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MOVING BEYOND STIGMA:
Centering Currently Incarcerated Individuals in Creating Social Change

Riley Hewko

Abstract

Our inability to have empathy and seek changes that support incarcerated people beyond those with nonviolent crimes has the unintended consequence of creating more violence, less safety, and instability for individuals and our communities. This is particularly true for people marginalized by race, ethnicity, class, age, ability, gender, sexuality, religion, and immigration status. Strategies grounded in theories of anti-oppression and prison abolition may help legal and policy leaders work more closely with people on the inside of prisons allowing us to address the root causes of incarceration, find forms of accountability that do not rely on prisons, move beyond gender binaries, and uplift entire communities.

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> Well, if one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected—those, precisely, who need the law's protection most!—and listens to their testimony. Ask any Mexican, any Puerto Rican, any black man, any poor person—ask the wretched how they

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> are in the halls of justice, and then you will know, not whether or not the country is just, but whether or not it has any love for justice, or any concept of it. It is certain, in any case, that ignorance, allied with power, is the most ferocious enemy justice can have.[1]

Introduction

The above quote by novelist, playwright, and activist James Baldwin circulated on my social media feed in 2018 for his birthday and again recently for Black History Month in 2019,[2] and I saw how it resonated with other queer and transgender people of color that I follow. As people of color and LGBTQI people are disproportionately members of communities that are under surveillance and are overpoliced, and therefore overincarcerated, this shared experience, exemplified by this quote, made a good deal of sense.[3] However, those most directly impacted by the criminal justice system are often excluded from the mainstream dialogue on what will improve our justice system, and what specifically is needed to do to end violence. Queer and transgender people have articulated this reality in many academic circles with the help of independent publishers.[4] Due to our identities as queer and trans people of color,

1. James Baldwin, No Name in the Street, 149 (1979).
2. A note: My hope is to provide an overview and analysis from working closely with incarcerated individuals as an ally whose privilege affords me to sit at many policy tables and work from leading nonprofits aiming to make change. In no way is my analysis comprehensive or meant to rule out the amazing work being done from more traditional legal work; rather, it is an effort to ask us to dig deeper to the root of the issues we are working on and center the issues and actions of currently-incarcerated people.
3. *See, e.g.*, Prison Rape Elimination Act, 42 U.S.C. § 15601 (2003) (Congressional findings in the enabling legislation estimated that at least 13 percent or 200,000 youth and adults are sexually abused in prisons, jails, and juvenile detention facilities each year); *see also* Nat'l Center for Transgender Equality, Nat'l Gay and Lesbian Task Force, *Injustice at Every Turn: A Look at Black Respondents in the National Transgender Discrimination Survey*, http://nbjc.org/sites/default/files/trans-adjustment-web.pdf [https://perma.cc/F9SM-ZG7S] (citing the 2011 National Transgender Discrimination Survey which shows that 38 percent of Black transgender and gender nonconforming people who interacted with the police reported harassment; 14 percent reported physical assault, and six percent reported sexual assault; 35 percent of Black respondents had been arrested or held in a cell due to bias at some point in their lives; and half reported discomfort with seeking police assistance). *See also*, Jerome Hunt & Aisha Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System*, Ctr. for Am. Progress (June 29, 2012), www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf [https://perma.cc/3D4J-DMZN] (60 percent of gay and transgender youth in prison are black or Latinx); William Adams and Julie Samuels, *Tribal Youth in the Federal Justice System*, Urban Inst. Justice Pol'y Ctr., iii (2011), https://www.urban.org/sites/default/files/publication/27426/412369-Tribal-Youth-in-the-Federal-Justice-System.PDF [https://perma.cc/8B7J-PMWF] (reporting that native youth represent one percent of the general youth population but make up over half of all juveniles in the federal system).
4. Several anthologies attempt to take that conversation back. *See* The Revolution

many of us encountered a different version of the criminal justice system than the one that promises safety and justice for our communities. Queer and trans voices have articulated the reality that the very same laws that are said to protect us actually serve to bolster and uphold the current systems that cause harm and violence by both state and individual actors.[5]

For example, immigrants, transgender and gender nonconforming people of color, and women of color have not seen the promises of safety and protection articulated by the mainstream antiviolence and domestic violence movements.[6] Once incarcerated, people face overcrowding,

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Starts at Home: Confronting Partner Abuse in Activist Communities (Ching-In Chen et al. eds., 2016) [https://perma.cc/JU6P-7VRT]; *see also* Captive Genders: Trans Embodiment and the Prison Industrial Complex (Eric A. Stanley & Nat Smith eds., 2011); Queering Sexual Violence: Radical Voices from Within the Anti-Violence Movement (Jennifer Patterson ed., 2016).

5. *See, e.g.*, Chandan Reddy, Freedom With Violence: Race, Sexuality, and the US State 1–15 (2011). This book examines the contradiction of wins such as the National Defense Authorization Act of 2010 which included an amendment titled the Mathew Shepard and James Byrd, Jr. Hate Crimes Prevention Act that aims to provide LGBTQ people freedom from violence by extending the 1969 federal hate crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability. *Id.* Included in the amendment is allocating financial and institutional resources to local law enforcement officials for the investigation and prosecution of hate-motivated incidents. *Id.* This amendment was passed as a package alongside the largest appropriation of funds of $680 billion to the Department of Defense (DOD), the highest set aside for the DOD in history. *Id.* Reddy adds that this was during the worst recession and job market in the United States since the end of the Great Depression and Second World War and while the United States was engaged in two wars abroad in the Middle East and South Asia. *Id.* The funding was for the continued use of unmanned U.S. drone strikes and bombings in countries "that the United States is not officially at war with, such as Pakistan, disrespecting their national sovereignty and inflicting civilian deaths." *Id.* In discussing the support from mainstream LGBT groups, he states that "none of these progressive voices show any equivocation, let alone concern, about the strange coupling of civil rights and national security. *Id. See also, e.g.*, Dean Spade, Normal Life: Administrative Violence, Critical Trans Politics and the Limits of Law 79–99 (2015) (highlighting that mainstream antidiscrimination and hate crime reforms not only fail to provide relief, but also enhance the power, resources, and legitimacy of systems, such as criminal punishment, that continue to endanger trans people); Dean Spade & Craig Willse, *Confronting the Limits of Gay Hate Crimes Activism: A Radical Critique*, 21 Chicano-Latino L. Rev. 38, 42 (2000) [https://perma.cc/AMF6-HZX3] (discussing the mainstream gay rights organizations primary agenda items to include hate crimes, military inclusion, and freedom to marry, "[e]ach of the primary agenda items seeks inclusion in intuitions that reinforce inequality and subordination, thereby failing to challenge systems of domination of people of color, women, poor people, or sexual deviants outside of heteronormative homosexuals"). Another example of the failure of hate crime legislation to protect trans individuals can be seen in the documentary, *Free Cece!*. Free CeCe! (Distribber 2016). CeCe McDonald survived a violent racist and transphobic attack in 2011 and served time in a men's prison in Minnesota for defending herself against this attack. *Id.*

6. *See* Morgan Bassichis, et al., *Building Abolitionist Trans and Queer Movement with Everything We've Got*, *in* Captive Genders: Trans Embodiment and the

physical and sexual violence, inadequate medical and mental health care, and the use of solitary confinement.[7] Upon release, people are indebted to legal financial obligations, denied jobs, education, and housing as they enter an oppressive free market economy that has gutted the minimal safety nets set up for vulnerable people.[8] For some of us, witnessing this reality has led us to critique our current criminal justice system and demand one that centers on a vision of prison abolition and anti-oppression as we don't want to give more power to institutions that further traumatize our communities.

Abolition in the simplest form asks us to build the kind of society that does not need prisons.[9] A vision of abolition asks us to see that prison, policing, jails, and detention centers are not solutions for the violence and harm that exists in our communities, and to believe that it is possible to create safety without these institutions.[10] Abolition is not just about tearing down prisons; it demands that in order to decenter prisons in our society, we must provide access to meaningful physical and mental healthcare and education (including the demilitarization of our schools) for all, and we must develop strategies of restoration and healing—such as reparations or reconciliation—rather than punitive retribution and vengeance.[11] Abolition also connects the use of prisons to our country's roots of slavery and colonization, and the role of prisons and policing as a way to control both individuals and entire communities and to support our economic system of capitalism.[12] Therefore, abolition asks that we not only address crime differently, but that we take affirmative steps to alleviate the oppressive social and economic conditions that lead people into prisons, jails, and detention centers from the start. Through an abolition lens, we see that one cannot separate proposed solutions from the realities of how the criminal justice system serves to uphold U.S. and global capitalism, imperialism, racism, xenophobia, sexism, homophobia, transphobia, and ableism.[13]

However, even assuming that solutions could be separated from these harms, due to prison policies, many of these books, conversations, and dialogue of reform or abolition are often not available to people inside of prisons. This is even more true in women's prisons, where political protest may be seen to fall outside of prescribed gender roles, as people

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Prison Industrial Complex 15–40 (Eric A. Stanley & Nat Smith eds., 2011) [https://perma.cc/JR3H-B4GP] (supporting ways to respond to violence that are transformative and healing instead of more police and prisons which are instead oppressive, shamming, or traumatizing).

7. *Id.* at 26–32.
8. *Id.* at 28–30.
9. Angela Y. Davis, Are Prisons Obsolete? 105 (2003) [https://perma.cc/K5RC-FHW5].
10. *Id.* at 11–14.
11. *Id.* at 107.
12. *Id* at 25.
13. *See* Bassichis, *supra* note 6, at 38–43.

inside women's prisons are often encouraged to accept their conditions of confinement with passivity.[14] Another factor is that, apart from writings such as Victoria Law's book, *Resistance Behind Bars*, most often the writings that challenge prisons and the U.S. ideology surrounding them are highly academic, making the language and style inaccessible to many.[15] Further, in traditional nonprofits or public defender organizations that work directly with people in prisons, the goal of abolition is often dismissed as utopian or unrealistic, and some of those organizations may even fear the loss of their jobs or relevance if we were to move toward a different model. Although in some nonprofit and academic circles there is recognition that many of our laws fall short of ending violence in our communities, we also know that many of the people of color, transgender, and queer people who have experienced violence may believe in the current criminal justice system's promises of safety and the ability to deter future harm, even when faced with the reality of the injustice and physical and sexual violence that occurs inside prisons.[16] When we propose alternatives, such as the need for restorative, rehabilitative or even healing justice, most people find the idea of abandoning our current carceral punishment and policing practices as not only impractical, but unfathomable.[17] Mainstream antiviolence groups still control the narrative that precludes perpetrators from being survivors and fails to recognize that 'saving' victims by placing the 'bad guys' behind bars does not prevent, address, or end violence.[18] And most importantly, this narrative perpetuates both the individual and systemic violence of the criminal justice system, both of which target those impacted by racism, classism, ableism,

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14. I have witnessed this firsthand attending events for the Concerned Lifers Group at Monroe Correctional Complex where men host an annual conference that is usually filled with prison abolition dialogue and connected to political education that is often not accepted in women's facilities. *See also*, Victoria Law, Resistance Behind Bars: The Struggles of Incarcerated Women 6–17 (2009) (describing the reality that women who challenge the system face extreme levels of administrative harassment, or whose issues that focus on family are seen as less pressing or not seen as political at all) [hereinafter Resistance Behind Bars].
15. *Id.* at back cover (quoting Mumia Abu-Jamal, death row, political prisoner and author, "Written in regular English, rather than academese, yet full of fire, this is an impressive work of research and reportage.").
16. *See, e.g.*, Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. Rev. 1156 (2015) [https://perma.cc/TF2Y-BHN2]. S*ee also*, Sharon Dolovich, *Prison Conditions*, 4 Reforming Criminal Justice: Punishment, Incarceration, and Release 261 (2017) (discussing the need to address the safety and humanity of people who live inside) [https://perma.cc/L8UF-5EA9].
17. Davis, *supra* note 9, at 9–10 ("Prison abolitionists are dismissed as utopians and idealists whose ideas are at best unrealistic and impracticable, and, at worst, mystifying and foolish.").
18. *See, e.g.*, Rousse Arielle, *Beyond the Binaries: Exclusive Dichotomies in the Anti-Sexual Violence Movement*, in Queering Sexual Violence: Radical Voices from Within the Anti-Violence Movement 39–47 (Jennifer Patterson ed., 2016) (arguing that to truly address the root cause of sexual violence, we must abandon the Victim/Survivor and Survivor/Perpetrator binaries).

sexism, transphobia, homophobia, and xenophobia.[19] However, these are exactly the contradictions and oppositional narratives that we must dig into if we are going to work towards addressing our current incarceration problem which has, as of 2016, more than six million people under the adult corrections systems (prisons, jails, probation and parole).[20]

The expansive changes that we need in order to address the realities of our criminal justice system will not be possible as long as politicians and legal decision makers are negatively influenced by the stigma that surrounds the incarcerated. Many of the political and legal arguments posited to motivate change in our criminal justice system place an over-reliance on research and numbers that are disconnected from the real lives of incarcerated people and do not act to undo the stigma and bias surrounding them, but instead may reinforce this stigma and bias.[21] Without a connection to people inside prison who can remind us that the over six million people in probation, prison, or on parole are real people who are more than their crimes, we fall short of finding solutions that are truly necessary to create the change we so urgently seek. Additionally, traditional legal tactics such as litigation are insufficient on their own. If someone is represented by an attorney, the attorney most often serves to "speak for" the client with little opportunity for the incarcerated person to have their own voice. Further, litigation often takes years, and the passage of the Prison Litigation Reform Act (PLRA) in 1996 has placed extra burdens and restrictions making it nearly impossible for incarcerated people to bring cases for themselves or even with the help of attorneys due to additional procedural hurdles.[22] The PLRA also placed restrictions

19. *Id.*
20. Danielle Kaeble & Mary Cowhig, U.S. Dep't of Just. Bureau of Just. Stats., Correctional Populations in the U.S., 2016 (2018), https://www.bjs.gov/content/pub/pdf/cpus16.pdf [https://perma.cc/98R3-KGNQ]. I use the 2016 numbers as they are the most recent for which the Bureau of Justice Statistics has published.
21. Studies showing racial bias support the ways that implicit and explicit bias inform our decisions and most importantly our legal doctrine without any basis in fact, just in stereotype. *See* Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stan L. Rev. 317 (1987) (asking scholars to reexamine the nature of racism and look at how individuals may unintentionally harm people of color by looking at thoughts, discourse, stereotypes and feelings). *See also* Tracey Maclin, *Race and the Fourth Amendment*, 51 Vand. L. Rev. 333 (1998) (police targeting of black communities and search and seizure occurring at a disproportionate rate is nothing new, there is no factual basis for this targeting given that drug use is roughly the same around all races, but our current doctrine ignores this social reality).
22. 42 U.S.C. § 1997e(a) (requiring that before an incarcerated person can file a lawsuit, they must have exhausted all levels of the prison or jail's grievance system and comply with all the deadlines and other procedural rules in this system, and if not, their right to sue can be entirely lost); 42 U.S.C. § 1997e(d) (limiting the amount of attorney's fees can be paid if a prisoner wins a lawsuit); 42 U.S.C. § 1997e(e) (requiring a physical injury requirement in order to recover compensation for a mental or emotional injury).

on the ability of lawsuits initiated by prisoners to allow for oversight of prison conditions and also limited the power of federal courts to enforce orders and implement the sweeping changes necessary to improve the conditions and treatment of people inside prisons.[23]

Whether it is by the actual physical barriers that prisons create or as disinterest by those on the outside, people inside prisons are rarely afforded opportunities to share their experiences in order to work toward larger system change.[24] As Baldwin so eloquently highlighted in the opening quote, when it comes to speaking about justice, certain voices are valued, or even overvalued, in our society, while others are excluded altogether. Therefore, we as advocates and lawyers on the outside should seek to provide more spaces grounded in prison abolition and anti-oppression that can help build counterstories and solutions led by people currently experiencing incarceration which will serve to both humanize the experience of people inside prisons and provide an alternative story to the mainstream rhetoric. I call for finding creative and safe ways to bring these dialogues into the prison community so that people on the inside can better contribute their experiences and knowledge to help collectively change the conditions they are in, and the policies that affect them.

Allowing the incarcerated community to dictate and lead policy change would allow us to address public perception and the deeply-rooted beliefs that underlie legal strategies that unintentionally work against the system's goals of creating public safety. For example, most legal reform provides solutions only for people convicted of nonviolent crimes, leaving out people who carry the stigma of violent crimes or crimes that label them as sex offenders, in order to win incremental steps towards decarceration.[25] Our inability to seek changes that support people in prison

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23. 18 U.S.C. § 3626 (stating that prospective relief must be narrowly drawn and "relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs," and the court "shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief").

24. *See, e.g.*, Law, *supra* note 14, at 127 (relaying how the voices of those on the inside, particularly those in women's prisons often remain unheard by both mainstream and activist-oriented media, "During her ten and a half years behind bars, Yriada L. Guanipa wrote to every mainstream newspaper and media source in the nation to draw attention to the plight of incarcerated women. The only response she ever received was a form letter from Donald E. Graham, the board chair of the *Washington Post*: "Thank you for your recent submission. Unfortunately, this is not the sort of work that *The Washington Post* is in a position to publish. I appreciate your interest and wish you the best in finding another outlet for your work.").

25. *See, e.g.*, JustLeadershipUSA, *JustLeadershipUSA Joins with National Partner Organizations in Opposing Revised First Step Act Legislation* (Nov. 20, 2018), https://justleadershipusa.org/media-release/justleadershipusa-joins-with-national-partner-organizations-in-opposing-revised-first-step-act-legislation [https://perma.cc/M6MA-5SXS] (highlighting the limitations of the First Step Act).

deemed unworthy of change has unintended consequences of creating more violence, less safety, and instability for individuals and our communities.[26] If more change leaders in the 'free world'[27] worked directly with people on the inside in our reform efforts, we would: (1) be less likely to leave people behind who are deemed not deserving of reform; (2) build solutions and strategies that look different in that they would prioritize decarceration and move beyond gender binaries; and (3) effectuate the cultural shift work needed to undo stigma and separate one's crime from their character.

In Part I, I will discuss the reality that people with violent crimes are deemed undeserving of reform and the tendency of political liberals and nonprofit legal advocates to focus on people with nonviolent crimes when seeking solutions to the criminal justice system. In Part II, I will discuss how incarceration itself acts as a barrier to political participation and how storytelling and engaging currently-incarcerated people in heart-centered leadership can help reduce stigma and demand that policymakers know and understand the full lives of people on the inside of prisons. In Part III.A, I will provide concrete strategies for placing currently incarcerated individuals in the lead as well as some potential theories and strategies to ground that work within legal and policy work. In Part III.B, I provide examples of efforts led by parents in a women's prison to create change. In Part IV, I close by proposing that getting to know people with violent crimes may help us create the culture shift necessary to create the safety and security our communities need by highlighting a biopsychosocial perspective on behavior, instead of a perspective based on fear and criminality.

I. (Un)deserving of Reform

When we suggest reforms only for people with nonviolent crimes, we serve to perpetuate the idea that there are deserving and undeserving people in prison. Just like much of the criminal justice system, our efforts fall short of supporting all people in prison—a reality particularly true for those whose identities fall at the intersections of race, class, gender, sexuality, immigration status, ability, age and those who struggle with mental health and/or substance abuse issues. A solution to address this issue requires us to engage with these individuals deemed unworthy of change through organizing for policy change, storytelling, demand letters, clemency petitions, and efforts to reduce family separation. Even if the law is not on our side, taking on this work can send a message to judges, policy makers, and the larger community, that we believe that more than just people with nonviolent crimes deserve support. Such action

26. Davis, *supra* note 9, at 60–63 (explaining that the origins of imprisonment help us understand imprisonment itself as racialized and gender-based violence explaining the routine violence and sexual assault that occurs in prisons).

27. "Free world" is defined here as what is used by many prisoners to refer to the rest of the world outside of the prison.

also serves as a means to encourage people to take action against their current conditions—taking attorneys out of the lead and placing those incarcerated at the forefront of the effort. The following example illustrates how working on a "losing case" can be seen as a win:

> 16-year-old Daniel would use aggression for everything without thinking. He would just act out, try to impress others. The new 20-year-old Daniel, he stops and thinks, he doesn't let things bring him down as easily as when he was younger, and he actually tries to strive for success every time.[28]

Daniel Loera's words describe how he has seen himself change since he was sixteen-years-old when he committed the crime of Assault I, a serious violent offense in Washington State. Along with his cousin and under the influence of drugs, he followed two strangers outside of a Walmart to rob them.[29] Daniel beat the young man he had followed with the butt of a gun and then fled the scene in his cousin's car, only to be picked up two blocks away and then identified in a lineup.[30] Based on the sentencing laws of Washington state he was automatically charged as an adult and sentenced to 7.75 years in prison and three years of community custody.[31] When I sit across from Daniel, I can hardly imagine that the young man described in the police report attached to his clemency petition is the same man sitting in front of me. Since Daniel did not fit the required minimum of serving a sentence for ten years or more, the clemency petition was a long shot. With an autodecline sentence and him turning twenty-one, he was to be transferred to the men's prison where visiting with his daughter would prove difficult. Visitation was a requisite for him to maintain his legal rights with his daughter as he was in an open child welfare case. The mother of the child was also incarcerated for an incident that triggered the opening of a child welfare case. His family, his

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28. Describing Daniel Loera, Housed at Monroe Correctional Complex in Washington State, Lillian M. Hewko, *Grasping at the Root: A Young Father's Path to Incarceration*, Just. Strategies (Mar. 28, 2017), https://www.justicestrategies.org/coip/blog/2017/03/grasping-root-young-fathers-path-incarceration [https://perma.cc/9E6F-ABJ6].
29. Clemency Petition for Daniel Loera, submitted to the Wash. State Clemency and Pardons Bd., Office of the Attorney Gen. (on file with author) (arguing that "[W]e understand that clemency would be an exceptional step, but we believe that Daniel is an exceptional person. Additionally, we recognize that Daniel has not served more than 10 years on his sentence, but due to his unique mental health needs, we believe he should be considered as an exception to the Clemency & Pardon Board policy. Further, Daniel should be seen as an exceptional person and case given (1) the changes in juvenile law (2) the impacts of his incarceration on his daughter's life and (3) his complete rehabilitation from an aggressive teen seeking community in gangs and gang violence. Daniel takes full accountability for his crime and is now a leader, a mentor, and a true example of the change that is possible under the guidance and direction provided by our Juvenile Rehabilitation Administration. Daniel's life and growth after his conviction is nothing short of exceptional.").
30. *Id.*
31. *Id.*

counselors, and his mentors organized to try and advocate on his behalf. With the help of Silicon Valley De-Bug and a modified version of their participatory defense model, we created a social biography video to submit along with his clemency petition that showed that he was more than his crime—he was a father, he was a leader, and he was a mentor.[32]

Becoming a father grounded Daniel in his "new self." Four years into his sentence, he found out that he was the father of a beautiful four-year-old girl named, Mila (short for "My Lady"). Daniel's own father was incarcerated at a juvenile facility when he was born. He says:

> When I found out I had a daughter, my heart dropped . . . my dad was never really in my life . . . he wasn't a positive influence on me, he would even tell me he saw me more like a friend than a son, so it kind of hurt me really bad. So, I decided I don't ever want to be like that, I want my daughter to know me as a father and somebody that's gonna be there for her and protect her.[33]

Daniel's daughter Mila is one of the many Black and Latinx kids who, due to a racially unjust criminal justice system, is respectively seven and two times more likely to have a parent in prison.[34] More than five million children have had a parent incarcerated at some point in their lives, and since the 1980s, the number of kids with a father in prison has increased 500 percent.[35] Mila now has a relationship with her father through an open adoption. Due to child welfare laws that require a permanent placement for a child, and her father's long sentence, she eventually lost her legal connection to her father.

We tried every avenue we could to prevent Daniel from losing his parental rights. But, like most people serving time for a violent crime, Daniel was deemed undeserving of reform. If Daniel had a nonviolent crime, he would have had the opportunity to maintain his legal parental rights by releasing twelve months early under Washington State's Family Offender Sentencing Alternative—which allows parents to finish their sentence in the community. Daniel was also not eligible for clemency.[36] As I mentioned above, in Washington State, clemency applicants are required to serve at least ten years before they can apply due to a 2013 policy change.[37] Although there is a flimsy exception to policy offered for those with sentences under ten years if unique or emergency circumstances can be proven, there is no official definition or case law defining

32. SV Debug Video, *Daniel Loera SBV*, YouTube (Dec. 9, 2016), https://www.youtube.com/watch?v=9ACwjf7VUU0 [https://perma.cc/G7N2-8GDH].
33. Hewko, *supra* note 28.
34. Kids Count DATA Ctr., The Annie E. Casey Found., A SHARED SENTENCE, (2016), https://www.ae*cf*.org/m/resourcedoc/aecf-asharedsentence-2016.pdf [https://perma.cc/46ZB-9DVX].
35. *Id.* at 1.
36. Wash. Rev. Code § 9.94A.655 2018.
37. Wash. State Clemency & Pardons Bd., Pol'y Manual 1 (2015), http://www.governor.wa.gov/sites/default/files/Approved-CPB-Policies-Apr15.pdf [https://perma.cc/L8XJ-U6ML].

what "unique or emergency circumstances" entail. Given these limitations, our argument centered on the fact that prison is not a safe place for people successfully navigating serious mental illness and urged Daniel's release to the community where he could have more individualized treatment and the support of consistent, trusted adults in his life, and could help parent his child. Despite the truth of our arguments, they were nonetheless a tough sell when prisons are our nation's largest and only response to mental health needs[38] and where families are routinely separated with little sympathy.[39]

In addition to the usual arguments, we also sought to bring Daniel's story into the petition with a social biography video and by implementing a modified organizing model of participatory defense, a community organizing model for people facing charges, where their families, and their communities seek to impact the outcome of cases and transform the landscape of power in the court system.[40] For Daniel, having been incarcerated for many years, his community consisted of his Juvenile Rehabilitation (JR) staff members, his mentor who created the facility's dog-training program, and his immediate family members. The participatory defense model is unique as it is rare for family members or the incarcerated individual to fully participate in most traditional legal processes. Generally, the criminal justice system separates and allows only fragmented connections between incarcerated people and the community, and this fragmented connection reduces their ability to influence the power held by legal decisionmakers. By telling his personal story through video, Daniel was able to get at the root of his incarceration in a manner that gives people who watch the ability to react with empathy and understanding, and to connect. Engagement at this level helps shift power back into the hands of the incarcerated individual. By doing this, Daniel was able to tell his truth in his own words, not those of the criminal justice system, thereby increasing his ability to influence the power held by legal decision makers directly. Most importantly, using stories to promote empowerment and social justice allows the storyteller to engage beyond their individual case, giving the storyteller the opportunity to plant seeds for larger systemic change.

In his video, Daniel recounts that his gang involvement was not related to illegal activities. Jumped into a gang at eight-years-old by his uncle, the gang was a space that provided him "family," respect, and a "father." Daniel recounts that just before his crime, he went to live with

38. *See* Azza AbuDagga Et Al., Individuals with Serious Mental Illnesses in County Jails: A Survey of Jail Staff's Perspectives 1 (2016), https://www.treatmentadvocacycenter.org/storage/documents/jail-survey-report-2016.pdf [https://perma.cc/FAR7-EC5K].

39. *See* Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1481–82 (2012).

40. Raj Jayadev, *What Is "Participatory Defense,"* Albert Cobarrubias Just. Project, https://acjusticeproject.org/about/purpose-and-practice (last visited Mar. 7, 2019) [https://perma.cc/CT73-SP3Z].

his father in Mexico. Instead of a bond, he found an emotionally abusive relationship where he played the role of an adult taking care of his father in many ways. Daniel's father encouraged him to use drugs and alcohol. His father was arrested, and Daniel had to get a job to take care of himself *and* his father. It was during this time that Daniel experienced the ultimate violation of trust by an adult in his life when he was sexually assaulted by his father's best friend. Daniel then experienced a second violation of trust when his father refused to believe Daniel over his friend. Daniel recounts that, at the time of the incident, he was struggling with the sexual assault and began to hear voices. This prompted Daniel to begin to carry a gun as he felt unsafe. Terrified of what was happening internally, he used drugs, alcohol, and violence to cope. It wasn't until he was placed in juvenile detention that he was diagnosed with both schizophrenia and depression. After two years of extremely hard work with his psychiatrist, they found a medication and behavioral treatment plan that worked; finally, he found positive mentorship. He began working with the dog training program where he could help dogs—who like him had experienced trauma and needed love, support, and boundaries in order to recover.

We were not successful in getting his case to be accepted by the Clemency Board under the "unique and emergency circumstances" exception, however, the adaptation of the full process created by Silicon Valley De-Bug allowed him to feel like he had agency in the process.[41] It was thanks to this process that his family members also felt like they could be a part of a process and push back on a decision that was mostly out of their hands.

Daniel is not alone in his story—black and brown youth are more likely to be incarcerated than youth of other races, mental health disorders affect a majority of men in prison, and these men often have a history of sexual assault.[42] Yet instead of being supported in their experiences of trauma, depression, addiction, and other injuries of violence, individuals like Daniel are displaced into the criminal justice system where they are exposed to more violence.[43] Stories like Daniel's can help us get closer to grasping the root of our failed policies and help us find effective alternatives that give young people like him a chance. And importantly, Daniel's involvement in his clemency petition allowed him to feel connected to a larger struggle to make structural change. Daniel was able to see that there were larger institutional and systemic issues at play. Daniel has continued to share his words and support efforts to expand

41. Note: A key component of the organizing strategy is regular meetings where families can drop in as a crisis arises where there are no attorneys present. As Daniel was in a rural area, I worked with others to bring the process to him and helped coordinate with family and mentors.

42. Paula M. Ditton, Bureau of Just. Stats., U.S. Dep't of Just., Mental Health and Treatment of Inmates and Probationers (1999), https://www.bjs.gov/content/pub/pdf/mhtip.pdf [https://perma.cc/K9E3-YZ2F].]

43. McLeod, *supra* note 16, at 1173–84.

the parenting alternative sentencing law in Washington State; even if he won't be able to now benefit because his daughter has been adopted. He has shared with me that he hopes to impact young people who may be in similar circumstances and help us make legal change that is necessary to support parents and their children. This process has also served as a creative outlet for Daniel, and he hopes to create a healing project centered on art when he is released. Writing later to support incarcerated parents fighting for their kids in the child welfare system, he says:

> What I want to say to all the incarcerated parents and free parents going through the same scenario, please don't lose hope, but try to keep your head held high and eyes dry because just remember you're still blessed to be able to call your child yours. Let's stick together and start to make a change in this world to make it better and safe for our children's future, and to keep making it safer.[44]

Many believe it will take a radical shift in the way we view crime in order for us to enact the change necessary to truly make our communities safer. However, according to prison activist Angela Davis, "Radical, simply means 'grasping things at the root.'"[45] What is at the root of the problem here? Our failed tough on crime approaches are based on an unproved theory that if the punishment is harsh, individuals will be less likely to commit crime.[46] Unfortunately, these policies fail to recognize the underlying reasons as to why people, and specifically young people, get involved in gangs and/or behavior that leads to violent acts, such as living in communities with a daily threat of violence, living in communities that are racially segregated and economically underresourced,[47] and, like Daniel, being themselves victims of violence in the past.[48] Also, our tough on crime rhetoric does not recognize the historical violence against black and brown people in our country. As Dr. Katherine Beckett points out so eloquently:

> Our enthusiasm for getting "justice" for violent acts by punishing people convicted of them is not matched by a passion for making amends for, or even acknowledging, the centuries of lethal racial violence that pervades our national history. Nor is our collective desire to condemn those convicted of violent crimes accompanied by an

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44. Daniel Loera, *Sentenced to Lose: A Message From a Young Incarcerated Father*, Just. Strategies (Sept. 5, 2017), https://justicestrategies.org/coip/blog/2017/09/sentenced-lose-message-young-incarcerated-father [https://perma.cc/96Z8-GW43].
45. Angela Y. Davis, "Let Us All Rise Together: Radical Perspective on Empowerment for Afro-American Women" Spellman College (1987). Angela Y. Davis, Women Culture and Politics (1989), Reprinted.
46. Pew Ctr. on the States, Pew Charitable Tr., Time Served: The High Cost, Low Return of Longer Prison Terms 1–6 (2012), https://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/prisontimeservedpdf.pdf [https://perma.cc/Z4X2-TBLF].
47. Katherine Beckett, *Violence, Mass Incarceration, and the Myth of Monstrosity*, Am. Prospect (Aug. 18, 2016), https://prospect.org/article/violence-mass-incarceration-and-myth-monstrosity [https://perma.cc/NDV8-LCJY].
48. *Id.*

> equally zealous effort to address the interpersonal and structural violence that so frequently precipitate the crimes we rush to denounce.

Further, these policies do not recognize the reality that many crime survivors agree that the tough on crime approach is not alleviating the problem of violence, nor is it providing victims with any help.[49] More and more victims are stating that they prefer increased investments in crime prevention and programs for at-risk youth over more investments in prisons and jails.[50]

II. "Carve Outs"—The Dangerous Illusions of Incremental Change

> "After being told for years that it's the violent criminals we need to worry about—the murderers, rapists, and predators—will the public be able to accept the idea that many of those offenders are also being punished too severely?"[51]

The practice of doling out long sentences and denying early release opportunities for people who have committed violent or a sex crimes often goes unchallenged despite the reality that longer sentences, or incarceration alone, has failed to end the cycle of violence or reduce crime.[52] Why then do we not change our policies that leave people like Daniel with no way out? Much of the solutions offered for the mass incarceration problem focus on individuals with nonviolent crimes as these efforts more palatable.[53] However, this means that the 54 percent of people in our state prisons who are charged with violent crimes are entirely left out of reform efforts,[54] absent a couple recent and effective exceptions with

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49. All. for Safety and Just., Crime Survivors Speak: The First Ever Nat'l Survey of Victims' Views on Safety and Just., 4–5 (2016), https://www.allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf [https://perma.cc/2KYL-XBNN].
50. *Id.*
51. Gilad Edelmen, *The Real Answer to Mass Incarceration*, New Yorker (July 17, 2015), https://www.newyorker.com/news/news-desk/the-real-answer-to-mass-incarceration [https://perma.cc/R7TY-H4KM].
52. Beckett, *supra* note 47.
53. James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. Rev. 21, 23 (2012) (arguing that the Jim Crow analogy leads to a distorted view of mass incarceration and therefore hampers our ability to challenge it effectively).
54. *See* Dana Goldstein, *How to Cut the Prison Population by 50 Percent*, Marshall Proj. (Mar. 4, 2015), https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent#.e9slLotyZ [https://perma.cc/4AAW-55TU] (highlighting that, "Left mostly unsaid is that achieving the goal of this 'Cut50' movement would entail touching what has long been a third-rail in criminal justice reform. To halve the prison population, sentencing would have to change not only for the so-called 'non, non, nons'—non-violent, non-serious, and non-sex offender criminals—but also for some offenders convicted of violent crimes.").

programs diverting people with violent crimes in Brooklyn, NY[55] and in Richmond, CA.[56]

The mainstream public is often unaware that violent crime has actually declined, since Hollywood movie studios, news outlets, and tough-on-crime politicians often place greater emphasis on stories that elicit fear.[57] When the infamous tough on crime laws passed in 1994, few knew that we were actually on a steady decline in violent crime.[58] Contrary to what we believe, studies show that people convicted of sex offenses[59] and homicide,[60] the most serious violent crimes, are least likely to have prior criminal records and have some of the lowest rates of recidivism upon release.[61] However, these numbers alone are not sufficient to change minds. Instead, most people assume that people who act in violence are inherently violent people, and therefore prisons act to bring us safety. This discrepancy is being addressed by groups such as the Vera Institute of Justice, who argue that:

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55. *See Common Justice Model*, Common Just., https://www.commonjustice.org/common_justice_model [https://perma.cc/K2L3-PZQP] (last visited Mar. 7, 2019). According to their mission: "Common Justice develops and advances solutions to violence that transform the lives of those harmed and foster racial equity without relying on incarceration . . . Rigorous and hopeful, we build practical strategies to hold people accountable for harm, break cycles of violence, and secure safety, healing, and justice for survivors and their communities." *Our Mission*, Common Just., https://www.commonjustice.org/home#mission [https://perma.cc/7KHH-XFFH] (last visited Mar. 7, 2019).
56. Richard Gonzales, *To Reduce Gun Violence, Potential Offenders Offered Support and Cash*, Nat'l Pub. Radio (Mar. 28, 2016), https://www.npr.org/2016/03/28/472138377/to-reduce-gun-violence-potential-offenders-offered-support-and-cash [https://perma.cc/A865-GPSQ] (explaining that the Operation Peacemaker Fellowship gives participants training and financial support; the fellowship program was part of a city-backed effort to treat gun violence as a public health problem, not just as a crime issue).
57. *See, e.g.*, John Gramlich, *Five Facts About Crime in the U.S.*, Pew Research Ctr. (Jan. 3, 2019), http://www.pewresearch.org/fact-tank/2019/01/03/5-facts-about-crime-in-the-u-s [https://perma.cc/P5YC-JRVC].
58. Susan Turner et al., *National Evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program* (Nov. 29, 2001), https://www.ncjrs.gov/pdffiles1/nij/grants/191201.pdf [https://perma.cc/XZW2-GRQD] (unpublished report to U.S. Dep't. of Just., on file with Nat'l Criminal Justice Reference Serv.).
59. *See, e.g.*, Hal Arkowitz & Scott O. Lilienfeld, *Once a Sex Offender, Always a Sex Offender? Maybe Not*, Sci. Am. (Apr. 1, 2008), https://www.scientificamerican.com/article/misunderstood-crimes [https://perma.cc/F4TP-NR9K].
60. *See, e.g.*, Ken Broder, *Record Number of Prison Lifers Released, but Few Return*, AllGov (Dec. 30, 2014), http://www.allgov.com/usa/ca/news/top-stories/record-number-of-prison-lifers-released-but-few-return-141230?news=855226 [https://perma.cc/LE7Z-85MB] (citing a study by the Stanford Criminal Justice Center that found a 48.7 percent recidivism rate for the overall prison population from 1995–2010, whereas the recidivism rate for murderers was 'miniscule' during that period at 0.6 percent, with only five out of 860 paroled murderers returning to jail).
61. Beckett, *supra* note 47.

> The country cannot incarcerate its way out of violence. As a violence intervention strategy, prison fails to deliver the safety, justice, and accountability all people deserve, and at great human and financial cost.[62]

Prisons have largely failed to make us safer, yet society largely cannot fathom letting people like Daniel out early, let alone diverting him completely.[63] As the Public Safety Performance Project by The Pew Project showed in 2012,[64] our failed tough on crime approaches are based on an unproven theory that harsh punishment deters criminal activity. But, as I've pointed out, these policies fail to recognize the underlying reasons people, specifically young people living in poverty, get involved in gangs and/or behavior that leads to violent acts.[65] The Vera Institute of Justice further reports:

> Prison is also limited as a tool because incarceration treats violence as a problem of 'dangerous' individuals and not as a problem of social context and history. Most violence is not just a matter of individual pathology—it is created. Power drives violence. Inequity drives violence. Lack of opportunity drives violence. Shame and isolation drive violence. And like so many conditions known all too well to public health professionals, violence itself drives violence.[66]

Although it may be more favorable to start our reform with individuals who have committed nonviolent crimes, we must find solutions that support humanity and dignity for all people in prison. This is particularly important as 95 percent of those currently in state prison will be released at some point and return to their communities.[67] Instead of denying people with violent crimes opportunities for alternatives to incarceration, it

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62. Danielle Sered, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, Vera Inst. of Just., 4 (2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/accounting-for-violence/legacy_downloads/accounting-for-violence.pdf [https://perma.cc/E6VY-93MV].
63. Davis, *supra* note 9, at 11–12 ("In thinking about the obsolescence of the prison, we should ask how is it that so many people could end up in prison without major debates regarding the efficacy of incarceration. When the drive to produce more prisons and incarcerate ever larger numbers of people occurred in the 1980s during what is known as the Reagan era, politicians argued that "tough on crime" stances—including certain imprisonment and longer sentences—would keep communities free of crime. However, the practice of mass incarceration during that period had little or no effect on official crime rates. In fact, the most obvious pattern was that larger prison populations led not to safer communities, but, rather, to even larger prison populations.").
64. *Public Safety Project Overview*, Pub. Safety Project (2019), https://www.pewtrusts.org/en/projects/public-safety-performance-project [https://perma.cc/VHC7-N35K].
65. Beckett, *supra* note 47.
66. Sered, *supra* note 62.
67. Timothy Hughes & Doris James Wilson, *Reentry Trends in the U.S.*, U.S. Dep't of Just., Bureau of Just. Stats. (last updated March 14, 2019), https://www.bjs.gov/content/reentry/reentry.cfm [https://perma.cc/U6Y3-7EVW].

is important that we include opportunities for people with violent crimes in diversion programs[68] and programs for early release.

It is important to note that even though the last ten years has brought a needed racial critique of the criminal justice system into the mainstream as well as the voices of people who previously experienced incarceration, many of the talks of reform still center on solutions for people with nonviolent offenses to the exclusion of immigrants, transgender and gender nonconforming people.[69] Books such as Michelle Alexander's widely-read the *New Jim Crow* helped popularize the racial history of our prisons and pushed for much of the cultural shift needed for decarceration strategies for people with nonviolent drug crimes; however, it also set up an illusion that dealing with drug crimes would end mass incarceration.[70] More than half of the people in our state prisons have been convicted of violent crimes.[71] Thus, it's clear that if we let out everyone with a nonviolent crime tomorrow, mass incarceration wouldn't end and we would still have more people incarcerated in the United States than any other country.[72]

In addition to addressing the lack of support for people with violent crimes, we must address the number of sex offenders who serve indeterminate or long sentences and then remain on parole or some sort of corrections for life. We have policies that allow indeterminate sentencing for people with sex offenses, meaning that people can be incarcerated indefinitely without real due process (or evidence that longer sentences prevent future harm or create current safety).[73] Review boards are given complete discretion and power to make decisions about releasing people who have been the recipients of sentences based on tough on crime laws; however, they rarely connect the ways in which violence is constructed in our society on a historical and structural level (such as with genocide

68. *See Common Justice Model*, *supra* note 55 (creating alternatives to incarceration for people with violent crimes).
69. *See* Goldstein, *supra* note 54 (reflecting that with our largest progressive campaigns for policy reform. For example, "Cut50," a national initiative of Dream Corps that leads campaigns on issues with partner organizations and nonprofits with great influence on criminal justice reform, have multiple campaigns that support legislation for only people nonviolent crimes, and that leave out immigrants, and transgender people in prison).
70. Michelle Alexander, The New Jim Crow: Mass Incarceration In The Age Of Colorblindness (2010).
71. More than half (54 percent) of state prisoners were serving sentences for violent offenses at year-end 2015, the most recent year for which data are available. *See* E. Ann Carson, *Prisoners in 2016*, U.S. Dep't Of Justice, Bureau Of Just. Stats., Bulletin 1 (Jan. 2018), https://www.bjs.gov/content/pub/pdf/p16.pdf [https://perma.cc/4T6C-QXH9]. I use the 2016 numbers as they are the most recent for which the Bureau of Justice Statistics has published based on offense.
72. *See* Forman, *supra* note 53, at 48 (arguing that "the *state's response* to violent crime—less diversion and longer sentences—has been a major cause of mass incarceration).
73. Goldstein, *supra* note 54 (quoting Gottschalk in that "[w]e're having a quiet war on sex offenders now, and very few people are saying we have to stop that war").

of indigenous people and the enslavement of Africans to the structural violence of denying people basic needs via inequality and poverty), or how power or even abuse itself leads to further abuse.[74] In discussing the inability of review boards to hold underlying issues of historical and structural violence and the reality that those who are harmed often harm, Beckett states:

> We can never know what would have happened if the board had actually considered these points. But the board's refusal to deeply reflect on them is indicative of our impoverished way of thinking about violence. As long as we continue to ignore the historical and structural violence that has shaped, and continues to plague, our country, to deny our collective responsibility for it, and to insist that the sole cause of violence is the monstrosity of the convicted, we will never develop a more capacious, humane, and effective approach to violence.[75]

Further, our policies fail to recognize that a review board process, just as in every other step of the criminal justice process, makes success harder for people who live on the margins: people of color, people outside of the gender binary, people with mental health disorders, and those with the stigma of addiction.[76] Even so, prosecution and incarceration is promoted as the only way—and even the courageous way—to solve sexual abuse without looking at whether incarceration is actually ending the cycle of this type of violence.[77]

Current policies also fail to question the efficacy of placing people in prison where they will be exposed to treatment that is coupled with both the individual and systemic violence of the prison setting.[78] The reality is that much violence and sexual violence occurs between individuals who know each other and goes unreported because people do not want their loved ones to face incarceration.[79] The decision not to report such violence does not mean they do not wish for the violence to end or for the person to be held accountable; instead, many people want options for accountability that exist outside of the prosecution and expulsion of the perpetrator who committed sexual violence.[80] Currently, prosecution and expulsion is the only avenue for accountability and for the ability to

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74. Beckett, *supra* note 47 ("Researchers have amassed a mountain of evidence showing that people convicted of violent crimes, and prisoners in general, are the targets of assaults, often throughout their entire lives. Indeed, chronic deprivation and long-term abuse is the norm in the biographies of those serving time").
75. *Id.*
76. Ctr. for Am. Progress and Movement Advancement Project, Unjust: How The Broken Criminal Justice System Fails LGBT People, 33 (Feb. 2016), http://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf [https://perma.cc/LFZ7-79YL].
77. Arielle, *supra* note 18, at 45–46.
78. *Id.* at 46.
79. *Id.*
80. *Id.*

access victims services.[81] Studies estimate that as many as one-in-three people raised as girls and one-in-six raised as boys were sexually abused as children are not monster perpetrators, but people with histories of "intergenerational trauma, community and state-sanctioned abusive norms, and alienation."[82] A "radical" response to this problem would allow us to get to the root of the issue and seek to end the family and community norms that contribute to the widespread and unacknowledged abuse of children.[83] A "radical" response would look like healing resources for survivors and the actual transformation of people who have been sexually abusive[84] instead of laws that isolate people convicted of sexual offenses through registries that guarantee they will not find work or a place to live, thwarting their ability to recover and find healing. Recognizing the racist, classist and ableist underpinning of our laws, many people who have experienced harm do not engage with the criminal justice system because they do not want to give any more power to the institutions that further traumatize them and their communities.[85]

Scholar and critic of the "Jim Crow narrative," James Forman, Jr., says advocates focus on nonviolent crimes due to the difficulty of suspending moral judgment when it comes to violent crime.[86] I argue the same is true for sex offenses. This type of reform would require us to come to terms with the pervasiveness of both issues, and it is easier to focus on the bad few, not a culture that protects and promotes this behavior. Forman says he is sympathetic to the impulse to avoid discussing violent crime as, "the New Jim Crow writers are frustrated by decades of losing the crime debate to those who condemn violence while refusing to acknowledge or ameliorate the conditions that give rise to it."[87] However, Forman goes on to support the view that the closer we are to those labeled with violent crimes, the less likely we are to avoid the topic of violence as we begin to see that it is a disservice to the very people we are trying to support.[88] He points to the reality that youth of color who disproportionately enter prison are also disproportionately victimized by

81. *Id.* (discussing how federal antiviolence funding often requires prosecution in order to access victims funds).
82. Bassichis, et al., *supra* note 6, at 24 (discussing "Megan's Laws," which are statutes that require people convicted of sexual offenses to register and that require this information to be available to the public, and the nonexistent deterrent effect of such laws).
83. *Id.*
84. *Id.*
85. Arielle, *supra* note 18, at 46.
86. Forman, *supra* note 53, at 127 (citing to a view proposed by Ronald Reagan at an Annual Conference of the National Sheriffs' Association: "Choosing a career in crime is not the result of poverty or of an unhappy childhood or of a misunderstood adolescence; it's the result of a conscious, willful, selfish choice made by some who consider themselves above the law, who seek to exploit the hard work and, sometimes, the very lives of their fellow citizens").
87. *Id.* at 127.
88. *Id.* at 128.

crime and that "the two phenomena are mutually reinforcing."[89] Forman runs an alternative school for teens from the juvenile court system for youth charged with drug dealing, auto theft, gun possession, aggravated assault, robbery, and murder. He says that after getting to know the students, he was able to "appreciate the toll the violence had taken, and continued to take" in the lives of the young people he worked with.[90] He learned that most of these kids, similar to Daniel, sought safety and security, and that their own acts of violence had been closely connected to being in an unsafe environment.

The reality is that when we fail to engage with people in prison or people directly affected by our carceral systems through an anti-oppression and abolitionist lens, we often create solutions that will continue to leave out the most marginalized people in prison. Our inability to address these realities has led to failures such as:

- Money given to corrections entities for "gender responsive" initiatives that lead to little or no change, that see gender as meaning only cis women, or create initiatives that leave out transgender and nonbinary people, fail to address toxic masculinity in men's prisons, and fail to recognize the reality that prisons are sites of violence for people of all genders.[91]
- The Death Penalty being abolished only to have Life Without Parole (LWOP), leading to conditions of confinement that are worse than before, and the creation of LWOP sentences in states that did not have them before.[92]
- Alternative sentencing for only people with nonviolent crimes, or people who can "pay for it."[93]
- Alternatives of electronic home monitoring which act to bring the prison more directly into our communities, increasing the

89. *Id.*
90. *Id.* at 129.
91. *See, e.g.*, S.B. 5876, 66th Leg., Reg. Sess. (Wash. 2019), https://app.leg.wa.gov/billsummary?BillNumber=5876&Year=2019&Initiative=false [https://perma.cc/7LWT-VH57] (recent legislation proposed in Washington State SB 5876 allocating money and resources to the department of corrections to create a women's division as a response to the abuses and harms occurring in the women's facilities in Washington State); *see also* Californians United for a Responsible Budget (CURB), Reducing the Number of People in Cal.'s Women's Prisons: How "Gender Responsive Prisons" Harm, Women, Children, and Families (2007).
92. *See, e.g.*, James Ridgeway & Jean Casella, *What Death Penalty Opponents Don't Get*, Marshall Proj. (Nov 30, 2014, 11:15 PM) https://www.themarshallproject.org/2014/11/30/what-death-penalty-opponents-don-t-get [https://perma.cc/HGS7-YV5U] (showing the current situation in Washington State Prisons after the author visited a facility in Washington State where males charged with the Death Penalty reside and are given little access to yard time, programming or other rehabilitative measures).
93. James Kilgore, *Electronic Monitoring is Not the Answer: Critical Reflections on a Flawed Alternative*, 20 (Oct. 2015), https://centerformediajustice.org/wp-content/uploads/2015/10/EM-Report-Kilgore-final-draft-10-4-15.pdf [https://perma.cc/97WB-VJBX].

chances of reincarceration when people are not given enough support systems but are placed under the constant surveillance of the criminal justice system.[94]

- Additions of risk assessments that are steeped in racial bias and confined to a gender binary.[95]
- People with sex offenses and violent crimes inside prisons are unreasonably barred from programming and other resources during their incarceration and are denied visitation and connections with their families contrary to social science research indicating that the negative impacts of isolation and the positive impacts of family as the number one predictor of success upon release.[96]
- The Prison Rape Elimination Act (PREA) has failed to prevent sexual abuse and harassment of women, LGB and transgender and nonbinary people—sexual abuse is a norm in most prisons and the PREA policy that aims to protect is more often used to harm transgender or LGB people with the use of segregation after being victimized or due to lack of "safe" housing options, or the obsession with bodies and genitalia to define one's validity as a transgender person and placement in a men's or women's prison. Further, many efforts to support transgender people on the inside have led to accounts that hyper sexualization transgender and nonbinary people inside (*e.g.*, stories garnering support for these individuals often relay unnecessary descriptions of people bodies, specifically genitalia and describe sexual violence and humiliation in unnecessary detail).[97]

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94. JustLeadershipUSA, *supra* note 25 (detailing concerns including risk assessments steeped in racial bias and use of electronic home monitoring and halfway houses instead of reduced sentences thereby replacing one form of incarceration for another; gains are dependent on people applying for retroactive treatment under the Fair Sentencing Act which means room for bias and impact for only a few thousand people in a system incarcerating nearly 180,000); s*ee also* H. R. 5682, 115th Cong. (2nd Sess. 2018), https://www.congress.gov/115/bills/hr5682/BILLS-115hr5682rds.pdf [https://perma.cc/XWA6-UC28].
95. JustLeadershipUSA, *supra* note 25. *See also* S.B. 5291, 66th Leg., Reg. Sess. (Wash. 2019) (adding a risk assessment to bill to make it more palatable), http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/5291-S2.pdf#page=1 [https://perma.cc/YXY3-58E5]; Jennifer L. Doleac & Megan Stevenson, *Are Criminal Risk Assessment Scores Racist?*, Brookings Inst. (Aug 22, 2016), https://www.brookings.edu/blog/up-front/2016/08/22/are-criminal-risk-assessment-scores-racist [https://perma.cc/58UH-YCTH].
96. *See, e.g.*, Wash. Dep't of Corr., *Imposed Conditions*, DOC 390.600 (B)–(C)(1) https://www.doc.wa.gov/information/policies/files/390600.pdf [https://perma.cc/C8KQ-V6DM] (assuming automatically that a parent charged with a sex crime against a child cannot visit with their own children who are not victims even if the sentencing court's judgment and sentencing order allows for exceptions).
97. Captive Genders, *supra* note 4, at 41; Ctr. for Am. Progress, *supra* note 76, at 90.

In addition, highly lauded reform efforts across the nation ending the ability for juveniles to be charged as adults, such as the 2018 legislative passage of SB 6170 in Washington, are not the full successes that they seem.[98] We can highlight some of the limitations of this law by running Daniel's case through the recent passage of SB 6170, which made reformist changes to Washington's "auto-decline law." Daniel was sentenced as an adult under the previously existing auto-decline statute which mandated juveniles be tried as adults for certain enumerated offenses—a practice that, at that time of his clemency petition, was being reviewed by the Supreme Court of Washington for its constitutionality.[99] In his petition, we argued that the recent developments by United States Supreme Court and in several states reflected psychology and neuroscience that showed the fundamental differences between juvenile and adult minds warranted due process protections for juveniles that are greater than those provided for adults.[100]

First, the Court found that juveniles lack maturity and have an underdeveloped sense of responsibility which leads to "recklessness, impulsivity, and heedless risk-taking."[101] Second, juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.[102] Third, the character of a juvenile is not as well formed as that of an adult, and thus, a juvenile's actions are less likely to be evidence of irretrievable depravity.[103] Youth also do not have the same ability as adults to control their impulses or to understand the longer-term impacts and consequences of their actions.[104] Further, most teenagers are capable of being rehabilitated.[105] These findings make clear that legislators, District Attorneys, and the courts are increasingly recognizing that, given our growing understanding of adolescent brain physiology, sentencing teenagers to long sentences serves no deterrent purpose, does not increase public safety, is exorbitantly costly for taxpayers, and is, indeed, cruel and unusual punishment.

Automatic decline laws also are negative because they disproportionately affect communities and youth of color. The Washington State Department of Social and Health Services revealed an alarming

98. S.B. 6160, 65th Leg., Reg. Sess. (Wash. 2018), http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6160-S2.SL.pdf [https://perma.cc/2ZC6-R2F3].
99. *State v. Houston-Sconiers*, 188 Wash. 2d 1, 26–27 (2017).
100. *Graham v. Fla.*, 560 U.S. 48, 68–73 (2010); *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012); *Montgomery v. La.*, 136 S. Ct. 718, 733 (2016); *State v. O'Dell*, 183 Wash. 2d 680, 692–93 (2015).
101. *Miller*, 567 U.S. at 471.
102. *Id.*
103. *Id.*
104. *Id.* at 472.
105. *Id.* at 470.

overrepresentation of youth of color adjudicated in adult court. Between 2010 and 2014, the white non-Hispanic and youth of color juveniles charged and sentenced in adult criminal court were 26.2 and 68.5 percent respectively.[106] In Daniel's petition we argued that the continued implementation of automatic decline statutes and reliance upon the adult system to rehabilitate juveniles disproportionately harms and negatively impacts youth and communities of color. However, the 2018 passage of the reform bill SB6170 failed to truly recognize both the racial disparities and current neuroscience. The amendments that were added still give judges the discretion to decline certain crimes and allow for automatic gang and gun enhancements. This is an issue provided that youth of color are disproportionality targeted as gang members as their communities are subject to more surveillance by police.[107] Advocate Nick Allen described the passage of the bill and its amendments as "bittersweet" due to the "regressive" components combined with groundbreaking rollback of auto-declinable offenses.[108] This reform failure is a prime example of stereotypes and bias that clouds the judgment of our policymakers. Once a bill gets in the hands of legislators, it may be difficult to stop them from advancing without significant carve outs that limit the bill's reach and may even cause more harm than before.[109]

This particular reform failure, viewed through the lens of Daniel's case, highlights how our reform efforts are greatly limited when our legislators and other decisionmakers are steeped in stereotypes and stigma that surround youth, and particularly youth of color. Daniel's case if assessed under this new law may have meant more time or no reduction at all for his sentence. Because he was over fifteen and was charged with a serious violent offense, the court would still have the ability to decline

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106. *Annual Report: Data Analysis Juvenile Transfers to Adult Court, Annual Report,* Wash. State DSHS, 146 (2014).

107. *See* Akiva M. Liberman & Jocelyn Fontaine, *Reducing Harms to Boys and Young Men of Color from Criminal Justice System Involvement*, Urban Inst., 4–7 (Feb. 2015), https://www.urban.org/sites/default/files/publication/39551/2000095-Reducing-Harms-to-Boys-and-Young-Men-of-Color-from-Criminal-Justice-System-Involvement.pdf [https://perma.cc/VSH2-VNDE].

108. Press Release, Columbia Legal Serv., *Washington Governor Signs Bill into Law that Significantly Limits the Number of Youth Who can be Transferred into Adult Court*, (Mar 22, 2018), http://columbialegal.org/washington-governor-signs-bill-law-significantly-limits-number-youth-who-can-be-transferred-adult [https://perma.cc/KEL7-U77X].

109. *See, e.g.*, Jeremy B. White, *California Ended Cash Bail. Why Are So Many Reformers Unhappy About It? What Promised To Be A Progressive Breakthrough Is Now Breaking Up The Left*, Politico Mag. (Aug 29, 2018), https://www.politico.com/magazine/story/2018/08/29/california-abolish-cash-bail-reformers-unhappy-219618 [https://perma.cc/Y4X8-VCSX] (discussing the SB10 Bail Reform Initiative in California where activists were unsuccessful in stopping its passage once it was amended from a bill that would end the predatory for-profit bail system to one that would instead harm and expand the unfair incarceration of communities of color).

his case.[110] And, as a Latinx gang member, it's likely he would have been subjected to the courts' well-documented bias against gang members. In addition, the new law also calls for mandatory gun and gang enhancements, whereas Daniel's judge had the discretion not to add gun or gang enhancements. Therefore, under the new, "improved" law, Daniel may have ended up with a longer sentence. However, there is a chance that he may have benefited from the new law. Now, Daniel would have the ability to serve his entire time in the juvenile facility instead of being transferred to the adult jail at age twenty-one as the new law extends Juvenile Rehabilitation placement to age twenty-five, but again, for a longer period of time. But the reform does nothing to either divert juveniles from incarceration altogether or help them release early, which is what Daniel actually needs. Reforms such as this are largely why most jurisdictions that do implement alternatives to incarceration, or early release options, end up with a lower population of incarcerated youth but an increase in racial disproportionality.[111] Scholars confirm this reality as a norm and point to the racialized assumptions of future criminality and stereotypes "to explain why juvenile justice authorities send black delinquents to juvenile detention while referring white delinquents to informal alternatives for the same offenses."[112]

Another reason for our failure to make real change for people with violent crimes has to do with how we talk about the issue in a manner that serves to uphold stereotypes and stigma, and further the violent vs. nonviolent dichotomy. When violence is addressed in the rare article that attempts to support advocacy for people with violent crimes, the focus is often on the issue that in many "violent" convictions, there was no actual violence that occurred. For example, one article points out that "the distinction between 'nonviolent' and 'violent' is not always clear-cut. Some 'violent' crimes, like illegal gun possession, in many states, don't require an actual violent act, while some offenders who did commit violence may plead guilty to a less serious, nonviolent charge."[113] However true, this

110. Wash. Rev. Code. § 13.40.110(1)(a) (2018); Wash. Rev. Code. § 13.40.193(4)(a)–(b) (2018), S.B. 6160, 2018 Leg., 65th Sess. (Wa. 2018) (Engrossed Second Substitute), http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6160-S2.SL.pdf [https://perma.cc/JU38-984T].

111. *See* The Sentencing Project, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, 15 (2008), https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf [https://perma.cc/59QN-EDLM]; Sentencing Project, *Fact Sheet, Black Disparities In Youth Incarceration*, 1–2 (Sep 12, 2017) https://www.sentencingproject.org/publications/black-disparities-youth-incarceration [https://perma.cc/Z98E-QDWN].

112. Roberts, *supra* note 39, at 1492–93 (quoting Kenneth Nunn, *The Child as Other: Race and Differential Treatment in the Juvenile Justice System*, 51 DePaul L. Rev. 679 (2001–2002)).

113. *See*, *e.g.*, Gilad Edelman, *The Real Answer to Mass Incarceration*, New Yorker, (July 17, 2015) https://www.newyorker.com/news/news-desk/

distinction falls short and has unintended consequences of further delineating a person in prison deserving of reform (those who are charged with violent crimes but did not commit any violence) versus undeserving (those who are charged with violent crimes and committed an act of violence). I believe framing the conversation this way is counterintuitive and an extension of the existing advocacy that leads advocates and decisionmakers to ignore the need to address violence outside of carceral responses. If we follow the logic, the next "palatable" incremental change to be proposed will be creating alternatives to incarceration, or modest reforms, for people charged with a violent crime but who did not commit actual violence. This perpetuates the belief that someone who commits an act of violence is an inherently violent person not deserving of support and ignores many of the underlying causes of violence as explained above. I have worked with more than enough people and have experienced violence in my own life to see that distracting the conversation, in an effort to make things more palatable, deters us from finding real ways to address the violence and sexual abuse so prevalent in our communities. Violence is often a cycle: most perpetrators of violence were once victims of violence.[114] Instead of focusing only on solutions for people who are charged with nonviolent crimes, which inadvertently vilifies individuals charged with violent crimes, we should talk about the conditions that lead to and create violence. Otherwise, we will continue to turn our back on individuals who, if they were younger, or not people of color, or fit the gender binary, would often be seen as victims.[115] Our inability to address this reality is a systemic failure that is actually creating more violence instead of stopping the cycle of violence. Only by finding solutions that address the root causes of violence can we achieve this.

In sum, we will not solve our mass incarceration problem without expanding our efforts beyond nonviolent crimes. Numbers, crime statistics, and reports have not reduced the stigma and bias that pervades our criminal justice system. In addition to academic articles and research reports that bring important visibility to the intense brutality, violence and dehumanization of prisons,[116] we must also seek ways to make visible the resilience and the humanity of people in prisons who have committed violent crimes. Without the latter, I believe our decisionmakers can

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the-real-answer-to-mass-incarceration [https://perma.cc/Z4YD-4WQY]; Timothy Williams, *Four Violent Crimes: You Decide the Sentence*, N.Y. Times (Dec. 9, 2016) https://www.nytimes.com/interactive/2016/12/09/us/brennan-center-report-sentence-length.html [https://perma.cc/L8RY-HFGS].

114. *See* Beckett, *supra* note 47. *See* N*ancy Wolff*, PhD, *Jing Shi*, MS, and *Jane A. Siegel*, PhD, *Patterns of Victimization Among Male and Female Inmates: Evidence of an Enduring Legacy*, Violence and victims, vol. 24, 4 (2009): 469–84, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3793850, (research shows abuse in childhood is strongly correlated with adult victimization, substance abuse, and criminality).

115. *See*, *e.g.*, Free Cece!, *supra* note 5.

116. McLeod, *supra* note 16, at 1173.

easily dismiss these individuals as not deserving of support and will never come to believe that even those who have caused violence should not be inflicted with more violence in the prison system.

III. Building Leadership and Centering People on the Inside

"[I]ncarceration acts as a means of political subordination."[117] The very function of the prison setting is one that separates; it separates those in the 'free world' from people in prison, and it separates and encourages distrust between individuals on the inside. On a systemic level, this separation makes it difficult to create legal change that supports the most vulnerable on the inside. Incarceration also has unique and shattering effects on people inside prisons, their families, and their communities. Misunderstandings around the incarcerated individual's experience and the paths that lead individuals to prison create missed opportunities for our systems to address the real needs of individuals. When decision-makers are greatly influenced by the stigma and negative stereotypes surrounding people in prison, it is nearly impossible for many to access the rights that are said to exist, such as alternatives to incarceration, freedom from violence or sexual assault while in prison, rights to basic health and welfare, or legal rights to their children. This is particularly true for those whose identities fall at the intersections of race, class, gender, sexuality, immigration status, ability, age and who struggle with mental health and/or substance abuse issues and are generally devalued in our communities.

Additionally, the structures and funding mechanisms of our nonprofits seeking to make positive criminal justice change also create separation from those in prisons. For example, many larger policy organizations do not have direct connections to people inside prisons or detention centers, and many accept federal funding which prohibits them from supporting currently incarcerated people and undocumented immigrants.[118] For those organizations that have a legal arm, they often take on individual client cases in a litigation format that consists only of traditional level work: declarations, depositions from the client and legal arguments developed only by lawyers and where the lawyer "speaks" and is the voice of the client. Multiple strategies are necessary and at times a lawyer speaking for the client is what is most needed, but the problem is when we on the outside of prisons continually fail to engage with people in prison in a more meaningful way. When we lack accountability to those on the inside, we are more likely to create solutions that leave

117. *See* Roberts, *supra* note 39, at 1483.

118. 45 C.F.C Part 1637 (no civil litigation for prisoners); 45 C.F.R. Part 1613 (no criminal cases outside of tribal courts or some court appointments); 45 C.F.R. Part 1626 (no representation of non-U.S. citizens except for certain permanent residents and other limited lawful statuses, victims of violence and trafficking if willing to participate in prosecution); 45 C.F.R Part 1639 (no welfare reform other than individual benefit cases, therefore prohibiting many nonprofits from working on root causes of economic marginalization).

out the most marginalized people in prison. It is often clear that our decisionmakers continually give deference to those who James Baldwin discourages us from taking as authorities in the opening quote of this paper: the police, lawyers, judges and the middle—and I will add—the middle and upper class. Whether it is at legislative hearings, courtroom hearings, nonprofit meetings, or even listening to most mainstream news and reporting, rarely do we center the voices of those currently impacted by incarceration. This is due to not only to the literal and physical barriers of incarceration, but also our lack of efforts to bring those individuals into the work in a more meaningful way. Further, the sphere of privilege that most lawyers and judges exist in, even those who identify as people of color or queer, acts as a barrier to the realities of those who are coming into their courtroom. These are the precise reasons why groups are taking back the policy conversation and investing in the leadership of people currently experiencing incarceration and those who have experienced incarceration in the past, such as Silicon Valley De-Bug, Transgender IJP, BreakOut!, All of Us or None, JustLeadershipUSA, Civil Survival, and the National Council for Incarcerated and Formerly Incarcerated Women and Girls.[119]

In discussing the impacts of incarcerating large numbers of black mothers behind bars and the destruction of critical family and community ties particularly in black communities, Dorothy Roberts stated that "[o]ne of the most pernicious features of prison expansion is that it devastates community-based resources for contesting of prison policy and other systemic forms of disenfranchisement."[120] She further notes that "prisons break down social networks and norms needed for political solidarity and activism."[121] Therefore, it is imperative that we seek to find solutions that repair those networks.

Dorothy Roberts was speaking specifically to the impacts incarceration and the child welfare system have on black communities in the 'free world;' however, her analysis can also be applied to those still on the inside and their ability to create community and come together for solidarity and activism from the inside. Most prisons operate with the priority of 'safety and security,' and thereby operate to control and separate individuals. For example, in Washington State, people inside the

119. *See*, *e.g.*, Silicon Valley De-Bug, https://www.siliconvalleydebug.org (last visited Mar. 11, 2019); TGI Justice Project, http://www.tgijp.org (last visited Mar. 11, 2019); BreakOUT!, http://www.youthbreakout.org (last visited Mar. 11, 2019); All of Us or None, https://www.prisonerswithchildren.org/our-projects/allofus-or-none (last visited Mar. 11, 2019); JustLeadershipUSA, https://justleadershipusa.org (last visited Mar. 11, 2019); Civil Survival, LLC, https://civilsurvival.org/our-team (last visited Mar. 11, 2019); National Council for Incarcerated and Formerly Incarcerated Women and Girls, https://www.nationalcouncil.us (last visited Mar. 11, 2019).

120. Roberts, *supra* note 39.

121. *Id.*

women's prison have told me that they fear meeting and organizing on their own in order to make changes regarding their conditions or other issues impacting their lives, as legal regulations prohibit "prison riots," which are interpreted as "if two or more people inside come together" and are seen to "disturb the good order of the institution and contrary to the commands of the officers of the institution."[122] In Washington State prisons, people on the inside cannot engage with each other unless they have an outside sponsor, usually provided by volunteer organizations. But many volunteer organizations are those that provide services and are not aimed at larger policy change. The prison policies also prevent family members or loved ones from working with people inside for change. Based on Washington policy, volunteers may not be immediate family members or have a current or prior relationship with someone or even the family of someone on the inside.[123] Lastly, preventing opportunities for community organizing alongside people in prison are policies that prevent volunteers from assisting on legal issues. For example, in Washington, nonlegal project volunteers are not able to act as advocates for individuals on legal concerns and cannot assist in writs, appeals, or petitions for clemency or other legal concerns, but they are able to refer them to a legal services agency or outside person for help.[124] But as mentioned above, few organizations provide legal or other services for people inside prisons.

Moreover, while many people on the outside can participate in legislative hearings, opportunities for people on the inside to get education and information on how to submit written testimony to legislators are rare. For example, in Washington State, it took concerted efforts and outside organizing to allow people on the inside to call in to testify in front of the Senate Committee on Law and Justice.[125] In 2018, currently incarcerated parents Minna L., Tanya Q., and Deb S. made Washington State history when they called in to testify from the prison on a bill attempting to expand access to the parenting alternative sentencing program to parents regardless of crime. Keep in mind that their opportunity to participate at the hearing involved many people on the outside involving them in the advocacy process early on. For example, in November 2017, a group of us helped bring Senate bill Sponsor Senator Jeannie Darnielle inside the prison to meet with these parents with violent and nonviolent crimes allowing them to urge her to expand the parenting alternative regardless of crime from their personal perspectives. The previous year, the bill had died quickly and Sen. Darnielle wanted to limit the bill to not cover people with serious violent crimes and sex offenses. After meeting

122. *See, e.g.*, Wash. Rev. Code § 9.94.010(1) (2003).
123. Wash. Dep't of Corr. Volunteer Program, Policy 530.100 (Nov. 1, 2017), https://doc.wa.gov/information/policies/files/530100.pdf [https://perma.cc/FNG7-WBYK].
124. Wash. Dep't of Corr. Relationships/Contacts with Offenders, Policy 850.030 (Jan. 14, 2014).
125. Now called the Senate Human Services, Reentry & Rehabilitation Committee.

with some incarcerated people, particularly one mother who was incarcerated for a serious violent crime, Sen. Darnielle brought forward a bill in 2018 with language that expanded the bill regardless of crime, a feat that would have been unlikely without her connecting with the parents and their stories.[126] Most importantly this connection led Sen. Darnielle, as the Chair of the Committee, to change the committee rules in order to allow for remote telephone testimony. Minna L. and Tanya Q. were able to call in from the prison and open up initial testimony on the bill from their personal experience of parenting while serving time for violent crimes, and Deb as an ally and parent with a nonviolent crime.[127] Although the law did not pass that session and the house side later added an amendment excluding serious violent and sex offenses,[128] the voices of these women did make an impact—the bill advanced out of committee whereas the previous year, the prosecutor's testimony had shut down the bill after its first hearing.[129]

These women continue to tell their story to urge Sen. Darnielle to expand the bill regardless of crime. In January of 2019, Tanya Q., was able to join again and testify by videoconference.[130] She testified:

> This program should not exclude children who have parents who have committed a violent crime. Every child's parent deserves a chance to participate in the formal application process whether they have a violent crime or not. Because regardless of outcome, that parent is going to be released to their child. And the ideal transition

126. S.B. 5307, 2018 Leg., 65th Sess. (Wash. 2018) (substitute), http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/5307-S.pdf [https://perma.cc/A3G6-T3Y8]. http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/5307-S.pdf.

127. *See, e.g.*, *Public Hearing on S.B. 5307, S.B. 6280, S.B. 6281, S.G.A. 9206, S.G.A. 9260, S.G.A. 9312 Before the S. Human Services & Corrections Comm. Corr*, 2018 Leg., 65th Sess. (Wash. 2018), *available at* https://www.tvw.org/watch/?clientID=9375922947&eventID=2018011186&startStreamAt=3906&autoStartStream=true (telephonic testimony of Minna L., Tanya Q., and Deb S., currently incarcerated parents) (discussing their personal experience of parenting while serving time and indicating their support for a bill expanding eligibility to the parenting sentencing alternative).

128. E.S.S.B. 5307, 2018 Leg., 65th Sess. (Wash. 2018) (engrossed substitute amendments), http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Amendments/House/5307-S.E%20AMH%20PS%20H4991.2.pdf [https://perma.cc/LPH5-J65Q].

129. *See, e.g.*, *Public Hearing on S.B. 5307 Before the S. L. & Just. Comm.*, *Law & Justice*, 2017 Leg.,. 65th Sess. (Wash. 2017), *available at* https://www.tvw.org/watch/?eventID=2017021020) (statement of Washington Association of Prosecuting Attorneys arguing that expansion to parents with violent crimes and sex offenders is just not good policy).

130. *See, e.g.*, *Public Hearing on Creating Alternatives to Total Confinement for Certain Qualifying Persons with Minor Children Hearing on S-0553.1 Before the S. Human Services, Reentry & Rehabilitation Comm.*, 2019 Leg., 65th Sess. (Wash. 2019), *available at* https://www.tvw.org/watch/?clientID=9375922947&eventID=2019011081&startStreamAt=5448&stopStreamAt=5706&autoStartStream=true (testimony of Tanya Q.).

> would be with the CPA structure and support . . . Success is not possible without opportunity.

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Unfortunately, the design and strategies of most legal and policy advocacy-based nonprofits do not provide a space to organize alongside or develop legal and policy strategies with currently incarcerated people. Instead, people in prison write to nonprofits to no avail, hoping to be the perfect case that a legal nonprofit will decide is deserving enough to take on to create change.

A. *Strategies for Working on the Inside*

> "Even if it is not possible to change the system from within, an individual's actions within the system do matter. We can accept or reject, promote or hinder the state's agenda." –Taiaiake Alfred[132]

It is often difficult for us to take theory into practice. Using a project created in Washington State as a model,[133] it is my hope to show that

131. Image: Tanya Q. testifying in front of Senate Committee on videoconference in from prison on January on January 16, 2019.
132. Paul Kivel, *Social Service or Social Change?*, *in* The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex 129, 144 (INCITE! ed., 2007) (quoting Taiaiake Alfred, Peace, Power, and Righteousness: An Indigenous Manifesto, 2d Ed., 76 (1999)).
133. The project is a coalition of law students, lawyers, and antiracist organizers that provide resources and support that heal the relationships harmed by incarceration and envision a world where families can be together & thrive, free from the

by grounding projects in an anti-oppression and abolitionist model, we can create a roadmap that holds us accountable to those on the inside and encourages us to take direction from their actions and issues.[134]

An anti-oppression model provided by the Reproductive Justice (RJ) framework, embedded in human rights and social justice, can serve as a model to help guide projects inside prison. The RJ framework recognizes that control and exploitation of gender, sexuality, and reproduction is an effective strategy of controlling individuals and communities, particularly communities of color.[135] For example, controlling individuals through our child welfare, family law and criminal justice system is a strategic pathway to regulating entire communities. In following this framework, we sought a model grounded in organizing individuals to change structural power inequalities by developing leadership of those directly affected by incarceration.

There are several key pieces that I find helpful to focus on when working with incarcerated people. First, the RJ framework addresses power. It builds and works to shift power into the hands of those directly affected in order to make systemic change. It is not enough for us to create change on behalf of currently incarcerated people; it is necessary to build leadership of currently incarcerated people, recognizing that they hold the most effective solutions to the problems created by our criminal justice system. Second, the RJ framework addresses historical and current oppression and seeks to alleviate and undo the impacts of that oppression. It asks us to look at how the same people who have historically been affected by slavery, colonization, and forced labor conditions, are now disproportionately incarcerated. And third, the RJ framework recognizes intersectionality. It considers that race, class, gender, sexuality, ability, age, religion, and immigration status, for example, impacts the experience of incarceration, and since oppression is experienced at the intersection of identities, conditions, systems, policies, and practices, strategies for change must also reflect this reality. Finally, the RJ framework recognizes that all individuals are part of families and communities and

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prison industrial complex.

134. Kivel, *supra* note 132, at 146.

135. *See, e.g.*, *A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights and Reproductive Justice*, Asian Communities for Reprod. Just. (2005), https://forwardtogether.org/wp-content/uploads/2017/12/ACRJ-A-New-Vision.pdf [https://perma.cc/7N4A-J2BC]; Loretta J. Ross, *The Color of Choice: White Supremacy and Reproductive Justice*, *in* Color of Violence: the incite! Anthology 53, 62–65 (INCITE! ed., 2006); Jael Sillman, et al., *The Political Context for Women of Color Organizing*, *in* Undivided Rights: Women of Color Organizing for Reproductive Justice 25, 35–36 (2004); *We Are BRAVE Toolkit: Building Reproductive Autonomy and Voices for Equity Toolkit: A Manual for Organizations of Color to Champion Abortion Coverage and Reproductive Justice*, W. States Ctr. (2014), http://westernstates.center/our-work/we-are-brave [https://perma.cc/CQ6C-RSCC] [hereinafter We Are Brave Curriculum].

that our strategies must lift up entire communities in order to support individuals.

I believe it is crucial that any anti-oppression model, like the RJ framework, also be paired with a prison abolition lens when implementing a project in prison, an institution that disproportionately affects people who experienced racism, state violence, and poverty. Given the reality that prisons are sites of violence and abuse, in order to work to support people as they are held in prisons, we must also work to end prison as punishment as our primary form of accountability. There are two ways to look at this is:

1. While supporting people in prison, *DO NOT create/support laws or reform efforts that make the prison punishment system stronger* and instead divert money and resources to the community. For us, this came from working on policy change that minimized the harms when the criminal justice and child welfare system intersect.[136] We also brought in speakers that help heal our communities and address underlying trauma, *e.g.*, relationship skills courses as a way to help minimize violence in intimate relationships.
2. *Change the rhetoric* around incarcerated people such that people know who incarcerated individuals really are, and not only see them as shown by the dominant culture through television and movies. Really getting to know individuals beyond stereotypes can help create the culture shift that is necessary for our larger community to both imagine and implement real alternatives to our current system of incarceration and create a system that does not center on prisons as justice and accountability, or use prisons as a source of violence or profit.

I have spoken to many law students and activists who find it hard to implement the theory of abolition in practical terms. One of my favorite explanations of abolition is that "[a]bolition is about breaking down things that oppress and building up things that nourish. Abolition is the practice of transformation in the here and now and the ever after."[137] I see that to mean taking actions that shift resources away from police, corrections and carceral institutions in order to create the necessary conditions for all people to thrive. As advocates we can help create such spaces starting now. We can resist the punitive nature of accountability and instead uphold the transformative possibilities of accountability in the manner in which we do our work day-to-day.

At the same time, we can dedicate our advocacy and policy changes to support creating a system that nourishes and transforms us for our

136. Victoria Law, *New Law Gives Parents Behind Bars in Washington State a Way to Hold Onto Their Children*, Truth Out (May 11, 2013), https://truthout.org/articles/new-law-gives-parents-behind-bars-in-washington-state-a-way-to-hold-on-to-their-children [https://perma.cc/A6VF-53FX].

137. Captive Genders, *supra* note 4.

future. In developing our project, we took steps to work from an abolition lens to define the type of work we took on and to help create tangible opportunities to put the theories of abolition into action. Some of the work includes:

- Encouraging people in prison to speak out and minimize the negative impact of incarceration and the child welfare system on their lives.
- Providing an opportunity to bring participants together with others in the same situation, to nurture and develop leadership skills and to influence decisionmaking that affects their lives in a manner that changes perceptions of individuals who face incarceration.
- Supporting legislative actions that support people while incarcerated and reduce the impacts of the criminal justice system such as laws helping keep families together or opposing laws that enhance the criminal justice system such as gang enhancement measures.
- Drawing attention to and contesting racism in the child welfare and criminal justice system through, for example, panel discussions on law school campuses or in community spaces where future prosecutors, judges and decision makers can be exposed to a different rhetoric.
- Providing relationship skills classes as an effort to minimize violence against individuals and within intimate relationships.
- Drawing attention to the collateral consequences and community harm created by separating families and the use of prisons as accountability.
- Drawing attention to the lack of access to education, mental health services, race and class disparities and align our group with others working on decarceration through panel discussions and public events.
- Seeking to create access to effective treatment programs (e.g. working with bodywork specialists and other alternative healers) and encouraging people to work with empowering volunteer programs already within the prison that they may not be aware of.
- Connecting the issues of incarceration to immigrant detention and defense of immigrant rights, to the gender-based violence against women, transgender and nonbinary individuals, and to historical issues of sterilization within communities of color and genocide.

Further, in organizing our project, we wanted to resist the structures that often prevent nonprofit organizations from doing the "radical" work necessary to create change. We wanted a social change organization, not a mere social services organization. Paul Kivel's article, "Social Service, or Social Change?" provides a list of "Questions to Ask Yourself" after each part that can help you determine if your project is actually helping

build power, or just providing services that help maintain the status quo.[138] For example in one part he asks: "Is the primary goal of the work you do to help people get ahead or to help them get together?"; "How do you connect people to others in the same situation?"; "How do you nurture and develop leadership skills in the people you serve?"; "How do you ensure that they represent themselves in the agency and other levels of the decisionmaking that affect their lives?"; "Do you provide them not only with information related to their own needs, but also with information on how the larger social/political/economic system works to their disadvantage?"; "Do you create situations in which they can experience their personal power, their connection to others, and their ability to work together for change?"; "Do you help people understand and feel connected to the ongoing history of people's struggles to challenge violence, exploitation, and injustice?"

In response to these questions, as law students and lawyers, we determined that instead of one-on-one client meetings that largely leave the power in the hands of the attorney, we would also do group sessions so people could:

- Learn from each other and develop skills in navigating and demystifying the law.
- Provide a mutual support system in a prison setting where folks are traditionally taught to distrust each other.
- See that there are larger institutional and systemic issues at play, and that there is more to the story they were being told that they were undeserving as parents.
- See that their struggles are interrelated, allowing opportunities to come together for increased consciousness, resource sharing, and mobilization.

This strategy was especially important given the fact that individuals in prison are usually denied the ability to organize, to build leadership, and to work together for change.

B. *Strategies and Outcomes—Incarcerated Led Policy Change*

Grounded in much of the work we did, from Q&A sessions to policy trainings, was a focus on promoting leadership for incarcerated folks so that they are equipped with resources and tools to continue to lead and support their families and communities. First, it led to folks in prison who worked as legal library clerks working alongside us. We helped train folks so that when we weren't there, they could support folks in the legal library. Moreover, we developed a resource binder, so that the folks on the inside could create brief banks and letters for social workers/attorneys that folks could borrow.

In recognizing the limitations of our current law, we sought models for policy that had made changes that positively affected families without making the prison system stronger, and also sought a road for change

138. Kivel, *supra* note 132, at 142–43.

that centered leadership of those who were currently incarcerated. In learning of a 2010 New York State law that had passed giving incarcerated parents explicit rights to have more time in their child welfare cases, we encouraged incarcerated parents to ask their child welfare attorneys to make creative arguments based on the law.[139] In 1997 federal laws had created arbitrary timelines and incentives to push toward adoption when a child is in out of home placement for fifteen of the last twenty-two months.[140] Although the federal law has catchall phrase that stated "the agency has documented a compelling reason why filing a termination petition would not be in the best interests of the child," that exception was never being used.[141] Most of the parents we were working with were systematically losing their children based on this timeline and lack of access to services, visitation, and long sentences. Within a year, we drafted and pushed for a similar and more detailed law in Washington, S.H.B. 1284 "Children of Incarcerated Parents Act," to address these issues alongside the currently incarcerated parents and parents in the community who had previously experienced incarceration.[142] In order to help the community better understand the experience of incarcerated parents, we created blogs with personal stories by parents who had experienced incarceration and their children. Inside the prison, we held sessions on how a bill becomes a law and how to write your legislators. The currently and formerly incarcerated parents came up with creative ways to communicate with their legislators. The incarcerated parents submitted packets of poems to legislators on separation and loss after working with an artist on a poetry series; this poetry class allowed us to create a safe space to talk about underlying trauma as well as systemic issues, and the participants sent their completed poems to the legislature around Valentine's Day (an idea of one of the participants). The formerly incarcerated parents on the outside had the idea to deliver handmade green shamrock cards for St. Patrick's Day that said, "People Change, Families Reunite." These parents testified in support of S.H.B 1284 alongside of me, helping to undo much of the misunderstandings and some of the stigma that legislators had in believing that incarcerated parents are not deserving, or worse, dangerous in a manner that I could have never done with legal arguments, statistics, and studies.[143]

139. N.Y. Soc. Serv. L. § 384-b (3)(1)(v) (McKinney 2016) (mending the law to add an additional exception to the fifteen-month filing requirement for parents who are or were previously incarcerated).
140. *See* 42 U.S.C. § 675(5)(E).
141. *Id.*
142. S.H.B 1284, 2018 Leg., 63rd Sess. (Wash. 2013) (substitute), http://lawfilesext.leg.wa.gov/biennium/2013-14/Pdf/Bills/Session%20Laws/House/1284-S.SL.pdf (the law not only allowed judges the discretion to expand the current child welfare timeline for termination of parental rights beyond 15 of the last 22 months, but it afforded certain rights for parents to access visitation, their child welfare case planning meetings and hearings, as well as protections at the termination stage).
143. Testimony in Support of SHB 1284, Concerning the rights of parents who are incarcerated or in residential substance abuse treatment, Wash. State Legislature,

After this legislative success in passing S.H.B 1284, in 2015 we conducted a series of policy and leadership trainings with the help of mothers who had previously experienced incarceration. We used the "Reproductive Justice Timeline" activity created by Western States Center as a form of political education and tool for mobilizing toward policy change.[144] The timeline has a series of events throughout history that help connect the issue of parental incarceration to immigrant detention and the defense of immigrant rights, the historical issues of sterilization within communities of color, and genocide.[145] The timeline connects racial, economic, and political subordination, as well as stereotyping, stigma, shaming and silencing, regulation of families, sexual violence, and the control of bodies, genders and sexualities.[146] We added several timeline events to the activity from their own history and advocacy in Washington State, such as the passage of SHB 1284 in 2013. During the training, Tanya Q. and Minna L. came up with an idea for a "Mommy and Me" program to help fund video visits for parents who couldn't afford the high service costs, recognizing the barrier created by a for-profit company that was separating families. They later wrote a grant and received funding for the project, only to hit barriers set by the institution to limit its implementation. It was also out of this training that the participants decided they wanted to work on legislative changes that Minna L. had been researching that would amend Washington's parenting alternative sentencing program that left out people stigmatized for having violent crimes and sex crimes. They also wanted to address the definitions of "parent" as the law limited the program only to primary caregivers. The changes suggested would expand the definitions of custody to reflect the key roles that noncustodial family members play in their children's lives. Tanya Q, and Minna L. came up with a messaging plan that would help change the image of parents with violent crimes, which included the idea of a photographer documenting them parenting from inside.

Senate and House Committees, February 2013 to April 2013, Video of Testimony: https://app.leg.wa.gov/billsummary?BillNumber=1284&Year=2013&Initiative=false#videoSection.

144. W. States Ctr., *supra* note 135, at 28–36 (full timeline attached as appendix).

145. *Id.*

146. *Id.* at 34–36.

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Two years later, the bill was brought forward by Sen. Jeannie Darnielle.[149] Minna L. had provided much of the policy research. Alongside Minna L., Tanya Q. and Deb S., we pushed avenues for storytelling for parents regardless of crime and successfully gained sponsorship for the

147. Minna L., a mother serving time for a violent crime, spending quality time with one of her three-year-old twins at the Washington Corrections Center for Women Holiday Party. Photo credit: Maria Bryk Photography, 2015.

148. Tanya Q., a mother serving time for a violent crime, holds her son Marley at the holiday party at the Washington Corrections Center for Women. Photo credit: Maria Bryk Photography, 2015.

149. S.B. 5307, 2018 Leg., 65th Sess. (Wash. 2018) (substitute), http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/5307-S.pdf [https://perma.cc/TN79-423S].

bill in 2017. It has now been reintroduced in 2018 and 2019 and is getting closer to becoming law each year. However, I know that for it to succeed, it will take a cultural shift from all sides—from those inside, those labeled as survivors, and community members. But, one of the very parents who has been working on developing legislation for the past four years, Tanya Q., keeps getting written out of the bill as she has a serious violent crime. She is staying positive, but it still does not make much sense for legislators to keep her out of a program that would greatly benefit her, her son, and our community. Family ties are said to be one of the number one predictors of support upon release, and this program would allow her to reenter with the support she needs to prioritize rebuilding her relationship and parenting role with her son.

Overall, without the involvement of parents like Minna L. and Tanya Q. who have been charged with violent crimes and who have helped shift the views of key decision makers, it is unlikely that the bill would have made it as far as it has. However, both fear and stereotyping of people with violent crimes are clouding the Washington State legislators' ability to find empathy and compassion for these parents as they return to our community after serving their time. I am aware that it will take more work in centering the voices and participation of people with violent crimes in the legal change process, but I am hopeful that with the voices of those directly affected we can continue to change both hearts and minds.

IV. Waking Up Our Empathy

> "We readily feel for a suffering child but cannot see the child in the adult who his soul fragmented and isolated, hustles for survival a few blocks away from where we shop or work." –Gabor Mate[150]

Gabor Mate,[151] author and physician, discusses our inability to sympathize with adults who are living out the effects of childhood trauma. This highlights the issue of the survivor/perpetrator dichotomy, as many people's experiences do not fall neatly along these oppositional identities. However, our criminal justice system precludes a perpetrator from being a survivor and ignores the fact that many people who commit acts of violence or sexual violence are themselves survivors.[152]

During his work in Vancouver, Canada's Downtown Eastside, Gabor Mate never met a female patient that had not been sexually abused as a child.[153] Similar to the patients Gabor Mate has worked with, in working with people on the inside, almost everyone I work with, both

150. Gabor Mate, M.D., In the Realm Of Hungry Ghosts: Close Encounters With Addiction, 37 (2010).
151. Gabor Mate, M.D., *How Emotions Affect our Cognitive Functioning*, Neuroplasticity and Education Conference, Vancouver, B.C. (2013), https://www.youtube.com/watch?v=OgiqMQTfw1Y.
152. Arielle, *supra* note 4, at 44.
153. Mate, *How Emotions Affect our Cognitive Functioning*, *supra* note 151 at 24:40.

men and women, have relayed to me that they experienced sexual abuse, and often great physical abuse, as children. Most did not have positive adult relationships that allowed them the ability to seek help, and often the abuse came from caregivers who were charged with protecting them. Healing justice[154] does ask us to look at the root of trauma, but much of our criminal justice system has not found a way to grapple with that. This is clear given that "the people that our government is jailing in large numbers, are people that were traumatized as children. That's just the reality of the world we live in."[155]

Interestingly, as I was preparing for the symposium connected to this Article, I got a phone call from someone on the inside who is one year older than me. As a child, he was placed in foster home after foster home as his caregivers struggled with addiction. The system that was "protecting him" from his parents placed him in a boy's home where the boys were being abused by their caretakers. No one listened when they ran to a nearby hotel. The police were called to help them, yet returned them to their 'home,' which was actually the site of their abuse. He told me that he pled to the adults saying, "We're being harmed," but when asked for more information, he didn't feel he could trust the adults in his life to disclose more than that. The adults who came to reprimand him for running found his calls for help secondary to him acting out by running away. Dr. Mate comments on our inability to look at what may be underlying someone's "acting out" as he says, "we act out when we don't have the language to say something in words, that's what acting out actually means . . . kids are acting out all the time and our response is to control the behavior, we respond to the form of the message rather than to the content of it, and we wonder why it doesn't work."[156]

As I listened to this person tell me his story, at seven-years-old, the only person he could call to try to protect him was his mother who he was legally being removed from by the child welfare system. She could only console him and his friends until the police would come and then they would be returned. Eleven years later they were asked to relive this horror when, at eighteen-years-old, he was the part of a huge criminal take down of the perpetrators of harm. He was left with a settlement of money; no "victims services," no justice from his end. When I talk to this person, the true harm that they can't get over is that there was no one available to ask for help, no one prepared to protect them. That harm, he explained, hurt more than the actual sexual abuse he endured.

154. Fania Davis, *Restorative Justice's Promise*, Lecture at the National Bioneers Conference (2015), 16:46, https://youtu.be/g63g1GwAneQ (Explaining that our justice system harms people that harms, healing justice, restorative justice is rooted in indigenous principles of healing and reconciliation, she says restorative justice "sees crime as damage, as harm to relationships, so justice therefore must heal that damage and repair that harm. So restorative justice seeks to heal the harm rather than replicate it.").

155. Mate, *supra* note 151 at 25:56 min.

156. *Id.* at 10:10.

There is something wrong at a fundamental level when a child who is a victim of great harm is placed into the same criminal punishment system as his abusers, just twenty0 years later. The criminal justice system is now tasked with correcting the behavior of that child, now an adult, whose violence is connected to the repressed and undealt-with trauma and anger from the harm he experienced when he was young. That child, once a victim, being 'saved by the system' is now seen as a monster, a serious violent 'offender.'

The harder reality is that we consciously place this adult in a system that is known to harm him. Gabor Mate, when talking about the conditions most desirable for learning, says, "nothing grows where it is not vulnerable . . . to grow, it has to make itself soft and vulnerable."[157] Prisons on the other hand create a state of "constant vigilance" where people are "constantly afraid and on guard."[158] We are aware of what works. As Angela Davis says, for people with histories of addiction, such resources exist for the wealthy, describing centers like Betty Ford.[159] She says to make these truly alternatives, "they wouldn't have to be linked to imprisonment as a last resort."[160] For people with violent crimes, we have models from other countries that have substantially humanized their systems and prioritize the normalization of lives for even those labeled the "most violent."[161] Overall, our criminal legal system is not known for looking into healing, trauma, nor biopsychosocial effects of trauma in a meaningful way. My hope is that as more people share their stories of resilience, we see that we cannot help but connect that the conditions created by prisons are failing to support *all* people on the inside, not just people with nonviolent crimes. Reform cannot get us where we need if our goal is to truly provide safety and security for our communities.

Conclusion

It is my hope that advocates will use this Article in an attempt to engage with policy change that is directly led by the incarcerated community as I believe it will allow us to better address public perception and deeply-rooted beliefs. These beliefs lead us to create changes that actually work against our system's goals of creating public safety. It is my hope that we move away from incremental steps towards decarceration and the practice of creating legal reform that finds solutions only for people with nonviolent crimes and that carves out people who carry

157. *Id* at 30:14.
158. Dolovich, *supra* note 16, at 264.
159. Davis, *supra* note 9, at 109.
160. *Id.*
161. *See, e.g.*, Allegra M. McLeod, *Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives*, 8 Harv. Unbound 109, 122 (2013) (discussing the Scandinavian prisoners' welfare movement, convened in part around a "Parliament of Thieves," which included furloughed prisoners along with criminologists and other experts, and which ultimately organized to substantially transform the conditions in prisons in Norway, Sweden and Denmark).

the stigma of violent crimes or crimes that label them as sex offenders. We must see that our inability to have empathy and to seek changes that support incarcerated people deemed unworthy of change has unintended consequences of creating more violence, less safety, and instability for individuals and our communities. As we seek to meaningfully work directly with people on the inside in our reform efforts, we can counter the belief that certain individuals are undeserving of reform. Instead, we can create solutions and strategies that prioritize decarceration, move beyond gender binaries and uplift communities. Finally, by creating space for those on the inside to share their truth, we can help effectuate the cultural shift work needed to undo stigma and separate one's crime from their character, finding real solutions for accountability that don't rely on prisons.