicknamed “Worm” forced all of his girls to get a tattoo depicting an apple with a worm. On the “track” she can’t look the pimps in the eye, she must look down. “Pimp’s up, ho’s down” is the rule: if the pimps are on the “track” she has to move down to the street level so the pimps can walk on the sidewalk. If she is guilty of a violation of the rules she is sometimes placed in a “pimp circle” where she is surrounded by a group of men who stomp on her with fists and boots. If she commits the most egregious transgression — she tries to leave — she is hunted down, brought back, and severely punished, as in a recent prosecution where a defendant’s alleged torture of choice was burning with a hot iron.

A couple of years ago, in putting together a presentation entitled *From Let’s Make a Deal to Let’s Make a Difference: Changing the Criminal Justice System’s Approach to Teen Sex Trafficking*, I included the following accounts from two young survivors:

“Cheryl”:

I was thirteen or fourteen when I was turned out to the life and he was 30, 31. When I first met him I did not know what to expect, all I knew was that he was a gorgeous man and I had to meet him. . . . He told me that I was going to make money and the way I was going to make money was to give my stuff away

to men I didn't know . . . he took my innocence, I was supposed to be running around and playing with Barbie dolls and all that, but instead. . . . The reason they pick the girls so young is because they don't know any better, catch them around thirteen or fourteen, they are going to believe what you say, they want you to like them . . . how do I know because I've been there. . . . When I was on the track you see so many girls lined up behind cars, just sitting there and waving, and you know, it's kind of scary, because when you see a girl, standing there one minute, the next minute she is gone, sometimes they don't return back. . . . I know because I was close to losing my life in the game.

“Stephanie”:

I was in Covenant House and I met him in the park and he told me all about himself, making it seem like a guy who really wanted to get to know a female, and he asked me all about myself, whether I had kids, my sign, and what I wanted to do with my life. He asked me do you want to make money in the streets and I said ‘yeah,’ I had nowhere to go, no food, no money. I was fifteen, he was 26 or 27. . . . On the track I saw females get stabbed, get doped up, slipped mickeys by their pimps, pimps forcing drugs into their system. . . . I seen a gun pointed at a female's head, I've been in life and death situations, getting choked out, getting beat up for no reason or because you don't bring home a lot of money . . . you get really stressed out in this game, if you are not doing drugs when you come in, you leave with it . . . you don't care about yourself really, you feel there is no help and you just want to go to a suicide house.

Many of these victims turn to alcohol and drugs as a way to cope with the terror. They develop physical ailments, they contract sexually transmitted diseases, they engage in a coping mechanism called disassociation as a result of engaging in numerous intimate sex acts with total strangers. Many of them develop psychological ailments including clinical depression, schizophrenia, Post Traumatic Stress Disorder, and Stockholm Syndrome.⁶ Young women, many of them “physically, mentally, emotionally, and spiritually devastated,”⁷ facing unimaginable dangers on the “track” and fearing the wrath of the pimps, find it extremely difficult to leave the “life.”

A number of years ago at a trafficking seminar I came across the following quote:

More and more children are going into prostitution . . . because of a lack of will to combat it.⁸

When I first read it, I thought it referred to the children, that they lacked the will. I have now come to interpret it differently. It refers to *us*, all of *us*. In the past, we as a community lacked the will to confront the sexual exploitation of our children. We tried not to look them in the eye and shook our heads sadly as they were led off to jail. We unfairly accused their advocates of proposing the legalization of prostitution. In truth, advocates for sexually exploited youth never called for the legalization of prostitution. They asked us to find a more enlightened way to deal with these lost children. When pioneers of the drug treatment courts were clamoring for a change in our approach to addiction, were they calling for the legalization of drugs?

Several years ago, a sixteen year old walked into my courtroom in Queens County. She had been arrested more than five times for prostitution and had the same sad and vacant expression I had seen on the faces of countless teenagers over the years. Rather than sentencing her to a jail term, I adjourned her case to the following day for an assessment and to facilitate her referral to an organization that could provide her with services. That was the spark that led to the creation of a judicial diversion program in Queens County, a program dedicated to working with sexually exploited youth.

When we began, there were few resources available for this population. I was able to locate one Harlem-based program, the GEMS program, founded by a woman named Rachel Lloyd, and shortly thereafter we partnered with the Sexual Assault and Violence Intervention Program at Mount Sinai. Over the last four years, we have referred hundreds of young women charged with prostitution-related offenses to these two programs. Many have succeeded and have escaped the “life.” Some have failed, including a teen named Erin who was found frozen to death in a railroad yard on a blustery winter morning, a tragic reminder that we still have much work to do.

As a result of some very courageous voices who simply refused to be silent, the tide has begun to change. Columnists for *The New York Times* are taking notice:

The big problem out there is the teenaged girls who are battered by their pimps, who will have to meet their quotas tonight and every night, who are locked in car trunks or

basements, who have guns shoved in their mouths if they hint of quitting . . . those innumerable girls . . . for whom selling sex isn't a choice but a nightmare.⁹

The Legislature is listening as well, as evidenced by the recent passage of the Safe Harbour for Exploited Children Act. We are now beginning to recognize two fundamental truths: (1) many of the kids charged with prostitution in New York City are *victims* and not *criminals*; and (2) the justice system's treatment of these kids needs to change. Let's not punish them, let's get them help.

As for myself, I have also come a long way from those nights in the "lobster" shift twenty-four years ago. I no longer avoid the gaze of sexually exploited youth. I now look them in the eye and what I see is not despair — I see kids, full of hopes and dreams, ready to soar if only given the chance.

Notes

1. Mia Spangenberg, *Prostituted Youth in New York City: An Overview*, ECPAT-USA (2001).
2. Cassi Feldman, “Report Finds 2000 of State’s Children Are Sexually Exploited, Many in New York City,” *The New York Times* (April 24, 2007).
3. National Center for Missing and Exploited Children, *Female Juvenile Prostitution: Problem and Response* (Nov. 2002).
4. Spangenberg, *supra* note 1.
5. Melissa Farley, *Prostitution, Trafficking and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, Yale Journal of Law and Feminism (2006).
6. Melissa Farley, *Prostitution Is Sexual Violence*, Psychiatric Times (Oct. 2004).
7. United States Department of State, Bureau of Public Affairs, *The Link Between Prostitution and Sex Trafficking* (Nov. 2004).
8. Spangenberg, *supra* note 1.
9. Nicholas Kristof, “The Pimp’s Slaves,” *The New York Times* (Mar. 16, 2008).

