

DEFENDING SELF-DEFENSE

A CALL TO ACTION
BY SURVIVED & PUNISHED



REPORT BY SURVIVED & PUNISHED
IN COLLABORATION WITH PROJECT NIA AND
THE UCLA CENTER FOR THE STUDY OF WOMEN

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In collaboration with Project Nia and the UCLA Center for the Study of Women

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**Appendix A: Power & Control Wheel - Intimate Partner Violence & State
Violence** by Moni Cosby, et al.

Appendix B: Anti-Violence Organizational Self-Assessment Tool by Hyejin Shim

Appendix C: Legal Defenses for Self-Defense by Sydney Moon

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Cover images:

Foreground: Outside the Joan Little trial, 1975. *The News & Observer*, Raleigh, North Carolina.

Background: #FreeLiyah demonstration calling for the freedom of Liyah Birru outside ICE San Francisco Field Office, 2020. Photo by Brooke Anderson.

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I. EXECUTIVE SUMMARY

In 2021, survivors who have been criminalized for self-defense, along with a broad range of advocates and organizers engaged in *defending* survivor self-defense, convened to build a rich understanding of why survivor self-defense has not been protected in courts. This participatory research report offers a body of qualitative data produced through engaged dialogue and analysis among convening participants. Reflecting the collaborative approach to this research initiative, the report foregrounds survivor analysis, insights, and experiences through abundant use of direct quotations. Additionally, the report includes an overview of research and scholarship on the criminalization of self-defense in the context of gender-based violence as well as a brief overview of legal defenses used to defend survivors in court.

Participants identified the following key themes in the criminalization of survivors who act in self-defense:



KEY THEMES

1. Isolation, often a strategy of abuse, can prevent escape from abuse, which can make self-defense with force a necessary option for survivors.
2. Survivors experience a failure of “safety” systems when they reach out for help.
3. Survivors face systemic erasure of their experiences of violence, which blocks them from being seen or understood as “victims of violence” by systems designed to support and/or punish them.
4. Survivors experience police and guard violence during arrest and while in jail awaiting trial.
5. Survivors experience profound vulnerability and violence throughout the process of criminalization.
6. Survivors face a racist judicial system.
7. Survivors criminalized for self-defense are targeted by prosecutors for severe sentences, and by parole boards for perpetual prison time.
8. Prosecutors target children who act in self-defense in the context of surviving abuse as well as parents who defend their children from abuse.
9. Survivors experience ongoing punishment, even after release from incarceration, which creates financial instability, barriers to critical resources, and legal vulnerability.
10. Survivors have a range of experiences of self-defense, but they are in consensus that survivors’ lives are worth fighting for.



RECOMMENDATIONS TO END THE CRIMINALIZATION OF SELF-DEFENSE

Participants have taught us that, in order to respond to powerful webs of violence and abandonment, survivors, advocates, and organizers must cultivate dynamic and connected practices of self-defense and collective defense enacted across many locations and contexts. Individual and collective practices to defend survivors must be supported by many people situated in key positions, including (but not limited to) defense attorneys, victim advocates, legislators and policy advocates, community organizers, journalists, educators, elected officials, and friends and family.

- **Policy & Budget Advocacy: What policies are needed to shift from a punitive budget to a safety budget?** Given the overwhelming financial and social costs of policing, prosecution, and incarceration, participants recommend transforming local, state, and federal budgets to prioritize health and safety as defined by criminalized survivors, including divesting from systems of criminalization and investing in public health and housing. Other policy recommendations include expanding affirmative defenses and sentencing reform policies to include survivors charged with “violent offenses,” and eliminating pre-trial detention.
- **Legal Defense: How do we ensure survivors are not prosecuted and, if they are, effectively defended in courts?** Legal defense recommendations include increasing the skills and capacity of defense attorneys to work in collaboration with criminalized survivors; building connections between legal defense and community organizing through participatory defense campaigns; and providing incarcerated people non-surveilled open access to legal resources. Because prosecutors charge survivors with discretionary power, participants also strongly recommend reducing the reach and power of prosecutors, including disincentivizing prosecutors from pursuing charges against survivors.
- **Anti-Violence Advocacy & Resource Building: How do we support a system of advocacy that is accessible to criminalized survivors?** Participants recommend that anti-violence organizations increase their capacity to actively and skillfully support survivors who are criminalized, including those who have been arrested, who are currently incarcerated, and who have been released from incarceration, and contribute to a network of advocacy across prison walls. Recommendations also include prioritizing resources to increase safety for survivors (accessible and affordable housing, healthcare, childcare, etc.), and ensuring that, once released from prison or detention, survivors are also released from ongoing punishment, surveillance, and control by parole and probation.
- **Prevention, Education, & Community Organizing: How do we increase and sustain efforts to educate and organize for freedom?** Recommendations include investing in the crucial, proactive anti-violence work of prevention and awareness efforts, such as facilitating community-based workshops on self-defense for young people; and organizing collective campaigns to decarcerate survivors, including clemency campaigns. Participants also recommend developing forms of community care and coalitions across social movements to build more comprehensive support for survivors and their families; and engaging in strategic media advocacy, such as creating a journalist toolkit to improve press coverage of criminalized survivors, and circulating community media that challenges tropes and stereotypes about survivors that support criminalization.

II. PREFACE

Defending self-defense. Reading that sounds strange, or at least like an oxymoron. In theory, why would self-defense need defending? From my own experience, I know why it is necessary to explore every single possible path that locks survivors of abuse or assault into endless cycles of repeated harm. It doesn't just begin and end with violent attacks from abusers. Still, the second we choose to survive, in every interaction we have, from arrest to incarceration, we encounter judgment, discarded looks, negative stereotypes, and invalidation.

I recall my experience on the day I chose life. Shortly after being detained, I encountered the responding police officer who was dismissive of my side of the story. The arresting officer retrieved on his laptop the "no-violent contact" protection order I had in place at the time of the arrest. The next attempt at devaluing me as a victim was made by the correction officer assigned to deliver legal papers requiring a signature to those detained. We sat on the metal bench in the county jail holding area, reviewing a retaliatory order of protection from my abuser who had attacked me hours earlier. I signed, handed him the papers, and he offered his unsolicited opinion, "You know black women tend to be more aggressive anyway." This mindset and observation are too common and lazy to dwell on analyzing his belief systems.

Defending self-defense is essential because survivors need protection when they believe their lives are threatened. They need protection more than the average person (and definitely more than those who are *over-protected* by the law) because survivor defendants know what their abusers are capable of and they are surviving not only for themselves but also, often, for their children. This report provides details on each touchpoint of re-traumatization a survivor will endure in the criminal legal system when they choose life over death. What makes me proud of these survivors' resilience is the intense fortitude and wherewithal to share their experiences — a generous offering given to us despite the risk of re-experiencing traumatizing events — but one given to us with the hope of helping to educate so we can create solutions and prevent other survivors from becoming defendants.

I hope to examine these harmful conditions that we have built that remove the right for survivors to live, and to implement recommendations that show they have the right not to die. No one among us can claim it's not our responsibility because, right now, the message is that it's only ok to survive until it's NOT.

- **Marissa Alexander**

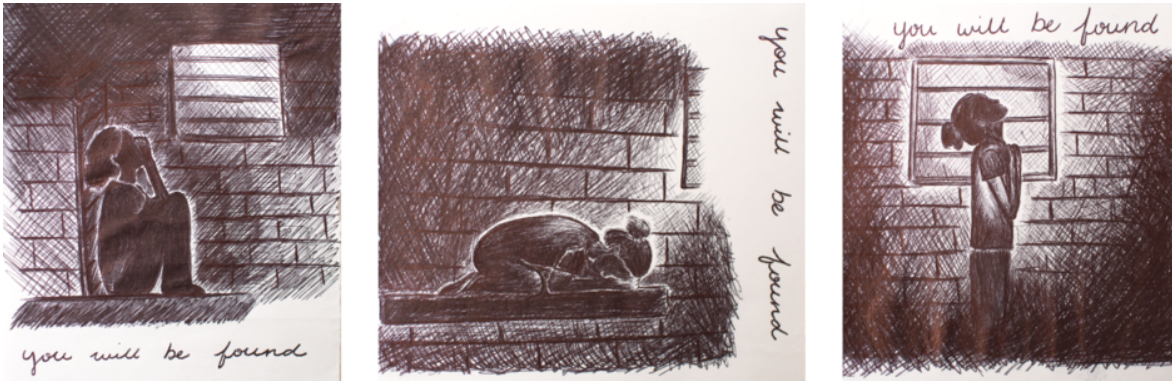
By the end of the day,
4 women will die at the hands
of an intimate partner.

Many women report
some form of
sexual or violent abuse
prior to incarceration.

If the violence is unabated,
we risk losing our lives.

If we defend ourselves,
we risk losing our freedom.

-MARISSA ALEXANDER¹



III. INTRODUCTION

WHY ARE SURVIVORS PUNISHED FOR DEFENDING THEIR LIVES?

A. NO WAY OUT

Prisons do not end domestic and sexual violence.² Prisons *intensify and institutionalize* domestic and sexual violence, making existing cycles of violence more deadly, and creating new cycles of punishment for survivors. As Marissa Alexander notes, the vast majority (some studies show *up to 99%*³) of people in women's prisons experience domestic and/or sexual violence before they are incarcerated, and 84% of girls in juvenile detention experience family violence.⁴ These numbers reflect what researchers have called an abuse-to-prison pipeline.⁵ This pipeline takes many different forms: survivors are criminalized for self-defense; for "failing to protect" their children from their abuser, for taking their children away from an abusive relationship; for being a youth who runs away from an abusive home; for being immigrants; for being coerced by an abusive person into criminalized activity; for being in the sex trade⁶; and for trying to contend with trauma through self-medicating with criminalized drugs. The United States warehouses tens of thousands of survivors in jails, prisons, ICE detention centers, and juvenile detention centers. These punitive lock-ups reproduce survivors' experiences of abuse and compound the traumatic effects of abuse.

Survived & Punished (S&P) is a national grassroots organization advocating for the decriminalization of survivors of domestic and sexual violence. S&P produced the Defending Self-Defense report to specifically examine the criminal punishment of survivors who act in self-defense, with a focus on survivors who self-identify or are gendered by others as women, non-binary, and/or transgender, including (but not limited to) trans women, cis women, trans men, lesbian/queer women, heterosexual women, and non-binary people.⁷ As research and contributors to this report demonstrate, punishing survivors for not conforming to normative, racialized gender expectations is itself gender-based violence and also *integral* to the criminalization of survivor self-defense. Additionally, we reference specific statistics and experiences of girls (including trans and queer girls) throughout the report. Decades of research repeatedly confirms that the legal system fails to protect these survivors from domestic and sexual violence, and then punishes them when they protect themselves.⁸ This pattern marks a fundamental disregard for survivors' lives by the legal system, including their most basic safety and dignity. This report foregrounds the insights, analyses, and recommendations of survivors who were punished for defending their lives, as well as organizers and advocates who have collaborated with criminalized survivors to secure their freedom.



Self-defense is how survivors halt an imminent or ongoing attack.

Survived & Punished was catalyzed, in part, by the participatory defense campaign to free Marissa Alexander, a contributor to this research and report. Marissa, a Black mother from Jacksonville, FL, likely only survived a deadly attack by her estranged husband because she fired a warning shot that compelled him to stop his attack and leave the home. Although the gunshot caused no injuries and her abuser detailed his history of violence on the record, Marissa was denied protection under Florida's Stand Your Ground law in 2011. Less than a year later, George Zimmerman was acquitted of killing Trayvon Martin under the state's Stand Your Ground law.⁹ In 2012, Marissa was prosecuted, convicted, and sentenced to a mandatory minimum sentence of 20 years.¹⁰



Self-defense is how survivors get to safety.

Patreese Johnson, a Black lesbian from New Jersey, was targeted by prosecutors after she and her friends fought off an attacker who threatened to rape them.¹¹ Patreese explains that the prosecutor attempted to blame the women for being attacked because they did not call the police for help. The prosecutor's argument also establishes a "no way out" bind because, as Patreese details, the police have enacted unrelenting racist harassment and violence against herself, her family, and her community. She states:

“Because of our history with the police, we're definitely not calling the cops. It's never the first thing to be like, oh my God, we're being attacked, let's call the cops. Nobody in our community would do that. We're going to defend ourselves. Like, we know how to defend ourselves to the best of our ability and we all go home together. At that moment I'm thinking about saving myself. It's not an option not to make it home.”

-PATREESE JOHNSON

Statistics reveal that domestic and sexual violence are national public health crises, particularly for women and trans people. **Gender-based violence is disproportionately deadly for trans women and Black women, Native women, and other women of color, and it has the quality of being both potentially catastrophic and stunningly common:**

The Center for Disease Control (CDC) estimates that



1 in 3 women

have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.¹²

2x

Recent studies show that **trans people are twice as likely** as non-trans people to experience physical and sexual violence in intimate relationships.¹⁶

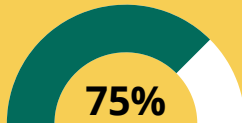


Every day, **four women** will be murdered by an intimate partner.¹³ Over **half of all homicides** of women are domestic violence-related.¹⁴



Homicide Rate

Black and Native women experience the highest rates of homicides of women in the context of domestic violence.¹⁷



75%

Of all trans women killed between 2015-2020, **75% of them were Black.**¹⁵

3x


Black women are almost **three times more likely** than white women to die at the hands of a current or ex-partner.¹⁸

“ I think people don't understand the constant abuse you're going through and that you didn't use self-defense for previous abuse, like being strangled and held down by a full grown man until you pass out. At what point are you allowed to defend yourself? ”


-NAME WITHHELD FOR SAFETY REASONS

Despite the sustained conditions of life-threatening interpersonal violence, when survivors take action to defend themselves and save their own lives, they are punished severely. **Research confirms that the legal system creates a no-way-out bind of “risking your life” or “risking your freedom.” This is particularly visible in sentencing trends:**


In 2005, the New York Department of Correctional Services found that



two-thirds of women incarcerated for killing someone close to them had been abused by that person.¹⁹




Studies consistently show that the vast majority of people in women's prisons (some *up to 99%*)²², and 84% of girls in juvenile detention²³, are survivors of domestic and/or sexual violence.




Guilty Verdicts


Survivors prosecuted for domestic homicide who do not conform to the “perfect victim” myth, such as showing that they were “good wives and mothers,” are **more likely to receive a guilty verdict.**²⁰



Unfair Sentences




Parole Denials



Clemency Denials

The Criminal Justice Section of the American Bar Association asserts:

“extensive studies demonstrate...that battered women **frequently receive unfair sentences but rarely are granted parole or clemency.**”²⁴



Sentencing Enhancements

Women who defend themselves from men in the context of domestic violence are more likely to do so using weapons like guns and knives than men who commit domestic homicide. This makes them **more vulnerable to receiving weapons sentencing enhancements.**²¹

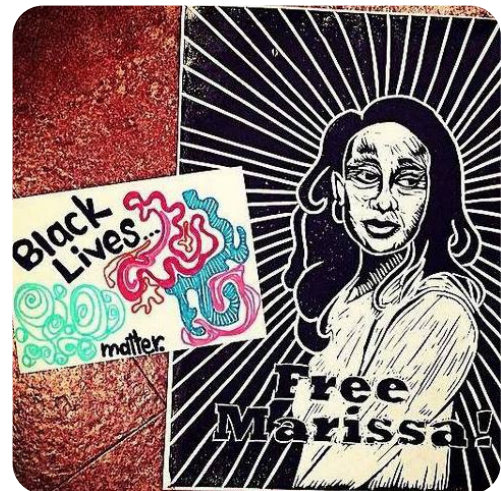
The combination of survivors being forced to navigate escalated, sometimes deadly, violence, abandonment through the denial of comprehensive social safety nets, and aggressive targeting by prosecutors (often for convictions with the most severe sentences) has helped to create a crisis situation. Thousands of survivors of sexual/domestic violence are warehoused in jails, prisons, and ICE and juvenile detention centers — places that are themselves locations of systemic sexual violence. This pattern established by the U.S. judicial system has made it clear that survivors who face life-threatening violence have only two options: to not defend themselves from violence and potentially lose their lives or their children's lives, or to defend themselves and experience the devastating violence of incarceration.

B. WHEN SELF-DEFENSE IS OUTSIDE OF THE LAW, SURVIVAL IS OUTLAWED

Self-defense against violent threats is, in some ways, *technically* protected by the law. So, why are survivors being incarcerated for self-defense as if they are breaking the law? Researchers explain that violence between strangers has been used as the working premise in the evolution of self-defense laws in the United States.²⁵ However, most women, both trans and non-trans, are killed by people that they know and, of those homicides, most are committed by people with whom victims had an intimate relationship.²⁶ Self-defense laws were not designed with the lived reality of gendered intimate violence in mind because legal protection for self-defense was originally meant for property-owning white men.²⁷ Therefore, domestic and sexual violence are often rejected as legitimate justifications for self-defense, either by the law's design or through its interpretation and application in courts.

For example, while some states require people who are attacked to retreat from violence *before* they defend themselves (or “duty to retreat”), other states’ self-defense laws affirm people’s right to defend themselves with force *immediately* when attacked, especially if attacked while in their home. Stand Your Ground laws are an example of the latter kind of self-defense law that does not require a duty to retreat. However, even in states with Stand Your Ground laws, domestic violence victims are *still* expected to take extreme measures to retreat from abusers’ violence, even when they are attacked within their own homes.²⁸ When Marissa Alexander was prosecuted in the Stand Your Ground state of Florida, the prosecutor argued that she should have retreated while being attacked by her estranged abusive husband, even if it meant *jumping out of a window*.²⁹

For domestic violence survivors acting in self-defense, the *legal* principle of “duty to retreat” merges with a *social* duty projected onto domestic violence victims to “leave” their abusive relationship, or sexual assault victims to make “less risky” choices. In this way, survivors are rendered criminally and morally responsible for the violence they experience if they do not, or cannot, escape.³⁰ But escape to where? Many survivors assert that their experience of sexual or domestic violence occurs within a broader context of vulnerability shaped by other forms of violence and abandonment, such as police violence, inadequate social services or lack of resources, other gender-based attacks, and/or lack of community or family support. The chronic lack of safe, affordable, and accessible housing also ensures there are few to zero escape locations.³¹ Further, when domestic violence survivors attempt to escape their relationships, abusers’ violence often escalates and becomes *more* lethal.³²



This report identifies some of the limited legal frameworks and addresses the anti-survivor climate within the judicial system that survivors navigate when facing prosecution. Appendix C reviews various legal terms and defense strategies for survivors who are prosecuted for defending their lives, such as Stand Your Ground and Battered Women's Syndrome. Other legal defense issues identified in the report include survivors' lack of consistent access to skilled, respectful, and affordable counsel; the extreme financial and emotional costs of a trial; when or how evidence of sexual and/or domestic violence is allowed in trials; whose testimonies are considered credible and why; who qualifies as "expert" enough to provide expert testimony for a survivors' legal defense; prosecutorial discretion that leads to long-term sentencing of survivors who act in self-defense³³; and the role of media in influencing trial outcomes. However, the contributors to this report made it clear that the reasons why the legal system punishes survivors for defending themselves also exceed the letter of the law and the bias built into legal proceedings.



Specifically, survivor self-defense is rendered *conceptually impossible* within the legal system, especially for Black survivors and other racialized survivors.

As survivors emphasize, their cases are not unique, but reveal an institutional problem with deep historical roots: the legal system refuses to protect those acting in self-defense if they are not white cis men.³⁴ As Marissa Alexander states:

“ I find that conceptions of 'self-defense' are rooted in a romanticized Western type of bad guy, good guy, Hollywood kind of thing, a very white heterosexual patriarchal lens. We want to start looking at self-defense with a broader lens [to understand the experiences of] women, and then take it a step further and look at Black women. But from that realm, self-defense can't even be *conceived* by these entities because they've had such a narrow ideology about what self-defense actually should look like. And since it is so pro-hetero, so pro-patriarchal, and so pro-white, it is very difficult for them to shift that. ”

-MARISSA ALEXANDER

The *inconceivability* of self-defense for Black women in particular has a legacy established in slavery, as we can see in cases such as Celia, a young Black woman who was hung in 1855 for killing the white man who enslaved and raped her for years.³⁵ In her study of the criminalization of Black women survivors during the Jim Crow era, historian Sarah Haley details how their “self-defense against domestic violence meant internment in carceral dungeons that they could not shake.”³⁶ Then and now, Black women’s attempts to survive violence by intimate partners makes them vulnerable to violence by police, prosecutors, judges, and prison guards, entrapping them, as Haley writes, “in a circle of unyielding assault.”³⁷

Further, Native survivors are prosecuted for defending their lives amidst the crisis of missing and murdered Indigenous women, girls, and two-spirit people (MMIWG2S). The 2021 prosecution of Maddesyn George, a member of the Colville Confederated Tribes and a survivor who defended herself from a non-tribal member who sexually assaulted her, exemplifies this particular form of ongoing gendered colonial violence. As the Campaign to Free Maddesyn George asserts, “Incarceration is a tool of Indigenous removal, and Maddesyn is now missing from her community.”³⁸

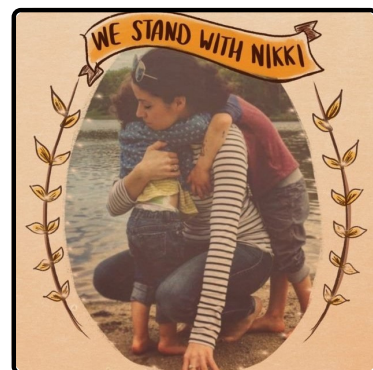
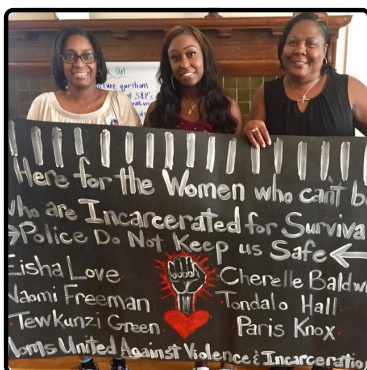
Survivors who identify, or are identified as, women, trans, lesbian, queer, and/or gender non-binary are also specifically punished for enacting violence against cis men because fighting back transgresses racialized gender norms.³⁹ Prosecutors, police, judges and journalists project racist and sexist tropes, such as the “angry black woman,” to rationalize punishing survivors who act in self-defense.⁴⁰ For example, prosecutors, judges, police, and media outlets often assert that women, non-binary, and/or trans people who fight back against rape and domestic violence do not do so out of self-defense or fear, but *only* out of vengeance, aggression, or anger.⁴¹ When a group of Black lesbian friends (who came to be known as the New Jersey 4) defended themselves from sexual violence in New York, the press contributed to the violence they experienced by labeling them a “lesbian wolf pack,” instigating anti-black and anti-lesbian public contempt which further empowered prosecutors to punish them.⁴² Anti-violence scholar Beth Richie reflects, “It is almost as if Black women in the court system are seen to not have a full range of emotions and only act out of anger, aggression, or vindictiveness — not fear, pain, or terror.”⁴³



Prosecutors also characterize survivors engaged in criminalized action, such as sex trade or street economies, as already guilty and outside of the law, and, therefore, undeserving of protection when they act in self-defense. For example, analyzing the criminalization of Alisha Walker and Cyntoia Brown, young Black women criminalized for acting in self-defense in the context of sex work, Mariame Kaba and Brit Schulte write that, “Alisha’s act of self-defense was met with the violence of a racist court system that branded her a manipulative criminal mastermind. Alisha and Cyntoia were both young Black women whose bodies were inscribed with inherent criminality and were, to some degree, presumed guilty until proven innocent. . . . Cyntoia and Alisha’s radical acts of self-love and preservation were criminalized by those with authority; each had the carceral weight of racism and whorephobia stacked against them.”⁴⁴

Further, immigrant survivors who are vulnerable to multi-system criminalization from ICE and state prisons can lack access to reforms that aim to end the criminalization of survivors, especially reforms that distinguish the “deserving” from the “undeserving.”⁴⁵ For example, immigrant survivors with criminal convictions, including for self-defense, can be disqualified from Violence Against Women Act (VAWA) protection from deportation because their convictions prevent them from meeting the law’s “good moral character” standard⁴⁶, which punishes survivors for “failing” to conform to “perfect victim”/“perfect immigrant” expectations. If immigrant survivors incarcerated in state prisons receive rare opportunities for release through a governor’s commutation or statewide sentencing reform, they can still be subject to ongoing carceral punishment through ICE detention and deportation⁴⁷

Stereotypes, myths, and distortions that carry the message that survivors have no right to “fight back” are a central reason why survivors’ self-defense is not protected by the legal system. This is especially true for survivors who do not fit the “perfect victim” paradigm or whose gender expression is already seen as outside of dominant gender norms, such as queer, trans, gender non-binary and nonconforming survivors, and women and girls of color.⁴⁸ In this report, survivors analyze and describe how a broad range of social identities and experiences — including being immigrants, children, mothers, disabled, incarcerated, low income, lesbian/queer, trans, gender non-binary or non-conforming, people in the sex industry, people with criminal records, and/or survivors of color — are weaponized by police, prosecutors, and judges to distort or dismiss their experiences of violence and justify their continued punishment. Finally, survivors emphasize that both incarceration and domestic/sexual violence can be caused by financial insecurity and can create *compounded* financial insecurity. All of these factors ultimately interlock and position survival itself as against the law.



Left: Cynthia Long (left), Cherelle Baldwin (center), and Mary Shields (right) hold a banner prepared by Moms United Against Violence and Incarceration, at the Survived & Punished No Perfect Victims Convening, Detroit, MI, 2017; **Center:** Tracy McCarter, art from the #StandWithTracy defense team, 2020. For more info, see standwithtracy.com; **Right:** Nikki Addimondo, photo and image from the We Stand With Nikki campaign. For more info, see westandwithnikki.com.

C. IT IS OUR DUTY TO FIGHT FOR OUR FREEDOM



Self-defense is an ongoing practice of survival.

For survivors, the concept of self-defense is expansive. It includes more than its legal definition, and more than the act of using force, including deadly force, to protect themselves, as well as their children, families, and friends from another person's violence. Self-defense is often considered an *ongoing practice* that occurs before and after the act for which they are targeted for prosecution and includes all the strategies survivors use to try to de-escalate violence *before* they use force. After they have been criminalized, survivors continue to defend themselves using strategies such as self-advocacy while in brutal contexts of incarceration; affirming the truth of their experience of violence even when it means continued punishment; fighting for clemency to secure release from prison and/or protection from being targeted by ICE; conducting legal research and engaging legal advocates; making strategic legal decisions, including whether to go to trial or negotiate a plea deal; taking action to support their physical and emotional well-being; and cultivating life-sustaining family and community supports. Survivors act in self-defense when they tell their stories on their own terms. For many, self-defense is a practice of freedom.

In addition to *self*-defense, almost all of the survivors who produced this report collaborated with grassroots participatory defense campaigns. By working with others to lift up the call for their freedom, survivors demonstrate the importance and power of *collective defense*. A defense campaign can mobilize a mass number of individuals and organizations to participate in the practice of defense, including signing petitions calling for survivors' freedom, organizing rallies, engaging in mass letter-writing to those in power and to the survivor, bringing strategic media attention to the case, facilitating community forums and vigils, fundraising for legal defense funds, and leading court watches.⁴⁶ These collective defense strategies create a powerful locus of mass support, connection, and political momentum for survivors who are isolated through incarceration and media distortions.

“ Self-defense is not something that needs to be diagnosed. Like you criminalizing me for defending myself is not going to fix the fact that I'm always going to defend myself, right? Your mental health can be managed, your physical health can be managed. When your life is on the line? You're gonna always fight or flight. ”

- RENATA HILL



Collective defense can make a crucial impact on legal defense.

As examples of collective defense, in the 1970s, survivors and organizers led pivotal participatory defense campaigns calling for the freedom of Joan Little, Yvonne Wanrow, Dessie Woods, and Inez García — all women of color who had been criminalized for self-defense.⁵⁰ Historian Emily Thuma contends that these campaigns showed how organizing to end sexual and domestic violence was "indivisibly linked" with struggles against the abuses of the carceral state.⁵¹ Further, the *organizing* precedents created by these coalitional campaigns helped secure these survivors' legal victories, which, in turn, set key *legal* precedents for self-defense. The Joan Little decision set a precedent for a woman to use lethal force in self-defense against sexual violence and both the Wanrow and Garcia decisions broke new ground for the courts to take the context of domestic violence into account in cases where women kill their abusers.

As the anti-violence field became more aligned with systems of criminalization in the decades that followed these campaigns⁵², collective defense for survivors became relatively scarce as a strategy. That shifted in 2011-2012 when campaigns to free Cece McDonald and Marissa Alexander emerged. More recent participatory defense campaigns focusing on survivors' right to self-defense include campaigns calling for the freedom of trans survivors, such as Ky Peterson and Eisha Love; immigrant survivors, such as Liyah Birru; survivors in the sex industry, such as Alisha Walker and Chrystul Kizer; survivors who are mothers, such as Wendy Howard, Tracy McCarter, Nikki Addimondo, Roshawn Knight, Maddesyn George, and Cherelle Baldwin; and survivors who are children, such as Bresha Meadows; amongst many others.

Additionally, *participatory clemency campaigns* call for commutations and pardons of survivors convicted for actions taken in the context of surviving gender violence.⁵³





Self-defense multiplies. It can be an act of faith that connects people to one another, which enables and expands freedom in unexpected ways.

Campaign efforts to collectively defend a survivor's freedom build on the body of self-defensive actions that the survivor has already taken. This, in turn, creates a pathway for future survivors to fight for their freedom. In a discussion with Marissa Alexander, Tewkunzi Green shared how critical Marissa's release was to her own process of advocating for her freedom:

“ I saw your case on CNN and when they said she's getting out, and I'm like, wow, that was so amazing that she got out. And then I was like, if she could do it, I definitely can. So you inspired me. . . . I've always been the type of person who would be embarrassed about what I'm about to say. I just crawl in my shell like a turtle. And I felt like that for years until when you came home. When you came home, you spoke your voice on CNN news and that pushed me even harder. I was doing all of my paralegal research. I sat in a room at night, I was up until three, four o'clock in the morning some nights, trying to write out things. I sent that all out in January and in the beginning of March, Rachel [White-Domain] and them came, and I was like, wow that didn't take long. So on that day, more people started getting involved.

In the midst of that time, I was [also] seeing Ky's story, and that inspired me. Then I heard about Bresha's case and then it was like, okay, everybody had similar problems. So this is God telling me like, wake up. I'm giving you all the signs. So you need to get going and that's when I started doing the advocate work from the inside of the prison. ”

- TEWKUNZI GREEN



Self-defense is essential because survivors' lives are essential.

The collective hope and vision is that no one would be targeted with violence and forced to use violence to save their lives. Towards that end, self-defense demands an end to domestic and sexual violence, anti-trans and anti-queer violence, and racial, economic, and carceral violence. As a practice of refusal, self-defense reveals a core truth that, while these layered and intersecting forms of violence are pervasive, they are not *inevitable*.

Assata Shakur teaches us that "it is our duty to fight for our freedom." We dedicate this report to all survivors who are still fighting for their freedom, and to all those who didn't make it out alive. Your spirits drive us to fight for freedom every day.



Clockwise from top left: Photo from Free Chrystul Kizer Defense Committee, 2020, see facebook.com/freechrystul; Photo from Campaign to Free Maddesyn George, Spokane, WA, 2021, see freemaddesyn.com; Photo from Survived & Punished CA, Sacramento, CA, 2019; Photo from Free Bresha Meadows campaign, Chicago, IL, 2018.

IV. DEFENDING SELF-DEFENSE INITIATIVE

A. PROJECT OVERVIEW

Organized by the national organization, Survived & Punished, the Defending Self-Defense Initiative convened survivors of domestic and sexual violence who have been criminalized as a direct consequence of defending their lives from this violence, as well as survivors criminalized in other contexts, organizers, advocates, scholars, and attorneys. At the convenings, we sought to better understand key patterns across contexts of the criminalization of survivor self-defense. We also aimed to identify strategies that could more effectively defend survivors facing criminal charges. The Initiative aims to document the analyses, ideas, and experiences of survivors who have been criminalized for self-defense, and to apply those insights in developing strategies to decriminalize self-defense and decarcerate survivors who are imprisoned for defending their lives.

“ This is important, super important to me because I'm a survivor of self-defense from an attacker as well as the justice system. I think that it's just the ongoing mode of survival daily as we defend ourselves against, you know, our past of surviving. ”

-RENATA HILL

“ This is important to me, because when I was arrested for defending myself I really didn't have any support in the beginning. And now that I'm home, and I did get some support towards the end of my sentence, I see that it's really important to support people who are currently going through that with the justice system, and I don't want anybody to feel the way that I felt at the beginning, where nobody cared that I was a victim. ”

-KY PETERSON

“ I'm a survivor of self-defense. I nearly lost my life, as well as some other people, to the abusive relationship I was in, and then I was further abused and criminalized and literally almost killed by the criminal justice system in the process afterwards. So I'm very passionate about this because I am working to try to prevent what happened to me and my family and loved ones from happening to other people. ”

-ANASTAZIA SCHMID

This report adds to a rich legacy of participatory research emerging from a context of community organizing to end violence. It offers a body of qualitative research produced collectively by survivors and allies that critically assesses the politics of survivor self-defense. To foreground survivors' voices, the report features numerous direct quotations from members of the Initiative's Survivor Advisory Council and other criminalized survivors. Additionally, this report includes an overview of guiding research and scholarship on the criminalization of self-defense in the context of gender-based violence, and a brief analysis of legal defenses used to defend survivors in court.

The Defending Self-Defense Initiative centers survivors who have experienced abuse in multiple spheres and from multiple systems, survivors who have insisted on their own survival and freedom, and those who continue to fight for the collective freedom of survivors nationwide. We hope the Initiative and report can meaningfully contribute to grassroots movements, legal defense strategies, policy reform to decriminalize survival, and efforts to substantially redirect public funding away from punitive systems and towards resources and support for survivors as informed by their needs, priorities, and visions of comprehensive community safety.

B. METHODOLOGY

Survived & Punished organized the Defending Self-Defense Initiative and approached the project using survivor-centered and community-based principles and practices. Our organizing structure included a Research Team, Survivor Advisory Council, and broader set of participants who attended national community strategy sessions.

Research Team

Our research team consists of Survived & Punished members and scholars, Dr. Alisa Bierria and Colby Lenz; advocate and expert on criminalized survival, Marissa Alexander; and advocate and law student for survivor-defense, Sydney Moon. As a research team, we partnered with the Survivor Advisory Council to develop this participatory action research project, we organized community strategy sessions, and we helped analyze and synthesize key findings and recommendations.

Survivor Advisory Council

Through our collective years of experience building relationships with criminalized survivors, we recruited and formed a Survivor Advisory Council to guide the focus and goals of the project. We compensated Council members for their much valued time and expertise. The Survivor Advisory Council includes ten survivors who experienced criminalization for self-defense, though the contexts of the violence and criminalization they experienced were diverse. Council members racially identify as follows: eight are Black, one is Latina, and one is white. Geographically, members were criminalized on the East and West coasts, in the Midwest, in the South, and by the federal government through Immigration and Customs Enforcement (ICE). Additionally, the Council included members who self-identify as women, trans, lesbian/queer, and heterosexual.⁵⁴

Finally, three Council members were criminalized while defending themselves from sexual violence that was not in the context of domestic violence and the other seven members defended themselves from domestic violence which, for some, also included sexual violence. All Council members experienced incarceration as a consequence of defending their lives, including in juvenile halls, jails, locked mental health institutions, state prisons, and ICE detention. The majority of Council members were sentenced to long prison terms, up to 36 years. The majority of Council members also had direct experience with participatory defense campaigns organized to support their fight for freedom, either pre-conviction (six members) or post-conviction (three members).

The research team held two Survivor Advisory Council virtual convenings to prepare for community strategy sessions, creating space for survivors to review and analyze their own experiences of self-defense and subsequent criminalization. The first convening gave Council members an opportunity to introduce themselves, learn more about the Initiative, and build trust. We asked Council members to simply share “What went wrong?” They may have believed their defensive actions would be legally protected, yet instead found themselves prosecuted and imprisoned for saving their own lives. This question provided a context for Council members to examine how and why the legal system and the broader network of community resources failed to support them. That conversation revealed the broader political landscape of the criminalization of self-defense.

In the Council’s second convening, we initiated a deeper exploration of the conditions of criminalization, survival, and resistance. We acknowledged that, depending on the context, retelling stories about traumatic experiences can be distressing, while it can also provide clarification, a sense of relief, and affirmation. Council members interviewed each other as a participatory research method to reduce the risk of feeling “studied” or objectified. We intentionally based interview pairings on shared experiences to facilitate trust and encourage deeper exploration of similar aspects of survivor-participants’ stories. We created and reviewed interview protocols with everyone to develop shared expectations and increase participants’ sense of safety, responsibility, and ownership in the process of collective knowledge production. Council members reported that this peer interview method was a positive, and even liberating, part of the research process. Many had previous negative experiences with storytelling. For most Council members, their stories were erased or violently distorted during prosecution. Still others recalled that even well-intentioned events and panels they participated in after their release included invasive or offensive questions. Many felt isolated, alienated, and disconnected after sharing their stories publicly and revisiting traumatic events without enough support in place. In contrast, many Council members shared that they found it affirming to tell their stories one-on-one to another person with shared experiences, and that doing so helped them see their own experiences in a new light.

The research team reviewed the transcripts from both Survivor Advisory Council convenings and the survivor peer interviews to help identify initial key themes and recommendations for the Council to review. These themes and recommendations became the building blocks to contextualize the issues for the community strategy sessions that followed, and to prompt further questions. Council members also attended the strategy sessions and provided more context for key patterns of concern and potential solutions identified by participants.

Strategy Sessions

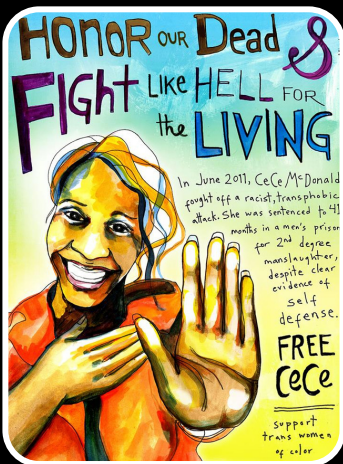
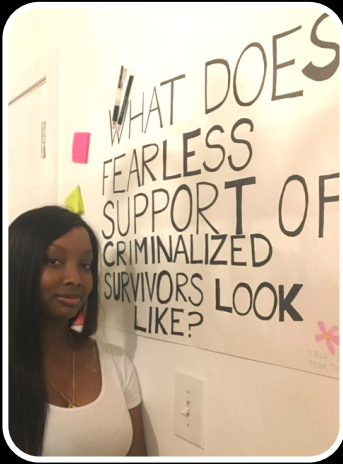
We organized two national community strategy sessions on defending self-defense. Leaning on the collective experience of those in the S&P network — including more than 20 years of building relationships with criminalized survivors, advocates, and organizers across the country through various organizations and formations — we used an emergent sampling strategy to identify participants for these sessions.

We designed these community strategy sessions to focus on organizing and advocacy in defense of self-defense. Therefore, we intentionally invited survivors and others with sustained experience in these areas. Participants held significant expertise on the criminalization of self-defense as well as strategies to support survivors’ freedom, including defense campaign organizing, victim advocacy, creative legal defenses, media advocacy, and policy advocacy. In the strategy sessions, participants reviewed and reflected on the Survivor Advisory Council’s key findings and recommendations. We asked participants to add from their experiences and consider new strategies together. We financially compensated survivors and their family members for their participation in the strategy sessions.

Collaborative Analysis

This research report is a collaborative production by design. The Survivor Advocacy Council provided information, insights, and analysis through discussions and peer interviews. The peer interview method re-ordered how we share and process information in the context of research. It placed Council members in a leadership position to develop mutual insights during the interviews and bring those insights to the larger group for further discussion and reflection. The Council also reviewed findings at multiple stages of the project and report production, sustaining a feedback loop and ensuring that the report accurately reflects their ideas and experiences.

Finally, the introduction to the report puts survivors’ insights in conversation with existing research, literature, and statistical data. This clarifies how the ideas produced through this survivor-centered research resonate with, build on, and depart from current discussions and understandings about the criminalization of survivors.

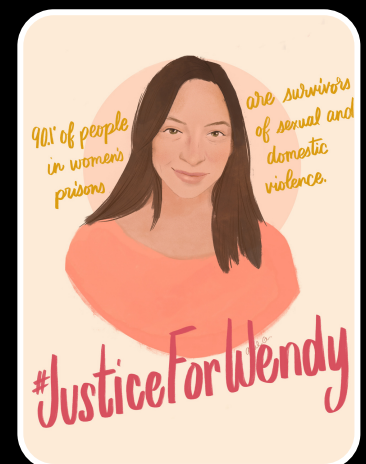


Top: Nikki Smalls-Williams at a Survived & Punished NY event for clemency for imprisoned survivors of domestic violence, including Smalls-Williams' mother, Jacqueline Smalls. Photo by Melissa Jeltsen, 2018; **Center:** Cece McDonald, art by Micah Bazant, Transgender Day of Remembrance, 2013; **Bottom:** Art by Kah Yangni, from the campaign to free Chrystal Kizer, 2020. For more information, visit facebook.com/freechrystal.

Next Steps

This report, which establishes a survivor-centered narrative about the criminalization of self-defense and strategies towards freedom, represents the culmination of the first phase of the Defending Self-Defense Initiative. The next phase of this project will include strategy sessions for attorneys and legal advocates with specific experience legally defending survivors who act in self-defense. By inviting more attorneys into the room with survivors and organizers, we aim to share expertise across experience and disciplines and collaborate to strengthen, expand, and transform legal defenses. Ultimately, we hope to help seed a national attorney network for defending self-defense, creating more opportunities for attorneys to collaborate with organizers and advocates and take leadership from survivors and their families.

In our third phase, we plan to incorporate the ideas and recommendations of currently incarcerated survivors who have been criminalized for self-defense. Prison pandemic conditions have increased isolation and lock-downs, dramatically limiting our ability to connect with incarcerated survivors in person. As a result, this critical portion of the Defending Self-Defense Initiative will require more time and creative strategy.



V. THE CRIMINALIZATION OF SELF-DEFENSE: KEY THEMES

A. INTRODUCTION

Moni Cosby, a lead organizer with Moms United Against Violence and Incarceration (MUAVI), collaborated with advocates and organizers at Love & Protect and MUAVI to adapt the Power & Control Wheel, a classic training tool on the multiple dimensions of domestic violence, to illustrate how patterns of carceral violence mirror and intersect with patterns of domestic violence (see Appendix A). Beth Richie, a Black feminist anti-violence scholar and organizer, has offered the critical framework, “matrix of violence,” to illustrate how Black women’s experiences of violence unfold in a range of contexts and locations, as well as the interdependency of those multiple forms and contexts of violence.⁵⁵ These models teach us that violence is *plural*, and that many forms of violence that survivors experience do not occur in isolation. Rather, they intersect and interlock, forming a powerful web. In this section, we outline ten key themes that the Survivor Advisory Council identified in their experiences of criminalization. Like Cosby’s and Richie’s innovative models, these themes demonstrate how multiple forms of violence across different contexts become tethered, often enabling and reinforcing each other.

B. KEY THEMES



1. Isolation, often a strategy of abuse, can prevent escape from abuse, which can make self-defense with force a necessary option for survivors.

Survivors reported that social isolation, shame, and fear created by the abusive relationship can prevent them from reaching out for help before the abuser’s violence escalates to the point of being life-threatening. Isolation is also a powerful strategy used by abusive people to control their partners, making it harder for them to escape or share their experiences with others.

“ I felt like I had lost my identity and I couldn’t even recognize who I had become. Because of what I used to know and what kind of situation I had found myself in, I was really ashamed. I was scared to speak out about it. I couldn’t really talk to my family. My immediate family, my mom, my dad, they were thousands of miles away back in Ethiopia. I just didn’t want anybody to know what was going on. . .

He is from Northern California, but he made sure to basically isolate me from everyone that I knew. He knew that all my family and friends and everybody I knew were in Southern California. He had said that we were going to move but it never happened. So my life changed literally three weeks after arriving in California.

”

- LIYAH BIRRU



2. Survivors experience a failure of “safety” systems when they reach out for help.

Survivors reported reaching out to various systems for help before being forced to defend themselves, but those systems failed to support them. Specifically, survivors point to the failure and dangers of the police, family regulation or “child welfare” systems, and other government agencies and systems. Survivors also highlight how domestic violence/LGBT advocacy organizations fail to support criminalized survivors, including those actively facing prosecution for self-defense. Strategy session participants raised concerns about how government funding and investments in “good” relations with prosecutors can play a role in organizations' decisions to not publicly support survivors.⁵⁶ Additionally, the policies of some domestic violence programs create barriers for survivors vulnerable to criminalization, such as requiring fees for services or mandatory reporting.

Despite these systemic barriers and failures to support survivors when they seek help, survivors are *still blamed* for not “escaping” the abuse and for actions they take to defend their lives.

“ I myself was reaching out for help. The night that I was kidnapped, raped, and beaten, I was also threatened by the police. I was threatened by everyone, every way that I tried to get help, including later in prison. No one understood. So I feel like, because I've done 36 and a half years in prison, the reason why I want to speak out is because of how I was treated, how the police officers treated me. And there was just no justice. I literally shut down because I couldn't get the help that I was crying out for. ”

-ROBBIE HALL

“ I called the cops to let them know I had run away and I didn't feel safe at home. I told them that I didn't feel comfortable going back. They told me to come to the police station because I was still a runaway and whoever I was with would get a kidnapping charge. So I did go to the police station, and they sent me home with no questions whatsoever. ”

-BRESHA MEADOWS

“ I reached out to domestic violence agencies, and the saddest part is they are the ones that failed me first. Rather than trying to help me and see what my situation was, I was asked where I lived, how far it was, how much money I make. It's not how desperate your situation is. I wasn't even working because I wasn't allowed to work. But he was working. So I have to report how much he was making. And so based on that I didn't qualify to be admitted to the domestic violence agency or shelter. ”

-LIYAH BIRRU



3. Survivors experience systemic erasure of their experiences of violence, which blocks them from being seen or understood as “victims of violence” by systems designed to support and/or punish them.

Police, prosecutors, judges, the media, and parole boards *systematically* reject, suppress, minimize, ignore, and distort survivors' experiences of violence, even when there is clear evidence of victimization. Some survivors described how even their own defense attorneys refused to discuss or introduce evidence of their victimization. Officials also invent their own false narratives of what happened, often using racist, transphobic, sexist, and otherwise oppressive tropes and stereotypes. This erasure is not only a strategy for prosecution but is at the heart of the social and criminal punishment of survivors who act in self-defense.

Survivors described this erasure of their victimization as silencing, dismissive, dehumanizing, and violent. They further described how the systematic erasure of survivors' experiences fuels the abuse-to-prison pipeline and keeps survivors in prison perpetually. For example, parole boards denied parole to survivors by using their testimony of victimization as evidence of their "lack of insight" into their "crime" to conclude that they remain a "danger to society." This effectively erases the contexts of violence that led the survivor to engage in the self-defensive acts for which they are being punished. The systemic process of erasure should be understood as a form of traumatic violence in and of itself.





3. Survivors experience systemic erasure of their experiences of violence. (continued)

“ They said, 'You don't look like a victim.' We had the DNA evidence proving what I said but it didn't matter.

- KY PETERSON

The prison guards expressed to us how important it was that if you had been the first one to call 911, you would have been the victims, and [the attacker] would have been a defendant. . . So you expect me in the most vulnerable state that I'm now supposed to dial 911 and ask that they come here and listen to me? No, they don't come and listen to you and get all the pieces first and determine who's in trouble, who's not in trouble. They say you look threatening, you look like a monster, you're an angry, angry black woman.

- RENATA HILL

I was crying out for help. Even though I called the police too. It didn't matter what I said. Everybody heard what they wanted to hear, and x'ed me out. The words were coming out of my mouth, but nobody ever took heed to what I was trying to tell them, my truth. My truth wasn't even worth it.

- TEWKUNZI GREEN

It doesn't even really matter the situation that you were in, or what happened, you're already judged, before we even get into anything, you're already guilty because of who you are.

- ANASTAZIA SCHMID

In my case, they had it in my husband's own words, literally his writing of what he did to me. And yet it's minimized. It's like, if the words that were used by the prosecutor don't show a pattern or enough of a pattern, then I don't know, like, how many times is enough? It's devastating to know that they just completely minimize and take away the power of the abuse.

- NAME WITHHELD FOR SAFETY REASONS



My experience was with the police themselves, they falsified records, they covered up my record, my complaint. They hid my order of protection. And for 22 years [in prison], I basically yelled and screamed that I was a victim of domestic abuse, and the very system that was supposed to help me and protect me worked against me.

- BETSY RAMOS



4. Survivors experience police and guard violence during arrest and while in jail pre-trial.

Arrest and pre-trial detention (in juvenile detention, jail, ICE detention, etc.) are sites of profound violence for survivors. Survivors described police on the streets and in custody as consistently abusive. They reported coercive interrogations, isolation in solitary confinement, denial of medical attention, being held at gunpoint with a child present, being sexually violated, and having physical evidence of the violence they experienced destroyed or disregarded.

“ The highway state trooper pulled a gun right away. I explained I have a five-year-old in the car. The state trooper did not want to hear it. Several cars came after that. They drew down on me. One of the young officers said slurs and racist things. My son was trying to get out the truck. I told them, don't point the gun because there's a little boy with me, and my baby laid down right beside me. ”

-ROSHAWN KNIGHT

“ We were held in a cell for about 20 something hours, no food, no water. . . and they kept questioning us over and over and over again, until they actually convinced us to make a statement and write what happened, and they said then we'll go home. Of course, that's not how it works. When you write a statement, you're basically saying that I was involved in something, so from there we went to Rikers [jail]. ”

-RENATA HILL

“ One police officer threw two of my police reports away from when I called the police to report the abuse, along with some hospital documents. The police told me at court that they have no record of it whatsoever. ”

-TEWKUNZI GREEN



5. Survivors experience profound vulnerability and violence throughout the process of criminalization.

Survivors described their experiences of violence and of defending themselves as traumatic events that, for some, caused dissociation, intense distress, panic, and physical illness and injury. However, there was almost no medical or other crisis support instead of, or after, arrest, only additional forms of violence. Survivors described facing medical and mental health neglect and violence after arrest and while incarcerated awaiting trial, including being forcibly medicated. These profound vulnerabilities create barriers to survivors' capacity to self-advocate while navigating being charged by prosecutors for defending their lives.

Once convicted, survivors continue to be subjected to the violence of ongoing incarceration in the context of prisons, juvenile detention, and/or ICE detention. Further, if survivors are convicted of "violent offenses," such as first or second-degree murder, they can face devastating long-term sentences, including life, life without the possibility of parole (or what many have called, the living death sentence), and the death penalty. Prisons, jails, and detention centers are *centralized locations of sexual violence*.⁵⁷ For example, trans women in "men's prisons" are 13 times more likely to be sexually assaulted than cisgender men, and over 50 percent of incarcerated trans women report fearing for their safety if they report harassment, discrimination or violence.⁵⁸

“ I was incapable of defending myself, incapable of speaking for myself, the state literally was poisoning me to death with medication. Had that medication not stopped at the time it did, I would be dead from that. So suppression of evidence across the damn board, doping somebody up to the point that they don't know what the hell's going on. ”

- ANASTAZIA SCHMID

“ I felt like they wanted me to hate myself as a trans woman. They wanted to force me to be someone that I wasn't. They wanted me to delegitimize myself as a trans woman — and I was not taking that. As a trans woman — as a proud Black trans woman — I was not going to allow the system to delegitimize and hyper-sexualize and take my identity away from me. ”

- CECE MCDONALD⁵⁹

“ I wasn't in my right state of mind. In the county jail I wasn't myself. I knew I wasn't, but I was asking for help. They were trying to give me psych meds and I wouldn't take them because I knew that's not what I needed. I knew they were trying to get me to say something different. And I knew that wasn't the truth so I wouldn't take medication. I wanted to talk to a nurse. I wanted to talk to an attorney. And I never talked to no one. ”

-ROBBIE HALL



5. Survivors experience profound vulnerability and violence throughout the process of criminalization. (continued)

“ I want to reflect on the resources that are available to you after arrest. I'm a nurse. I was immediately arrested at the incident and taken to jail. And I really tried to advocate for my own mental health, physical health, and I know the language, right, these are my people, I thought. I'm gonna get to the clinic and the doctors and the nurses, they're going to hear me they're going to see. It's so obvious the trauma that my body is in and my mind is in, and I'm gonna get help because that's what you get when you go to a doctor or a nurse. I was shocked that you're ignored. It doesn't matter. You're no longer a person. I feel like when you cross the threshold, and you go into the clinic, that should be a safe space, but they perpetuate the violence just as the guards, just as the warden, they become your next abuser. As well as the entire system. Honestly the worst abuse I've experienced has been at the hands of the state. ”

- NAME WITHHELD FOR SAFETY REASONS

“ I was on Ashley Diamond's freedom team and I'm thinking about Ashley Diamond's experiences, such as being repeatedly sexually assaulted in the Georgia men's prison that she's in. And because she's Black and trans, she isn't thought of as someone who's capable of being raped, which we know is a legacy of slavery with Black women in particular. So I'm thinking how important it is to think about how race and gender, how antiblackness and transphobia play into everything. ”

- HEENA SHARMA

“ [Prison guards] tried to maintain power and control by degrading us. There was a lot of verbal abuse. They called us monkeys, assholes, bitches. But of course, when you speak back you get in trouble for it. It was like they were trying to take the little bit of freedom left within me in order to just demolish me. . . They used so much energy and power to degrade us. What happens when they are at home, with their families and with their children? Who else will they degrade? ”

- TEWKUNZI GREEN⁶⁰



6. Survivors face a racist judicial system.

Survivors overwhelmingly reported that the judicial system is deeply racist. Specifically, Black survivors noted that anti-black racism was a major factor in their criminalization. They also highlighted how prosecutors use the intersection of race with other identities (such as sexuality, gender identity, and age) to impose violent tropes and false stereotypes onto them, invent stories about who they are and why they took action, and create sympathy for their abusers. As participant Ny Nourn put it, "This system is racist as hell."

“ My lawyer wanted to give me a plea deal and I'm telling him this is not right. And he tells me, 'You got to think about living in the south, they see you walking in their neighborhood at night, they're gonna swear you're a criminal.' Why would you say that? He's telling me pretty much that you can't defend yourself just because of how you look. ”

- KY PETERSON

“ When we stood in court, the judge was determined, along with the prosecution, to make an example out of me. It's not that they weren't aware that he had done that violence. But I always say that they all identified with each other, there is a Caucasian man standing with them. Not only that, but an ex-Marine. So while they were criminalizing me, they were saluting him and saying thank you in front of me as if the abuse he had done to me was not enough. This just contributed to my abuse being prolonged. ”

-LIYAH BIRRU

“ Being Black, being a Black female, being a Black lesbian female, being a masculine-identified female became a scary place. It was horrifying. We got railroaded through the trial. The media papers were like, 'killer wolf pack lesbians'. . . it was very demeaning. And not one time did anyone ever ask us our side of the story or even try to figure out like, where we came from, or our experiences growing up. What may have been triggered that night that caused us to get so angry? Not that we needed a reason. ”

- RENATA HILL



7. Survivors criminalized for self-defense are targeted by prosecutors for severe sentences, and by parole boards for perpetual prison time.

Survivors reported that they were aggressively prosecuted so the prosecutor could “make an example” out of them. Some survivors refused plea deals because they believed their actions were protected under the law. Others were coerced into plea deals because of threats of life sentences and/or because racism would make them a target for a long-term sentence. Survivors also reported being pressured in parole hearings to re-live traumatic experiences or otherwise recant their testimonies about violence they experienced to demonstrate “remorse” for their self-defensive action.

Survivors described prosecutors as the gas that fueled their incarceration. They describe how prosecutors dismiss victims of violence, with a singular focus on punishment and winning convictions. Participants pointed to prosecutorial discretion and incentives that reward prosecutors for securing the most punitive outcome as a major driver of the criminalization of survival, echoing existing research on increased prosecutorial power as a key factor in climbing rates of incarceration.⁶¹ Survivors described how their victimization means nothing in the context of the economic pressure to fill prisons with people — both from public economies and private industries⁶²— and they recognized the criminalization of self-defense as part of a broader pattern of systemic violence from police, prosecutors, and prisons.

“ Prisons are a billion-dollar industry. They have to keep those beds filled in the prisons. So, it doesn't matter if you're defending yourself, or if you were hurt. This system doesn't care about people; once you come in contact with the justice system, you become a number and you're no longer a person. ”

- KY PETERSON

“ I don't think it's going to change unless we absolutely do what we're doing and stick together and fight it. Because those prosecutors, they don't care nothing about what happened to us. That is not their focus, their focus is on getting victory - sending us to prison. That's their ultimate goal. And nothing else mattered to them. Not the circumstances that brought us there, not our life before. They only want a conviction and they will do anything to us to get that. ”

- MARY SHIELDS

“ How the system doesn't take you seriously and see you as a victim hit home to me. It was to the point where I went before a parole board and they actually made me describe to them in detail how I was raped, sodomized, and didn't believe that I was a victim of domestic violence. ”

- BETSY RAMOS



7. Survivors criminalized for self-defense are targeted by prosecutors for severe sentences, and by parole boards for perpetual prison time. (continued)

“ My attorney said they sentenced me to 14-and-a-half years, but I did 36-and-a-half years in prison. The parole board said that because I wouldn't say that [the man who raped me] was the victim, I have no remorse and no insight. Another commissioner at another board hearing said, you're not a victim, so stop trying to play like you're a victim. And it was just traumatizing me more. Even when you're not apologetic about defending yourself, you have to put this face on to pretend like you're apologetic. I had to apologize for my actions when deep down inside, I knew my actions were warranted. I needed to defend myself, but to be forced in this box where you have to apologize over and over again to get free, explaining yourself over and over again, years later. ”

- ROBBIE HALL



8. Prosecutors target children who act in self-defense in the context of surviving abuse as well as parents who defend their children from abuse.

Both survivors who defend their children and survivors who are children are uniquely vulnerable in this system. For example, survivors reported that prosecutors try to dismiss and diminish their experiences of violence because of their young age, or try to take advantage of their inexperience in order to advocate for more severe sentences.

“ Both my daughters who were abused by this man were in court when the prosecutor called their experiences, 'just mere allegations of sexual abuse.' So basically, you're telling my daughters that they're lying, that their experiences aren't valid. Those kinds of things are so damaging and so unnecessary. ”

- NAME WITHHELD
FOR SAFETY REASONS

“ The prosecutors were going to try to use me to set an example for other children. I don't know, they more so took me as a joke, because I was younger. I feel like my age had a lot to do with how they went about the case. Like, they thought because I was 14, they could take advantage of it and just give me whatever charge. When I started, the DA was looking to me for an adult life sentence, you know? So I feel, if any factors had something to do with it, it would be more so my age and my race, but especially age. ”

- BRESHA MEADOWS



9. Survivors face ongoing punishment, even after release from incarceration, which creates financial instability, barriers to critical resources, and legal vulnerability.

“ When does being a victim stop, really? After your release, when does being a victim stop? It doesn't stop. ”

- RENATA HILL

“ My conviction for self-defense disqualified me from getting to where I need to be right now. It feels like I'm still being judged, even in society. So when I try to look for an apartment, they say, let me run your background and they see all this stuff. . . We also get judged and prosecuted by children's social services. There was no justice at all. For six months now I haven't seen my son because of the father. They gave him sole custody and it's been really hard for me. This emotionally affects us too. ”

- ROSHAWN KNIGHT

Survivors described the consequences of violence and criminalization as *ongoing*, even after release, such as more criminalization, threats to child custody, discrimination in employment and housing, financial instability, continued control by parole or probation officers, and threats from abusers and/or abusers' friends and families. They described experiencing a “permanent criminality” where release from custody never means “free” because of the stigmatization they face based on their criminal records and the ongoing control of parole and probation. This ongoing stigma and escalating vulnerability undermines survivors' ability to *survive* by, for example, creating barriers to housing and employment, making it dangerous to seek trauma counseling when under surveillance of parole or probation, or trying to address civil legal issues, such as immigration status or child custody. Institutions do not see them as someone who was victimized by others, but as someone with a “violent history.”

“ I have been a victim of crime or abuse, but also I have been doubly, triply criminalized by the state and federal government as well. In prison I was able to get a lot of milestones. I got a little over two years taken off my six-year sentence. But then I was transferred to ICE detention because I was not a US citizen, only a legal resident of this country. So I was in ICE detention for another year and a half, which basically was all the time that was taken off through my milestones, unfortunately. But you know, that's just part of this horrible system. ”

- LIYAH BIRRU



9. Survivors face ongoing punishment, even after release from incarceration, which creates financial instability, barriers to critical resources, and legal vulnerability. (continued)

“ You're already fighting for your survival before coming in contact with the justice system. Then once you're released, you're still fighting for your survival, because they're telling you you're free, but you're really not free because you're running into a whole new set of problems. ”

- KY PETERSON

“ Still being on parole, I am still in a position that anything I say or do can and will be used against me. So trying to reach out for real help, when I'm still in crisis, it's almost impossible. I mean, it's scary, because divulging that you may still be having issues or problems leaves you subject to being re-institutionalized, re-criminalized, re-traumatized and going through the whole process all over again. ”

- ANASTAZIA SCHMID



10. Survivors have a range of experiences with self-defense, but they are in consensus that survivors' lives are worth fighting for.

Survivors who defend their lives from gender-based violence do so in a wide range of contexts. However, all participants strongly believed that self-defense should be actively protected rather than criminalized, stigmatized, or treated as if it stems from mental illness.

“ I don't want to hurt him, but I don't want to be hurting anymore either. Having to wrestle with the person that you may have had kids with, somebody that you loved at one point, but also knowing the possibility [of violence against yourself] and trying not to allow that to happen. I want people to understand the complexity of emotions and feelings that are going on in such a short time, when you have a split second decision you have to make. ”

- MARISSA ALEXANDER

VI. RECOMMENDATIONS TO END THE CRIMINALIZATION OF SELF-DEFENSE

“ I pray one day a new system will be created by people like us, those of us who have survived and lived through our experiences. This system was not made for us at all. ”
 - RENATA HILL

INTRODUCTION: A MATRIX OF DEFENSE

During the strategy sessions, participants began mapping a “matrix of defense,” teaching us that, in order to respond to powerful webs of violence and abandonment, survivors, advocates, and organizers must cultivate dynamic practices of self- and collective defense enacted across many locations and contexts. Inspired by Beth Richie’s groundbreaking “matrix of violence” which maps Black women’s experiences of violence across key interconnected contexts, the matrix of defense identifies four objectives needed to end the criminalization of survival: shift resources, defend criminalized survivors, protect all survivors, and transform conditions of violence. To end the criminalization of survival, efforts must be supported by many people situated in key positions, including (but not limited to) defense attorneys, victim advocates, legislators and policy advocates, community organizers, journalists, educators, elected officials, and friends and family. These forms of defense enable and reinforce each other, advancing change that strengthens the protection of survivors and survivor self-defense and helps to dismantle the forms of carceral and gender-based violence that structure our lives, communities, and relationships. The matrix of defense includes recommendations in the areas of policy and budget advocacy; legal defense; anti-violence advocacy and resource building; and prevention, education, and community organizing.



POLICY & BUDGET ADVOCACY

1 Transform local, state, and federal budgets to prioritize health and safety as defined by criminalized survivors. Participants described a criminal legal system that reinforces and perpetuates ongoing violence against survivors, yet the budgets for policing, prosecution, and prisons continue to rise⁶³ while budgets that support health and safety continue to be scarce and unable to meet overwhelming public need.

- Defund systems of criminalization and reduce the number of people who are incarcerated through supporting legislation that aims to decriminalize and decarcerate. Substantially invest in a universal basic income and healthcare, childcare, transportation, and victim services that are non-punitive, free or low-cost, safe, accessible, and independent from systems of criminalization.
- Substantially increase funding for public defense and legal aid, including both pre- and post-conviction representation, and address the persistent funding disparity between prosecution and public defense.⁶⁴
- Prioritize funding for a wide range of affordable and accessible housing options, including safe havens for those who are in immediate danger. These housing options must support survivor self-determination and be independent from the criminal legal system and other systems of punishment.

“ The country, in general, lacks safe houses for survivors and women trying to escape violence. When a self-defense case happens due to domestic violence or sexual abuse, they don't want to let us stay at home after arrest. They want to keep us incarcerated the whole time. So one recommendation is a place that people could go to that was not actually connected to the state, that was based on real healing and patient-guided treatment — safe houses based on holistic healing as an alternative placement. If such things existed, there would be a whole lot less need to ever incarcerate somebody later on anyway. You would start getting treatment and healing right from the start, you would be in a safe place during the process, and we could enact things like participatory defense and restorative justice and leave the carceral system out of it completely.

—ANASTAZIA SCHMID

POLICY & BUDGET ADVOCACY

2 Pass legislation that strengthens survivors' legal defense.

- Expand affirmative defenses, like duress, to apply to all offenses, including first-degree murder. Specify eligibility for survivors of domestic and sexual violence. Expand duress to include both imminent and future danger in contexts of domestic and sexual violence and trafficking.⁶⁵
- Change the legal standards for self-defense by expanding the category of "reasonable belief" to include a belief of either imminent or future harm in contexts of ongoing and escalating violence, such as domestic violence.
- Add domestic and sexual violence as contexts that should be given "great weight" in jury and judge consideration when survivors are prosecuted.⁶⁶
- Support sentencing reform to reduce or eliminate long-term prison sentences for people charged with "violent offenses." A recent study shows that women are increasingly vulnerable to extreme sentencing, including life sentences and life without the possibility of parole.⁶⁷

3 Reduce the power of parole boards and make plans to phase out this system.

- Adopt presumptive parole policies. Prohibit parole denials for subjective reasons so that parole is organized to grant release as the *norm* rather than keeping people perpetually incarcerated.⁶⁸
- Revoke parole boards' power to interrogate survivors about their experiences of violence, including coercing them into retracting their testimonies of abuse to demonstrate "insight" into their crime, or forcing them to go into detail about their traumatic experiences.
- Phase out parole boards. Work with survivors of violence (especially those who have experienced incarceration) and other anti-violence experts to develop transformative justice approaches to safe and supportive release and reentry planning/systems for all incarcerated people.

POLICY & BUDGET ADVOCACY

4 Pass legislation that protects survivors from endless punishment.

- Eliminate pre-trial detention. Support survivors to stay connected with friends and families, develop active community support, avoid further violence, process their experience, and prepare their defense without the added trauma of incarceration.
- End perpetual incarceration, including transfers from jails and state and federal prisons to ICE detention centers.
- Eliminate parole and probation policies that require survivors to parole to their counties of conviction. Allow survivors the human right to freedom of movement. Survivors should have self-determination over where they live so that they can better secure safety and develop their support systems.

5 Expand and strengthen “ban the box” policies that prevent questions about “criminal history.”

- Remove barriers that prevent formerly incarcerated people from accessing housing (subsidized or private), education, employment, and other resources needed to rebuild their lives.⁶⁹

“ [While in jail] they only let me see my mom. I couldn’t see my brother, my sister, or other people I love and care about. And the jail’s order was for me not to speak. Everybody was telling me not to, because they’re like, people are just looking for something to have against me and I could say something that could incriminate myself. So a lot of times, I didn’t get to speak about my emotions. I was more so stuck. ”

- BRESHA MEADOWS

“ A lot of times we are expected to remain in the city or county where our conviction happened. And unless a person feels comfortable staying in that same city or county, they should be allowed to leave where they can start their healing process where they can feel safe. ”

- LIYAH BIRRU

LEGAL DEFENSE

1 Reduce the reach and power of prosecutors. Use the tools of policy reform and community organizing to hold them accountable for prosecuting survivors.⁷⁰

- Reduce funding to prosecutors and actively disincentivize prosecutors from pursuing charges against survivors of domestic and sexual violence.
- Organize community court watches and produce prosecutor “report cards” to expose prosecutors’ choices to punish survivors, making it easier for the public to hold them accountable.
- Organize to put community pressure on prosecutors to “drop the charges” or refrain from pressing charges before survivors go to trial or take a plea. Examples of organizing strategies include: producing a letter of concern signed by local, statewide, and national anti-violence organizations and advocates; holding direct actions in front of the courthouse and inviting press; and mobilizing large numbers of people to write to the prosecutor and other key elected officials.⁷¹

2 Ensure that survivors have skilled, well-resourced defense attorneys who are free or low-cost, and who actively work in respectful collaboration with survivors to ensure their experiences are represented in court. Excellent counsel increases survivors’ capacity to advocate for themselves.

- Increase resources for public defense, including appointed attorneys and expert witnesses.
- Increase resources to subsidize costs for private defense attorneys and other trial expenses to increase survivors’ access to the best defense teams possible.
- Improve training for defense attorneys on defending survivors of gender-based violence and providing supportive, engaged representation. As part of this training, pay survivors who have experienced criminalization to share their expertise.
- Provide free, non-surveilled, and open-access to legal resources in jails, prisons, and ICE and juvenile detention.



LEGAL DEFENSE

3 Support the legal defense of survivors through collective defense strategies.

- Organize defense campaigns for survivors facing charges. Community support and organizing, such as court watches, can demonstrate to courts that survivors are not alone and that their supporters are watching the criminal legal process, which can strengthen survivors' standing in court. Collective defense is also a powerful practice of solidarity with survivors as they navigate a violent judicial process.⁷²
- Forge coalitions between anti-domestic and sexual violence organizations and organizations that train people in participatory defense (such as the National Participatory Defense Network). Build participatory defense hubs for criminalized survivors across the United States.⁷³
- Explore possibilities for formerly incarcerated survivors to serve as expert witnesses in self-defense cases.

“ I had so much community support and they did protests, news media coverage, and my family was a real voice. After I made bail, one of the friends that I wrote to said that she was in the courtroom and she heard the bailiff saying they had never seen something like that ever happen. So I do attribute [my ability to be at home as I prepare for my trial] to community support and community pressure. ”

**NAME WITHHELD
FOR SAFETY REASONS**



Photo above: The #MonumentQuilt on display at Marissa Alexander's final court hearing before her release, Duval County Courthouse, January 27, 2015. Photo by FORCE: Upsetting Rape Culture.

ANTI-VIOLENCE ADVOCACY & RESOURCE BUILDING

1 Invest substantial public resources into advocacy services that prioritize survivor self-determination and are independent from the criminal legal system, including domestic/sexual violence victim advocacy programs and free or low-cost mental healthcare services. Ensure that children, adults, and families have broad and easy access to these services by connecting these resources with schools and other key community hubs.

- Survivors should have immediate access to comprehensive healthcare, especially after being attacked and defending their lives, including but not limited to emotional and mental health and wellness. This healthcare should be self-determined, non-coercive, free, confidential, non-punitive, and *outside of the control of punitive systems*.
- Develop statewide emergency systems that are independent from law enforcement so that survivors in dangerous situations can leave the situation quickly without being required to meet arbitrary criteria, and seek help without fear of criminalization.

2 Create resources to support criminalized survivor self-advocacy and collective advocacy. Recognize this work as a critical form of anti-violence advocacy work.

- Fund inside-outside programs that support collective advocacy, including survival support and solidarity-building among incarcerated survivors.
- Create inside-outside resource hubs in partnership with currently and formerly incarcerated survivors to support crucial information sharing across the walls and among survivors.

“ I had to file a certificate of appealability. Because I have Post Traumatic Stress Disorder, trying to do any of this on my own was almost impossible. So this is when some very close friends in the prison, they would see me having mental meltdowns over it, and they'd be like, give us your paperwork. We're gonna lay it all out for you. We're going to illegally sneak to the law library, we're going to type the shit out for you when we can get away with doing it. We're going to help you put it together as much as we can.”

- ANASTAZIA SCHMID

“ They told me I wasn't ever gonna get home when I was in that prison, and guess what? Made it till I got my hormones and made sure that other guys got the hormones. Had my boxers so they couldn't take them away as contraband. I made those changes. You know why? Because you're not going to tell me what I can't do.”

- KY PETERSON

ANTI-VIOLENCE ADVOCACY & RESOURCE BUILDING

3 Increase the capacity of anti-violence organizations to actively and skillfully support survivors who are criminalized, including those who are currently incarcerated.⁷⁴

- Train anti-violence organizations about the criminalization of survival so they develop better advocacy skills to support survivors before and during arrest, pre-trial incarceration, trial, post-conviction incarceration, and after release.
- Examine and change organizational policies and practices that exclude criminalized survivors. (See Appendix B in this report for an organizational self-assessment tool.) Some survivors who felt forced to defend themselves reported that they had previously reached out for help to domestic violence services but were turned away or otherwise felt abandoned. Queer survivors also noted that they did not have active support from LGBT advocacy organizations.
- To strengthen advocacy for criminalized survivors, anti-violence organizations should develop partnerships with organizers and groups engaged in anti-criminalization work, mutual aid, and advocacy for incarcerated people, as well as public defenders and other defense attorneys representing survivors facing criminal charges. Additionally, partnerships should be cultivated between non-incarcerated advocates and incarcerated advocates who facilitate domestic/sexual violence support groups and lead other efforts to support survivors.
- Establish consistent anti-violence organizational practices of advocating for the freedom of survivors both pre-conviction and post-conviction. This can include speaking out in support of survivors' release from custody, writing support letters for clemency petitions, and endorsing calls for the immediate release of survivors.

“ Prisons aren't safe for anyone, and that's the key issue. ”

- CECE MCDONALD⁷⁵

“ I don't feel like anybody should be locked up. That's not an experience a human being should go through. If that person has a problem, get them help. ”

- PATREESE JOHNSON

ANTI-VIOLENCE ADVOCACY & RESOURCE BUILDING

4 Support the self-determined health and safety of survivors throughout their engagement with the legal system.

- Immediately after a 911 call related to gender-based violence, provide survivors access to anti-violence advocates who are independent from the criminal legal system. Advocates should be trained in de-escalation, safety planning, and providing trauma support, as well as have knowledge about systems of criminalization.
- Upon release from prison, jail, ICE detention, or youth detention, ensure that survivors have robust and immediate community and reparative support, including accessible and affordable housing, comprehensive healthcare (including mental healthcare), childcare, legal aid, and a safety plan if they are still in danger. Survivors should be released from ongoing punishment, including parole and other forms of surveillance.
- Create paid employment opportunities for survivors who are formerly incarcerated. For example, despite overwhelming barriers to accessing training and other resources from anti-violence organizations, many survivors learn how to become advocates for other survivors of domestic and sexual violence while incarcerated, including facilitating support groups and developing strong organizing skills. Proactively recruiting formerly incarcerated survivors will expand organizations' understanding of criminalization and also help counter employment discrimination against people with "criminal records."
- Invest in restorative/transformational justice resources at every stage of the process to reduce threats of violence by abusive individuals.

“ Instead of making a way to help heal traumatized survivors of domestic violence, they shame you and force you to believe you are the monster that the court made you out to be. With no therapy it's hard to overcome the deeper issues. ”

- ALISHA WALKER

“ I'm a firm believer that if more steps had been taken throughout the entire process to work through healing, not just for me and my family, but working with the other family as well. . . I think this is crucial to learning new strategies and ways of preventing future violence. If both sides are not working on healing and getting well, violence is just going to continue, and it's going to perpetuate. ”

- ANASTAZIA SCHMID

PREVENTION, EDUCATION, & COMMUNITY ORGANIZING

1 Invest in the crucial, proactive anti-violence work of prevention and awareness-raising efforts.

- Organize community-based workshops for young people as a means of challenging and countering stereotypes about violence, including the trope of the "perfect victim."
- Provide "know your rights" workshops and written resources to increase people's capacity to self-advocate in contexts of surviving domestic and sexual violence, arrest, and trial.
- Increase the capacity of families, friends, and community members to identify and interrupt abuse. Cultivate a broad base of people with skills to support and advocate on behalf of survivors.⁷⁶

“ For me, the big piece will be prevention because I think by the time we get to the place where somebody has to defend themselves, there's a lot that took place prior to in the relationship. The idea is to intervene earlier on so that I'm not dealing with telling a young person that your choices are life, death, prison, or freedom if you get into this situation. Then we're more proactive as opposed to being reactive. ”

- MARISSA ALEXANDER

2 Build more comprehensive support for survivors and their families through developing networks of community care as well as coalitions across social movement sectors.

- Cultivate mutual aid strategies to support currently and formerly incarcerated survivors, including grassroots fundraising, letter-writing, prison visiting, and other resources.
- Forge coalitions between anti-violence, anti-incarceration, and reproductive justice organizations. Forced family separation, carceral violence against children, and reproductive control while incarcerated are all examples of intersecting issues around which these coalitions could organize.
- Develop partnerships between transformative and restorative justice practitioners and defense and clemency/post-conviction release campaigns to increase safety for survivors upon release.

PREVENTION, EDUCATION, & COMMUNITY ORGANIZING

3 Advance campaigns to decarcerate survivors.

- Organize collective clemency campaigns for incarcerated survivors. Connect individual clemency campaigns to broader calls for decarceration.⁷⁷
- Build people power to demand that prosecutors use their resentencing power and other forms of authority to release survivors who have been convicted. Consider exploring "conviction review units" as possible sites to create public pressure for collective release.
- Mobilize court watches for survivors' trials and hearings. Train people on how to engage in this critical form of survivor support. Establish court watch networks across the United States.⁷⁸
- Empower students, community networks, survivors, and others to organize for the freedom of criminalized survivors. For example, Survived & Punished created the following resources: a court watch toolkit, a defense campaign toolkit, and an inside-outside letter-writing action center.⁷⁹

“ Clemency was a chance to tell my truth — a truth I’ve been made to feel the courts do not want to hear, especially having gone through a sentencing hearing that led to a sentence of 34 years. With clemency, I was asking, “Can somebody hear my voice?” And then, with the success of our efforts, I felt it made me visible. That clemency made me visible after the courts and prison had made me feel invisible.

- TEWKUNZI GREEN ⁸⁰



PREVENTION, EDUCATION, & COMMUNITY ORGANIZING

4 Engage in strategic media advocacy. Though media coverage can be useful to ensure that survivors' names and stories are not forgotten, some journalists use racist, sexist, anti-trans, anti-queer, and otherwise oppressive stereotypes and tropes in their writing which can further endanger survivors' lives.

- Develop toolkits for advising journalists on how to cover stories about criminalized survivors.⁸¹ Circulate such toolkits widely, including among faculty and students in journalism schools. Organize events where journalists hear directly from survivors about how both positive and negative media coverage impacted them.
- Use media to expand advocacy and organizing for survivors in rural areas. Survivors who face prosecution in rural areas typically have less access to community support and collective defense; media can be a critical tool for building more support.
- Create community media, such as video and film, poetry, music, visual art, social media, and press releases to increase education on the criminalization of survivor self-defense. Circulate survivors' self-chosen photographic and artistically rendered portraits to counter and crowd out media images that objectify and criminalize survivors, such as mugshot photographs.
- Create media pressure that exposes prosecutors who pursue criminal charges against survivors. Anita Alvarez in Chicago and Angela Corey in Jacksonville are prosecutors who targeted domestic violence victims acting in self-defense and they were voted out in part because grassroots organizing exposed their destructive policies in the media.⁸²

CONCLUSION

Defending and decriminalizing survivor self-defense will require focused transformative action across multiple areas and systems. This includes specific policy, legal, and organizational changes to protect survivors who act in self-defense and release those who are currently incarcerated. Defending self-defense also requires community-based support and organizing to dismantle the “perfect victim” paradigm and build stronger networks of safety and connection. Collective organizing and systemic change can bolster individual acts of resistance to violence, prevent people from reaching a point of desperation, and allow survivors the right to live their lives without violence and punishment and, to quote Robbie Hall, to *breathe*.

MATRIX OF DEFENSE

SHIFT RESOURCES



DEFEND SURVIVORS



PROTECT SURVIVORS



TRANSFORM CONDITIONS OF VIOLENCE



POLICY & BUDGET ADVOCACY

What policies are needed to shift from a punitive budget to a safety budget?



LEGAL DEFENSE

How do we ensure survivors are not prosecuted and, if they are, effectively defended in courts?



ANTI-VIOLENCE ADVOCACY & RESOURCE BUILDING

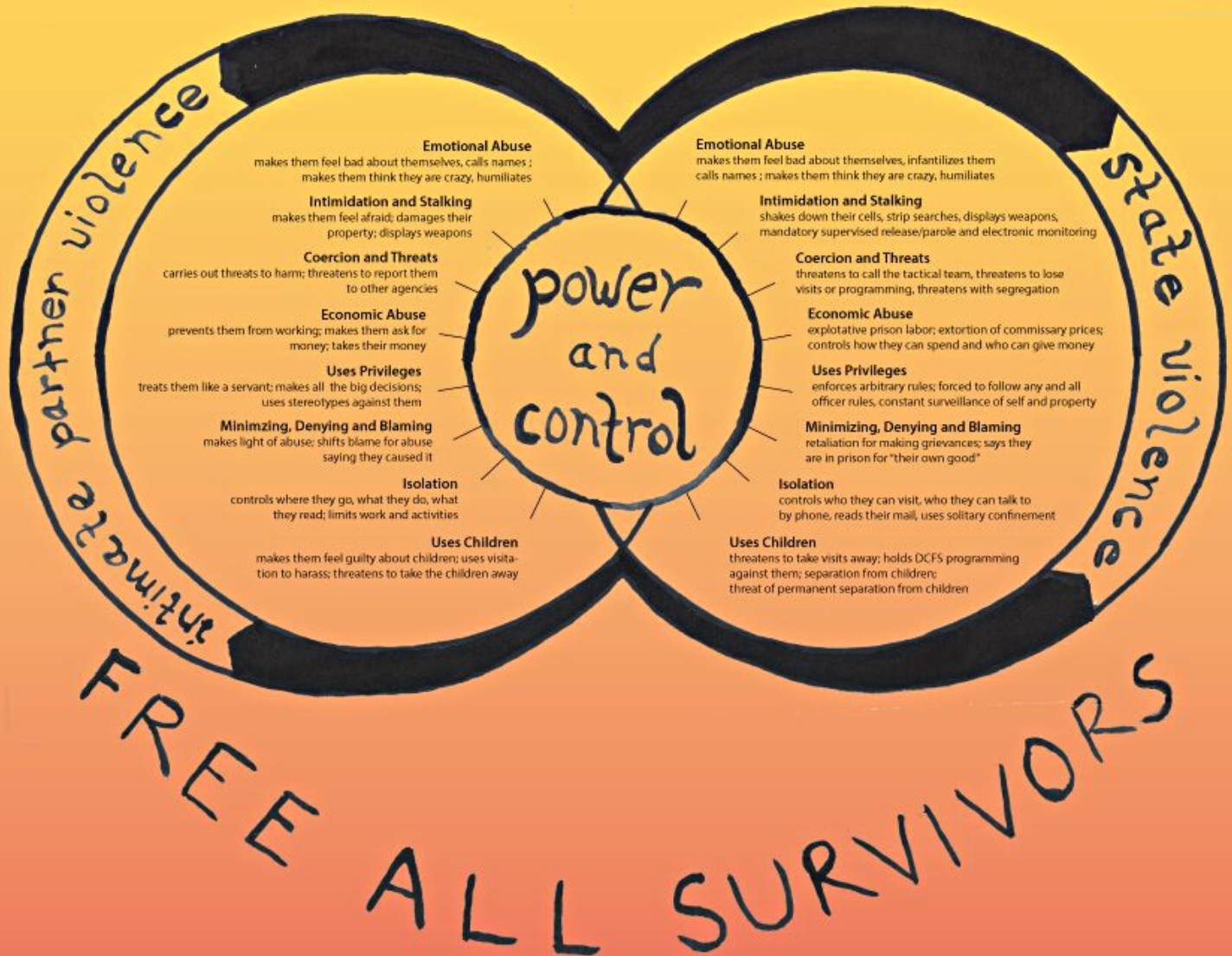
How do we support a system of advocacy that is accessible to criminalized survivors?



PREVENTION, EDUCATION, & COMMUNITY ORGANIZING

How do we increase and sustain efforts to educate and organize for freedom?

PRISON IS GENDER VIOLENCE



Appendix A

Model conceptualized by Moni Cosby in collaboration with Beth Richie, Rachel Caidor, Love & Protect, and Moms United Against Violence and Incarceration (MUAVI). Moni emphasizes that, if it weren't for these collaborators, this model would not have been possible. Art by Sarah Ross.

SURVIVED AND PUNISHED

end the criminalization of domestic and sexual violence survivors
 survivedandpunished.org

Anti-violence Organizations & Criminalized/Incarcerated Survivors: Self-assessment Tool (May 2016)

Question	Response				
	Does not exist	Rarely	Sometimes	Often	Ready
Direct services and outreach					
Implement structure for answering mail and phone calls from incarcerated survivors.					
Operate with understanding that many survivors have frightening, hostile and traumatic experiences with police and prosecutors.					
Develop screening process for crisis calls and intakes inclusive of criminalized and incarcerated survivors.					
Write parole letters for incarcerated survivors offering services and/or support (shelter, trainings, volunteering, jobs, support group, counseling, etc.).					
Create language access capacity for Limited English Proficiency (LEP) survivors.					
Share domestic violence/outreach materials in jails, prisons and detention centers, including information about shelter and resources for survivors post-release.					
Include education on criminalization, race, and domestic violence in volunteer training programs.					
Give shelter, transportation and resources to callers who are being released from prison/detention.					
Give continuity referrals to community resources or coping skills for how to transition to the community for those being released from prison/detention.					
Provide support post-release from prison/detention.					
Organizational development					
Prioritize formerly incarcerated survivors as potential staff, board, and volunteers.					
Include support for criminalized/incarcerated survivors, including immigrants, as part of the organization's population served, mission, values and priorities.					

Train staff, board and volunteers to support criminalized/incarcerated survivors (trauma-informed cultural competency, education on prison and immigration systems, impacts of racism/sexism on our legal systems, etc).					
Create stronger boundaries between organizations and prosecutors (ex: challenge prosecutors targeting survivors; document/report sexist, racist, homophobic and transphobic rhetoric used by prosecutors, judges and police to justify criminalizing survivors; challenge notion that prosecutors are natural allies or should be in leadership roles for anti-violence organizations; etc).					
Community organizing and advocacy					
Prioritize the development of community-based strategies to addressing domestic violence.					
Share skills for addressing domestic violence with community members (ex: emotional support, safety planning, de-escalation, etc).					
Identify staff members who could be the contacts for a survivor defense campaign that arises.					
Support volunteers to regularly write to incarcerated survivors.					
Challenge notion that increasing criminalization and incarceration will increase safety for survivors.					
Ground analysis in context of harmful impacts of policing, immigration enforcement and prisons on communities, particularly Black/immigrant communities—including women and trans/queer people.					
Build alliances with immigration and anti-prison organizations/policy advocates focusing on decarceration and immigration relief.					
Oppose initiatives that increase policing and criminalization to address domestic violence.					
Prioritize anti-criminalization legislation in policy advocacy (end mandatory minimums, 3 strikes, mandatory arrest, failure to protect, immigrant detention and deportation ["priority enforcement"]).					
Advocate for more expansive forms of immigration relief that don't rely upon one's status as a victim or perpetrator of crime.					
Advocate for incarcerated survivors with the understanding that imprisonment is inhumane and violent for everyone—and that domestic violence survivors are not the only ones inside who have histories of abuse and trauma and are in need of support and compassion.					

VII. APPENDIX C

LEGAL DEFENSES FOR SELF-DEFENSE

INTRODUCTION:

While the politics and ethics of “the law” and the legal system have been critiqued throughout this report, this appendix aims to break down common language and concepts that criminalized survivors, their attorneys, loved ones, supporters, and participatory defense teams are likely to encounter while fighting for freedom, dignity, self-determination, and safety. As demonstrated below, the specific law of self-defense describes an ever-evolving body of doctrine and practices. Included at the end of the appendix are brief graphic summaries of four legal defenses for self-defense and several key legal doctrines relevant to survivor self-defense.

Criminal-legal language and doctrine, meaning the law’s rules and principles, are complex and often confusing, even for attorneys and legal professionals. In the United States, criminal law is primarily informed by legal traditions and court decisions, often called the “Common Law,” as well as the Model Penal Code (MPC), a text developed by the American Law Institute in 1962 to guide state legislatures in standardizing criminal laws from state to state. Criminal law varies between the federal and state levels and its interpretation further varies across courtrooms. This creates significant differences in the law, its application, and degrees of punishment across jurisdictions.

The law provides guiding rules, but they are not enforced in a vacuum. Criminal law is applied using discretion, or the power to make calculated choices, that reflects some of our culture’s most violent tenants: racism, sexism, cisheterosexism, ableism, classism, and other axes of oppression. Institutional actors use their discretionary power to make key choices at all levels of the process:

- a. Legislators:** create and amend criminal laws, including laws that determine the level of discretion of other institutional actors (such as mandatory arrest for police and mandatory minimum sentences for judges)
- b. Police:** decide whether or not to arrest (depending on the law), which person to arrest when responding to domestic violence calls (in states with mandatory arrest laws), and whether or not to investigate a case
- c. Prosecutors:** choose whether or not to try case and which charges to bring
- d. Courts & Judges:** decide whether or not to let a case move forward, what evidence to allow, and, often, the format and length of a defendant’s sentence (depending on the case and local laws)
- e. U.S. Immigration & Customs Enforcement (ICE):** chooses whether or not to pursue detention and/or deportation
- f. Parole Boards:** determine whether or not to grant parole
- g. Correctional Officers:** although not always within a legitimate discretionary capacity according to official policies, correctional officers typically have immense, unchecked power to decide when and how to report disciplinary infractions, whether or not to push for punishment and/or solitary confinement, whether or not to enact escalated violence, and whether or not to provide emergency assistance

Please know that the information provided on this appendix does not, and is not intended to, constitute legal advice. Rather, all information included in this appendix is available for general informational purposes. It cannot be guaranteed to be accurate and it may not constitute the most up-to-date legal or other information. If you have questions about a current legal matter, please consult with an attorney. Only your individual attorney can provide assurances that the information contained herein — and your interpretation of it — is applicable to your particular situation and jurisdiction.

KEY LEGAL TERMS:

- **Criminal Liability:**

Criminal liability always requires two forms of **culpability** (or moral blameworthiness): **actus reus** (culpable conduct or behavior) and **mens rea** (culpable state of mind). Every criminal charge requires that some standard for actus reus and mens rea be met, even if it is not explicitly stated in a **statute** (or written law). **Mens rea** standards include four familiar terms: purpose, knowledge, recklessness, and negligence.

Criminal liability always requires the commission of some **voluntary** act that is prohibited by law. In other words, to satisfy the **actus reus** requirement, a defendant has to have acted (or failed to act) voluntarily. What exactly constitutes a “voluntary” action is more complicated and narrowly defined, and may be best understood by explaining what it is not (i.e., what is **involuntary** in the law’s eyes). Generally, it is widely accepted that acts are **voluntary** even when a defendant cannot remember them. **Involuntary** acts are limited to those (1) done by one’s muscles without the control of their mind such as reflexes, convulsions, seizures, or spasms or (2) done without a conscious awareness of one’s actions as might be the case when one is unconscious, has a concussion or traumatic brain injury, or sleepwalks.

Some criminalized acts are **“strict liability”** offenses, meaning that they have no mens rea, or culpable mental state, requirement. Instead, strict liability crimes require only that someone does the specific illegal act or fails to act when there is a legal obligation to do so.

- **Jurisdiction:**

Jurisdiction is the right of a court to hear a particular case and determine remedies or punishments based on the geographic or legal scope of its authority over the type of case and its parties. Divergences in legal approaches or norms are often described in terms of variation or “splits” across jurisdictions.

- **Defense:**

After **actus reus** and **mens rea** are established, there are two broad categories of legal defenses against criminal liability: (1) justification and (2) excuse. Understanding these two theories helps contextualize the relative strengths and weaknesses of the legal defenses invoked by survivors and their legal teams.

1. **Justification:** A theory of defense that asserts there is some “social utility” to the act. In other words, the law (attempting to reflect dominant societal values) does not consider it a “bad” act.
 - Includes: Self-Defense, Defense of Others, and Defense of Property
 - Under this theoretical framework, acting in self-defense *justifies* the need for force against another person and self-defenders should, therefore, not be criminally punished.
2. **Excuse:** A theory of defense for when the law (attempting to reflect dominant societal values) finds punishment unfair because the defendant has a legally defined “incapacity.”
 - Includes: Duress and Legal Insanity
 - *Can include:* Imperfect Self-Defense, which is only honored in some jurisdictions
 - Under this theoretical framework, a person’s mental state or inability to control their actions *excuses* their conduct and they therefore should not be punished, or punished as harshly, for the conduct.

- **Affirmative Defense:**

An affirmative defense is a fact or legal argument asserted by the defense that, if proven, will defeat the prosecution's claim, even if the allegations in the complaint are valid and true. The defense bears the *burden of proof* in an affirmative defense. Examples include Legal Insanity and Self-Defense.

- **Burdent of Proof:**

Burden of proof is a legal party's (in criminal law, the defense's or prosecution's) obligation to produce enough evidence and to persuade the *trier of fact* about an issue, claim, or defense that is disputed. This burden will fall on either the defense or the prosecution for different aspects of a case. The burden of proof includes both (1) the ***burden of production***, or the obligation to produce enough evidence on an issue to avoid dismissal, and (2) the ***burden of persuasion***, or the obligation to convince the judge or jury of the party's case.

- **Mitigation:**

Generally, to *mitigate* means to make less severe or intense, or to alleviate. In legal settings, mitigation refers to circumstances and facts that may be considered to help contextualize criminalized conduct and thereby reduce the degree of moral blame the court places on the defendant. Although mitigating factors or circumstances are not a *justification* or *excuse* for a criminal offense, the evidence is considered as an act of "fairness" to a party. Sometimes, mitigation specifically refers to reducing a charge or sentence based on these circumstances. Sometimes, it specifically refers to evidence introduced at sentencing that may reduce the penalty for a crime.

Mitigating factors are typically contrasted with ***aggravating factors***, which can result in harsher penalties and punishment. Mitigating factors might include a history of abuse, mental illness, or developmental and intellectual disabilities while ***aggravating factors*** might include killing a police officer, killing multiple people, or killing in a particularly cruel or degrading manner.

In some jurisdictions, evidence of ***provocation*** can mitigate murder charges to manslaughter. *Provocation* has a narrow legal definition that differs across jurisdictions. Most broadly, it refers to circumstances the law believes might elicit a "homicidal reaction" by a "reasonable person" (see below for a definition of "reasonable person"). The use of provocation can result in major changes in sentencing, potentially the difference between a 10-year sentence and life. Other jurisdictions use ***Extreme Emotional Disturbance*** language and frameworks, introducing evidence of trauma and/or mental illness, to mitigate murder to manslaughter. However, what counts as "provocation" is subjective and open to racist, sexist, etc. interpretation. For example, George Zimmerman argued that Trayvon Martin "provoked" him, even though he initiated the altercation.¹ Other examples have historically included claims of provocation by "gay/trans panic" or walking in on a cheating spouse. An argument that one was "provoked" can also undermine an argument that they had no choice but to act in self-defense. These realities make this mitigation strategy difficult to employ in the context of survivor self-defense.

An ***affirmative defense*** is more powerful than mitigation as it can be raised against and defeat a charge such as homicide or assault and battery. Nonetheless, in instances where a self-defense or other defense is unlikely to succeed, mitigation may tangibly reduce the harmful impacts of criminalization on survivors.

- **Jury Trial:**

Under the Sixth Amendment, defendants have a constitutional right to a jury trial in federal and state criminal cases when they face a punishment greater than six months' imprisonment. Jury trials require **unanimity**, or agreement by all people on the jury, to convict a defendant. **Jury nullification** happens when the jury believes that the prosecutor has proven their case *beyond a reasonable doubt*, but the jury still **acquits** (declares innocent) the defendant for moral or ethical reasons.

- **Trier of Fact, Finder of Fact, or Fact Finder:**

In a criminal trial, the person (the judge in a bench trial) or group of people (the jury in a jury trial) who have the responsibility to examine evidence and determine the facts.

- **Beyond a Reasonable Doubt Standard:**

The standard of proof required to convict an individual of a criminal offense. This is the highest standard of proof. It requires that the prosecution provide sufficient evidence to show that, based on the facts, no other logical explanation is possible except that the defendant committed the alleged crime.

- **Sentencing:**

Determines the penalties for criminal defendants, including the amount of time a defendant will be incarcerated. Discretion at every level of criminal punishment leads to sentencing disparities that reflect structural oppression such as racism, classism, ableism, sexism, and cisheterosexism. Sometimes sentences have **enhancements** which make more severe penalties available for certain crimes. *Sentence enhancements* are typically based on circumstances that are considered egregious or *aggravate* the seriousness of the crime, such as the use of certain weapons or a defendant's prior criminal record.

There are four key institutions that determine sentences:

1. **Legislature:** defines crimes and sets a sentencing range. Can create **mandatory minimum sentences** which are fixed penalties that a judge must impose for specific crimes, or that the prosecutor or judge can waive, but only under limited circumstances prescribed by local law.
2. **Prosecutor:** decides which charges to bring. In some jurisdictions, the prosecutor can decide which cases to bring for resentencing.
3. **Judge:** determines the length of the sentence within the range set by the law, for example choosing an 18- versus a 12-year sentence in a 10-20 year range.
4. **Parole Board:** controls the amount of time a person will be imprisoned by granting or denying parole.

KEY DEFENSES FOR CRIMINALIZED SURVIVORS:

- A. Self-Defense
- B. Imperfect Self-Defense
- C. Duress
- D. Legal Insanity (high legal standard of mental illness)

A. SELF-DEFENSE:

An affirmative defense doctrine defined by three underlying principles: fault, necessity, and proportionality. When defending against a homicide charge, self-defense law requires that the defendant not be the aggressor, and that they *reasonably* believed lethal force was both (1) *necessary* and (2) *proportionate* to repel an *imminent* attack which would have resulted in death or serious bodily injury.² Both of these two “prongs” are key components, forming a legal test that defendants must pass to prove their self-defense defense. The law uses what it terms an *objective reasonableness* standard to examine whether self-defense was *necessary* and *proportionate*.

1. **Prong One: Necessary:** A legal standard that one must meet to prove self-defense. In some jurisdictions, the standard is (a) “*imminence*” and in others it is (b) “*immediately necessary*” with no reasonable alternatives. Imminence is the stricter standard and is the traditional Common Law approach. This prong presents significant challenges to survivor-defendants based on their attacker’s (batterer, rapist, or other violent actor’s) behavior immediately preceding their use of defensive force.

a. **Imminence:** A strict standard to prove the necessity of defensive force. Under this standard, the threat of attack must have been immediately in front of the survivor-defendant, and the survivor-defendant had absolutely no alternatives to their use of force, including retreating or calling police regardless of how difficult these actions may have felt in the moment.

If the defensive context is considered “non-confrontational”—such as when an abuser is not actively engaged in an attack, takes a break from actively attacking, or is asleep—then imminence cannot be proven under this standard. When a survivor-defendant does not meet the standard, defensive force will *not* be considered necessary under the law.³ Many courts refuse to give a self-defense instruction in cases where a killing occurred in a non-confrontational context.⁴

This standard has been subject to increasing criticism, especially as it relates to domestic violence. Defenders of this standard argue that in a “civil society,” the imminence requirement reflects that the use of force should be reserved for the state, such as in war and policing, with only one exception: when “an individual is faced with an imminent threat [such that] the state would not be able to intervene in time to protect the person.”⁵ Critics argue that outcomes of survivor self-defense cases expose fundamental flaws in the doctrine, namely that the imminence requirement prohibits courts from appropriately recognizing when it is *necessary* that survivors use force against or kill their batterers to escape the escalating pattern of coercive control or certain death.⁶

b. **Immediately Necessary:** A slightly more flexible standard that asks: Did “reasonable” options besides using force exist? This standard theoretically leaves more conceptual room for using self-defense in a non-confrontational context, but further research is required to understand how often survivors are actually successful in winning their self-defense arguments under this standard.

2. Rosen, 1993.

3. In 1989, Judy Norman was denied permission to raise a self-defense defense after killing her batterer-husband in his sleep—irrespective of the well-documented chronic abuse, torture, and death threats she suffered from her abusive husband—because the trial court determined that the danger of death or serious harm was not *imminent* at the time Norman killed him. The North Carolina Supreme Court affirmed this decision. (Rosen, 1993).

4. See, e.g., *State v. Stewart*, 763 P.2d 572, 577 (Kan. 1988); *State v. Norman*, 378 S.E.2d 8, 12 (N.C. 1989). See also Black’s Law Dictionary 750 (6th ed. 1990) (defining “imminent” as “impending, on the point of happening.” “[s]omething which is threatening to happen at once.”).

5. Kaufman, 2007.

6. Rosen, 1993. See also: Murdoch, 2000.

2. Prong Two: Proportionate: A legal standard one must meet to prove self-defense. It examines whether the defendant's force was "*reasonably*" (*objectively*) proportionate to the aggressor's force. The type of defensive force used does not need to exactly mirror the attacker's force, but it must be considered roughly the same amount. For example, if an attacker wields a knife, a self-defender is not exclusively limited to using a knife in their defense. However, if an attacker is using words or their hands, a self-defender has a significant challenge to rationalize why a gun or knife was "*reasonably*" proportionate.

a. **Serious Bodily Injury (SBI):** A legal term that varies in definition across jurisdictions. Generally, SBI is a high standard of harm, equating to a substantial risk of death or serious, physically-disabling injury (one that permanently alters the body or causes a long-term loss of or injury to a bodily function, body part, or organ).

This is a high standard of physical violence for domestic violence, especially when paired with the imminence requirement. When survivors act in self-defense, their use of lethal force or force resulting in SBI is limited to specific situations. In most jurisdictions this includes when the self-defender faces kidnapping, rape, or SBI. Some jurisdictions also include when the self-defender is being robbed. It is legally permitted for one person to defend themselves against multiple attackers.

Standards & Doctrines Invoked for Self Defense:

- **Reasonableness:** A legal standard, also sometimes called the "reasonable person standard." Whereas the **subjective** standard refers to a defendant's own perceptions, experiences, and "honest beliefs," *reasonableness* is considered the **objective** standard. It asks: Would the "reasonable person" believe defensive force was necessary and proportionate to the initial attack or incident of abuse? The mythical "reasonable person" refers to the jury or fact finder's idea of a typical, "average" person who has *not* necessarily had the lived experiences of the defendant. This presents challenges for survivors, particularly those surviving a prolonged pattern of coercive control and/or living with traumatic impacts from abuse. The "reasonable person" has not been subjected to the same patterns of abuse and acts of violence.

The standard can sometimes be "individualized" to factor in some aspects of a defendant's identity and experience. Physical characteristics, such as the relative sizes of the self-defender and attacker, are typically and non-controversially folded into the reasonableness standard for a jury to consider. Mental characteristics, however, are not typically incorporated into the standard.

- **Battered-Woman Syndrome (BWS):** A legally recognized psychological "condition" or construct that can be used to individualize the *reasonableness* standard as part of one's defense. Also referred to more narrowly as Battered-Wife Syndrome or Battered-Spouse Syndrome and more broadly as Battered-Person Syndrome. Dr. Lenore Walker coined the term in the 1970s to describe a constellation of psychological symptoms and behaviors among cis women. Evidence of BWS contributes to a legal defense by helping *justify* self-defensive action or mitigate punishment for the use of self-defense. While BWS was notably gendered in its conception, it has since been used to address domestic violence regardless of gender.

BWS is widely considered outdated and regressive in its pathology of survival and is criticized for definitional problems. Whether BWS constitutes "good science" is another site of debate, impacting the standard of admissibility under which it should be judged.⁷ Nonetheless, evidence of BWS is used in a legal context to explain how patterns of abuse impact survivors' feelings, experiences, and behaviors. BWS evidence aims to contextualize survivors' actions by clearing up common misconceptions about domestic violence, particularly as the realities of domestic violence and its impacts are beyond the understanding of the typical, non-survivor juror.⁸

7. Criminal Trial Techniques § 36:2. Battered woman syndrome, May 2021 Update, pg. 1-2.

8. Criminal Trial Techniques § 36:2. Battered woman syndrome, May 2021 Update, pg. 2.

Evidence of BWS has been brought in nearly every court in the country within the last decade, partly due to its success in early cases such as *Ibn-Tamas v. United States*, *State v. Anaya*, and *Smith v. State*.⁹ In a self-defense defense, BWS is most relevant to the *proportionality* prong (see above). The theory underlying this proposes that the survivor-defendant has a heightened ability to understand and predict the extent and scope of violence that a batterer is likely to use against them; therefore, the court may find it appropriate to individualize what was “*reasonably proportionate*.” For example, if a survivor-defendant knew that a batterer’s slap almost always led to being knocked unconscious, the survivor can argue that they *reasonably* believed more extreme defensive force was necessary and proportionate to the slap because they understood the preceding pattern of abuse signaled more escalated violence in this instance.

Application & Admissibility of Battered Women’s Syndrome: Application of BWS evidence is complicated, particularly when and how evidence of BWS is permitted. Courts must evaluate the legal doctrine at two levels. First, they consider whether BWS is a legitimate framework; this sometimes presents challenges around the validity of BWS as a “scientific” diagnosis. Second, courts consider the admissibility standards for expert testimony, asking: Does expert testimony on BWS assist the trier of fact (judge or jury) in evaluating the facts before them?¹⁰

The defense that wishes to introduce BWS must lay an adequate foundation to support its use; it is not automatically or necessarily applied in cases involving domestic violence. Additionally, it is debated whether BWS evidence can be entered outside the context of an affirmative self-defense defense.¹¹ BWS is most relevant in the context of self-defense, a type of *justification* defense. However, less commonly, a defendant may argue that BWS supports their insanity or duress defense, which are types of *excuse* (or “incapacity”) defenses. If a defendant argues for a voluntary manslaughter mitigation, BWS evidence may support their claim and, in this context, might be considered a theory of *excuse* rather than a *justification*.

Further, evidence of BWS may sometimes be grounds for post-conviction relief and/or used in the context of participating in criminalized activities while surviving abuse.¹² BWS evidence can be used to explain a survivor’s fears and seemingly disproportionate reactions to someone other than their batterer, even a stranger. Some judges find BWS helpful to explain concepts like “learned helplessness” or how a survivor may assess danger differently from the average person who has not experienced abuse.¹³ One jurisdiction has held that BWS evidence is admissible in child abuse prosecutions to explain a defendant’s mental state.¹⁴

- **Duty to Retreat:** A legal restriction on self-defense that applies to the defense’s *necessary* prong (see above). If a person can retreat somewhere, the law does not view self-defense as necessary. If a defense fails to meet the necessary requirement, the defense fails. The codified *duty to retreat* has devastating implications for survivors, who must navigate the legal expectation that they evade and escape attacks into perpetuity, including in their own homes. The *Castle Doctrine* and *Stand Your Ground* laws, which vary state to state, prescribe when and where someone has a legal duty to retreat.

9. Psychological and Scientific Evidence in Criminal Trials § 7:2, Ch. 7 Battered Woman Syndrome, May 2021 Update, pg. 1.

10. 2 Mod. Sci. Evidence § 12:7 (2020-2021 Edition) Self-defense — judicial responses to the battered woman syndrome in self-defense cases —Legal issues surrounding the battered woman syndrome, pg. 2.

11. In *Duran v. State*, the court upheld exclusion of BWS expert testimony because it determined the underlying facts did not support a claim of self-defense. The court explained that the “battered woman syndrome statute does not create a separate defense; it permits the introduction of expert testimony on the battered woman syndrome when the affirmative defense of self-defense is raised.” *Duran v. State*, 990 P.2d 1005, 1009 (Wyo. 1999) (internal quotations omitted). Accordingly, “[o]nce the trial court determined that self-defense was not an appropriate defense in this case[,] ... reliance on the statute was misplaced.” In other words, BWS could not be invoked where a self-defense defense was not brought.

12. In *McMaugh v. State*, an incarcerated woman who had been convicted alongside her husband of murder, conspiracy, and weapons violations was able to demonstrate that she had experienced profound abuse from her husband such that she was not able to assist her attorney in presenting her defense at the time of her conviction. Although the trial court denied her motion for a new trial, the Rhode Island Supreme Court found that the defendant’s arguments merited post-conviction relief. *McMaugh v. State*, 612 A.2d 725 (RI, 1992).

13. See: *State v. Riker*, 869 P.2d at 53-56 (Wash. 1994); Criminal Trial Techniques § 36:2. Battered woman syndrome, May 2021 Update, pg. 3.

14. BWS can be used in this context to help the court determine whether a survivor acted intentionally (purposely or knowingly) in placing a child in a dangerous situation, particularly in the instance of leaving a child with the abuser. See: *Barrett v. State*, 675 N.E.2d 1112 (Ind. Ct. App. 1996).

- **Castle Doctrine or Castle Exception** and **Stand Your Ground**: Exceptions to the *duty to retreat*, these may be invoked as a part of a defense. The Castle Doctrine and Stand Your Ground cancel a defendant's legal obligation to retreat when attacked.

1. **Castle Doctrine**: A traditional Common Law term and rule that renders a person's home their "castle" or a sacred private space, one that should be free from invasion. According to this rule, a person inside their own home has no duty to retreat. In other words, a person can "stand their ground" within their own home. The vast majority of jurisdictions honor the Castle Doctrine such that if a defendant is in their own home, they have no duty to retreat before using deadly defensive force. However, and critically important for survivors, jurisdictions are split about co-occupants of the home. There are three approaches: (1) some jurisdictions generally allow defendants to "stand their ground" against a co-occupant (e.g., an abusive partner living in the same home), (2) others now make a distinction based on the presence of a protection or restraining order, and (3) other jurisdictions always require retreat if a home co-occupant is the one posing the threat.
2. **Stand Your Ground (SYG)**: Less common and more recent laws in some states that eliminate the duty to retreat even outside the home. Instead, a person may meet force with force, even deadly force. Some states have expanded SYG laws to include a person's car or workplace, some even broader to "anywhere a person has a lawful right to be." Who is entitled to "stand their ground" has proven to align with the traditional design of defensive force policy to protect white men and their property.¹⁵

Survivors, especially those who are Black and/or indigenous women, face unique challenges invoking SYG not only because of their racial, gender, and sexual identities, but also because common aspects of surviving domestic violence—such as continuing to have contact with an abusive partner—are frequently cited to negate a SYG claim.¹⁶ In 2012, Whitlee Jones killed her abusive boyfriend in self-defense. She was granted SYG immunity, but South Carolina state prosecutor Culver Kidd tried to reverse the decision, arguing that the law's intention "was to provide law-abiding citizens greater protections from external threats in the form of intruders and attackers" *not* to "reach into our homes and personal relationships" as in the case of intimate partner violence and sexual abuse.¹⁷

B. IMPERFECT SELF-DEFENSE:

A modified version of self-defense available in some jurisdictions to mitigate a murder charge to manslaughter as long as the defendant had an "honest" (subjective) belief that force was necessary (that the threat was imminent), whether that belief was "objectively reasonable" or not. This is also sometimes termed an "honest but unreasonable" belief. Imperfect self-defense can be understood as a good-faith, but ultimately mistaken, belief that self-defense is necessary to repel an attack.

15. One study by The Urban Institute found that in "stand your ground" states, when white shooters kill Black people, 34 percent of the resulting homicides are deemed "justifiable." In contrast, only 3 percent of deaths were ruled "justifiable" when the shooter was Black and the victim was white. Additionally, even when Black shooters killed Black people, those shootings were less likely to be deemed justifiable in a court of law than those involving white shooters who kill white people. (Roman, 2012).

16. The incarceration of Pamela Smith (Kentucky), Marissa Alexander (Florida), Melissa Roberts (Kentucky), Callie Adams (Florida), and so many more exemplify the unequal application of SYG. All of these women were incarcerated for using guns in self-defense against abusers, even when protection/restraining orders were in place. See: Mary Anne Franks, 2014 (analyzing stand your ground laws and their unequal application based on defendants' genders, and finding that such laws expand the legal system's favoritism for white men's violence against strangers while further shrinking self-defense protections for all women and people of color); see also: Coaston, 2018; Light, 2017.

17. Flatow, 2014

C. DURESS:

A defense available when threat, violence, constraint, or other actions forced a defendant to perform an illegal act against their will. The act still meets the voluntary requirement in the eyes of the law, but “voluntary” has been compromised and therefore merits the duress excuse.

1. **Application & Divergences of Duress:** Jurisdictions are split about what constitutes a significant enough threat to invoke a duress defense. In some jurisdictions, a duress defense is only available for imminent threats of death or Serious Bodily Injury (SBI). In these jurisdictions, duress is unavailable if the defendant is considered “at fault” for putting themselves in the situation where duress took place. When a defendant is considered “at fault,” the law declares the person should have known duress could arise and, therefore, cannot invoke it as a defense. Domestic violence survivors and those labeled as “gang-affiliated” are problematically considered “at fault” in this regard and so duress is not available to them in these jurisdictions.
2. **Duress & Battered-Woman Syndrome (BWS):** Evidence of BWS may be admissible in cases with a duress defense. This evidence can be relevant as it speaks to a survivors’ credibility as to a “good-faith, objectively reasonable belief that [their] criminal act was necessary to prevent an imminent threat of greater harm” [italics my own].¹⁸ However, recent decisions indicate that federal appellate courts resist the admission of BWS evidence for duress defenses. They maintain that BWS evidence transforms the inquiry into a *subjective* rather than *objective* one.¹⁹

Generally, evidence of BWS is disallowed for duress when survivors are charged with crimes related to their survival (i.e., Third Party Criminalization). The dominant legal rationale for this distinction is that, in duress cases, other “innocent” people are harmed, whereas, in self-defense cases, the batterer or attacker specifically is harmed. Thus, the law sees more conceptual room to include BWS to defend against liability for the latter. The idea that “innocents” are harmed in duress cases is problematically extended to criminalized acts with no direct human contact, such as theft. In these cases, the law values property over survivors and survival more broadly.

D. LEGAL INSANITY:

An affirmative defense when a defendant's mental state prevented them from appreciating the consequences of their actions. Legal insanity is sometimes framed as volitional (what behaviors the defendant can control) and sometimes as cognitive (what the defendant can understand). This defense is used to negate the *mens rea* (culpable state of mind) requirement for criminal liability. It can (1) negate *mens rea* in a narrow sense, meaning the *mens rea* explicitly named in a criminal statute, and therefore make evidence of mental illness admissible. Or, it can (2) negate *mens rea* in a broad sense, meaning the defendant could not have any mental culpability; this allows for the possibility of full acquittal, also known as the “not guilty by reason of insanity” acquittal. “Insanity” has a specific and narrow legal definition that does not conform to how the term is typically used in plain language to refer to a broad range of mental health diagnoses. It is very rare to meet this standard and criminalized survivors do not typically bring this defense.

POST-CONVICTION RELIEF AVAILABLE TO CRIMINALIZED SURVIVORS:**Parole:**

Parole is the supervised release of an incarcerated person for the remainder of their sentence if certain conditions are met. Parole is usually regulated by statutes that vary from state to state. Statutes create parole boards, typically made up of former correctional authorities, that possess the authority to release people from incarceration. Parole hearings are subjective, legally intricate proceedings wherein incarcerated individuals present their readiness for release and reentry before the parole board.

18. Criminal Trial Techniques § 36:2. Battered woman syndrome, May 2021 Update, pg. 2.

19. These courts that oppose BWS evidence for duress assert that such evidence “changes the inquiry from an objective one—“whether a person of ordinary firmness could have resisted the coercion”—to a subjective one—“whether the individual defendant could have resisted in light of her psychological condition.” Criminal Trial Techniques § 36:2. Battered woman syndrome, May 2021 Update, pg. 3.

Those pursuing parole are expected to demonstrate a high level of “accountability and insight” as determined by parole boards using language and frameworks that are sometimes arbitrary, counterintuitive, regressive, and, especially for survivors, re-traumatizing. It can be very difficult for incarcerated people to successfully present their readiness for release without adequate legal support and trauma-informed preparation. Survivors face unique challenges, as speaking to their true experience of abuse, victimization, and self-defense can be construed as “minimizing accountability” or “playing the victim” by parole boards. Additionally, parole boards sometimes wrongfully characterize experiencing domestic violence as a “character defect” and ask that survivors of rape and abuse create plans to prevent “relapse” into an abusive relationship. There is no constitutional right to representation in parole hearings and parole revocation hearings. Although many states provide representation to impoverished people in these hearings, the quality of representation can vary and many people will not meet with an attorney more than once before their parole board hearing.

Clemency:

The clemency process ranges across jurisdictions, but generally, a governor or a state clemency board (for state convictions) or the president (for federal convictions) can use the executive power of clemency to grant a *pardon* or *commute* (reduce) the sentence of an incarcerated person as an “act of mercy.”

→ **Commutation:**

Commutation refers to the replacement of a criminal punishment with a lesser one, sometimes shortening a sentence to “time served.” A *commutation of sentence* modifies or reduces a punishment, usually for the defendant’s “good conduct” following their conviction. A *commutation* may only be granted by an executive authority with clemency power.

→ **Pardon:**

A *pardon* restores rights, such as the ability to obtain a professional license, and also allows for immigrants, in some cases, to reopen their deportation cases. Criminalized survivors who are immigrants can be ordered deported based on their convictions, including old convictions. Many criminalized immigrant survivors face ICE detention and deportation after serving sentences for self-defense. Survivors facing deportation may be able to seek a *pardon* to eliminate the immigration consequences of their conviction. A *pardon* may only be granted by an executive authority with clemency power.

Sentencing Relief:

Some states have created new forms of legal relief for survivors of domestic and/or sexual violence when they have been incarcerated for crimes that occurred in the context of their abuse. In 2019, for example, New York passed the Domestic Violence Survivors Justice Act (DVSJA) which changed some aspects of sentencing laws to expand the situations in which judges can consider survivors’ abuse. DVSJA authorized alternative sentences for people charged with a criminal offense related to their abuse, including authorizing motions for resentencing. In 2001 in California, a domestic violence habeas law was passed to enable domestic violence survivors incarcerated in California prisons to challenge their convictions by presenting new evidence of abuse, its psychological effects, and its role in the charges brought against them. The impact of these laws on survivors has been limited due to various factors, including limits on eligibility for relief, prosecutorial incentives to sustain convictions despite reforms, and judges’ unwillingness to enact new laws for sentencing relief.²⁰

20. For example, in Nikki Addimondo’s self-defense case, the trial judge refused to grant her a sentencing reduction based on the DVSJA because, despite overwhelming evidence, he rejected her testimony of severe, prolonged domestic violence. Addimondo was sentenced to 19 years to life. She won an appeal based on the DVSJA, which reduced her sentence to 7.5 years. Survived & Punished NY writes that the DVSJA “has severe limitations, including the strictness of the test, the steep burden of proof, and uncertainty as to future court interpretations of the standards. Equally as problematic, it contributes to narratives that legitimize the incarceration of survivors who don’t meet a set of narrowly defined, and yet to be practically established, standards for relief under the new law” (2020).

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SELF-DEFENSE

Self-defense is an affirmative defense, which means that, if proven, it will defeat the prosecutor's claim. This legal defense requires that the self-defender (1) was not the aggressor and (2) "reasonably" believed lethal force was both (A) necessary and (B) proportionate to repel an imminent attack that would have resulted in death or serious bodily injury.

(See next page for "Legal Standards & Doctrines Used for Self-Defense.")

IMPERFECT SELF-DEFENSE

Imperfect self-defense is a modified version of self-defense that can mitigate a murder charge to manslaughter as long as the defendant had an "honest" belief that force was necessary (meaning, the threat was *imminent*), whether that belief was "objectively reasonable" or not.

Imperfect self-defense is understood as a good-faith, but ultimately mistaken, belief that self-defense is necessary to repel an attack.

LEGAL DEFENSES FOR SELF-DEFENSE

DURESS

A duress defense is available when threat, violence, constraint, or other actions forced a defendant to perform an illegal act against their will. The act is still considered voluntary in the eyes of the law, but "voluntary" has been compromised.

Evidence of Battered Women's Syndrome may be admissible in cases with a duress defense.

LEGAL INSANITY

This is an affirmative defense that can be used when a defendant's mental state prevented them from understanding the consequences of their actions.

Legal insanity is sometimes framed as volitional (what behaviors the defendant can control) and sometimes as cognitive (what the defendant can understand).

Legal Doctrines Used in Context of Self-Defense

Four key legal standards and doctrines used in the context of the legal defense of "self-defense." See above for a more detailed explanation and definitions of technical terms used for each of these legal theories.

REASONABLENESS

"Reasonableness" is a legal standard that asks: Would the "reasonable person" believe defensive force was necessary and proportionate to the initial attack or incident of abuse? The mythical "reasonable person" refers to the jury or fact finder's idea of a typical, "average" person who has not necessarily had the lived experiences of the defendant.

RELEVANCE FOR SURVIVORS:

This presents challenges for some survivors because **the "reasonable person" has not been subjected to the same patterns of abuse and acts of violence as the survivor has.** However, the reasonableness standard can sometimes be "individualized" to factor in some aspects of a defendant's identity or experience.

BATTERED WOMEN'S SYNDROME (BWS)

"Battered-Woman Syndrome" is a legally recognized psychological "condition" or construct that can be used to individualize the reasonableness standard as part of one's defense.

Dr. Lenore Walker coined the term in the 1970s to describe a constellation of psychological symptoms and behaviors among cis women survivors that contributes to a legal defense by helping justify self-defensive action or mitigate punishment for the use of self-defense. While BWS was notably gendered in its conception, it has since been used to address domestic violence regardless of gender.

RELEVANCE FOR SURVIVORS:

BWS is widely considered outdated and regressive in its pathology of survival. Nonetheless, **evidence of BWS is used in a legal context to contextualize survivors' actions by clearing up common misconceptions about domestic violence**, particularly as domestic violence & its impacts are beyond the understanding of the typical, non-survivor juror.

DUTY TO RETREAT

"Duty to retreat" is a legal restriction on self-defense that limits what defensive actions can meet the legal standard of "necessary." If a person can retreat somewhere, the law does not view self-defense as *necessary*, which means the legal defense fails.

RELEVANCE FOR SURVIVORS:

The duty to retreat restriction has devastating implications for survivors who must navigate the legal expectation that they evade and escape attacks into perpetuity, including in their own homes. When and where someone has a legal duty to retreat varies by jurisdiction.

CASTLE DOCTRINE & STAND YOUR GROUND

These doctrines are *exceptions* to the duty to retreat, meaning they may be invoked as a part of a defense to absolve a defendant of their duty to retreat when attacked.

Castle Doctrine: If a defendant is in their own home, they have no duty to retreat before using deadly defensive force.

Stand Your Ground: Eliminates the duty to retreat even outside the home. Instead, a person may meet force with force, even deadly force.

RELEVANCE FOR SURVIVORS:

Critically important: jurisdictions are split about applicability of these theories as to co-occupants of the home: (1) some generally allow defendants to "stand their ground" against a co-occupant (i.e., abusive partner living in the same home); (2) others make a distinction based on the presence of a protection or restraining order; and (3) other jurisdictions require retreat if a home co-occupant is the one posing the threat.

VIII. RESOURCES & REFERENCES

RESOURCES:

To join a national Defending Self-Defense network of survivors, attorneys, organizers, and policy advocates, please contact Colby Lenz at clenz@ucla.edu.

Take Action:

The following survivors were criminalized for self-defense and urgently need community support:

- Latoya Dickens (GA): tinyurl.com/BringLatoyaHome
- Wendy Howard (CA): freewendy.com
- Tracy McCarter (NY): bit.ly/DropHerCharges
- Defend Survivors (CA): defendsurvivorsnow.org

Documentaries & Art:

- *Out in the Night*: outinthenight.com
- *And So I Stayed*: andsoistayedfilm.com
- *Free Cece*: freececedocumentary.com
- No Selves to Defend website: noselves2defend.wordpress.com
- Defend Survivors: defendsurvivorsnow.org

Participatory Defense Campaign Resources:

- Love & Protect and Survived & Punished Defense Campaign Toolkit: survivedandpunished.org/defense-campaign-toolkit
- National Participatory Defense Network: participatorydefense.org

To explore examples of defense campaigns for survivors criminalized for self-defense, visit these websites:

- freebresha.wordpress.com
- freeliah.org
- freemaddesyn.com
- freemarissanow.org
- freewendy.com
- supportcece.wordpress.com
- sxhxcollective.org/category/alisha-walker
- westandwithnikki.com

Clemency Resources:

- Clemency & Parole: A Guide by Survived & Punished NY
survivedandpunishedny.org/mass-commutation-clemency/freethemny
- California Coalition for Women Prisoners Commutation Application Guide
droplwop.com/commutations-application-guide/
- Clemency for Battered Women in Michigan: A Manual for Attorneys, Law Students and Social Workers
websites.umich.edu/~clemency/clemency_mnl/printable.html
- Asian Law Caucus Guide to California Pardons:
<https://www.advancingjustice-alc.org/wp-content/uploads/2019/05/pardon-guide.pdf>
- Survived & Punished Commutations Campaign:
survivedandpunished.org/commutations-campaign

Legal Defense Resources:

- National Clearinghouse for the Defense of Battered Women: ncdbw.org

Self-Defense Education:

- Visit the website of Home Alive, a self-defense organization founded in Seattle in 1993, which includes curricula and other resources: teachhomealive.org/curriculum

Transformative Justice Resources:

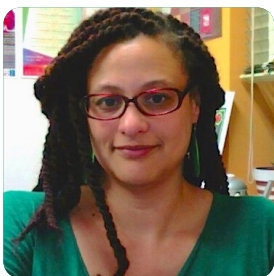
- transformharm.org
- *Creative Interventions Toolkit: A Practical Guide to Stop Interpersonal Violence*, edited by Creative Interventions, Chico: AK Press, 2021.
- *Beyond Survival: Strategies and Stories from the Transformative Justice Movement*, edited by Ejeris Dixon and Leah Lakshmi Piepzna-Samarasinha, Chico, CA: AK Press, 2019.
- *Love with Accountability: Digging up the Roots of Child Sexual Abuse*, edited by Aishah Shahidah Simmons, Chico, CA: AK Press, 2019.
- *The Revolution Starts at Home: Confronting Intimate Violence Within Activist Communities*, edited by Ching-In Chen, Jai Dulani, and Leah Lakshmi Piepzna-Samarasinha, Chico, CA: AK Press, 2016.
- *Color of Violence: The INCITE! Anthology*, edited by INCITE!, Durham: Duke University Press, 2016.

CONTRIBUTOR BIOS



Marissa Alexander, Research Team & Survivor Advisory Council

Marissa Alexander is an inspirational speaker and an advocate for social justice, equality, and criminal justice reform. Formerly denied Stand Your Ground immunity after firing a warning shot to defend herself in a domestic violence incident, Marissa now shares her story in hopes that it will heighten awareness and help end the epidemic. She has been featured on CNN, MSNBC, COURT TV, and TV One, and in *Time* and *Essence*. Marissa has spoken to students of Sociology, Law, Ethnic Studies, and Psychology at Harvard, Wake Forest, Georgetown, UC Irvine, DePaul, and other universities. See www.marissaalexander.com for more information.



Alisa Bierria, Ph.D., Research Team

Alisa Bierria is an assistant professor in the Department of Gender Studies at UCLA. A Black feminist philosopher, Alisa is developing a book manuscript entitled, *Missing in Action: Agency, Race, & Invention*, which explores the meanings of intentional action in the context of anti-black racism, carceral reasoning, and gendered violence. She is a co-editor of the volumes, *Abolition Feminisms, Volume 1: Organizing, Survival, and Transformative Practice* (Haymarket, 2022); *Abolition Feminisms, Volume 2: Feminist Ruptures against the Carceral State* (Haymarket, 2022); and *Community Accountability: Emerging Movements to Transform Violence*, a special issue of *Social Justice* (2012). Alisa has also been an advocate and organizer within the feminist anti-violence movement for over 20 years. She has co-founded and co-led several local and national organizations, including Survived & Punished, which advocates for the decriminalization of survivors of domestic and sexual violence.



Aylaliyah (Liyah) Birru, Survivor Advisory Council

Aylaliyah (Liyah) Birru is an Ethiopian immigrant and survivor of domestic violence who was incarcerated for defending herself against her abusive ex-husband. With the immense help of Survived & Punished and other grassroots organizers, she was finally freed from ICE detention on May 20, 2020. She now participates in advocacy campaigns to support criminalized survivors and to end ICE transfers.



Tewkunzi Green, Survivor Advisory Council

Tewkunzi Green is a community leader and activist. Through her personal outreach work, Green helps families of incarcerated individuals navigate the prison system and release, providing crucial support and knowledge to vulnerable individuals. A former client of the Illinois Prison Project, Green's sentence was commuted by Governor Pritzker, leading to her release in November of 2020. She focuses on educating and advocating for families of incarcerated individuals through her job as a Community Educator with Illinois Prison Project. Green became an advocate for domestic violence survivors and worked with multiple anti-violence collectives, including serving as a member for the board of Love & Protect, the Survived & Punished Self-Defense Survivor Advisory Council, and the Children's Best Interest Advisory Committee.



Robbie Hall, Survivor Advisory Council

Robbie Hall is a beloved mother, grandmother, and aunt. She is working with a therapist to manage PTSD from her experience of sexual violence which includes the traumatic violence of prosecution, prison, and parole hearings. She was recently released from prison and she hopes to be able to safely walk around the block and breathe.



Renata Hill, Survivor Advisory Council

Renata Hill is a mother, a wife, and a dedicated advocate for underserved communities. She obtained her Associate's Degree in Human Services at the Borough of Manhattan Community College and has future plans to continue her education. Renata was featured in the critically acclaimed documentary *Out in the Night*. Renata is known for her public speaking engagements about her experience with violence, prison, and her life's challenges and accomplishments. She has been invited to speak on panels, at universities, in the media, and has toured many film festivals in support of *Out in the Night*. Renata recently got married and relocated to New Jersey. She is currently a Residential Service Coordinator where she takes great pride in providing direct service support to individuals diagnosed with severe mental health and substance abuse disorders.



Wendy Howard, Survivor Advisory Council

Wendy Howard is a criminalized survivor from Southern California who is currently awaiting trial for a self-defense case. A mother of seven, Wendy spends her time homeschooling her younger children while learning how to advocate for other survivors of trauma. She believes that this is all of our fight, and it will take all of us for significant and meaningful changes to be made.



Roshawn Knight, Survivor Advisory Council

My name is Roshawn Knight. I am 50 plus and still learning how to live. I am a Mother, Sister, Auntie, Great Grandmoma, and everything in-between. I love outdoors fun with my family and friends. My journey started out good and it turned rough. I went through a time in my life when I went from being the victim to being incarcerated for trying to protect my son and myself. I went through greatness and pain and losses, and I have been through some difficulties in my life and gotten through with lots of prayer. I have been trying to keep my message on top by speaking about some of the things that I have gone through in my life. I have been through so much in my life and now I am at the point in life where I embrace the process of growth and change. I have grown mentally and I have changed spiritually, and with that comes the evolution of Roshawn.



Colby Lenz, Research Team

Colby Lenz is the Deputy Director of Policy and Community Research at the UCLA Center for the Study of Women. Colby has 20 years of experience in community-engaged research, grassroots organizing, and policy advocacy addressing the intersections of criminalization, incarceration, and gender-based violence. Colby is a co-founder of Survived & Punished, a national organizing project to end the criminalization of survivors of sexual and domestic violence, and a long-term advocate with the California Coalition for Women Prisoners (CCWP) and the Transgender Advocacy Group (TAG).



Bresha Meadows, Survivor Advisory Council

Bresha Meadows is an activist and criminalized survivor. She is a member of the Lifted Voices Collective.

Sydney Moon, Research Team

Sydney Moon is an artist-activist, community advocate, and second-year law student dedicated to building a future free from patriarchal violence. She integrates over a decade of experience from community organizing, youth arts mentorship, and abolition feminist anti-violence work into creative legal advocacy and survivor defense. For five years at the Northwest Network of Bi, Trans, Lesbian, & Gay Survivors of Abuse, she provided and enhanced trauma-informed advocacy, support groups, and programming for diverse LGBTQ+ survivors of domestic and sexual violence. Her approach brings multiply-marginalized and highly criminalized survivors and sex workers to the heart of our strategies for justice and healing. She is sustained by survivors' creative resistance, queer magic, her blue-nose pit bull, and a lot of coffee.



Ky Peterson, Survivor Advisory Council

Ky Peterson (petersonkm89@gmail.com) is a trans advocate from South Georgia who was incarcerated for self-defense. During his incarceration, he fought for trans prisoners' rights to medical care. In 2017, Ky founded Freedom Overground, a 501(c)3 non-profit organization that supports the TGNC incarcerated community. Today, Ky shares his story of courage and perseverance with TGNC communities across the country.



Anastazia Schmid, Survivor Advisory Council

Anastazia Schmid is an independent and degreed scholar, artist, and activist. She blends her knowledge and artistic expressions in her work and contributes her time and talents to numerous activist and advocacy causes. She is a founding member of the *Prison History Project*, a collective historical research team engaged in re-writing the history of women's prisons and institutions, scheduled for publication through The New Press in 2023. Her area of emphasis is nineteenth-century gender and sexuality: the history of gynecology/obstetrics, medicalization of women's bodies, sex work, and trauma. She is an active leader bringing awareness and fighting for change for Post Traumatic Prison Disorder (PTPD) and works closely with trauma survivors. She also works in collaboration with Abolition Journal Collective, Silent Cry, Inc., National Council of Incarcerated and Formerly Incarcerated Women and Girls, Constructing Our Future, Focus Re-Entry Initiative, and Memento Mori Paranormal History Hunters.

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ENDNOTES

(Bibliography and footnotes for Appendix C included in that section.)

1. Marissa Alexander, *Not Another Victim — I'm An Empowered Survivor Defendant* | Marissa Alexander | TEDxFSCJ. All quotes are part of the original research of this report unless otherwise noted.
2. For example, less than a third of sexual assaults are reported to police, fewer than 6% lead to arrest, and less than 1% result in conviction and incarceration (Van Dam, "Less than 1% of Rapes Lead to Felony Convictions"). A 2015 ACLU study also reports that, "An overwhelming majority of the survey respondents (88%) [including victim advocates, service providers, attorneys, and others working with survivors of domestic and sexual violence] reported that police "sometimes" or "often" do not believe survivors or blamed survivors for the violence. A similarly large majority (83%) reported that police "sometimes" or "often" do not take allegations of sexual assault and domestic violence seriously. Respondents described examples where law enforcement increased the risk of a batterer's retaliation by, for example, taking no action or by dismissing the claims" (Goldscheid et al., "Responses from the Field: Sexual Assault, Domestic Violence, and Policing," 1). A 2007 study found that mandatory arrest laws, which victim advocates had hoped would prevent domestic violence homicides, have led to a "54 percent increase in intimate partner homicides" (Iyengar, "Does the Certainty of Arrest Reduce Domestic Violence?," 10).
3. Reichert, Adams, and Bostwick, "Victimization and Help-Seeking Behaviors among Female Prisoners in Illinois"; See also Gilfus, "Women's Experiences of Abuse as a Risk Factor for Incarceration"; and Sawyer, "The Gender Divide."
4. Sherman and Balck, "Gender Injustice."
5. Saar et al., "The Sexual Abuse to Prison Pipeline." See also Beth Richie's landmark 1996 study for a detailed analysis of "pathways to crime" for Black women survivors of domestic violence (Richie, *Compelled to Crime*).
6. We use the definition of "sex trade" as written by the Young Women's Empowerment Project in their groundbreaking 2009 research report, "Girls Do What They Have to Do To Survive" (Iman et al.) They write, "To us, the sex trade is an umbrella term that describes any way that we can exchange our sex or sexuality for money, gifts, drugs, or survival needs. Sometimes, this can be by choice but we can also be forced into the sex trade by someone else. There are many ways that girls can be involved in the sex trade and we believe that our experiences, though all uniquely different, are united by the way we experience the intersections of misogyny, racism, classism, transphobia and homophobia" (7). This definition acknowledges the complexity and diversity of survivors' experiences across contexts of sex work, sex trade, and sex trafficking; the importance of survivors defining their experiences on their own terms; and the reality that survivors in the sex industry are disproportionately vulnerable to experiencing violence and to being blamed for that violence. See also Kaba and Schulte, "Not A Cardboard Cutout."
7. When citing research, we use the gendered terms the authors use in their reports. However, some of the survivors referred to in that existing research may themselves identify as gender non-conforming or non-binary, but are not recognized as such.
8. For example, a 2008 review of existing research found that women's violence against men in intimate relationships was more likely to be motivated by self-defense and by fear, while men's violence against women in intimate relationships was more likely to be motivated by control (Swan et al., "A Review of Research on Women's Use of Violence With Male Intimate Partners").

9. Critics of the law's protection of George Zimmerman would often juxtapose his case with Marissa Alexander's case, arguing that the two cases exemplified how Stand Your Ground fails to protect Black people, whether they were standing their ground to defend their lives from domestic violence, or they were being victimized by a stranger's racist attack. As a consequence of how the public connected the two cases, and how organizers mobilized these contradictions to demand Marissa's freedom, Marissa's story became linked to the emerging Black Lives Matter movement that was, in part, catalyzed by Zimmerman's murder of Trayvon Martin.
10. As contributors who helped produce this community-based research report, members of the Survivor Advisory Council are sometimes referred to by their first name after they are originally referenced with their full name. As more context about Marissa Alexander's case, Marissa and her legal team successfully appealed her conviction and, because of her resistance and leadership, strategic advocacy from her family and legal team, and media and political pressure created by a broad-based grassroots defense campaign, she was released from prison in 2015. See Bierria et al., "Free Marissa Now and Stand With Nan-Hui," as well as Marissa's defense campaign websites, Free Marissa Now at <https://freemarissanow.org> and the Chicago Alliance to Free Marissa Alexander at <https://chicagofreemarissa.wordpress.com/> for more information about this 2012-2017 participatory defense campaign.
11. See the 2014 documentary, *Out in the Night: Criminalization of Race, Gender Identity, and Sexuality*, for more details about the attack, self-defense, prosecution, and fight for freedom as experienced by Patreese Johnson, Renata Hill, Venice Brown, and Terrain Dandridge (also known as the New Jersey 4) and three other friends.
12. Black et al., "The National Intimate Partner and Sexual Violence Survey (NISVS)."
13. Fridel and Fox, "Gender Differences in Patterns and Trends in U.S. Homicide, 1976-2017."
14. Petrosky et al., "Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003-2014."
15. Schmidt, Mayes, and Decaille, "Surviving as a Black Transgender Woman in Baton Rouge."
16. Peitzmeier et al., "Intimate Partner Violence in Transgender Populations."
17. Petrosky et al., "Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003-2014."
18. Violence Policy Center, "When Men Murder Women: An Analysis of 2019 Homicide Data."
19. Staley, "Female Homicide Commitments, 1986 vs. 2005."
20. Newby, "Evil Women and Innocent Victims."
21. See Newby, "Evil Women and Innocent Victims." For example, Brandy Scott, a Black trans woman in California, defended herself from her abusive partner and was prosecuted and incarcerated. Brandy has served the "base term" of her prison sentence, but because she defended herself with a gun, she is still in prison on gun enhancements that add years to her sentence. In 2018, judges in California received discretion to strike some gun enhancements, but those reforms are not retroactive. See bit.ly/CommuteBrandy.
22. Reichert, Adams, and Bostwick, "Victimization and Help-Seeking Behaviors among Female Prisoners in Illinois"; See also Gilfus, "Women's Experiences of Abuse as a Risk Factor for Incarceration"; and Sawyer, "The Gender Divide."
23. Sherman and Balck, "Gender Injustice." Authors also note that the increasing number of girls arrested for defending themselves from violence in their homes is linked to mandatory arrest, or "domestic violence laws making arrest mandatory in all cases of domestic battery or family-based assault" (17). Also, Black, Native, and Latina girls all have a disproportionately high rate of incarceration in juvenile detention and "a survey of 1,400 girls across seven jurisdictions found that 40

percent of girls in the juvenile justice system are [lesbian, gay, bisexual, transgender, or gender non-conforming] (LGBT/GNC) (compared to 14 percent of boys)" (Saar et al., "The Sexual Abuse to Prison Pipeline," 7). This suggests a need for more research on the experiences of youth being criminalized for self-defense, and how race, sexuality, and gender identity contribute to gender-based violence and criminal punishment against young people.

24. Aiken et al., "Resolution 102A: Domestic Violence Victims and Incarceration, Report," 2.
25. For example, Cristina Messerschmidt writes, "[According to Denise Crisafi's research], of the twenty-three states that currently have "stand your ground" laws incorporated into their statutes, only four (Arizona, Georgia, Kentucky, and Michigan) 'were found to have incorporated language into their Stand Your Ground statutes that provide greater acknowledgement and enforcement of protections from victims of domestic violence and family violence.' [E]ight states (Alabama, Arizona, Florida, Kentucky, Michigan, Oklahoma, South Carolina, and Tennessee) require victims of domestic violence to retreat before responding with deadly force" (Messerschmidt, "A Victim of Abuse Should Still Have a Castle," 609-610). Though Messerschmidt notes that there is an exception in the law for victims who have protection orders, many survivors have experienced barriers to securing protection orders, particularly Black survivors and others who have a higher likelihood of being criminalized and of being killed by their abusers. See for example, Piehl and Leone, "Barriers to Justice."
26. A Washington Post study found that 69% of trans women who were murdered between 2010-2015 were killed by acquaintances, and half of those were people with whom they were intimately involved, including in the context of sex work (Schmidt, et al, "Surviving as a Black Transgender Woman in Baton Rouge"). The Violence Policy Center found that, in 2019, 91% of women who were murdered were killed by men they knew and, of those men, 62% were husbands or intimate acquaintances (Violence Policy Center, "When Men Murder Women").
27. Light, *Stand Your Ground*.
28. Franks, "Real Men Advance, Real Women Retreat"; Messerschmidt, "A Victim of Abuse Should Still Have a Castle." See Appendix A for definitions of "duty to retreat" and "Castle Doctrine."
29. State of Florida vs Marissa Danielle Alexander, 2011.
30. For more discussion of the phenomenon of "holding survivors accountable" for the abuse of their batterers, see Bierria and Lenz, "Battering Court Syndrome"; and Bierria, "Where Them Bloggers At?"
31. For example, in a recent survey of domestic violence programs across the U.S., the National Coalition Against Domestic Violence found that, in a single day, domestic violence victims made 11,047 requests for services—including emergency shelter, housing, transportation, childcare, legal representation, and more—that could not be provided because programs lacked the resources to meet their needs. Approximately 57% of these unmet requests were for housing and emergency shelter (National Network to End Domestic Violence, "15th Annual Domestic Violence Counts Report"). Further, shelters often will not accept some survivors of domestic violence, such as trans and non-binary survivors, disabled survivors, children, or survivors who do not speak English. Finally, shelters can be dangerous for survivors if the program enacts punitive policies and practices (such as mandatory reporting policies that increase survivors' vulnerability to being targeted by police or Child Protective Services), ultimately becoming part of survivors' pipeline to criminalization. See for example, Garcia, "All Canned Foods Are Expired but Still Edible"; Koyama, "Disloyal to Feminism"; and Rojas Durazo, "We Were Never Meant to Survive."

32. "Separation violence" is a common phenomenon in which abusive people in domestic violence relationships often become more violent and more lethal when survivors attempt to leave the relationship (Campbell et al., "Risk Factors for Femicide in Abusive Relationships"; Nanasi, "A Fraught Pairing").
33. For more analysis about how prosecutorial discretion leads to increases in long-term sentencing with devastating consequences, see Pfaff, *Locked In*.
34. Light, *Stand Your Ground*.
35. Hartman, "Seduction and the Ruses of Power"; Kaba, "Black Women Punished for Self-Defense Must Be Freed from Their Cages."
36. Haley, *No Mercy Here*, 190.
37. Haley, *No Mercy Here*, 192.
38. Free Maddesyn George Defense Committee, "Defense Committee Statement on Sentencing."
39. Allard, "Rethinking Battered Woman Syndrome"; Franks, "Real Men Advance, Real Women Retreat"; Goodmark, "When Is a Battered Woman Not a Battered Woman?"
40. See for example, Ritchie, *Invisible No More*. Patricia Hill Collins' analysis of the racist and sexist "controlling images" projected onto Black women provides a deeper analysis about how these harmful tropes shape what people (including police, judges, attorneys, and juries) believe they "know" (Collins, *Black Feminist Thought*).
41. Allard, "Rethinking Battered Woman Syndrome"; Franks, "Real Men Advance, Real Women Retreat"; Goodmark, "When Is a Battered Woman Not a Battered Woman?"; Michigan Women's Justice & Clemency Project, "Clemency for Battered Women in Michigan."
42. dorosh-walther, *Out in the Night*.
43. Jeltsen, "Jury Begins Deliberations In Trial Of Woman Accused Of Killing Her Alleged Abuser."
44. Kaba and Schulte, "Not A Cardboard Cutout."
45. Survived & Punished NY, "Preserving Punishment Power"; Law, "Immigrants Who Defend Themselves From Sexual Violence Face Prison, Deportation."
46. Guerrero, "Immigrant Domestic Violence Survivors Are Re-Victimized by the State;" Wang, "Unsettling Innocence."
47. Fred, "The Invisible Voices of the Movement to End Violence against Women."
48. Franks, "Real Men Advance, Real Women Retreat"; Newby, "Evil Women and Innocent Victims"; Richie, *Arrested Justice*.
49. To learn more about the political strategy, vision, and impact of participatory defense campaigns for criminalized survivors of domestic and sexual violence, see Bierria et al., eds., *#SurvivedAndPunished*; Kaba, "Black Women Punished for Self-Defense Must Be Freed from Their Cages"; Kaba and Lenz, "Bresha Meadows Returns Home After Collective Organizing Efforts"; Shim and Munshi, "Perspectives: Stand with Nan-Hui: Intimate Violence, Systemic Violence, and Community Accountability"; Thuma, "Lessons in Self-Defense"; and Thuma, *All Our Trials*. To learn more about participatory defense movement hubs and the National Participatory Defense Network, see <https://www.participatorydefense.org>.
50. Davis, "Joan Little"; Kaba, ed., *No Selves to Defend*; Thuma, "Lessons in Self-Defense"; Thuma, *All Our Trials*.
51. Thuma, *All Our Trials*, 10.
52. Kim, "The Carceral Creep"; Richie, *Arrested Justice*.
53. Participatory and mass clemency campaigns to free incarcerated survivors post-conviction also have an important social movement legacy which includes groundbreaking leadership by organizations such as Convicted Women Against Abuse, Free Battered Women, the Michigan Women's Clemency Project, and the National Clearinghouse for the Defense of Battered Women, among others. To learn

more about this legacy, see Bible and Field, “Free Battered Women”; “Convicted Women Against Abuse Fact Sheet”; Gagné, “Identity, Strategy, and Feminist Politics”; Gagné, *Battered Women’s Justice*; and Michigan Women’s Justice & Clemency Project, “Clemency for Battered Women in Michigan.” Other organizations are also currently leading clemency campaigns for survivors of domestic and sexual violence, including affiliates of Survived & Punished in New York and California, Love & Protect, Moms United Against Violence & Incarceration, California Coalition for Women Prisoners, and the Illinois Prison Project’s Women & Survivors Project.

54. Though we hoped to connect with trans women survivors in our network who were criminalized for self-defense for participation in this initial phase of the project, they were unable to join the project as Council members at that time. This is a significant limitation of the report that we plan to address in future phases of the project. We recommend a forthcoming powerful discussion between Cece McDonald, a Black trans woman, and Ky Peterson, a Black trans man and Survivor Advisory Council member, who explore self-defense, incarceration, and fighting for freedom (Stephens, ed., “How Much Do My Black Life Matter?”).
55. Richie, *Arrested Justice*.
56. These concerns resonate with research that describes how victim advocacy organizations’ collaboration with systems of criminalization undermines their ability to advocate for those most vulnerable to those systems (Kim, “The Carceral Creep”; Richie, *Arrested Justice*).
57. For example, between 1,016 and 2,573 complaints of sexual abuse at immigrant detention facilities between May 2014 — when PREA regulations were implemented — and July 2016, a number that is believed to be an underestimation (Del Valle, “Asylum seekers are being sexually assaulted in U.S. detention”). LGBT immigrants are 15 times more likely to be sexually assaulted in immigration detention (Center for American Progress Immigration Policy team and Nicholson, “The Facts on Immigration Today”). State and federal prison systems’ resistance to

external accountability systems also accompany a high rate of sexual abuse that is ultimately ignored. For example, of the 336 reports of sexual misconduct by prison staff in California filed in 2017, internal investigations concluded that only 11 cases have “merit” (Ashton, “Sexual Misconduct Reports Spike in California Prisons”). Among the lawsuits against California prisons and jails for sustaining a culture of sexual violence, detailed testimonies of violence within the Lynwood jail in Los Angeles and the Central California Women’s Facility in Chowchilla have come to light (Levin, “PTSD Is Real, I Wake up Crying”; White, “The California Jail Where Women Say Guards and Medics Preyed on Them”).

58. Law, “Trans Women Who Report Abuse in Prison Are Targets of Retaliation”; Smith and Yarussi, “Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings, 2nd Edition.”
59. McDonough, “CeCe McDonald on Her Time in Prison.”
60. Green, “Surviving Everywhere.”
61. Pfaff, *Locked In*.
62. This insight resonates with research analyzing the political economy of prisons, see for example, Gilmore, *Golden Gulag*.
63. See CURB, “California Department of Corrections and Rehabilitation is a ‘Money Pit’” as an example of California prison budgets continuing to rise even while Gov. Gavin Newsom states that his goal is to reduce the number of prisons in the state.
64. Furst, “A Fair Fight.”
65. See early versions of California Assembly Bill 124 (2021 Cal AB 124.) as an example of legislation that begins incorporating this recommendation. Unfortunately, the bill was significantly weakened by the CA Senate and the reforms are not eligible to those prosecuted for “violent offenses” (Licari, “New Bill Protects Abuse Survivors Who Fight Back”).
66. Licari, “New Bill Protects Abuse Survivors Who Fight Back.”

67. Researchers note that “the number of women serving any life sentence increased by 19% between 2008 and 2020, and the number of women serving life without the possibility of parole increased by 43%” (Nellis, “In The Extreme,” 11). The study makes connections between women’s experience of abuse and trauma and their increased vulnerability to receiving long-term sentences.
68. For a review of presumptive parole and other parole reform strategies, see Renaud, “Eight Keys to Mercy.”
69. See Evans, “Ban the Box in Employment” for more context about this strategy.
70. For examples of organizing strategies, see the toolkit, Abolitionist Principles & Campaign Strategies for Prosecutor Organizing at <https://www.communityjusticeexchange.org/en/abolitionist-principles>
71. See the #ByeAnita campaign as an organizing model for prosecutorial accountability: <https://alvarezmustgo.wordpress.com/>
72. See the Love & Protect and Survived & Punished Defense Campaign Toolkit as a resource: <https://survivedandpunished.org/defense-campaign-toolkit/>
73. Silicon Valley De-Bug has established participatory defense hubs in multiple communities and could be a strategic coalitional partner for feminist anti-violence organizations in those communities. See <https://www.siliconvalleydebug.org/> and <https://www.participatorydefense.org/>.
74. For an organizational self-assessment tool, see Appendix B in this report or download at <https://survivedandpunished.org/advocacy-strategies/>. The website also includes a list of advocacy strategies to support criminalized survivors.
75. McDonough, “CeCe McDonald on Her Time in Prison.”
76. As an example, see the Northwest Network’s FAR Out program (Burk, “Think. Re-Think. Accountable Communities”).
77. See clemency resources in the “Resources” section of this report.
78. See the Survived & Punished “Courtwatch Toolkit” as a resource: <https://survivedandpunished.org/court-watch-toolkit/>
79. Survived & Punished Defense Campaign Toolkit: <https://survivedandpunished.org/defense-campaign-toolkit/>; Survived & Punished Letter Writing Action Center: <https://survivedandpunished.org/letter-writing-action/>; Survived & Punished Courtwatch Toolkit: <https://survivedandpunished.org/court-watch-toolkit/>
80. Green, “Surviving Everywhere.”
81. As an example of this kind of resource, see the media toolkit, “Reporting on Rape and Sexual Violence: A Media Toolkit for Local and National Journalists To Better Media Coverage,” published by The Chicago Taskforce on Violence Against Girls and Young Women: <http://www.chitaskforce.org/wp/wp-content/uploads/2012/10/Chicago-Taskforce-Media-Toolkit.pdf>
82. Goodman, “Florida State Attorney Who Oversaw Trayvon Martin & Marissa Alexander Cases Is Defeated in Primary”; Law, “Bresha Meadows Is Out From Behind Bars—But What About Other Abuse Survivors?”

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*In Loving Memory of
Our Beloved Friend & Co-Organizer*



Tewkunzi Green

A treasured member of the
Defending Self-Defense Survivor Advisory Council
and a leader in the movement to end violence, we honor
Tewkunzi's bold heart and transformative vision of freedom.

“ They were silencing you, they muted you, they were saying your voice wasn't worth hearing, and neither was your truth. It's amazing how you get behind a wall in a cell and turn on the light and the power of the pen allows you to reverb your voice in a way that everybody hears you. That's what self advocacy does. When they think they shut you out and they bury you in a hole, like the saying goes, they buried the seed and it grew. When people wrote to me, I wrote them back because that was my part of participatory defense, that was my way of connecting with the community. It humanizes you and it makes people feel for you. Then you have a voice with people. ”

- MARISSA ALEXANDER



**THEY TRIED TO BURY US.
THEY DIDN'T KNOW
WE WERE SEEDS.**

