

## Criminalized Survivors of Gender-Based Violence

**Submitted by:** The Advocates for Human Rights and Violence Free Minnesota

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**Summary:** Survivors of gender-based violence (GBV), particularly LGBTIQ+ survivors, and Black, Indigenous, and women of color, are being arrested and incarcerated at alarming rates, often for offenses tied directly to the abuse they have experienced. This crisis is fueled by unaddressed historical racism in the criminal legal system (CLS), a scarcity of holistic approaches to accountability, and a systemwide failure in the CLS to recognize, address, and respond to trauma, GBV dynamics, and the intersectional experiences of survivors. At a time when increased initiatives are needed to reverse the growing trend of criminalizing survival, the government is instead exacerbating these human rights abuses by slashing resources for survivors and fueling dangerous rhetoric that threatens survivor safety and increases survivors' vulnerability to arrest and incarceration.

## The Over-Reliance on the CLS in the U.S. Leads to the Criminalization of Survival

- Current resources and strategies for combatting GBV and ensuring public safety are primarily concentrated on carceral-only approaches, which create arrest and incarceration risks for survivors. Comparatively, there is no robust investment in basic supports such as housing and healthcare, alternative mechanisms for accountability, prevention efforts, or holistic intervention models that increase safety and prevent criminalization of survivors.

## Flaws Inherent in the CLS Framework Perpetuate the Criminalization of Survivors

- The punitive nature of the CLS often replicates power and control dynamics that are central to GBV, creating an environment of disempowerment, voicelessness, loss of agency, and acute trauma for survivor-defendants.
- Rigid practices, such as mandatory arrest laws, limited use of prosecutorial discretion and inflexible sentencing rules, lead to the arrest, prosecution, and incarceration of survivors.
- Criminal proceedings are complex, highly technical, and fast-paced, significantly hindering many survivor-defendants, once arrested, from navigating their cases and advocating for their innocence.
- The adversarial nature of the CLS disincentivizes transparency, making it risky, and at times dangerous, for survivors to share their whole story in defending their innocence.
- Defenses against criminal charges, such as self-defense, duress, and coercion provisions are prohibitively narrow and fail to address GBV and trauma dynamics, leaving many survivors without legal redress to fight unjust prosecution and incarceration.
- Faced with severe barriers to accessing justice and safety issues unique to survivors, women and gender-diverse defendants, particularly those from historically marginalized communities, often feel pressured to plead guilty—even in cases where they are innocent or have grounds to mitigate their sentences.

## The Experience of Criminalized Survivors Is Not Properly Identified, Acknowledged or Responded to by CLS System Actors

- Law enforcement (LE) officers fail to identify survivors, inappropriately labeling them as aggressors or public safety threats, based on investigation procedures that do not account for GBV and trauma dynamics.
- Inadequate reporting by LE officers that does not include relevant GBV and trauma-related context results in improper charging decisions and faulty case adjudication.
- There is an absence of trauma-informed screening of GBV by system actors throughout all stages of the CLS.
- Even in cases where survivor-defendants raise GBV-related issues or defenses, systems actors such as attorneys and judges often fail to acknowledge the survivor's experience, ensure proper support is provided to the survivor, or adjust their charging, sentencing, or other decisions relating to the survivor's case.

## Systemic Racism, Gender Discrimination, and a Failure by System Actors to Understand the Dynamics of GBV Exacerbate the Criminalization of Abuse

- Racial profiling, over-policing, police violence, and criminalized immigration enforcement have resulted in many survivors from marginalized communities being essentially excluded from legal and support systems.
- Racial and gender biases influence the arrest and adjudication of cases for survivors. For instance, stereotypes about how a victim should act and misunderstandings of how injuries present on various skin tones result in inequitable criminalization.
- A lack of understanding regarding trauma responses and GBV results in the misinterpretation of survivors' behavior by system actors, which leads to survivors being incorrectly labeled as guilty, aggressive, or malicious.

## Recommendations

The Government of the United States should implement, incentivize, and/or financially support:

- The comprehensive provision of housing, childcare, healthcare, and food security resources, which address basic needs and act as methods of violence prevention and intervention.
- Non-carceral approaches to address public safety issues and GBV, including low-barrier and culturally responsive prevention, domestic violence intervention, diversion, and restorative justice programming.
- Comprehensive training for CLS system actors relating to racial bias, gender bias, GBV dynamics, and trauma, developed in collaboration with system-impacted survivors and culturally responsive programs.
- Trauma-informed procedures and training for LE on predominant aggressor evaluation, self-defense assessment, and documentation of trauma and GBV dynamics.
- Increased resources for public defender offices to provide holistic, trauma-informed representation to survivors.
- Implementation of procedures across CLS intervention points, particularly within prosecution agencies and courts, to implement trauma-informed screening and support criminalized survivors.
- The expansion of survivor-centered affirmative defenses, sentencing mitigation, and re-sentencing statutes.