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# A New Path to Justice:

Getting Women Off Rikers Island



**Vera**  
INSTITUTE OF JUSTICE

**THE  
NEW YORK  
WOMEN'S  
FOUNDATION**  
Radical generosity.

## Director's Note

The number of women incarcerated in this country has ballooned a shocking 700 percent since 1980. Yet despite this growth, women remain largely absent from the increasing public discourse on criminal justice reform.

Academic experts, grassroots advocates, and formerly incarcerated women themselves are clear on the reasons why women end up involved in the system: the often-intertwined factors of economic instability, intimate partner violence, drug abuse, and mental illness that narrow their options for survival. They also agree that there is little public safety rationale to detaining many of these women, particularly considering the known costs to their children, families, and communities when their ability to be caregivers and contributing members of the community is compromised by incarceration.

**We need a new paradigm to help stop the cycles of poverty and trauma and create new paths for opportunity and stability in the lives of women and the families that depend on them.**

Each year, more than 5,500 women are admitted to the jail at Rikers Island. And while there has been much activity throughout New York City on criminal justice reform in recent years, including consensus among policymakers to close Rikers Island and cut the number of people involved in the system by half within a decade, gender-specific solutions remain elusive.

To address this, The New York Women's Foundation has partnered with the Vera Institute of Justice to identify

gender-informed strategies for getting New York City women disentangled from the criminal justice system. A culmination of dialogue among more than 20 nonprofit organizations and New York City agencies, this report reflects our commitment to ensure that those with expertise on systemic solutions for women have the opportunity to inform thought leadership in the field. Within the pages of this report, you will find policy and practical recommendations that could significantly reduce the population of women involved in the criminal justice system in New York City. Building on our partnership with the Prisoner Reentry Institute at John Jay College of Criminal Justice on the report *Women InJustice: Gender and the Pathway to Jail in New York City*, the recommendations in this report serve as a blueprint to ensure that women do not remain unseen in the fight to end mass incarceration in our city.

As philanthropists, it is not enough to support the creation of reports such as these, though they are one important piece of the puzzle. We must also invest and leverage our dollars and other resources to ensure that those who are the most underinvested, such as system-involved women, are at the center of solutions. That's why, for more than 30 years, we at The New York Women's Foundation have focused our efforts on investing in marginalized communities of women to create economic justice for all, particularly on complex, intersectional, and intractable issues such as criminal justice reform. We urge policymakers and other funders to join us in our commitment to ending mass incarceration for women in New York City. The moment is now.



Ana L. Oliveira  
President & CEO  
The New York Women's Foundation

## About this project

The New York Women's Foundation's work is guided by the principle that the best solutions for the most pressing problems a community faces are present within that community. It is with this principle in mind that we strive to build inclusive tables where leaders in community, philanthropy, academia, and government come together to share knowledge and to advance change together. To that end, The Foundation commissioned the Vera Institute of Justice (Vera) to write the report, *A New Path to Justice: Getting Women Off of Rikers Island*, using a participatory approach.

Vera formed an advisory group and began meeting over several months in 2017 to answer the question: What would it take to get women off of Rikers Island now? The goal of these advisory group discussions was to think broadly but practically about changing the experience of women in New York City's criminal justice system. Over six sessions, the advisory group identified the challenges women face in the New York City criminal justice system and developed strategies and solutions to change the trajectory of their involvement from arrest to case disposition.

Vera also met with dozens of other stakeholders, including staff from community-based organizations that serve justice-involved women, city officials and policymakers and, critically, women who have directly experienced the harms of Rikers Island. Vera conducted individual meetings and site visits, and led focus groups—including one with incarcerated women and girls at the Rose M. Singer Center, the women's facility at Rikers Island.

We are proud to present *A New Path to Justice: Getting Women Off of Rikers Island*. It is a blueprint of aspirational first principles, programmatic considerations, and practical solutions to keep women out of the criminal justice system and off Rikers Island. It is also one part of an evolving body of content and activity, which encompasses reports, convenings, and public education events and more.

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# Introduction

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 In any given day, approximately 500 to 550 women, mostly women of color, are held in Rose M. Singer Center at Rikers Island—the vast majority because they can't afford the bail set in their cases, while others are serving jail sentences or held for violations of probation or parole.<sup>1</sup>

On March 31, 2017, New York City Mayor Bill de Blasio stood on the steps of City Hall and announced that it was the city's intention to close Rikers Island.<sup>2</sup> That announcement in and of itself was one of historic proportions. It was an acknowledgment that the old, dilapidated jails that comprise Rikers are beyond repair, as is the culture of violence and isolation that permeates the Island. It was also an exhortation for New York City to go further, much further, to create a criminal justice system that prioritizes fairness, invests in communities, and reserves the use of jail as a sanction of last resort.



**New York City's recent  
experience demonstrates that  
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In recent history, New York City has positioned itself as a leader in progressive criminal justice reform by prioritizing public safety while reducing reliance on incarceration.<sup>3</sup> Securing a commitment to close Rikers Island was the result of political winds in favor of a new approach. Decades of litigation over jail conditions, especially abuse and use of excessive force by corrections officers, supplied the evidence for why business as usual was no longer tolerable.<sup>4</sup> New York City's vast network of community-based resources, services, and court-based programs provided the proof that there are legitimate alternatives to jail that judges, prosecutors, and defense attorneys can count on.<sup>5</sup> Finally, the relentless advocacy of formerly

incarcerated individuals and their families provided the moral justification that the only solution to fixing Rikers Island was to shutter it entirely.<sup>6</sup>

What changed, in an unprecedented way, was the idea of *what* comprises public safety. New York City's recent experience demonstrates that reducing reliance on incarceration actually yields greater public safety.<sup>7</sup> The Independent Commission on New York City Criminal Justice and Incarceration Reform, a blue-ribbon commission convened by former New York City Council Speaker Melissa Mark-Viverito and led by Jonathan Lippman, former chief judge of the New York State Court of Appeals, studied the question of Rikers Island for a year and concluded: "[S]hutting Rikers Island is an essential step toward building a more just New York City. Refurbishing Rikers is not enough. Our current approach to incarceration is broken and must be replaced."<sup>8</sup> When considering public safety, jails are part of that public, and the people incarcerated within are as deserving as anyone else of safety.

In the year 2018, the city has already taken concrete steps toward making the closure of Rikers Island a reality. The average daily jail population, already way down from a high in 1992 of more than 20,000 individuals, consistently hovers below 9,000 now.<sup>9</sup> The first of 10 jails on Rikers Island is slated to be closed in summer 2018.<sup>10</sup> Sites for four borough-based jails in the Brooklyn, the Bronx, Manhattan, and Queens have been selected.<sup>11</sup> The Mayor's Office of Criminal Justice launched the Justice Implementation Task Force, a working group that meets regularly to move forward on the city's roadmap to close Rikers, and created new programmatic initiatives to expand pretrial supervised release and reduce the use of short jail sentences.<sup>12</sup> The #CLOSERikers campaign continues to exert pressure to shorten the timeline for closure to well under 10 years.<sup>13</sup>

## A new path to justice for women

Across the board, there is consensus that fewer New Yorkers should be incarcerated and that jail, when used, should be a place that is humane and safe, and offers stability and rehabilitation. Yet, one of the risks in this moment of opportunity is that the needs of specific populations within the criminal justice system—especially women—will be overlooked. Nationally, women are the fastest growing segment of the incarcerated population, in no small part because so little attention has been paid until recently to the unique pathways that result in the arrest, prosecution and, increasingly, the incarceration of women.<sup>14</sup> While time in jail or prison is destabilizing and traumatic for anyone, irrespective of gender, age, race, or ethnicity, for many women the sheer impact of an arrest—let alone incarceration—can extend that instability and trauma to the children and families who rely on them. Moreover, involvement in the criminal justice system can compound existing trauma that many women have faced in their lives.<sup>15</sup>

New York City must be deliberate and focused in making sure that criminal justice reform does not overlook the experience of justice-involved women. Already, there is strong evidence that we have not, and will not, perpetuate those oversights. For years, nonprofit organizations in New York City, such as the Women's Prison Association, Hour Children, Providence House, Housing + Solutions, and Greenhope Services for Women have provided counseling, case management, housing, legal, civil, and other supports. Others, like the Women in Prison Project at the Correctional Association, provide oversight and influence policy related to conditions of confinement. Programs at Rikers Island by organizations like STEPS to End Family Violence, the Osborne Association, Friends of Island Academy, and others offer critical connections to services and stability for incarcerated women. These programs have been supported by the city and supplemented by initiatives of its own, including a new pretrial release program that serves women at both arraignments and at Rikers Island who are facing the threat of bail or pleading guilty to a sentence of jail time because they do not have stable housing.<sup>16</sup> Public defenders have also developed gender-specific responses by assigning dedicated lawyers to the Human Trafficking Intervention Courts in each borough and innovative programs such as the Legal Aid Society's Women's Pretrial Release Initiative. Chirlane McCray, the city's First Lady, recently announced a huge investment—\$6 million—in services for women in jail and those reentering the community.<sup>17</sup>

## Thinking boldly to reduce the incarceration of women

The collective impact of these investments is a tremendous step forward toward reducing the involvement of women in the criminal justice system overall and the number of women who enter Rikers Island each year. However, in this remarkable moment, in which the imperative to dream big and dream boldly about criminal justice reform has never been more immediate, a group of stakeholders began meeting regularly over several months in 2017 to answer the question:

“What would it take to get *all* women off Rikers Island now?”

✦ In this remarkable moment, in which the imperative to dream big and dream boldly about criminal justice reform has never been more immediate, a group of stakeholders began meeting regularly over several months in 2017 to answer the question: “What would it take to get all women off Rikers Island now?”



The goal of these discussions was to think broadly but practically about changing the experience of women in New York City's criminal justice system from that first 911 call or police encounter to how bail is imposed and cases are resolved, particularly focusing on instances where jail is too often the end result. Over six sessions, the group identified the specific challenges women face in the New York City criminal justice system and developed strategies and solutions to change the trajectory of their involvement from arrest to case disposition. This report is a blueprint of aspirational first principles, programmatic considerations, and practical solutions to keep women out of the criminal justice system and off Rikers Island. It reflects the consensus of the stakeholders who participated, individual meetings, and focus groups, including one with incarcerated women held at Rikers Island.

## The advisory group

Members of the group represented a remarkably diverse cross section of stakeholders. Some advisory group members had extensive experience working with women in the criminal justice system or had direct experience themselves with incarceration. Others had served as judges in New York City family and criminal courts. Many had spent countless hours over the years at Rikers Island providing programming and services to incarcerated

women. Others were public defenders, social workers, and advocates with experience representing women in court. The collective brain trust included expertise in policy, community organizing, legal services, counseling, case management, and research.

Members of the advisory group:

- > Jody Adams, retired judge of the New York City Family Court
- > Afua Addo, Center for Court Innovation
- > Miriam Goodman, Women's Prison Association
- > Susan Gottesfeld, Osborne Association
- > Kaitlin Kall, Vera Institute of Justice
- > Judy Harris Kluger, Sanctuary for Families
- > Leigh Latimer, Legal Aid Society's Exploitation Intervention Project
- > Avery McNeil, The Bronx Defenders
- > Ana Oliveira, The New York Women's Foundation
- > Anne Patterson, STEPS to End Family Violence
- > Insha Rahman, Vera Institute of Justice
- > Gail Smith, Women in Prison Project at the Correctional Association
- > M. Jane Stanicki, Hour Children
- > Ash Stevens, Brooklyn Community Bail Fund
- > Herb Sturz, Open Society Foundations
- > Abigail Swenstein, Legal Aid Society's Exploitation Intervention Project
- > Rita Zimmer, Housing + Solutions
- > Alison Wilkey, Prisoner Reentry Institute at the John Jay College of Criminal Justice

## Scope of this report

This report is in no way exhaustive or representative of the entire range and depth of the discussions the group had over many months. Several challenges and barriers—indeed, challenges and barriers that members of the group work to overcome day in and out—felt too large and worthy of an entirely separate study to address in any depth here.

For one, the recommendations and strategies in this report focus primarily on ciswomen, those whose gender identity and expression correspond to their sex assigned at birth. While the majority of women at Rose M. Singer Center are ciswomen, a sizeable population is transgender or gender-nonconforming.<sup>a</sup>

Second, this report does not attempt to delve into or address the myriad factors that disproportionately figure in the lives of justice-involved women. These factors include the trauma, physical, and sexual violence that many have experienced prior to their incarceration; the prevalence of mental and behavioral health disorders among incarcerated women; the lack of access to stable, safe, and quality housing or employment for many women both prior to and after their incarceration; and the challenge of providing legal services and support to justice-involved women as they manage cases across multiple court systems, especially family court. The statistics that point to the need to address these factors is staggering: nationally, more than half of incarcerated women have a medical condition, more than 80 percent have or have had a substance dependency, one-third experience serious mental illness, and only 40 percent report having full-time employment before their incarceration.<sup>b</sup> Even more staggering are the statistics that suggest the extent of victimization and trauma justice-involved women have faced: 86 percent reported

# A profile of women admitted to Rikers Island

In New York City, all women ages 16 and older in jail are in a facility called the Rose M. Singer Center (RMSC), or, colloquially, “Rosie’s,” on Rikers Island.<sup>18</sup> Over the years, many efforts have been made to improve the conditions, services, and programs offered at RMSC, including programs to foster relationships between women and their families, a nursery for newborns, and a play area for young children when they come to visit their mothers and relatives at Rikers Island.<sup>19</sup> Programming for women held at RMSC ranges from therapy and group sessions to GED classes and workforce development training. The classrooms at RMSC where these programs are held, painted in bright colors with artwork hanging from the walls, is illustrative of the efforts made to set RMSC apart from other facilities at Rikers Island that have a reputation for being far less safe or supportive for those incarcerated there.

Yet no amount of programming and services can undo the harm to many of the women incarcerated at Rikers Island. Research on women in New York City’s criminal justice system suggests that they end up in custody for different reasons than men and boys, and traditional criminal justice options—such as existing diversion programs and alternatives to incarceration—are not tailored to meet their needs.<sup>20</sup> Unlike men—many of whom are

admitted to Rikers Island on robbery, burglary, and gun possession charges—during the period studied in this report women were admitted pretrial primarily on assault, drug- and property-related misdemeanors, and nonviolent felonies.<sup>21</sup> Women are also held at higher rates than men on open warrants for failure to appear in court, pay fines, or complete conditions such as community service or counseling on prior cases.<sup>22</sup> Additionally, many of the women at Rikers Island are jailed for only short periods—fully 60 percent are released to the community within two weeks of entering the jail.<sup>23</sup>

As context for the ideas and solutions in this report, what follows are some of the key data points and statistics from an analysis of DOC data for a cohort of 5,734 women admitted to RMSC between October 2015 and September 2016. This summary is not intended to be exhaustive or to identify all of the major junctures in the New York City criminal justice system for women, or to compare the trends of women's incarceration to men, but it does provide a basic profile of the women who end up at Rikers Island. For a more comprehensive data analysis of how women experience New York City's criminal justice system, a comparison of women and men's incarceration trends in New York City, and the issues that lead to women's criminal justice involvement in the first place, the *Women InJustice* report by the Prisoner Reentry Institute at John Jay College of Criminal Justice and The New York Women's Foundation is an invaluable resource.

experiencing sexual violence and 77 percent experienced partner violence prior to their incarceration.<sup>c</sup> The need for resources and services that are gender- and trauma-informed—for all individuals in the criminal justice system, but especially women—cannot be emphasized enough. Again, each of these factors—trauma, mental health, housing, and employment—deserves its own study and investment beyond what can be covered here.

Third, this report focuses on strategies and recommendations to get women off Rikers Island and out of jail. To that end, it does not examine the programmatic and service needs of incarcerated women, of which there are many. Developing programs and services in jail that promote stability, maintain connections with family and community, and set people up to succeed upon reentry is another complex topic worthy of its own additional study and investment well beyond what is doable in the pages of this report.

Finally, in no way should the focus on women diminish the need for equally bold, innovative solutions to the over-incarceration of men, boys, or people who are transgender or gender-nonconforming. Much more work is needed to create a more equitable, fair justice system for everyone. However, the tangible goal of getting women off Rikers Island—fueled by the fierce urgency of now, in which both the opportunity to do justice differently for women, and the closing of Rikers Island, are in reach—led to the ideas and recommendations in this report.\*

\*For sidebar notes see back of report.

## The *Women InJustice* report and the need for gender-responsive and trauma-informed programming for justice-involved women

In 2017, the Prisoner Reentry Institute and The New York Women's Foundation released *Women InJustice: Gender and the Pathway to Jail in New York City*.<sup>a</sup> Despite growing awareness and a deeper exploration of the rise of women's incarceration nationally, until this report New York City had not taken a close look at women in the criminal justice system. *Women InJustice* explores at each juncture in the justice system—arrest, charging, arraignment, case processing, and disposition—how women in New York City are often on a different path to jail than men. The report found that compared to men, women are “charged with less serious crimes, are less likely to be charged with violent crimes, and are less likely to return to jail within one year.”<sup>b</sup> For many women, their criminal justice system involvement is a result of prior trauma, abuse, poverty, relationships, or untreated substance use.<sup>c</sup> Because of their specific pathways into the justice system, the *Women InJustice* report underscored the need for any new programs or services for women to be gender-responsive and trauma-informed—to recognize that women's service and treatment needs may be unique and distinct from men and that the structure or approach of traditional programs in the criminal justice system—diversion programs, alternatives to incarceration, treatment programs—may not be sufficient to meet women's specific needs.<sup>d</sup>

One of the report's most striking findings is that despite the overall headway New York City has made to reform its criminal justice system and reduce incarceration over the past two decades, women have not benefited in the same way as men from those reforms. In particular, while arrests and the use of jail for men has declined significantly in recent years, that has not been true for women. Why is this? The Prisoner Reentry Institute found that one likely reason is that historically women have comprised a small share—no more than 6 or 7 percent—of the overall justice-involved population in New York City. The relative obscurity of women in the overall system has resulted in far fewer, if any, reforms targeted towards this population, despite growing momentum for criminal justice reform. In New York City, gender-specific programs—those designed to address the unique needs of women in the justice system—have been either nonexistent or limited to specific types of charges or cases.

<sup>a</sup> Prisoner Reentry Institute at John Jay College of Criminal Justice (PRI) and New York Women's Foundation (NYWF), *Women InJustice: Gender and the Pathway to Jail in New York City* (New York: PRI, 2017), <https://perma.cc/N53F-ZNHC>.

<sup>b</sup> *Ibid.*, 1.

<sup>c</sup> *Ibid.*, 4.

<sup>d</sup> *Ibid.*, 31.

# Personal characteristics

**Race.** The racial disparities between white women and women of color admitted to RMSC during the period studied were stark (although slightly less so than disparities between white men and men of color). More than three out of four women admitted to the jail were black or Latina. (See Figure 1, below.)

Figure 1  
**Race/ethnicity of men and women admitted to Rikers Island, October 2015 to September 2016**

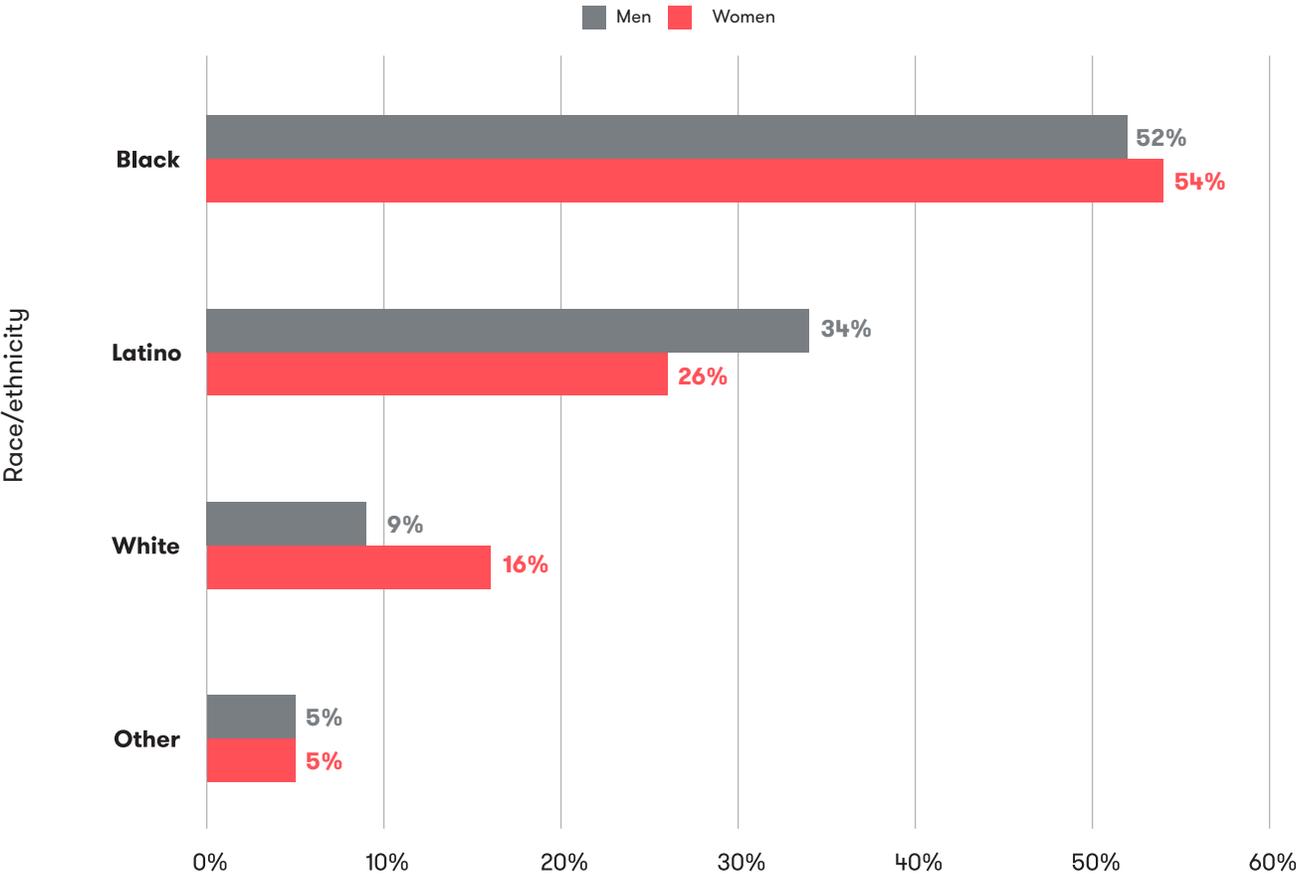
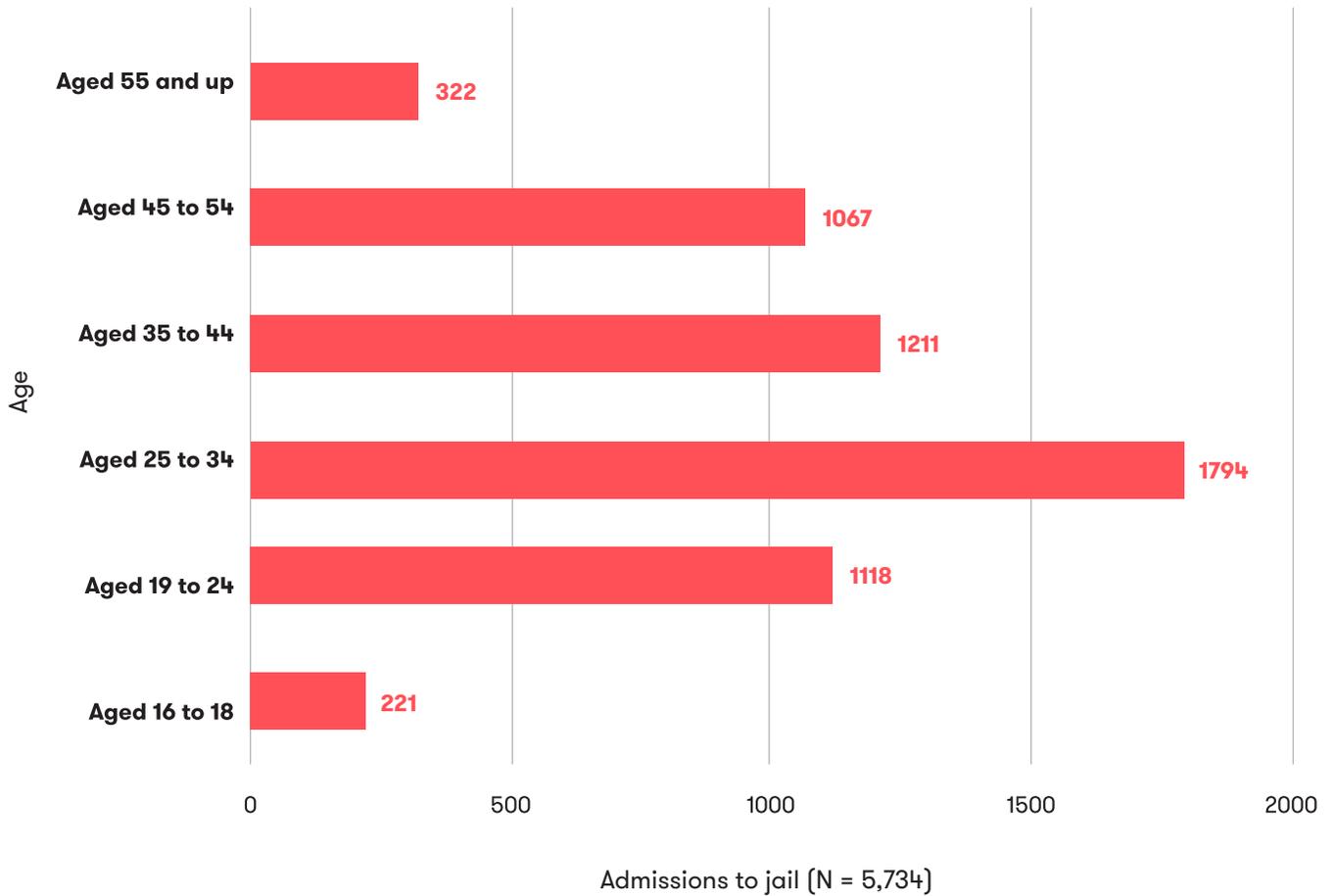


Figure 2

**Age breakdown of women admitted to Rikers Island, October 2015 to September 2016**



**Age.** The majority of women admitted to Rikers Island are during this time period were 25 years or older. Only 4 percent admitted to RMSC were girls and women under age 19, and almost 50 percent were age 35 and older. (See Figure 2, above.)

**Mental health.** Based on self-reporting and clinical assessments, almost three-quarters of women admitted to Rikers Island in the cohort analyzed had identified mental health needs.<sup>24</sup>

## Legal characteristics

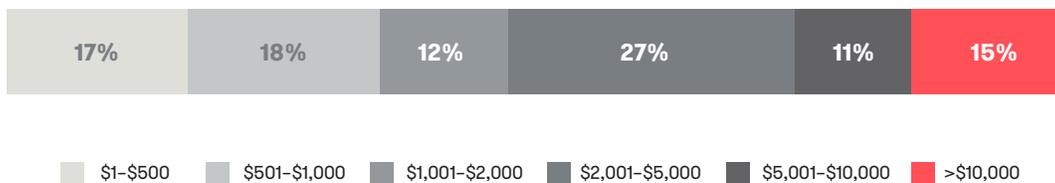
**Admissions status.** Three out of four women admitted to Rikers Island during the period studied entered in a pretrial status, where either bail was set and not made, or there was some other factor preventing release, such as an open warrant or a probation or parole hold.<sup>25</sup> Only 11 percent of women entered Rikers Island as “sentenced” to serve time on a sentence imposed by a judge, 4 percent entered because of a technical violation of parole, and 3 percent entered as transfers to serve a state prison sentence.

**Bail.** For those women admitted to Rikers Island pretrial, 47 percent had bail set at \$2,000 or less. (See Figure 3, below.) The inability to afford even relatively low amounts of bail is unsurprising, though, given a recent national study that found incarcerated women who could not make bail had an annual median income of only \$11,071.<sup>26</sup>

**Severity of charges.** A third of women were admitted to the jail for drug possession and larceny, two offenses commonly associated with behavioral health needs.<sup>27</sup> Another third of admissions were for offenses where there is a complainant or victim, such as charges of assault, robbery, burglary, or homicide. (See Figure 4, next page.)

Figure 3

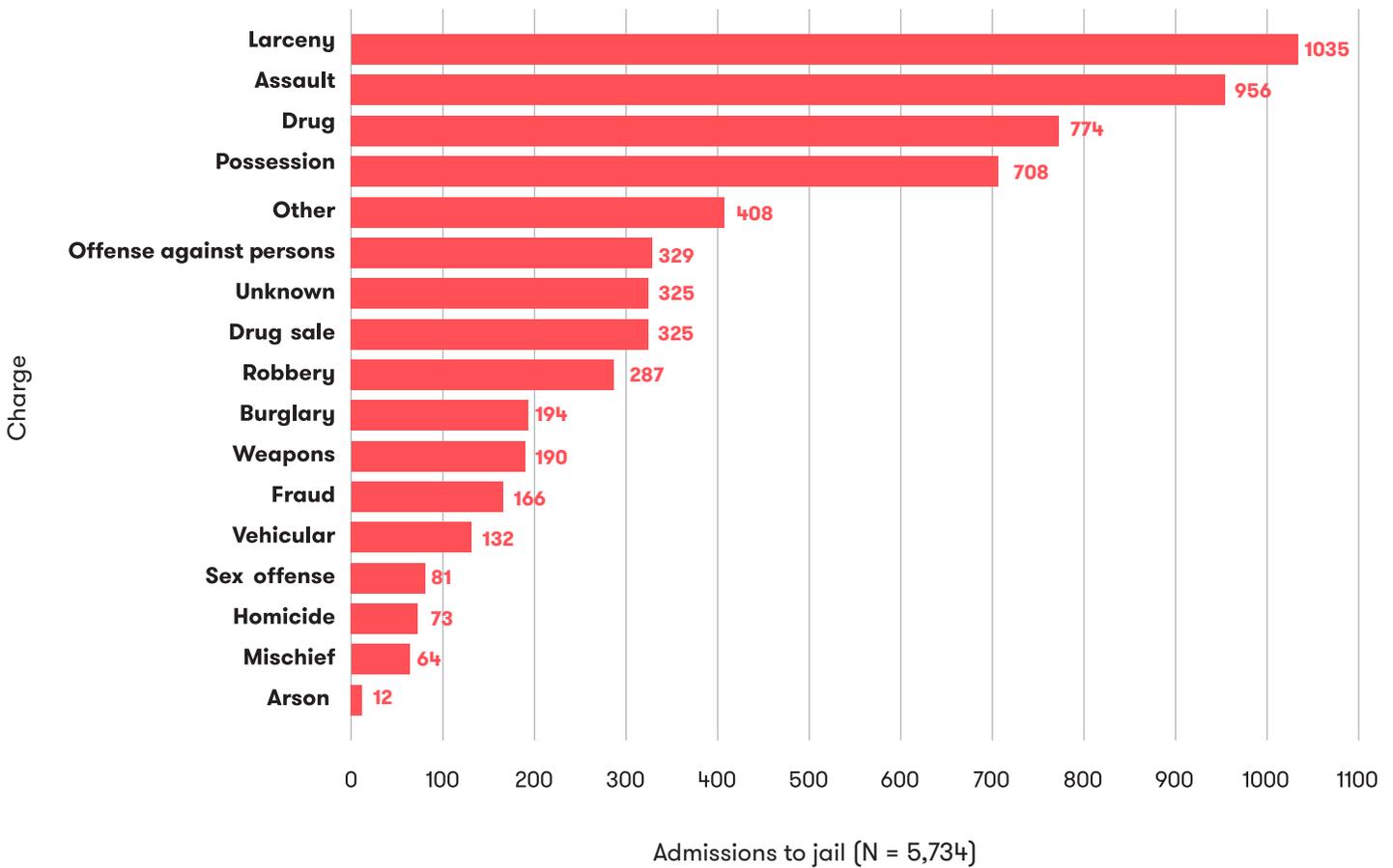
### Bail amounts set on women admitted to Rikers Island, October 2015 to September 2016



(N = 5,734)

Figure 4

**Most common charges of women to Rikers Island, October 2015 to September 2016**



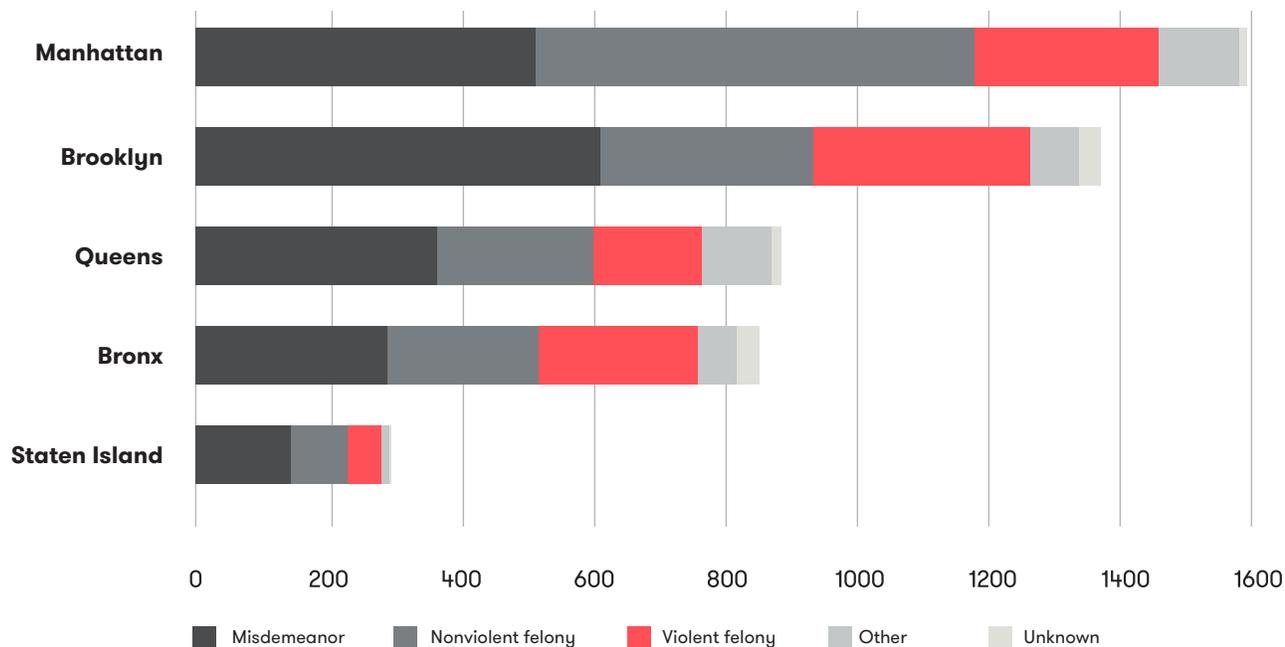
The differences in admissions to jail for women based on borough were also stark. By far, Manhattan was the greatest driver of incarceration for women, accounting for almost 1,600 admissions to Rikers Island during the 12 months analyzed. (See Figure 5, at page 15.)

The majority of women from Manhattan were admitted on felony-level offenses. In contrast, while Brooklyn, Queens, and Staten Island each sent fewer women to Rikers Island, proportionally more women arrested in these boroughs were incarcerated on misdemeanor-level offenses than in either Manhattan or the Bronx. There are a number of cases that do not originate in any particular borough. Women admitted as “direct admits”—almost 800 admissions annually—are not charged with a new offense, but rather are being held on a technical parole violation, violation of probation, an unresolved warrant, or another hold.

**Length of stay.** Most women stayed at Rikers Island only a few days, and 60 percent were released within two weeks of admission to jail.

Figure 5

### Admissions of women to Rikers Island by borough, October 2015 to September 2016



(N = 5,734)

### Girls' incarceration in New York City

Despite their young age, all 16- and 17-year-olds currently arrested in New York are treated as adults, facing prosecution in the state's criminal courts. On any given day, there are approximately 150 16- and 17-year-olds held at Rikers Island, a handful of them at Rose M. Singer Center.

Significant changes are underway to end the incarceration of girls at Rikers Island—and the end of incarceration for *all* girls in New York City—including those in the family court system, which handles juvenile arrests. In 2017, New York passed legislation to raise the age of criminal responsibility from 16 to 18 years old. After 2019, no minors will be housed at Rikers Island, and the majority of cases involving 16- and 17-year-olds will be handled by the family court system.

Amidst the hard-won victory of recognizing that young people should not be prosecuted as adults, it is vitally important to not simply replace adolescent incarceration at Rikers Island with detention in a juvenile facility. There is emerging consensus that holding young people in custody is costly, fails to address problematic behaviors and their underlying causes, and is in itself harmful. Moreover, the reasons why girls and young women enter the criminal justice system—particularly the types of charges they face—are often different than the trajectory of adult women. Of the slightly more than 300 young people admitted to girls' units within the family court

system in 2016, most were admitted for low-level offenses and presented complex needs that were unmet in the community.<sup>9</sup> To that end, it is important to draw distinctions between justice-involved girls and justice-involved adult women in New York City, and to develop targeted, individualized strategies for reducing the incarceration of both.

In 2017, several New York City agencies and organizations, in partnership with Vera, launched the Task Force on Ending Girls' Incarceration, a first-of-its-kind initiative designed to bring the number of girls and lesbian, gay, transgender, and gender-nonconforming children incarcerated in girls' units within the family court system to zero. After the passage of raise the age legislation, this effort will now include 16- and 17-year-old girls.

<sup>9</sup> These figures were compiled by a task force to end girls' incarceration in New York City. See Cindy Rodriguez, "Task Force Aims to End Incarceration for Young Girls," WNYC, February 2, 2017, <https://perma.cc/WV46-F7Z7>. More information about girls' unique pathways into New York City's family court system will be published in a forthcoming Vera report. For more information about girls' trajectories in the juvenile justice system generally, see Lindsay Rosenthal, *Girls Matter: Centering Gender in Status Offense Reform Efforts* (New York: Vera Institute of Justice, 2018), <https://perma.cc/M3UR-TXPP>.

# Establishing the values and priorities of a new approach to serving justice-involved women

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One of the challenges to developing a new approach to women in the criminal justice system is that the default response is to treat all women the same—instead of sending a woman to jail or prison, we opt for the few gender-specific programs designed for women in New York City without any assessment or meaningful understanding of whether it is the right or wrong approach. A new approach requires that we ensure interventions are carefully calibrated to serve individual needs rather than adding mandated programming or debuting another gender-specific or gender-responsive alternative to incarceration that would apply to all women uniformly. Many stakeholders involved in this project expressed concerns that this was the typical approach, and one that led to net-widening, over-programming, and an inappropriate level of intrusion and surveillance into women's lives.

While nationally women tend to be held on low-level charges, the data analyzed for this report shows this is not the case at Rikers, where a significant number of women are admitted for felony-level offenses.<sup>28</sup> Women facing felony charges should not be excluded from alternatives to jail and incarceration. Indeed, considering only women who have been arrested for low-level offenses runs the risk of undermining efforts to reduce incarceration if new alternatives and programs are only developed for charges that are classified as nonviolent and exclude other, more serious charges.<sup>29</sup> Typically, many alternatives to incarceration in New York City developed for women focus on drug treatment and counseling, which is wholly appropriate given the prevalence of women incarcerated at Rikers Island for drug- and behavioral health-related charges.<sup>30</sup> However, the New York City data highlights the need to go beyond the “low-hanging fruit” in reducing women's jail incarceration and move toward addressing the increasing numbers of women in the criminal justice system who are charged with serious offenses involving violence.<sup>31</sup> Recent reports on women and the criminal justice system have begun to do exactly this.<sup>32</sup>

To avoid a “one size fits all” response, this report starts with a set of **first principles** and overarching **resource ideas** before identifying specific **strategies**. The first principles outlined below are aimed at developing new solutions—ones that focus on needs and strengths, minimize unnecessary mandates and surveillance, and prioritize safety for both justice-involved women and the public. These are principles that already exist in niche programs and services for justice-involved women in New York City, and should be made universal.

### The benefits and limitations of programming

For decades, the use of programs as an alternative to jail or prison has been seen as a critical tool to fight mass incarceration and create a justice system that reflects principles of proportionality and parsimony.<sup>a</sup> The earliest wave of court-based programs, developed in the 1960s and 1970s, involved community service, which evolved over time into programs tailored to meet specific needs or to serve specific populations.<sup>b</sup> Today, in New York City, thousands of New Yorkers are served by an array of programs and alternatives to incarceration, and court- and community-based programs exist that assist youth, people with mental illnesses, people with substance use disorders, women, LGBT individuals, and more.<sup>c</sup> These alternatives to jail and prison have played a significant role in reducing the overuse of jail in New York City over the past two decades and are in part responsible for the remarkable decline in the jail population, from more than 20,000 in the early 1990s to less than 9,000 today.

Yet there is growing awareness that some of the mandatory, “one size fits all,” conditions routinely imposed by many programs—such as required appointments, drug testing, curfews, engagement in counseling, or other classes—are resulting in people failing to successfully complete their mandates despite having no new involvement in the criminal justice system, simply because they cannot keep up with required obligations.<sup>d</sup> This phenomenon has been studied extensively in the specialty courts context, such as drug and mental health courts, where participants are often required to engage in treatment for months—even years—extending their supervision by the criminal justice system for far longer than if they were given a prison or jail sentence for a specific term.<sup>e</sup> These cautions should be front and center when

developing any new programs for people in the criminal justice system, including gender-specific and gender-responsive programming for women.

<sup>a</sup> For a discussion of the principles of parsimony and proportionality, see Jeremy Travis, Bruce Western, and Steven Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 324–26.

<sup>b</sup> See generally Norval Morris and Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (New York: Oxford University Press, 1991).

<sup>c</sup> See the New York City ATI/Reentry Coalition’s website at <https://perma.cc/T2MT-Y4M6>.

<sup>d</sup> In fact, over-supervision has been found to produce worse outcomes for people found to be at low-risk for re-offending: “Decades of research confirm . . . that overly supervising (by number of contacts, over-programming, or imposing unnecessary restrictions) low-risk probationers or parolees is likely to produce worse outcomes than essentially leaving them alone. . . . Thus, uniform supervision will invariably have a negative impact on recidivism rates for some sector of the supervised population. In addition, if the supervision strategy and case plan are not matched to the individual’s assessed risk and needs, the supervision may very well be ineffective.” Vera Institute of Justice, *The Potential of Community Corrections: To Improve Communities and Reduce Incarceration* (New York: Vera Institute of Justice, 2013), 13, <https://perma.cc/NJ69-3FSS>.

<sup>e</sup> Drug courts have proliferated in the past two decades, with more than 3,000 courts operating across the United States. While these specialty courts have the potential to offer much-needed treatment and services to people in the criminal justice system, their strict eligibility criteria and lack of an individualized approach to treatment hinder their ability to do so. For a thorough examination of the potential and failure of drug courts, see Physicians for Human Rights (PHR), *Neither Justice Nor Treatment: Drug Courts in the United States* (Boston: PHR, 2017), <https://perma.cc/JMF7-SKMN>.

## First principles

### **Guiding principle 1: Create an overall smaller footprint of the criminal justice system for women**

Fewer women should be involved in the criminal justice system in the first place. To achieve this goal, many low-level, quality-of-life offenses that result in thousands of women being arrested each year should be removed from criminal justice scrutiny, including offenses such as farebeating, prostitution, and marijuana possession. Other offenses should be handled with alternatives to traditional arrest, more options offered by district attorneys' offices that result in dismissal, and more opportunities for judges to place women in diversion programs at arraignment to truly shrink the number of women in the criminal justice system.<sup>33</sup>

### **Guiding principle 2: Provide true alternatives for women who would otherwise be in jail**

When programs are developed for justice-involved women, they should target those who are otherwise jail-bound within the current system, which in New York City are often women facing serious charges who have long histories of criminal justice involvement, open warrants at arrest, and other indicators of noncompliance with the criminal justice system.

Criteria for participation in programs developed for women must be crafted in a way to minimize the potential for net-widening. Programs must avoid targeting cases that either should not be criminalized in the first place or should be handled by the justice system with a lighter touch, including so-called "quality of life" offenses such as trespass, loitering, farebeating, or disorderly conduct. Programs must also avoid casting a deeper net by imposing such a robust set of requirements that there are more opportunities to fail based on excessive appointments, supervision, and other conditions.

Finally, when a woman does not or cannot comply with the conditions or mandates of a program, sanctions for that failure should be no harsher than the original sentence if she had only faced traditional prosecution. Nor should jail time be the automatic sentence imposed on program failure.

### **Guiding principle 3: Integrate harm reduction principles into programming**

The concept of harm reduction is to provide services and programming with the primary aim of reducing harm to self, family, or the community. This is a concept that has growing momentum in the fields of healthcare and behavioral health, but is only now beginning to receive attention in the criminal justice sphere.<sup>34</sup> While not condoning behaviors that are potentially harmful or that constitute criminal conduct, harm reduction allows for the criminal justice system to focus on problematic or unproductive behaviors, such as drug or alcohol abuse, from a strengths-based position, and not simply to require the often unattainable outcome of complete abstinence.<sup>35</sup>

To the extent possible under court mandate, women's participation in programming and services, including case management, drug treatment, counseling, workforce development, parenting classes, and other conditions should be encouraged but voluntary. This is a central principle of a harm reduction approach. Lack of participation in one or all of these services should not be automatically interpreted as a failure of compliance. Success should also be more broadly defined than simply abstinence or reduced recidivism.

### **Guiding principle 4: Tailor programs and services to the needs of women**

Too often, criminal justice interventions fail to consider the specific needs of women and the outsize impact that incarceration has if the woman is a mother or caregiver, or shoulders other family responsibilities, such as being the primary source of income or financial support. Programs should prioritize women's needs as mothers and caregivers and not separate them from their children unless absolutely necessary—and then limit that separation to no longer than is absolutely necessary. Program appointments, conditions, and mandates should be imposed with flexibility to accommodate work schedules, school, family obligations, and other priorities. Court mandates should also prioritize life obligations that are key to stability and success, such as work, school, or parenting, over routine check-ins with case managers or other non-essential appointments. Case management and programming plans should be tailored towards specific needs, including preferences for geographic location, schedule, and other commitments such as childcare, family, education, and employment.

## **Guiding principle 5: Prioritize direct experience and peer support in staffing and developing services for justice-involved women**

Staffing and programming must be responsive to and supportive of the needs of women in the criminal justice system. Gender-responsive programs and services should hire and promote staff from diverse racial and ethnic backgrounds, gender and sexual orientations, and language fluencies, as well as people who have direct experience with the justice system, are survivors of trauma or violence, or who have overcome addictions or have direct experience with the substance disorder and mental health systems themselves. Promoting programs that rely on peer support and community networks can also help sustain women's success once they have formally completed their court mandates.

While qualifications such as formal educational experience are important for hiring and staffing, life experience, on-the-job training, and mentorship should also be given due consideration. Excellent programs exist to provide training and credentials to people with direct experience of the criminal justice system, and recruitment should be targeted at these potential sources of hiring in addition to more traditional options such as schools of social work, licensing programs for substance use and counseling, and other educational institutions.<sup>36</sup>

## **Guiding principle 6: Maintain a commitment to advancing equity, including racial equity and equity around gender identity, sexual orientation, disability, and other characteristics**

Programs serving women in the criminal justice system must not reproduce individual and systemic forms of discrimination along race, ethnicity, class, or gender identity lines. Many well-intentioned programs, including some alternatives to incarceration and drug treatment courts, have been shown to exacerbate racial disparities when a lens of racial equity is not prioritized.<sup>37</sup> For example, program eligibility factors that have strict exclusion criteria related to past criminal justice history or certain categories of charges may de facto exclude higher rates of people of color because of policing and criminal justice practices that disproportionately impact people of color or residents of certain communities.<sup>38</sup> Equity must be expanded beyond race to focus on other forms of intentional or de facto discrimination against members of certain communities, including women with disabilities, and women who are lesbian, bisexual, transgender, queer, or gender-nonconforming.

## Prioritizing streamlined resources and transparency

In addition to cross-cutting first principles, some themes emerged about streamlining resources—such as programs and services—and making real-time information about women in the criminal justice system available to all stakeholders who work with justice-involved women—service providers, case managers, volunteers, peer specialists, public defenders, and even police and corrections officers. This information might include basic demographic information, information on parenting status, and limited information about the current case that pertains to program eligibility, so that parties can work from identical data, eliminate redundant intake procedures, save women from having to navigate unnecessary bureaucracies, and promote better coordination across the system.

This sharing of data and information, however, should not come at the risk of compromising individual confidentiality, nor should there be any assumption that all service providers and programs conform to the same set of eligibility criteria, expectations, or programmatic approaches. In particular, information about a woman's mental health, history of trauma or abuse, substance use status, past involvement in the criminal justice system, or other highly-sensitive information should not be immediately available to all parties without express consent of the woman, and only after she has the opportunity to speak with an attorney to fully understand the process. The stigma attached to having a criminal record, experiencing mental illness or substance abuse, or any number of other factors requires that stakeholders tread cautiously and respectfully when handling data and information.

### **Resource idea 1: Create an online centralized resource hub that tracks program availability and location**

While dozens of providers across New York City serve justice-involved women, their services are often accessed by word-of-mouth and informal connections through lawyers, advocates, social workers, and case managers who have worked together for years. This informal network, while testament to the strong collaboration of stakeholders, cannot manage the scale at which resources and alternatives are needed to get women off Rikers Island and into community-based alternatives. For example, a lawyer in arraignments who needs to enroll a 19-year-old client in a parenting class as part of a judge's

condition for release currently has few options other than to call—or have a social worker or colleague in the office call—several parenting programs until one is identified that has an available slot and will accept the client. Similarly, if the need is for an immediate family shelter placement or a drug treatment program, the current process requires a certain amount of calling around and navigating bureaucracy to line something up.

These bureaucratic barriers cause unnecessary delay and are sometimes the reason why women spend days on Rikers Island waiting in jail until a program is identified and a referral or an appointment is confirmed. New York City can streamline this process by investing in an online centralized resource hub that allows service providers to research program eligibility criteria, look up programs by type and location and, importantly, display available slots at those programs in real time. The administrator of the resource hub can create the online platform, enter into agreements with community-based organizations and service providers to supply information about eligibility criteria, real-time availability of slots and appointments, and any other critical information. Stakeholders accessing the online platform can search for relevant programs and services by type (such as housing, drug treatment, workforce development, and counseling), specific criteria (such as LGBT-friendly or multilingual capabilities), location (for example, allowing for selection of a specific neighborhood within a borough so that a woman can maintain proximity to family and friends), among other criteria.

## **Resource idea 2: Collect and publish real-time data on women in the New York City justice system**

New York City is rich in data collection, and statistics are readily available on the number of arrests, charges filed, arraignment outcomes, use of bail, case dispositions and sentences by borough, types of cases, and other characteristics.<sup>39</sup> Yet very little of that data is shared in real time to allow stakeholders to monitor and adjust practices and programs to accommodate trends in cases that come through the criminal courts. Having such data available immediately would allow service providers to systematically check for women at different stages in the court process—at arraignment or if she is incarcerated pending trial—and prevent that woman from staying at Rikers Island simply because her case was overlooked for diversion or an alternative to incarceration.

One solution is to set up a real-time data collection mechanism, such as a dashboard, that provides daily statistics on women arrested

in each borough and the outcomes of their cases at arraignment. This information can be reported at the borough level and does not require sensitive, identifying information to be included, such as name or NYSID (an identification number selected by the state Division of Criminal Justice Services and attached to a specific individual at the moment of arrest). For all arrests of women, the dashboard should include the arrest charge and information about whether the officer considered an alternative to arrest. For all arraignments, the dashboard should include case information, such as whether the individual was released on recognizance, had the case resolved, was referred to a program such as supervised release or another alternative to detention, or had bail set. For cases where bail is set, a notification can be sent automatically to representatives of the community bail funds and to providers who operate programs at RMSC so that the case is flagged immediately and there is an opportunity to find an alternative to jail as soon as possible.

## Strategies to get women off Rikers Island

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What would it take to get more women off Rikers Island? In some ways, members of the advisory group found that naming the first principles that should underscore a new approach to how women experience New York City's criminal justice system was the easy lift. Developing solutions for how, practically, to reduce arrests and incarceration of women proved to be a more daunting task. Yet the advisory group developed several recommendations for how New York City can embrace a different approach at three critical junctures in the criminal justice system: (1) at arrest; (2) at arraignment; and (3) when women are held at RMSC.

Collectively, these strategies will not only reduce the number of women admitted to jail, but will also limit the overall churn of arrests and cases that go through the criminal courts. Some of the suggested strategies are already in operation and could be expanded, others are in development, and some, such as the ideas for diversion at the moment of arrest, are entirely new.

## Diversion at the moment of arrest

Approximately 55,000 women are arrested each year in New York City, and three out of four of those arrests are for misdemeanor and non-felony offenses, deemed by law to be nonviolent and less serious.<sup>40</sup> The point of arrest offers the best opportunity to avoid criminal justice involvement for women entirely. At the moment of arrest, in a system that prioritizes harm reduction and stability, an officer's first response should be to defuse the situation and assist in avoiding an arrest if possible.

The most common misdemeanors for which women are arrested are petit larceny, possession of a controlled substance, assault, and farebeating/theft of services.<sup>41</sup> These types of arrests can and should be prioritized for diversion at the moment of first contact with a police officer. The typical process in New York City is that annually more than 50,000 arrests are considered for a Desk Appearance Ticket (DAT) at the precinct, but issuing a DAT is entirely within the discretion of the arresting police officer.<sup>42</sup> If a person has an open warrant, for anything ranging from a parole hold to something as benign as a summons for riding a bike on the sidewalk, under current New York City Police Department practice, they are ineligible to receive a DAT.<sup>43</sup>

The most common felony arrests for women in New York City are for assault, drug possession and sale, robbery, and larceny.<sup>44</sup> The vast majority of these felony-level charges are currently statutorily ineligible for a DAT or other typical precinct-based diversion programs, such as the HOPE program in Staten Island.<sup>45</sup> Women arrested on felony charges are brought from the precinct to central booking, where they spend almost 24 hours, on average, before a judge makes a release or bail decision.

The result is that thousands of women arrested each year are held at the precinct, taken to central booking at the main courthouse in each borough, and processed through arraignments. The time from arrest to arraignment can last anywhere up to 24 hours—enough time to lose one's job, have children removed by the authorities, miss curfew at a shelter, or any number of other destabilizing and dire consequences. And this is for women who are released at arraignment. With more than 5,500 admissions to Rikers Island each year for women, many on felony-level charges and primarily because they cannot make bail, the numbers suggest a serious need to reimagine the process for women charged with all kinds of offenses—for both misdemeanors *and* felonies. Aside from the debilitating effects of incarceration, holding women in jail is not cost-effective, nor

does it necessarily enhance public safety, as most women who are admitted to Rikers Island are released within two weeks, and women are less likely than men to return to jail within one year of release.<sup>46</sup>

### **Strategy 1: Create a pre-arraignment off-ramp for women arrested on misdemeanor charges**

One solution is to create a pre-filing diversion program for women as an alternative to arrest on low-level, misdemeanor cases such as petit larceny, assault, and drug possession, among other charges. Instead of making an arrest on the scene and bringing the woman to the precinct to fill out arrest paperwork, the officer could remain at the scene of the encounter and call for a community navigator to arrive.<sup>47</sup> The officer would be able to alert the district attorney's office about the arrest. The police officer could then "hand off" the woman when the navigator arrives and allow for the navigator to complete a short assessment comprised of obtaining contact information, addressing any immediate needs such as homelessness or acute medical or mental health issues, and arranging a follow-up appointment with a service provider. The only mandate would be that the woman attend a one-time meeting with a service provider, who would assess needs and make referrals. Those referrals would be entirely voluntary and would not be tracked.

An anticipated challenge to this option is if the woman lacks identification or her identity cannot be verified on the scene. The police officer should assist in making phone calls to family members or friends who can verify or bring her identification. A lack of a residence or phone number should not disqualify a woman from diversion at this stage. A family member or friend's phone number and address should suffice, so long as that contact information is verified.

Under this option, the police officer could fill out paperwork "holding" the charges for 30 days, the amount of time given to the woman to meet with a service provider and complete the needs assessment, the results of which would remain confidential and not be shared with the court or any other parties. The service provider would be required to notify the police officer only whether the assessment was completed. If the assessment is satisfied, no charges would be filed. If not, then a letter and text message informing the woman of charges against her, with an arraignment date, would be sent to the contact address and phone number. The police officer could then "unhold" the charges and proceed with the arrest paperwork, which would be shared with the district attorney's office as usual.

## Strategy 2: Use DATs and reserve grand jury notice for women arrested on felonies

Appropriate felony-level cases too must be considered in any programs to divert women from the criminal justice system at the arrest stage. One solution for diverting felony-level cases at the moment of arrest could be to charge both felony- and misdemeanor-level offenses, but “hold” the felony charges and, at the precinct, file only the eligible misdemeanor charges with a DAT. For example, cases that can be charged as a felony assault can also be charged as a misdemeanor assault; cases that can be charged as a felony drug possession or a felony drug sale can also be charged as a misdemeanor drug possession; and cases that can be charged as a felony larceny or robbery can also be charged as a misdemeanor larceny. This work-around requires no statutory change to allow for more felony-level arrests to be eligible for a DAT. The felony charges would not disappear entirely, though. Under New York Criminal Procedure Law (CPL) § 170.20, the district attorney’s office can give notice to the defense of its intent to file felony charges, a mechanism within the law that preserves discretion to remove a misdemeanor case to superior court. By doing so, the district attorney would still be able to file the original, more serious, charges if the conditions of diversion were not met.

A woman could be eligible for this type of diversion on a felony-level case if she is able to show that she is contactable, either by phone or at an address, so that there is some guarantee that she will appear in court on the next court date. That phone number or address could belong to a friend or family member, depending on the circumstances of the arrest. A community navigator could meet her at the precinct and, while the arresting police officer is preparing the DAT paperwork, complete a short, confidential assessment. The mandate of the assessment would include appearance at the DAT court date, at least one meeting with a service provider to conduct a deeper assessment, and any conditions imposed by the court as a result of the case.

The key difference between misdemeanor and felony diversion at the point of arrest is that the misdemeanor charges may not automatically get dismissed on completion of the meeting with the navigator and the follow-up assessment, and any woman who benefits from a DAT on a felony arrest would still have to appear in court, be arraigned on the charges, and potentially face serious prosecution. Misdemeanor charges and an

obligation to meet court mandates would still apply at the discretion of the court and the district attorney. If a woman does not appear at the DAT arraignment date, or fails to comply with a mandatory condition of the intervention, then the district attorney's office could reinstate the felony charges pursuant to CPL § 170.20.

## Diversion at arraignments

Between an arrest and arraignment in criminal court, the district attorney declines to prosecute a small number of cases against women who have been arrested. However, the vast majority of arrests are accepted by the district attorney and are formally charged.<sup>48</sup> Formal charging happens at arraignment, the first appearance in criminal court and where a person learns of the charges against them, which must occur within 24 hours of arrest. At the arraignment of non-felony cases, a plea or resolution to the case may be offered by either the prosecutor or the judge. If the case is not resolved at arraignment, then the judge has a decision to make—either to release on recognizance (ROR) or to set bail. Felony charges are rarely resolved at arraignments with a plea offer.<sup>49</sup>

The majority of admissions to RMSC are women who are admitted pretrial as “detainees,” where bail has been set but not made. When judges set bail at arraignments, it is usually because the assistant district attorney has requested bail, there is some history of warranting on a prior case, or, the charge is severe enough that the judge determines some amount of money must be set in order to compel the woman to return to court.<sup>50</sup> The end result of a money bail system used in this way is that most women who have bail set cannot afford it, even though most bail is set at relatively low amounts—\$5,000 and below. (See Figure 3, above at page 13.) Although several alternative-to-detention programs exist at arraignments, including a citywide supervised release program and community bail funds, there is no mechanism to comprehensively flag women coming through arraignments and identify them early for intervention from bail.

### Strategy 3: Ask specific questions at arraignments to flag women for pretrial release

Everyone who is arrested and held at central booking is interviewed by a representative from the Criminal Justice Agency (CJA), who conducts a screening to assess their likelihood of return to court and provides a

recommendation to the court on pretrial release. For people held in central booking, the CJA representative could ask a few additional questions, many of which impact women in particular, that provide valuable information to the court as to why this person should be given priority for an alternative to bail. These additional questions can include:

- > Is the woman a parent or caregiver?
  
- > Does she have health needs that are being treated in the community?
  
- > Are there other factors—potential loss of housing or employment—that would be impacted by a stay in detention?

Such additional information collected for each woman in central booking would provide information to the judge that may influence him or her to consider an alternative other than bail.

#### **Strategy 4: Create a screening process at arraignments to flag women for pretrial release**

At arraignment shifts across all five boroughs, a dedicated nonprofit service provider operates programs such as Supervised Release, community service, and alternatives to incarceration. These nonprofits include the Center for Court Innovation, the Center for Alternative Sentencing and Employment Services, and the Criminal Justice Agency. Collectively, these organizations work to assess potential program participants, provide additional information to the courts about participant eligibility for their services, and accept people into their programs.

Each service provider has a court representative who is present in court at arraignments and receives a calendar of cases that are due to be arraigned during the shift. In creating a new screening process at arraignments to flag women for pretrial release, the service provider could proactively identify cases that have a female defendant and reach out to the assistant district attorney and the defense attorney to facilitate a discussion at arraignment of a potential arraignment outcome that does not involve bail.

## **Strategy 5: Encourage prosecutors to institute new policies regarding bail requests**

The assistant district attorney has the obligation, under law, to provide reasons for seeking bail. The district attorney for each borough could create a policy where prosecutors do not ask for bail, but instead consent to release, in cases in which there will be some additional impact on the person if bail is set, such as loss of custody of children, employment, or housing. While this policy cannot, and should not, be exclusive to women, the policy should explicitly consider factors such as a person's caregiving responsibilities, which disproportionately affect women involved in the criminal justice system.<sup>51</sup>

## **Strategy 6: Avoid jail pleas at arraignments by providing an alternative to incarceration**

A small number of women admitted to RMSC are admitted as “sentenced” because they have taken a plea to jail time at arraignments. The majority of these women have either outstanding warrants at arraignments or long histories of criminal justice system involvement, and serve relatively short sentences, most 15 days or less. Yet even just a few days in jail can be incredibly destabilizing to the person, while yielding very little gain in terms of public safety or accountability.<sup>52</sup> Again, the same strategies as above could be used to target women who have a high likelihood of pleading guilty to a jail sentence at arraignments because of these circumstances. Those cases should be flagged first by the CJA, and then by the service provider, as needing extra attention at arraignment. Additional information should be provided to the assistant district attorney and the defense attorney to avoid a jail plea at all costs. Alternatives to jail could include, on request of the woman, counseling, short treatment sessions if a behavioral health issue is present, or even an assessment with a community navigator and a referral to community-based services.

## Strategy 7: Create a process for handling outstanding warrants to remove a common barrier to release

Currently, women who have outstanding warrants are not eligible for diversion at the point of arrest. Open warrants can be for things like missing a court date, failing to pay a fine or complete community service, or even something as minor as ignoring a summons for an open container or being in a park after dark.<sup>53</sup> By policy, NYPD officers are required to make a full arrest rather than issue a DAT if a person has an open warrant. Typically, the person is brought to central booking, arraigned, and the open warrant is taken care of in court at the time that the new case is heard. In many cases, the open warrant is dismissed or resolved with a low-level disposition.<sup>54</sup> However, the harm to the person—several hours in jail and a loss of liberty—is outsized compared to the often minor conduct that led to the warrant.

Creating an alternative means of clearing warrants minimizes the amount of time a woman will spend in police custody and reduces the risk of an arraignment judge considering the open warrant as well as the new charges in setting bail. If a woman is arrested on an offense for which she would otherwise be eligible for arrest-based diversion except for the open warrant, the warrant should be resolved first and *then* a DAT should be issued. The police department should take her to court in a police car and bring her in “through the front,” or without going through the central booking process, so that the warrant matter is cleared in a matter of hours. This would avoid the normal booking process, which involves up to 24 hours in custody. On very low-level warrants, such as for summons matters, the police department and courts should create a program to clear those warrants by telephone or electronically with the court so that the officer does not have to transport her to the courthouse to do so. Once the warrant is cleared, the woman would be DAT-eligible. She could be brought back to the precinct and released with either a date to meet with the service provider (in misdemeanor cases) or a DAT to return to court (in felony cases).

## Diversion and alternatives at Rose M. Singer Center

By the time women enter RMSC, much has already been unwound in their lives. Within 24 hours, their children may be left in an unsafe situation and at risk of removal into foster care, their employment may be in jeopardy, or their housing or shelter bed may be lost.

### **Strategy 8: Implement early screening at intake in the jail**

The intake process at RMSC offers a prime opportunity to assess women and collect information to assist with speedy release. Women go through a 24-hour intake process on being admitted to RMSC. Identifying women right at intake as candidates for alternatives would result in fewer women incarcerated at Rikers and for shorter periods of time. Each morning at intake, a dedicated jail-based navigator who identifies potential cases for expedited release could confer with DOC intake staff and identify women who were admitted to the facility within the last 24 hours. The navigator could interview those women, with their consent, to collect information that would help in their release at the next court date, usually five to seven days away. In some cases, the navigator could contact family and friends, a community bail fund, or the individual's defense attorney to try to arrange release prior to the first court date.

### **Strategy 9: Assign a point person within each defender office to handle jail-bound cases involving female clients**

Rather than relying on individual defense attorneys to actively seek additional services for their female clients, each public defender's office should assign a dedicated attorney and social worker from within the office to handle cases involving women who are held at RMSC. This point person would have frequent contact and meetings with DOC staff at RMSC, as well as a working relationship with the jail-based navigator. This would avoid the delays resulting from slow information exchange between clients incarcerated at Rikers Island and their attorneys between arraignment and the first court date, expedite the early screening process, and streamline the process to facilitate release at the woman's next appearance.

# Conclusion

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The phrase, “the fierce urgency of now,” is not one to use lightly. Yet at no moment has there been momentum to change criminal justice in New York City as there is now. Nor has there been the current reckoning that we cannot end mass incarceration without specifically addressing the experience of women in the criminal justice system. The ideas, principles, and strategies in this report embody a hope and aspiration for a criminal justice system that recognizes women are much, much more than simply cases or the charges against them. Yet each idea, principle, or strategy is wholly doable and within the realm of possibility. But even if every strategy and recommendation in this report is embraced, there is much more work to be done to create a different experience for justice-involved women in New York City, and many more questions to be answered.

As the possibility of closing Rikers Island and holding incarcerated individuals in borough-based jails looms large, one pressing question is whether incarcerated women should all be held in one jail where dedicated resources, programming, and services can be centralized, or on a wing of each borough jail to make sure that they, like men involved in the criminal justice system, remain close to court and their families while incarcerated. The limitation of the “wing” approach is obvious—it becomes much harder to provide gender-informed and quality care, programming, and services when the number of women served is tiny compared to the men in a facility. Yet the downside of housing all women incarcerated in New York City in one facility is that they will not have the advantages of being held in jail closer to their families, loved ones, lawyers, or the court that will hear their cases.

Much more focused discussion is needed to answer that question. Even within the advisory group, stakeholders did not reach consensus about which approach would best serve women. However, there was much

consensus on *what* must be prioritized, whether women are housed in one facility across New York City or in wings within the borough-based jails. One of those priorities is rigorous gender- and trauma-informed training for all DOC staff working with incarcerated women, perhaps even requiring staff to “volunteer” or apply to work in the women’s facility or wings. Another priority is to increase access to the nursery and the play area to offer children and their incarcerated mothers an option to spend quality time together and maintain a close connection despite the fact of a parent being in jail. While the existing nursery at RMSC is a tremendous step forward in maintaining those family connections, on average it serves very few children or incarcerated parents, and does not make any special provisions for incarcerated mothers who have non-infant children.<sup>55</sup> Finally, a third priority is to work with women while they are incarcerated to create a plan for stable, quality housing on their release from Rikers Island.

Nevertheless, New York City, in recent years, has turned bold thinking into concrete steps forward—cutting its jail population by more than one-half, securing a commitment to close Rikers Island, reducing the footprint of the criminal justice system—as just a few tangible examples. Yet there is much more to be done. The ideas in this report will be valuable to policymakers in City Hall as they chart a path towards Rikers Island’s closure; to philanthropists who support both criminal justice reform and investment in women; to stakeholders such as judges and district attorneys, whose daily decisions impact lives in critical ways; and to the individuals and organizations who serve criminal justice-involved women. Within this report is something that each of these groups can do to change the trajectories—from arrest to arraignment to incarceration—of women in New York City.

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## Endnotes

- 1 For the most up-to-date data on the daily jail population in New York City, see JailVizNYC, an application developed by the Vera Institute of Justice based on Department of Correction data from the New York City Open Data portal that provides a breakdown of the current jail census and historical data about jail census trends. The app can be accessed at [https://vera-institute.shinyapps.io/nyc\\_jail\\_population/](https://vera-institute.shinyapps.io/nyc_jail_population/).
- 2 Mayor's Office of Criminal Justice (MOCJ), "Mayor de Blasio, Speaker Mark-Viverito Announce 10 Year Plan to Close Rikers Island," transcript (New York: MOCJ, March 31, 2017), <https://perma.cc/T8NQ-6J85>.
- 3 See for example Independent Commission on New York City Criminal Justice and Incarceration Reform (Independent Commission), *A More Just New York City* (New York: Independent Commission, 2017), <https://perma.cc/JJN6-MP7U>.
- 4 See Jennifer Gonnerman, "A Lawsuit to End Abuse at Rikers," *New Yorker*, December 19, 2014, <https://perma.cc/8YG9-8F5G>.
- 5 The New York City ATI/Reentry Coalition is a collaboration among 11 organizations in New York City that serve justice-involved individuals as an alternative to incarceration or provide reentry services. For more information, see <https://perma.cc/T54R-HUT7>.
- 6 The #CLOSErikers Coalition was launched in April 2016 to advocate for the closure of Rikers Island and a fairer criminal justice system in New York City. More than 150 organizations were members of the campaign and worked collaboratively to raise awareness about the need to close Rikers, maintain pressure on public officials, and identify demands for criminal justice reform. See #CLOSErikers, "CLOSErikers, Build Communities," <https://perma.cc/FD4T-RV5N>.
- 7 See Judith Greene and Vincent Schiraldi, "Better by Half: The New York City Story of Winning Large-Scale Decarceration While Increasing Public Safety," *Federal Sentencing Reporter* 29, no. 1 (2016), 22-38, <https://perma.cc/4GHM-FDW3>.
- 8 Independent Commission, *A More Just New York City*, 2017, 14.
- 9 MOCJ, "Mayor de Blasio Announces City Jail Population is Below 9,000 for the First Time in 35 Years," press release (New York: MOCJ, December 27, 2017), <https://perma.cc/G2G8-EYV7>.
- 10 MOCJ, "New York City to Close First Jail on Rikers Island by Summer 2018," press release (New York: MOCJ, January 2, 2018), <https://perma.cc/V38V-7VME>.
- 11 MOCJ, "Mayor de Blasio and City Council Reach Agreement to Replace Rikers Island Jails with Community-Based Facilities," press release (New York: MOCJ, February 14, 2018), <https://perma.cc/TT8Y-D8WD>.
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- 13 #CLOSErikers, *How Do We Close Rikers?* (New York: #CLOSErikers, 2017), <https://perma.cc/WUV6-KK6J>.
- 14 See generally Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Justice, 2016), <https://perma.cc/89G6-LKYH>.
- 15 Prisoner Reentry Institute at John Jay College of Criminal Justice (PRI) and The New York Women's Foundation (NYWF), *Women InJustice: Gender and the Pathway to Jail in New York City* (New York: PRI/NYWF, 2017), 4, <https://perma.cc/DND8-Y3BX>.
- 16 Testimony of Elizabeth Glazer, Director of the Mayor's Office of Criminal Justice, to the New York City Council Committee on Fire and Criminal Justice Services, December 4, 2017, <https://perma.cc/SFW6-2DPN>.
- 17 MOCJ, "First Lady Chirlane McCray Announces \$6 Million Investment to Break Cycle of Incarceration for Women in NYC," press release (New York: MOCJ, February 1, 2018), <https://perma.cc/4CVE-FPKJ>.
- 18 In 2017, New York State passed legislation to raise the age of criminal responsibility to 18 years old. Under current New York law, 16- and 17-year-olds arrested are charged and prosecuted as adults in criminal court. "Raise the age" legislation for 16-year-olds will go into effect on October 1, 2018, and for 17-year-olds on October 1, 2019. New York State, "Raise the Age: Improving the Way New York's Justice System Treats Young People," <https://perma.cc/2VG5-P5KU>.
- 19 For example, the nonprofit organization Hour Children runs several programs as part of its Rikers Island outreach. Hour Children, "Rikers Island Outreach," <https://perma.cc/8Y4F-9HSE>.
- 20 The *Women InJustice* report provides a comprehensive overview of the ways in which women's experience of the criminal justice system and incarceration differs from men, including the reasons for criminal justice involvement, and the differing service and treatment needs.
- 21 See also PRI and NYWF, *Women InJustice*, 2017, 10.
- 22 See *ibid.*, 12.

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- 23 Ibid., 19.
- 24 The statistic on the prevalence of mental health disorders and incarcerated women in the New York City criminal justice system comes from an analysis of individuals who receive an “M designation” while at Rikers Island. An “M designation” is assigned after an individual has at least three encounters with the mental health care system while in jail, or after an individual has been prescribed a particular class of psychiatric medication while incarcerated. The designation is a result of a settlement in *Brad H. v. City of New York*, 17 N.Y.3d 180 (2011), after a class action lawsuit was filed in 1999 challenging the lack of discharge planning by the Department of Correction for individuals with mental health disorders.
- 25 In New York City, a person may be incarcerated if they have a warrant or a hold. Warrants and holds may be in addition to a new arrest or criminal case, or may be the only basis for a person’s incarceration at Rikers Island. There are several different kinds of warrants and holds under New York law. One common type that may result in incarceration is a bench warrant, which is a warrant issued by the court when a person fails to appear for a scheduled court date on a misdemeanor or felony-level charge. On most bench warrants, judges have discretion to release the person or set bail. A judge may remand—commit to custody without any bail offered—a person if the bench warrant is for failure to appear on an indicted felony charge. A hold is an order, usually by an authority such as the departments of probation, parole, or the state prison system, to incarcerate a person until that authority can review or clear the order. In New York City, on a given day approximately 12 percent of the jail population is detained on warrants and holds. MOCJ, *Justice Brief: The Jail Population* (New York: MOCJ, undated), <https://perma.cc/9XB9-PAZU>.
- 26 Aleks Kajstura, “Women’s Mass Incarceration: the Whole Pie 2017,” Prison Policy Initiative, October 19, 2017, <https://perma.cc/Y3K6-U4RJ>.
- 27 On the relationship between behavioral health needs and the jail incarceration, see Office of the New York City Mayor, *Mayor’s Task Force on Behavioral Health and the Criminal Justice System: Action Plan* (New York: Office of the NYC Mayor, 2014), <https://perma.cc/DR9L-5WDZ>.
- 28 For national data, see Swavola, Riley, and Subramanian, *Overlooked*, 2016, 9.
- 29 Women are incarcerated for a variety of reasons and all their pathways into the criminal justice system, including those borne of their gender, must be considered. See for example an article in the Huffington Post by Roy Austin and Jennifer Katzman, former high-ranking officials in the Obama Administration, about the growing number of women incarcerated in the United States. Of this phenomenon, Austin and Katzman write, “Many women wind up involved in criminal acts as a result of drugs and their romantic entanglements with abusive partners, and they often pay hefty prices for this activity. Indeed, nearly 60 percent of women in federal prisons are there for drug convictions. These women often play small roles in a criminal enterprise, sometimes under significant duress, and rarely are involved in violence or have extensive prior convictions.” Roy Austin and Jennifer Katzman, “The Criminal Justice System’s War on Women,” Huffington Post, July 18, 2017, <https://perma.cc/ZZW2-PPVE>. The notion that women are involved in the criminal justice system because of relationships with male partners and are not engaging in violence themselves—which is certainly true for some justice-involved women—results in the unintended consequence of not looking holistically or carefully at women’s incarceration and acknowledging that women may need gender-specific alternatives to incarceration that address behaviors beyond trafficking, prostitution, or substance use to include charges involving violence such as assault, robbery, etc.
- 30 See Kajstura, “Women’s Mass Incarceration,” 2017.
- 31 In New York City and in the national literature on justice-involved women, many assault-related arrests for women involve situations where the parties know each other or where other dynamics may be at play such as a family dispute, intimate partner violence (IPV), or self-defense. See for example Debra Houry, Laurie Bay, Jennifer Maddox, and Arthur Kellermann, “Arrests for Intimate Partner Violence in Female Detention Patients,” *American Journal of Emergency Medicine* 23, no. 1 (2005), 96-97 (“policies favoring mandatory arrest for IPV have increased not only the arrest of the alleged perpetrator, but also the co-arrest of the alleged victim”), [https://www.ajemjournal.com/article/S0735-6757\(04\)00290-6/fulltext](https://www.ajemjournal.com/article/S0735-6757(04)00290-6/fulltext); and Peter S. Hovmand, David N. Ford, Ingrid Flom, and Stavroula Kyriakakis, *Women Arrested for Domestic Violence: Unintended Consequences of Pro and Mandatory Arrest Policies* (paper presented at the International System Dynamics Conference, July 29-August 2, 2007, Boston, MA), <https://perma.cc/A6NU-2JJ3>.
- 32 In New York City and in the national literature on justice-involved women, many assault-related arrests for women involve situations where the parties know each other, and where other dynamics may be at play such as a family dispute, intimate partner violence (IPV), or self-defense. See for example Debra Houry, Laurie Bay, Jennifer Maddox,

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- and Arthur Kellermann, “Arrests for Intimate Partner Violence in Female Detention Patients,” *American Journal of Emergency Medicine* 23, no. 1 (2005), 96-97 (“policies favoring mandatory arrest for IPV have increased not only the arrest of the alleged perpetrator, but also the co-arrest of the alleged victim”), [https://www.ajemjournal.com/article/S0735-6757\(04\)00290-6/fulltext](https://www.ajemjournal.com/article/S0735-6757(04)00290-6/fulltext); and Peter S. Hovmand, David N. Ford, Ingrid Flom, and Stavroula Kyriakakis, *Women Arrested for Domestic Violence: Unintended Consequences of Pro and Mandatory Arrest Policies* (paper presented at the International System Dynamics Conference, July 29-August 2, 2007, Boston, MA), <https://www.systemdynamics.org/assets/conferences/2007/proceed/papers/HOVMA376.pdf>.
- 33 The use of the term “diversion” throughout its report is meant in the context of true diversion from the criminal justice system—a pathway that avoids an arrest or a conviction. For an overview of diversion programs in their many forms, see Center for Health & Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (Chicago: Center for Health and Justice at TASC, 2013), <https://perma.cc/43BA-NRST>.
- 34 See generally Leah Pope, Chelsea Davis, David Cloud, and Ayesha Delaney-Brumsey, *A New Normal: Addressing Opioid Use Through the Criminal Justice System* (New York: Vera Institute of Justice, 2017), <https://perma.cc/9FJK-ZHCR>.
- 35 For a discussion of harm reduction principles generally, see David Cloud and Chelsea Davis, *First Do No Harm: Advancing Public Health in Policing Practices* (New York: Vera Institute of Justice, 2015), 6, <https://perma.cc/FA82-GBRV>.
- 36 For example, the Prisoner Reentry Institute at John Jay College of Criminal Justice, in partnership with the New York City Mayor’s Office of Criminal Justice, is developing a certificate-bearing program for forensic peer navigators. Other programs, such as the New School’s Institute for Transformational Mentoring, also seek to fill the gap in licensing and certification beyond formal degrees such as Masters in Social Work or CASAC (Credentialed Alcoholism and Substance Abuse Counselor) licensing. See The New School, “About ITM: The Institute for Transformational Mentoring,” <https://perma.cc/UFU8-SPFB>.
- 37 See for example Douglas B. Marlowe, “Achieving Racial and Ethnic Fairness in Drug Courts,” *Court Review* 49, no. 1 (2013), 40-47, <https://perma.cc/D72T-NY9R>.
- 38 See generally Elizabeth Hinton, LeShae Henderson, and Cindy Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* (New York: Vera Institute of Justice, 2018), <https://perma.cc/PMT5-G86M>.
- 39 In New York City, the Criminal Justice Agency has released annual reports of statistics on arraignments, bail-setting, bail-making, and appearance in court. See for example New York City Criminal Justice Agency (CJA), *Annual Report 2016* (New York: CJA, 2018), <https://perma.cc/VQT3-TTXP>. The New York City Criminal Courts also releases an annual report detailing this information. See New York City Criminal Court, “Annual Reports,” <https://www.nycourts.gov/COURTS/nyc/criminal/annual-reports.shtml>. Online, the Mayor’s Office of Criminal Justice provides frequently updated statistics and measures through its website and reports. See New York City Mayor’s Office of Criminal Justice, “Research and Reports from the Mayor’s Office of Criminal Justice,” <https://perma.cc/5VPZ-KBNZ>.
- 40 PRI and NYWF, *Women InJustice*, 2017, 9.
- 41 *Ibid.*, 10.
- 42 For more information on Desk Appearance Tickets under New York Law, see New York State Criminal Procedure Law, Article 150, “The Appearance Ticket,” <https://perma.cc/PPD9-C8AJ>.
- 43 According to the New York City Police Department Patrol Guide, if at the time of arrest the person “has warrants, is on parole/probation, is a recidivist, owes DNA, etc., the system will automatically preclude the desk officer from issuing a DAT.” New York City Police Department Patrol Guide, Procedure No. 208-27, 8, <https://perma.cc/7TZD-WVEQ>.
- 44 PRI and NYWF, *Women InJustice*, 2017, 9.
- 45 The Staten Island HOPE (Heroin Overdose Prevention & Education) Program was launched in 2017 by Staten Island District Attorney Michael McMahon in response to the growing numbers of overdoses and deaths in the county because of opioid addiction. The program, the first of its kind in New York City, diverts people arrested on misdemeanor opioid-related charges prior to arraignment and connects them to community-based health services. The program is limited to people who would qualify for a Desk Appearance Ticket (DAT) at the moment of arrest, which means that they could not have any open warrants, even for a summons or other minor issue, and likely have little to no prior criminal history. Despite the limited eligibility criteria, the program in its first year of operation has served hundreds of Staten Island residents and is being replicated in other boroughs of New York City. Staten Islanders Against Drug Abuse, “SIHOPE.org,” <https://perma.cc/W3F6-DM5V>.
- 46 PRI and NYWF, *Women InJustice*, 2017, 19.
- 47 Community navigators are peer specialists who are trained to provide support and assistance to participants

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- and clients. They are used in healthcare contexts and, increasingly, in the criminal justice field. In New York City, there are several community navigator programs, including a recently-funded new effort by the Manhattan District Attorney’s Office to provide navigators to people at risk of contact with the criminal justice system. See Criminal Justice Investment Initiative, “Community Navigators,” <https://perma.cc/F72E-56GS>.
- 48 Prosecutors declined to prosecute 7.1 percent of cases in New York City in 2017. New York State Division of Justice Services, *Data Source Notes: New York City—Adult Arrests Disposed* (Albany, NY: NYS Division of Criminal Justice Services, 2018), 2, <https://perma.cc/NU8J-GZXT>.
- 49 See Criminal Court of the City of New York, *Annual Report 2016* (New York: Criminal Court of the City of New York, 2016), 9, <https://perma.cc/ND4Q-7ELY>.
- 50 For an overview of the New York City bail process, see Insha Rahman, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City’s Criminal Courts* (New York: Vera Institute of Justice, 2017), 6-7, <https://perma.cc/QBR8-BW79>.
- 51 See Swavola, Riley, and Subramanian, *Overlooked*, 2016, 12 & 17-18.
- 52 See generally Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (New York: Laura and John Arnold Foundation, 2013), <https://perma.cc/BSH2-MXK3>.
- 53 See generally Misdemeanor Justice Project at John Jay College of Criminal Justice (John Jay), *The Summons Report: Trends in the Issuance and Disposition of Summonses in New York City, 2003-2013* (New York: John Jay, 2015), <https://perma.cc/V5RT-KTVS>.
- 54 *Ibid.*
- 55 See for example the 2016 report from the New York City Department of Correction (NYC DOC), *Rikers Island Nursery Report* (New York: NYC DOC, 2016), <https://perma.cc/7JAL-RABH>.
- consider an individual’s own gender identity, and not simply his or her genital anatomy, when assigning a person to a facility, some transwomen are still being held at DOC facilities designated for cismen, and some transmen are still being held at Rose M. Singer. See Rules of the City of New York, Board of Correction, § 5-18(d) (2016) (“The Department shall not assign a transgender or intersex inmate to a men’s or women’s facility based solely on the inmate’s external genital anatomy”), [http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter5eliminationofsexualabuseandsexua?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny\\$anc=JD\\_T40C005](http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter5eliminationofsexualabuseandsexua?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_T40C005). Even when DOC policy is followed, the best case scenario is that transmen are housed in protective custody at Rose M. Singer, while some transwomen may be eligible for the Transgender Housing Unit, opened in 2014. New York City Department of Correction, Directive No. 4498, Transgender Housing Unit (December 3, 2014). Also see Jillian Jorgensen, “City Orders Jails to House Transgender Inmates in Lockups Consistent with their Gender Identity,” *Daily News*, April 16, 2018, <http://www.nydailynews.com/new-york/city-orders-new-safety-rules-housing-transgender-inmates-article-1.3937469>. These solutions do not go nearly far enough to provide even basic safety and protection for incarcerated transgender, and gender-nonconforming individuals. See New York City Board of Correction, *An Assessment of the Transgender Housing Unit* (New York: NYC Board of Correction, 2018), <https://perma.cc/K27F-N38S>. Much more work is needed in this area to address these shortcomings.
- b Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Justice, 2016), 9-10, <https://perma.cc/89G6-LKYH>.
- c *Ibid.*, 11.

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### “Scope of this report” sidebar (page 9)

- a New York City Board of Correction, *An Assessment of the Transgender Housing Unit* (New York: NYC Board of Correction, 2018), <https://perma.cc/NT58-CA4K>. Despite recently adopted Department of Correction (DOC) policy that requires staff to

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