

THE HARDEST THING I'VE EVER DONE: REENTRY REALITIES OF CRIMINALIZED SURVIVORS*

EMUNAH EVANS,** MARSHA WEISSMAN*** & DEBORAH M. WEISSMAN****

Every year, hundreds of thousands of people throughout the United States are released from prison and face the challenges related to what Nelson Mandela called “the small things” required to manage day-to-day life. The vast literature spawned by what some have termed the “prisoner reentry industry” has focused its attention on instrumental needs of people leaving prison—employment, job training, and substance use treatment. Supports for how to manage “the small things,” however, has largely been ignored.

With respect to women returning from incarceration, their needs have been a secondary concern for the larger reentry movement. This is particularly true for basic reentry needs including housing, economic support, and parenting concerns. Women have gender-specific challenges in addressing these issues. And while both men and women experience the trauma of incarceration, for many formerly incarcerated women, the trauma of domestic violence and sexual and physical abuse magnifies their inability to reacclimate to post-prison life.

Reentry arguably has become the most popular of criminal justice reforms. At the same time, there has been mixed reaction on the part of advocates and academics to the so-called reentry movement. On the one hand, reentry as a criminal legal system reform leaves the basic structure of the U.S. system intact, doing little, if anything, to challenge the punitive policies that push people into prisons in the first place. While reentry programs implicitly recognize that social welfare policies and practices are at play in crime and justice, those considerations are placed at the back end, after someone has already spent years in prison. Yet on the other hand, standing side-by-side with these insightful critiques of reentry is the reality that people leaving prison themselves

* © 2025 Emunah Evans, Marsha Weissman & Deborah M. Weissman.

** Community activist.

*** Department of Sociology, Syracuse University.

**** Reef C. Ivey II Distinguished Professor of Law, UNC School of Law. Acknowledgements: The authors wish to thank Fiona Wanwen Huang and M.H. Tillman for their excellent research assistance. We also wish to thank the editors of the *North Carolina Law Review* for their very helpful suggestions and edits. The author gratefully acknowledges Louis Pérez, Jr., for his support and helpful comments.

acknowledge the need for support in making the transition from years ensconced in a harsh total institution.

Our discussion of the reentry needs of women has been strengthened by the inclusion of a coauthor, Emunah Evans, who has experienced the criminal legal system and is a leader in North Carolina's reentry efforts. Her insights throughout this Article on issues that affect women's pathways to prison, reentry, and the role of directly impacted people in achieving criminal legal system reforms underscores the imperative of listening to the voices of those who have gone through and survived the system.

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INTRODUCTION

After one has been in prison, it is the small things that one appreciates: being able to take a walk whenever one wants, going into a shop and buying a newspaper, speaking or choosing to remain silent. The simple act of being able to control one’s person.

-Nelson Mandela¹

Nelson Mandela wrote these words as he reflected on his release from a five-month prison sentence he served in 1961.² He would undoubtedly

1. NELSON MANDELA, LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA 220 (1994).

2. *Id.* Mandela was arrested, tried, and convicted for inciting a strike and leaving the country without permission. *Id.* at 290. He was sentenced to a five-year prison term. *Id.* Shortly thereafter, he was charged with and convicted of sabotage and sentenced to life imprisonment. *Id.* at 305, 328. He was released in 1990 after serving just over twenty-seven years of incarceration. *Id.* at 562.

experience these emotions more profoundly in 1990 when released from twenty-seven years of incarceration in South Africa.³ Mandela's statement draws our attention to one of the basic, but often overlooked, challenges facing the multitude of people leaving U.S. prisons each year—relearning how to negotiate the mundane experiences of everyday life.

Every year, hundreds of thousands of people throughout the United States are released from prison and face “the small things.”⁴ With few exceptions, the vast literature spawned by what some have termed the “prisoner reentry industry”⁵ has focused its attention on instrumental needs of people leaving prison—employment and job training programs⁶ and substance use treatment.⁷ However, supports for how to manage “the small things” have largely been ignored.

With respect to women returning from incarceration, their needs have been a secondary concern for the larger reentry movement.⁸ This is particularly true for basic adjustment concerns including housing, economic supports, and

3. Zanele Riba, *Nelson Mandela's Release from Prison: 33 Years On*, NELSON MANDELA FOUND. (Feb. 10, 2023), <https://www.nelsonmandela.org/news/entry/nelson-mandelas-release-from-prison-33-years-on> [https://perma.cc/RLS6-RT2U].

4. MANDELA, *supra* note 1, at 220; OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, DEP'T OF HEALTH & HUM. SERV., INCARCERATION AND REENTRY, <https://aspe.hhs.gov/topics/human-services/incarceration-reentry-0> [https://perma.cc/LS5Q-NPY9] (“Each year, more than 600,000 individuals are released from state and federal prisons.”).

5. See Jennifer M. Ortiz & Hayley Jackey, *The System Is Not Broken, It Is Intentional: The Prisoner Reentry Industry as Deliberate Structural Violence*, 99 PRISON J. 484, 485 (2019).

6. See, e.g., Christy A. Visher, Laura Winterfield & Mark B. Coggeshall, *Systematic Review of Non-Custodial Employment Programs: Impact on Recidivism Rates of Ex-Offenders*, 2 CAMPBELL SYSTEMATIC REVS. 1, 2 (2006); Herman J. Bierens & Jose R. Carvalho, *Job Search, Conditional Treatment and Recidivism: The Employment Services for Ex-Offenders Program Reconsidered*, 11 B.E. J. ECON. ANALYSIS & POL'Y 1, 1–5 (2011); Lynn M. Cole, *Transitional Training and Sustainable Employment for Ex-Offenders at Reentry: Public-Private Partnerships (PPP) 1–6* (May 2022) (Ph.D. dissertation, Northcentral University) (on file with the North Carolina Law Review); DAN BLOOM, *EMPLOYMENT-FOCUSED PROGRAMS FOR EX-PRISONERS: WHAT HAVE WE LEARNED, WHAT ARE WE LEARNING, AND WHERE SHOULD WE GO FROM HERE?* 1–3 (2006), <https://files.eric.ed.gov/fulltext/ED493008.pdf> [https://perma.cc/YN43-AAKC].

7. See, e.g., Kelly E. Moore, Robyn L. Hacker, Lindsay Oberleitner & Sherry A. McKee, *Reentry Interventions That Address Substance Use: A Systematic Review*, 17 PSYCH. SERVS. 93, 93–94 (2020); William D. Bales, Shanna Van Slyke & Thomas G. Blomberg, *Substance Abuse Treatment in Prison and Community Reentry: Breaking the Cycle of Drugs, Crime, Incarceration, and Recidivism?*, 13 GEO. J. ON POVERTY L. & POL'Y 383, 384 (2006); Sacha Kendall, Sarah Redshaw, Stephen Ward, Sarah Wayland & Elizabeth Sullivan, *Systematic Review of Qualitative Evaluations of Reentry Programs Addressing Problematic Drug Use and Mental Health Disorders Amongst People Transitioning from Prison to Communities*, 6 HEALTH & JUST. 1, 1–2 (2018).

8. Holly Ventura Miller, *Female Reentry and Gender-Responsive Programming: Recommendations for Policy and Practice*, NAT'L INST. JUST. (May 19, 2021), <https://nij.ojp.gov/topics/articles/female-reentry-and-gender-responsive-programming> [https://perma.cc/Z5FM-NQ6B]; *Five Things About Reentry*, NAT'L INST. JUST. (Apr. 26, 2023), <https://nij.ojp.gov/topics/articles/five-things-about-reentry> [https://perma.cc/5Q5R-WUF7].

parenting concerns.⁹ Women have gender-specific challenges in addressing these issues—in part because, while both men and women experience the trauma of incarceration, for many formerly incarcerated women, the trauma of domestic violence (“DV”), and sexual and physical abuse, magnifies their inability to reacclimate to post-prison life.¹⁰ Moreover, even when gender begins to enter into the reentry discussion, “the investigative gaze has been primarily focused on (cis-) women.”¹¹

Interest in the reentry of incarcerated people directly grows out of interest in mass incarceration. In the spring of 1999, with the U.S. prison population reaching 1.3 million people and growing, then Attorney General Janet Reno posed a seemingly simple question to Jeremy Travis, then director of the National Institute of Justice: “What are we doing about all the people coming out of prison?”¹² In answering the question, Travis introduced the concept of reentry as a network of community-based supports relying on social service agencies to help formerly incarcerated people transition to community.¹³

Reentry arguably has become the most popular criminal justice reform, securing bipartisan support and public and philanthropic funding.¹⁴ The Second Chance Act¹⁵ was signed into law in April 2008, authorizing federal grants to

9. See *infra* Part III.

10. See MELISSA E. DICHTER & SUE OSTHOFF, NRC DV, WOMEN’S EXPERIENCES OF ABUSE AS A RISK FACTOR FOR INCARCERATION: A RESEARCH UPDATE 2–3 (2015), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_IncarcerationUpdate.pdf [<https://perma.cc/7PST-LKSD>] (noting a 2014 study which found that more than seventy percent of incarcerated women have experienced intimate partner violence). This Article uses the term domestic violence (“DV”) or intimate partner violence (“IPV”) interchangeably.

11. Elizabeth Whalley & Colleen Hackett, *Carceral Feminisms: The Abolitionist Project and Undoing Dominant Feminisms*, 20 CONTEMP. JUST. REV. 457, 464–65 (2017).

12. Chris Suellentrop, *The Right Has a Jailhouse Conversion*, N.Y. TIMES (Dec. 24, 2006), <https://www.nytimes.com/2006/12/24/magazine/the-right-has-a-jailhouse-conversion.html> [<https://perma.cc/47WA-MT9U> (staff-uploaded, dark archive)]; ALLEN J. BECK, DEP’T OF JUST., NCJ 183476, PRISONERS IN 1999, at 1 (2000), <https://bjs.ojp.gov/content/pub/pdf/p99.pdf> [<https://perma.cc/4BKS-772M>].

13. JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 354 (2005).

14. See, e.g., Robert Stilson, Opinion, *Prisoner Reentry and the Power of Private Charity*, PHILANTHROPY DAILY (Mar. 31, 2020), <https://philanthropydaily.com/prisoner-reentry-and-the-power-of-private-charity/> [<https://perma.cc/96U6-93N7>]; *Philanthropy and the Dignity of Work: Reimagining Reentry with Brandon Chrostowski*, PHILANTHROPY ROUNDTABLE (Dec. 29, 2022), <https://www.philanthropyroundtable.org/philanthropy-and-the-dignity-of-work-reimagining-reentry-with-brandon-chrostowski/> [<https://perma.cc/QK8E-T988>].

15. The Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (2008) (codified as amended in scattered sections of 18 and 42 U.S.C.).

state and local entities to introduce reentry program models.¹⁶ A first-year appropriation of \$25 million in 2009 quadrupled to \$100 million by 2010.¹⁷

There has been mixed reaction on the part of advocates and academics to the so-called reentry movement. On the one hand, reentry as a criminal legal system reform leaves the basic structure of the U.S. system intact, doing little, if anything, to challenge the punitive policies that push people into prisons in the first place.¹⁸ While reentry programs implicitly recognize that social welfare policies and practices are at play in crime and justice, those considerations are placed at the back end, after someone has already spent years in prison. Loïc Wacquant, for example, challenges the reentry movement for failing to capture the reality that “the vast majority of former convicts experience *not reentry but ongoing circulation between the two poles of a continuum of forced confinement* formed by the prison and the dilapidated districts of the dualizing metropolis.”¹⁹ Yet standing side-by-side with these insightful critiques of reentry is the reality that people leaving prison themselves acknowledge the need for support in making the transition from years ensconced in a harsh total institution.²⁰

Special Note. This Article focuses on how to strengthen reentry supports and services for women, with particular attention to reentry initiatives in North Carolina.²¹ Our discussion of the reentry needs of women has been strengthened by the inclusion of a coauthor, Emunah (Mona) Evans, who has experienced the criminal legal system and is a leader in North Carolina’s reentry efforts. Her insight throughout this Article on issues that affect women’s pathways to prison, reentry, and the role of directly-impacted people in achieving criminal legal system reforms underscores the imperative of listening to the voices of those who have gone through and survived the system. A convergence of factors

16. § 101, 122 Stat. at 661–67.

17. NAT’L REENTRY RES. CTR., U.S. DEP’T OF JUST., THE SECOND CHANCE ACT (FACT SHEET) 1 (2018), https://csgjusticecenter.org/wp-content/uploads/2023/05/July-2018_SCA_factsheet.pdf [<https://perma.cc/3H3M-Q6GR>].

18. Michael Hallett, *Reentry to What? Theorizing Prisoner Reentry in the Jobless Future*, 20 CRITICAL CRIMINOLOGY 213, 216 (2012); Ortiz & Jackey, *supra* note 5, at 488; Renée M. Byrd, “Punishment’s Twin”: *Theorizing Prisoner Reentry for a Politics of Abolition*, 43 SOC. JUST. 1, 5 (2016).

19. Loïc Wacquant, *Prisoner Reentry as Myth and Ceremony*, 34 DIALECTICAL ANTHROPOLOGY 605, 611 (2010).

20. Marsha Weissman & Norman Brown, *Half Stepping Criminal Justice Reform: Reentry and the Experience of Formerly Incarcerated People*, 5 PUBLIC 1, 7–9 (2018), <https://public.imagingamerica.org/journalcontent/2018/5/2/305/index.html> [<https://perma.cc/9C6G-XF63>].

21. It is important to note that there are issues that affect reentry that are not addressed in this Article. Prison conditions generally, opportunities for meaningful work, educational programs, and mental health treatment are some of the conditions of incarceration which may contribute to or diminish reentry efforts that are not fully considered. Nor does the Article address sexual violence in prison or otherwise analyze the successes or failures of the Prison Rape Elimination Act. Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972 (codified as amended at 34 U.S.C. §§ 30301–09). These concerns require additional research in the context of the failures of the carceral system generally and specifically as they affect reentry.

makes the issue of women's reentry timely. As noted above, in recent years, researchers have established that the increasing numbers of women who enter the carceral system have a history of experiencing gender violence.²² While the number of incarcerated women in North Carolina has significantly increased over the years, the state has lagged behind other states that have addressed the needs of this cohort, often referred to as "criminalized survivors."²³ Legislative mandates have required attention to reentry issues, and, recently, North Carolina's Governor issued an Executive Order to incorporate a "whole-of-government" approach to "transform[] statewide reentry coordination and improv[e] outcomes for individuals transitioning through the criminal legal system."²⁴ This Article considers whether these legislative and executive mandates are responsive to the particular needs of women, an overwhelming majority of whom can be categorized as criminalized survivors.²⁵ For this reason, this Article interchangeably refers to this group as criminalized survivors or women who have been incarcerated.

Part I examines the front end of the reentry problem: an increase in the rates of incarceration of women, a phenomenon inextricably tied to reentry. We consider the emerging narrative and understanding of the consequences of DV on women and seek to explain how those experiences give rise to transgressive acts resulting in imprisonment. Part I then considers recent legal reforms to address these issues that might reduce the rates and lengths of incarceration of women. In particular, we focus on the New York State Domestic Violence Survivors Justice Act ("DVSJA"),²⁶ enacted in 2019, that allows the sentencing court to resentence a DV survivor who suffered sexual, psychological, or physical abuse that contributed to their conviction.²⁷ The DVSJA can serve as a model for states that are rethinking the role of intimate partner violence ("IPV") in sentencing people convicted of crimes. At the same time, as a sentencing mitigation statute that facilitates the release of criminalized

22. See DICHTER & OSTHOFF, *supra* note 10, at 2–4.

23. See *infra* Part I. The Vera Institute of Justice reported an eighteenfold increase in the number of women incarcerated in jails in North Carolina from 1970 to 2015 and a fivefold increase of women in North Carolina prisons from 1970 to 2017. VERA INST. OF JUST., INCARCERATION TRENDS IN NORTH CAROLINA 2 (2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-north-carolina.pdf> [<https://perma.cc/2K3T-82HT>].

24. See *infra* Section IV.A.1; N.C. Exec. Order 303, 38 N.C. Reg. 1057, 1059 (Mar. 1, 2024); Timothy Young, *A Step Forward for Second Chances: Bold Moves Taken to Transform Reentry in North Carolina*, N.C. JUST. CTR. (Jan. 30, 2024), <https://www.ncjustice.org/a-step-forward-for-second-chances-bold-moves-taken-to-transform-reentry-in-north-carolina/> [<https://perma.cc/6N3T-T83S>].

25. Erin Collins, *Punishing Gender*, 71 UCLA L. REV. 316, 326–27 (2024) (noting research shows that women often commit crimes because of external factors such as ongoing abuse, victimization, and trauma, and the consequences of gendered forms of harm).

26. Act of May 14, 2019, ch. 31, 2019 N.Y. Sess. Laws 144 (codified as amended at N.Y. PENAL LAW §§ 60.12, 70.45; N.Y. CRIM. PROC. LAW §§ 390.50, 440.47, 450.90).

27. § 3, 2019 N.Y. Sess. Laws at 147–49.

survivors from prison, the DVSJA in turn requires attention to issues related to reentry to support this cohort upon their release.

Part II discusses North Carolina-specific conditions at the inception of the reentry crisis that impacted criminalized victims. It considers the particular burdens that criminalized survivors face when seeking to mitigate culpability, the lack of opportunities for resentencing, and the murky procedures surrounding requests for clemency. Part II concludes with a recommendation that North Carolina consider adopting sentencing reform such as the DVSJA while ending on a cautionary note that without attending to the specific reentry needs of this cohort, sentencing reform will fall short.

Part III turns to the question of reentry and considers the general concerns as well as the specific needs of formerly incarcerated women, most of whom have histories of IPV. It reviews recent reentry scholarship that explores the contradictions within the reentry field—that is, efforts that often sidestep challenges to the socioeconomic structures that contribute to incarceration in the first place and create the most daunting obstacles to successful reentry.²⁸ Part III then comments on the failure to incorporate gender-responsive measures to reentry services and identifies those measures that are likely to improve outcomes for women exiting prison without reinforcing gender stereotypes.

Part IV then examines North Carolina's recent reentry initiatives and offers an assessment of whether they attend to the particular needs of women, and especially women who have experienced IPV. It reviews the annual reports of the North Carolina's State Reentry Council Collaborative ("SRCC") and observes that, notwithstanding the promises of legislative initiatives that might support reentry services, the results have been disappointing. Part IV also reviews reentry efforts initiated by the executive branch and concludes that little political or practical attention emerging from the governor's office focuses on reentering women.

Part V provides insight and analysis of the issues addressed in this Article from the perspective of a woman who has experienced the traumas of IPV, incarceration, and reentry. This part offers a clear description of the challenges women experience as they move to and from incarceration. It demonstrates that gender-responsive reforms that might benefit criminalized survivors are achieved primarily as a result of efforts led by formerly incarcerated women.

The Article concludes with a review of recommendations for states in order to build a robust reentry system that includes gender and DV responsive

28. See, e.g., BRUCE WESTERN, *HOMEWARD: LIFE IN THE YEAR AFTER PRISON* (2018) [hereinafter WESTERN, *HOMEWARD*]; Thomas P. LeBel, Matt Richie & Shadd Maruna, *Helping Others as a Response to Reconcile a Criminal Past: The Role of the Wounded Healer in Prisoner Reentry Programs*, 42 CRIM. JUST. & BEHAV. 108, 118 (2015) (noting the surprising and problematic gap in research about mutual aid and self-help efforts to assist formerly incarcerated individuals).

measures. It repeats the cautions offered throughout: reentry services may fall within the category of “carceral humanism,” that is, the “practice of repackaging punishment practices as social service interventions.”²⁹ Put differently, reentry services purport to attend to the basic needs of people who are leaving punitive institutions, but in the end, may fail to address the fundamental problems of U.S. overincarceration and the structures that both produce and rely on carceral systems.

I. SHIFTING NARRATIVES: THE “CRIMINALIZED SURVIVOR”³⁰ AND PUNISHMENT MITIGATION

This part examines the pathways through which increasing numbers of women enter the U.S. carceral system. It calls attention to the fact that the vast number of women who are incarcerated have a history of experiencing gender violence.³¹ The evidence suggests that IPV often acts to influence the criminal trajectories of survivors. Indeed, these trends increasingly serve as a subject of research related to the structural causes of crime.³² Considerable scholarship and a range of advocacy strategies have identified causal relationships between IPV and “transgressive”³³ behaviors.

A. *The Circumstances of Criminalized Survivors*

Those persons whose status as an offender overlaps with and is often directly related to their experiences as a victim are frequently referred to as “criminalized survivors.”³⁴ Homicide committed against an abusive partner is

29. Collins, *supra* note 25, at 359 (quoting James Kilgore, *Repackaging Mass Incarceration*, COUNTERPUNCH (June 6, 2014), <https://www.counterpunch.org/2014/06/06/repackaging-mass-incarceration/> [https://perma.cc/49UB-FNXV]).

30. For an overview of the term “criminalized survivor,” see generally ALISA BIERRIA, RACHEL CAIDOR, SUMAYYA COLEMAN, AYANNA BANKS HARRIS, SAIRA HUSSAIN, MARIAME KABA, FÁTIME KABRONA, COLBY LENZ, ANOOP PRASAD, NEDA SAID, MAYA SCHENWAR, HYEJIN SHIM, ASH STEPHENS, STACY SUH, EMILY SUH & EMILY THUMA, #SURVIVEDANDPUNISHED: SURVIVOR DEFENSE AS ABOLITIONIST PRAXIS (Alisa Bierria, Mariame Kaba, Essence McDowell, Hyejin Shim & Stacy Suh eds., 2007), <https://view.publitas.com/survived-and-punished/toolkit/page/1> [https://perma.cc/XP9V-BWGN].

31. See DICHTER & OSTHOFF, *supra* note 10, at 2–4.

32. Emily Frances Musson, *Cruel & Unusual Pathways to Crime: A Call for Gender- and Trauma-Informed Correctional Care*, 26 J.L. & POL’Y 713, 732 (2018) (noting the emerging scholarship on women’s pathways to crime as a result of “traumatic violence”).

33. The word “transgressive” is situated within quotes to suggest that although the term refers to acts that are formally criminalized, the authors hold the view that many of the acts committed by criminalized survivors must be contextualized and ought not be considered as behavior that should be managed by the criminal legal system.

34. See BIERRIA ET AL., *supra* note 30, at 6–7; Cynthia Feathers, *Domestic Violence Survivor-Defendants: New Hope for Humane and Just Outcomes*, N.Y. ST. BAR ASS’N. J., Mar. 2020, at 15, 16 (noting that “a critical shift is happening in the treatment of domestic violence victims who commit

the offense most commonly associated with criminalized survivors.³⁵ Incarceration is also the result of drug-related violations, larcenies, and sex work—acts often committed by survivors of DV as coping strategies, for economic survival, or as the result of coercion.³⁶ Additional findings demonstrate that women are often disproportionately punished, including those with diminished agency as a result of abuse and who may undertake a lesser role in the criminal act they commit with an abuser.³⁷ Criminalized survivors may be accused of endangering their children when DV is a factor in the household and may be punished irrespective of their own circumstances as victims of abuse.³⁸ Moreover, women who commit acts of violence against an abusive partner are often sentenced to disproportionately harsher punishment than men who are convicted for the same offense.³⁹

As a result of a deepening awareness among scholars and practitioners of the relationship between the consequences of IPV and the commission of crimes, advocacy projects, policy, and legislative initiatives have emerged to address the injustices derived from the phenomenon of the criminalized survivor.⁴⁰ Local campaigns to obtain justice for individuals wrongly convicted

crimes due to their own victimization”); Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 MICH. L. REV. 1199, 1217 (2022) (observing that abolitionist activists have organized campaigns for criminalized survivors).

35. See Shelby A.D. Moore, *Understanding the Connection Between Domestic Violence, Crime, and Poverty: How Welfare Reform May Keep Battered Women from Leaving Abusive Relationships*, 12 TEX. J. WOMEN & L. 451, 452 (2003).

36. *Id.* at 457 (providing an overview of the types of crimes survivors commit other than homicide); Jared Trujillo, *Reducing Multigenerational Poverty in New York Through Sentencing Reform*, 26 CUNY L. REV. 225, 259–60 (2023); Andrea L. Dennis & Carol E. Jordan, *Encouraging Victims: Responding to a Recent Study of Battered Women Who Commit Crimes*, 15 NEV. L.J. 1, 17 (2014); LIZ KOMAR, ALEXANDRA BAILEY, CLARISSA GONZALEZ, ELIZABETH ISAACS, KATE MOGULESCU & MONICA SZLEKOVICS, THE SENT’G PROJECT, SENTENCING REFORM FOR CRIMINALIZED SURVIVORS: LEARNING FROM NEW YORK’S DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT 1 (2023), <https://www.sentencingproject.org/reports/sentencing-reform-for-criminalized-survivors-learning-from-new-yorks-domestic-violence-survivors-justice-act/> [<https://perma.cc/RWB8-6DYS>]; see also Justine van der Leun, ‘No Choice But To Do It,’ APPEAL (Dec. 17, 2020), <https://theappeal.org/criminalized-survivors-survey/> [<https://perma.cc/RD54-JKTF>] (providing a compilation of harrowing abuses suffered by women who used violence as a means of survival).

37. Sentencing experts have found that statutes often impose the same punishment irrespective of the degree of culpability. See Trujillo, *supra* note 36, at 259 (offering the example of a woman who is the “getaway driver”).

38. For an overview of this issue, see *Nicholson v. Williams*, 203 F. Supp. 2d 153, 153 (E.D.N.Y. 2002).

39. *Words from Prison*, ACLU (June 12, 2006), <https://www.aclu.org/documents/words-prison-did-you-know> [<https://perma.cc/X2QF-6GBD>] (“The average prison sentence of men who kill their female partners is 2 to 6 years. Women who kill their partners are sentenced on average to 15 years, despite the fact that most women who kill their partners do so to protect themselves from violence initiated by their partners.”).

40. Inès Zamouri, *Self-Defense, Responsibility, and Punishment: Rethinking the Criminalization of Women Who Kill Their Abusive Intimate Partners*, 30 UCLA J. GENDER & L. 203, 259 (2023); Deborah

or excessively punished for defending their lives have developed into national advocacy organizations, most notably Survived & Punished.⁴¹ These entities have engaged in campaigns to support criminalized survivors of gender violence and have “challenge[d] the idea that ‘survivors’ and ‘criminals’ are two diametrically opposed groups.”⁴² Abolitionists have demanded the release of incarcerated women, and scholars have examined the mitigating dynamics of “survival homicide” as a matter of defense strategies.⁴³ Experts have investigated the pernicious harms attending the punishment of survivors and their right to relief.⁴⁴ Others have explored ways clemency boards could act to mitigate punishment.⁴⁵

Perhaps the most striking of these efforts have been legislative initiatives to address the disturbing carceral treatment of survivors of domestic violence through sentencing mitigation. Lawmakers, for various reasons, have enacted legislative provisions to reduce sentences for many types of crimes. “[T]he significant ramifications of globally-unparalleled rates of confinement” have ushered in sentencing reform often referred to as the “Second Look

M. Weissman, *Gender Violence, the Carceral State, and the Politics of Solidarity*, 55 U.C. DAVIS L. REV. 801, 851 (2021) [hereinafter Weissman, *Gender Violence, Carceral State*]. DANIELLE MALANGONE, CTR. FOR CT. INNOVATION, UNDERSTANDING THE NEEDS OF CRIMINALIZED SURVIVORS, 7–8 (2020), https://www.innovatingjustice.org/sites/default/files/media/document/2020/Monograph_Overview_11192020.pdf [<https://perma.cc/7P94-G8NV>]; Courtney Cross, *Criminalizing Battered Mothers*, 2018 UTAH L. REV. 259, 278 [hereinafter Cross, *Criminalizing Battered Mothers*] (noting that some states exempt prosecution or include affirmative defenses related to crimes committed by survivors of domestic violence).

41. See BIERRIA ET AL., *supra* note 30, at 7.

42. *Id.*

43. Michal Buchhandler-Raphael, *Survival Homicide*, 44 CARDOZO L. REV. 1673, 1673 (2023) (using the term “survival homicide” to refer to cases where survivors of DV kill abusive partners); see Mariame Kaba, Opinion, *Black Women Punished for Self-Defense Must Be Freed from Their Cages*, GUARDIAN (Jan. 3, 2019), <https://www.theguardian.com/commentisfree/2019/jan/03/cyntoia-brown-marissa-alexander-black-women-self-defense-prison> [<https://perma.cc/H9LC-JY78>]; Victoria Law, *Why Activists Are Calling on Kathy Hochul to “Free Them All,”* NATION (Oct. 15, 2021), <https://www.thenation.com/article/society/domestic-violence-clemency-hochul> [<https://perma.cc/F7N5-UVAJ>] (staff-uploaded archive); ANGELA Y. DAVIS, GINA DENT, ERICA R. MEINERS & BETH E. RICHIE, ABOLITION. FEMINISM. NOW. 6 (2022). See generally LEIGH GOODMARK, IMPERFECT VICTIMS: CRIMINALIZED SURVIVORS AND THE PROMISE OF ABOLITION FEMINISM (2023) (analyzing how most incarcerated women have been abused).

44. INT’L HUM. RTS. CLINIC AT CORNELL L. SCH. & SURVIVED & PUNISHED N.Y., MASS RELEASE NOW: NEW YORK STATE’S OBLIGATION TO DELIVER REPARATIONS FOR CRIMINALIZED SURVIVORS 43–46 (2021), <https://www.survivedandpunishedny.org/wp-content/uploads/2021/10/Mass-Release-Now-Report-Final-2021.pdf> [<https://perma.cc/66N6-2QQC>].

45. LEAH SAKALA, RODERICK TAYLOR, COLETTE MARCELLIN & ANDREEA MATEI, HOW GOVERNORS CAN USE CATEGORICAL CLEMENCY AS A CORRECTIVE TOOL 1 (2020), https://www.urban.org/sites/default/files/publication/102696/how-governors-can-use-categorical-clemency-as-a-corrective-tool_0_1.pdf [<https://perma.cc/5H6G-WWXX>].

Movement.”⁴⁶ National advocacy experts proposed model legislation to address sentences in excess of ten years for the “middle aged and the elderly.”⁴⁷ Practical considerations, moreover, particularly the cost of incarceration, have incentivized legislation to authorize sentence reductions.⁴⁸ In its review of state and federal sentencing mitigation statutes, the Sentencing Project, a national organization that “advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice,”⁴⁹ identified nearly a dozen states and the District of Columbia that have enacted punishment-mitigation laws.⁵⁰

B. *One Response: New York State’s Domestic Violence Survivors Justice Act*

Recent sentencing mitigation efforts have directed new attention to criminalized survivors as a particular cohort.⁵¹ After a decade of organizing by social justice groups largely comprised of criminalized survivors and their advocates, New York State enacted the first statute to address the concerns of criminalized survivors.⁵² The Domestic Violence Survivors Justice Act (“DVSJA”) of 2019 extended protection to criminalized survivors categorized as a special population.⁵³ The DVSJA authorizes judges to depart from sentencing guidelines when a defendant successfully establishes that they were “subjected to substantial physical, sexual or psychological abuse inflicted by a

46. Margaret Colgate Love & Cecelia Klingele, *First Thoughts About “Second Look” and Other Sentence Reduction Provisions of the Model Penal Code: Sentencing Revision*, 42 U. TOL. L. REV. 859, 859–60 (2011). Some attribute these developments to two United States Supreme Court decisions that held unconstitutional the punishment of juveniles deemed to be unduly harsh and in violation of the Eighth Amendment prohibiting cruel and unusual punishment. BECKY FELDMAN, *THE SECOND LOOK MOVEMENT: A REVIEW OF THE NATION’S SENTENCE REVIEW LAWS 7* (2024). Significant attention to sentencing reductions is focused on youth and “emerging adults.” *Id.* at 7–9. For example, the Washington State Supreme Court upheld a lower court’s authority to impose determinate sentences less than life-without-parole for emerging adults. *State v. Carter*, 548 P.3d 935, 939 (Wash. 2024) (en banc).

47. FELDMAN, *supra* note 46, at 9.

48. Love & Klingele, *supra* note 46, at 860.

49. *About Us*, SENT’G PROJECT, <https://www.sentencingproject.org/about/> [https://perma.cc/H8DP-MVPT].

50. FELDMAN, *supra* note 46, at 4. For example, California, Colorado, and New York allow judges to review sentences for certain groups including military veterans, persons sentenced under habitual offender laws, and domestic violence survivors. *Id.* at 5. Federal courts may grant compassionate release for extraordinary and compelling reasons; similarly courts in the District of Columbia may grant compassionate release based on elderly age. *Id.*

51. *Id.* at 19.

52. SURVIVORS JUST. PROJECT, *DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT RESOURCE GUIDE 3* (2022), <https://static1.squarespace.com/static/5fc81cb62a482c42dc14fc0d/t/63b3262c645430422b024a4d/1672685100954/SJP+DVSJA+Resource+Guide+%28Web+Version+-+updated+December+2022%29.pdf> [https://perma.cc/LL79-KRD6].

53. Act of May 14, 2019, ch. 31, 2019 N.Y. Laws 144 (codified at N.Y. PENAL LAW §§ 60.12, 70.45; N.Y. CRIM. PROC. LAW §§ 390.50, 440.47, 450.90); Weissman, *Gender Violence, Carceral State*, *supra* note 40, at 851–52.

member of the same family or household” and that the abuse they suffered was a “significant contributing factor” to their “criminal behavior.”⁵⁴ Defendants must also demonstrate that without the application of DVSJA factors the sentence to be imposed would be “unduly harsh.”⁵⁵ Moreover, the Act also allows survivors already incarcerated to seek resentencing upon the same grounds.⁵⁶ Advocates have recognized that the DVSJA offers a model for states that are rethinking the role of IPV and how these experiences have contributed to the behavior of the incarcerated person.⁵⁷

The implementation of the DVJSA is not without shortcomings. Certain crimes appear exempted from sentencing mitigation, including some of the offenses most likely to pertain to criminalized survivors.⁵⁸ A resentencing mitigation application is available only to those sentenced to at least eight years.⁵⁹ The statute, moreover, imposes an evidentiary burden that is often difficult for survivors to meet because DV often occurs in the absence of witnesses and otherwise presents insurmountable obstacles to obtaining any form of assistance or reporting of abuse.⁶⁰

Certain provisions of the statute have also enabled judges to limit the mitigating purposes of the statute, many of whom have been hostile to the statutory intervention.⁶¹ For example, the statute offers relief to survivors who suffered DV “at the time of the . . . offense.”⁶² The phrase was intended to mean that, at the time of the offense, defendants could demonstrate that the experience of domestic violence contributed to their actions, for instance, as a result of trauma or other circumstances that affected their agency or judgment.⁶³

54. § 1, 2019 N.Y. Laws at 145.

55. *Id.*

56. § 3, 2019 N.Y. Laws at 147–49.

57. KOMAR ET AL., *supra* note 36, at 16 (noting developments, including campaign efforts in Oklahoma and Illinois, the latter limited by a two-year statute of limitations as well as similar reforms introduced in Louisiana, Oregon, and Minnesota).

58. Exemptions include aggravated murder, first-degree murder, or any offense that requires an individual to register as having committed a crime of a sexual nature. § 1, 2019 N.Y. Laws at 145 (providing exceptions incorporated by statutory cross references including aggravated murder, murder in the first degree, murder in the course of rape, terrorism, or convictions that require a person to register as a sex offender).

59. § 3, 2019 N.Y. Laws at 147.

60. § 3, 2019 N.Y. Laws at 148 (“At least one piece of evidence must be either a court record, pre-sentence report, social services record, hospital record, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection.”).

61. KOMAR ET AL., *supra* note 36, at 14.

62. § 1, 2019 N.Y. Laws at 148. It is important to note that the Domestic Violence Survivors Justice Act (“DVSJA”) does not specifically authorize judges to deviate from the sentencing guidelines for all forms of abuse because domestic violence statutes do not include certain forms of nonphysical abuse such as isolation, economic abuse, or other strategies often referred to as “coercive control.” See Evan Stark, *Current Controversies: Coercive Control*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 26–27 (Claire M. Renzetti, Jeffrey L. Edleson & Raquel Kennedy Bergen eds., 3d ed., 2018).

63. KOMAR ET AL., *supra* note 36, at 14.

Some courts, however, have interpreted “at the time of the offense” to mean that the victimization had to have been concurrent with crime, thereby limiting the scope of the statute.⁶⁴ The requirement of demonstrating “substantial” abuse further creates challenges for judges who then have to determine whether the abuse was a “significant” factor. This ambiguity allows for unfettered judicial discretion.⁶⁵ Finally, the requirement that the sentence imposed or to be imposed would be “unduly harsh” has allowed the judges who are antagonistic to the statute to use their disinclination toward mitigation to refuse to deviate from sentencing guidelines.⁶⁶

Gains have been registered, however. Bloomberg Law reports that as of December 2024, a total of sixty-eight people have been resentenced under the DVSJA, and experts continue to train defense counsel and judges on how best to improve outcomes for criminalized survivors.⁶⁷ Yet the question remains: Where does sentencing mitigation leave those who suffered the trauma of past abuse and the destructive nature of the criminal legal system upon their release? New York’s Penal Law statement of the statutory purposes of punishment includes “the promotion of [convicted individuals’] successful and productive reentry and reintegration into society.”⁶⁸ This provision is in line with the Reintegration-Focused Sentencing Model.⁶⁹ However, the enactment of sentence mitigation statutes such as the DVSJA in New York does not adequately address the reentry needs of people released under the new law.⁷⁰ We address reentry issues in Part III below.

64. *Id.*; *see, e.g.*, *People v. Williams*, 152 N.Y.S.3d 575, 576 (N.Y. App. Div. 2021) (mem.), *leave to appeal denied*, 181 N.E.3d 1113 (N.Y. 2022).

65. *See supra* note 61 and accompanying text. *See generally* Alan Rosenthal, *The Complexity of Sentencing Under the DVSJA: A Challenge for Judges and Defense Counsel*, 32 ATTICUS 39 (2020) (analyzing the impact of the DVSJA on sentencing decisions).

66. *See, e.g.*, *People v. Burns*, 172 N.Y.S.3d 90, 92 (N.Y. App. Div. 2022). Burns suffered substantial abuse by his father, which was a significant contributor to the crime but denied relief because the judge determined that the original sentence of twenty-five years to life was not “unduly harsh.” *Id.*; *see also* *People v. Addimando*, 152 N.Y.S.3d 33, 42 (N.Y. App. Div. 2021) (finding that the trial court’s refusal to consider evidence of abuse amounted to “antiquated impressions of how domestic violence survivors should behave”).

67. Beth Wang, *NY High Court to Weigh Domestic Violence Victim Sentencing Cases*, BLOOMBERG L. (Jan. 6, 2025, 3:00 AM), <https://news.bloomberglaw.com/litigation/ny-high-court-to-weigh-domestic-violence-victim-sentencing-cases> [<https://perma.cc/Z9PG-9YRB> (staff-uploaded archive)].

68. N.Y. PENAL LAW § 1.05(6) (McKinney 2006); *In re Acosta v. N.Y.C. Dep’t of Educ.*, 946 N.E.2d 731, 732 (2011).

69. Rosenthal, *supra* note 65, at 40. Reintegration focused sentencing shifts sentencing goals to include “a more complex recognition of the shared responsibility of both the person seeking reintegration and the community in promoting public safety.” Alan Rosenthal, Marsha Weissman & Elaine Wolf, *Unlocking the Potential of Reentry Through Reintegrative Justice*, PATHWAYS FOR OFFENDER REENTRY: AN ACA READER 231 (Russ Immarigeon & Larry M. Fehr eds., 2012). Judges must consider how a sentence to imposed will promote the defendant’s successful reentry at the completion of their sentence. *Id.* at 232.

70. *See* Act of May 14, 2019, ch. 31, 2019 N.Y. Laws 144 (codified at N.Y. PENAL LAW §§ 60.12, 70.45; N.Y. CRIM. PROC. LAW §§ 390.50, 440.47, 450.90).

II. CRIMINALIZED SURVIVORS IN NORTH CAROLINA: THE ANOMALY OF GUILT AND PUNISHMENT

The North Carolina rate of incarceration is among the highest in the world.⁷¹ Black and Brown people are incarcerated at rates disproportionate to the demographics of the state.⁷² North Carolina imposes one of the highest rates of life without parole (“LWOP”) sentences in the country.⁷³ In recent years, there has been a spike in “extreme” sentences contributing to an ever-expanding aging prison population with costly consequences.⁷⁴

Women in particular have been adversely affected by North Carolina’s hardening carceral policies. The number of incarcerated women in North Carolina has significantly increased over the years.⁷⁵ Between 2009 and 2015, more women were added to the state’s prison population than men.⁷⁶ According to the Vera Institute of Justice, from 1980 to 2018, the number of women in jail increased 1,067%, and the number of women in prison increased 386%.⁷⁷ North Carolina has one of the highest numbers of women on death row or serving LWOP sentences.⁷⁸ As described in Part I, the pathway to the carceral system for all of these women is often intertwined with experiences of IPV.⁷⁹

This increase in the incarceration rate of women makes the need to address criminalized survivors in North Carolina a matter of urgency. Moreover, as noted in Part II below, as a result of the state’s structured sentencing laws, criminalized survivors in North Carolina face insurmountable obstacles to

71. The rate of incarceration in North Carolina is 559 per 100,000 compared to the overall rate in the United States of 614 per 100,000. Both these rates are significantly higher than other NATO countries, ranging from a high of 144 per 100,000 for the United Kingdom to a low of 36 per 100,000 in Iceland. *North Carolina Profile*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/profiles/NC.html> [https://perma.cc/QYL7-KD7K].

72. Ben Finholt, *Toward Mercy: Excessive Sentencing and the Untapped Power of North Carolina’s Constitution*, 16 ELON L. REV. 55, 73–74, 79–80 (2024) (citing PRISON POL’Y INITIATIVE, *supra* note 71) (noting that the state “incarcerates people at a higher rate than every country in the world except the United States”).

73. Brandon L. Garrett, Travis M. Seale-Carlisle, Karima Modjadidi & Kristen M. Renberg, *Life Without Parole Sentencing in North Carolina*, 99 N.C. L. REV. 279, 281 (2021) (noting that in North Carolina, life without parole (“LWOP”) is a mandatory sentence for first-degree murder convictions).

74. Finholt, *supra* note 72, at 76.

75. See VERA INST. OF JUST., *supra* note 23, at 1.

76. Wendy Sawyer, *The Gender Divide: Tracking Women’s State Prison Growth*, PRISON POL’Y INITIATIVE (Jan. 9, 2018), https://www.prisonpolicy.org/reports/women_overtime.html [https://perma.cc/RE4J-JCJ9].

77. See VERA INST. OF JUST., *supra* note 23, at 1.

78. See Ashley Nellis, *In the Extreme: Women Serving Life Without Parole and Death Sentences in the United States*, SENT’G PROJECT (Sept. 22, 2021), <https://www.sentencingproject.org/reports/in-the-extreme-women-serving-life-without-parole-and-death-sentences-in-the-united-states/> [https://perma.cc/NH5X-Y3Y7] [hereinafter Nellis, *In the Extreme*].

79. See *supra* notes 34–39 and accompanying text; Catherine M. Mitchell Fuentes, *The “Struggling Good Mother:” The Role of Marginalization, Trauma, and Interpersonal Violence in Incarcerated Women’s Mothering Experiences and Goals*, 81 HUM. ORG. 1, 2 (2022).

obtaining sentencing relief.⁸⁰ North Carolina, at present, pays little attention to enacting innovative measures, such as the DVSJA, that might overcome these obstacles.

A. *Challenges to Mitigating Culpability: North Carolina's Law of Self-Defense*

North Carolina's statute that authorizes the use of deadly force as self-defense has failed women who have experienced life-threatening abuse.⁸¹ Indeed, the state's case law interpreting the self-defense statute has gained notoriety for its unduly restrictive interpretation of the "imminence" factor that requires a reasonable belief that deadly force "is necessary to prevent imminent death or great bodily harm to himself or herself or another."⁸² In *State v. Norman*,⁸³ defendant Judy Norman was convicted of a homicide committed in anticipation that upon awakening from a nap, her husband was either going to kill her or continue his practice of forcing her to prostitute at a truck stop.⁸⁴ Although noting that Norman suffered horrific abuse and degradation for at least twenty years and had unsuccessfully attempted to flee the abuser on numerous occasions, the Supreme Court of North Carolina upheld her conviction based upon its determination that she failed to demonstrate an imminent threat of great bodily harm.⁸⁵ As Martha Mahoney has written, "Norman became one of the most famous cases involving battered women, appearing in many casebooks and hundreds of law review articles."⁸⁶

The *Norman* decision diminishes the opportunities for a self-defense jury instruction to be given in cases involving a DV survivor trapped in daily, life-threatening circumstances who kills an abusive partner in "nonconfrontational circumstances."⁸⁷ This forecloses the possibilities for a jury to consider the

80. See *infra* Section II.B.

81. N.C. GEN. STAT. § 14-51.3 (2024) ("[A] person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if . . . [h]e or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another."). For a helpful overview of the problems of self-defense and the criminalized survivor, see generally Zamouri, *supra* note 40 ("[S]elf-defense is not an effective defense for survivor-defendants.").

82. § 14-51.3; *State v. Norman*, 324 N.C. 253, 264–65, 378 S.E.2d 8, 15 (1989).

83. 324 N.C. 253, 378 S.E.2d 8 (1989).

84. *Id.* at 256–59, 378 S.E.2d at 10–12.

85. Judy Norman was married to her husband for twenty-five years, and his abuse began five years after their marriage. *State v. Norman*, 89 N.C. App. 384, 385, 366 S.E.2d 586, 587 (1988), *rev'd*, 324 N.C. 253, 378 S.E.2d 8 (1989). Norman sought the help of law enforcement, medical assistance, and social services, to no avail. *Norman*, 324 N.C. at 256–57, 378 S.E.2d at 10–11.

86. Martha R. Mahoney, *Misunderstanding Judy Norman: Theory as Cause and Consequence*, 51 CONN. L. REV. 671, 671 (2019).

87. Zamouri, *supra* note 40, at 214–15 (noting the research confirming that women develop a "hypervigilance" and can accurately predict danger from an abuser); Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 414–16

abusive circumstances faced by a criminalized survivor. As a result of *Norman*, judges often consider “imminence” without context related to the well-established circumstances of criminalized survivors who, as studies demonstrate, are best positioned to recognize predicted violence.⁸⁸ In *Norman*, moreover, the relevance of “imminence” was applied more narrowly than in other circumstances where the term is used.⁸⁹ North Carolina is not among the states that have revised and liberalized the definition of “imminence” pursuant to the Model Penal Code or otherwise amended their rules of evidence to support expert testimony in self-defense cases involving criminalized survivors.⁹⁰

North Carolina remains fixed in a distorted application of imminence that leads to criminalized survivors experiencing a miscarriage of justice under circumstances where their conviction is wrongful “in the broadest sense” and

(1991) (noting that the definition of imminence affects jury instructions and the scope of expert testimony); Kailey Ritchie, *The Interpretation of Imminency for Self-Defense in Nonconfrontational Homicides*, AM. U. WASH. COLL. L. CRIM. L. PRAC. (Apr. 10, 2024), <https://www.crimlawpractitioner.org/post/the-interpretation-of-imminency-for-self-defense-in-nonconfrontational-homicides> [https://perma.cc/B5Z2-3R8K]. The current definition of imminence also limits criminalized survivors who seek to rely on imperfect self-defense claims. Buchhandler-Raphael, *supra* note 43, at 1694.

88. Mahoney, *supra* note 86, at 739 n.423.

89. “Imminent” is defined as “ready to take place: happening soon.” *Imminent*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/imminent> [https://perma.cc/QF8F-KZP3] (last updated Dec. 13, 2024); see also Alexander D. Brooks, *Notes on Defining the “Dangerousness” of the Mentally Ill*, in DANGEROUS BEHAVIOR: A PROBLEM IN LAW AND MENTAL HEALTH 37, 55 (Calvin J. Frederick ed., 1978) (arguing that courts and legislatures should create “more carefully articulated definitions” of the term “dangerousness”); *Involuntary Mental Health Treatment*, MENTAL HEALTH AM., https://mhanational.org/issues/involuntary-mental-health-treatment#_ednref1 [https://perma.cc/F39S-7GAN] (last updated Mar. 7, 2024) (definition of imminent danger can include past acts, attempt, or threatened act); Noura S. Erakat, *New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self-Defense*, 56 ARIZ. L. REV. 195, 200 (2014) (relying on a “more flexible understanding of imminence”).

90. See Erin Sheley, *Self-Defense and Political Rage*, 11 TEX. A&M L. REV. 591, 601 (2024). Some states have amended their evidence codes to require the admissibility on the effects of domestic violence and the use of expert testimony on these issues. See Carrie Hempel, *Battered and Convicted: One State’s Efforts to Provide Effective Relief*, 25 CRIM. JUST. 24, 25–26 (2011) (discussing California’s Evidence Code section 1107). See generally Joy Dodge, *Porter v. State: Appropriately Pushing the Limits of the Battered Spouse Syndrome Statute*, 18 U. MD. L.J. RACE RELIGION GENDER & CLASS 235 (2018) (reviewing a similar provision in Maryland’s Code of Courts and Judicial Proceedings, section 10-916, observing that the judicial interpretation of the law creates greater flexibility when interpreting “imminence” in domestic violence cases); LINKLATERS LLP FOR PENAL REFORM INT’L, *WOMEN WHO KILL IN RESPONSE TO DOMESTIC VIOLENCE: HOW DO CRIMINAL JUSTICE SYSTEMS RESPOND?* 1, 15 (2016), https://cdn.penalreform.org/wp-content/uploads/2016/04/Women_who_kill_in_response_to_domestic_violence_Executive_summary.pdf [https://perma.cc/33MU-ZMS4]. North Carolina’s evidence code has been criticized for allowing the credibility of witnesses to be impeached with prior convictions particularly for its impact on victims of domestic violence. See Daniel R. Tilly, *Victims Under Attack: North Carolina’s Flawed Rule 609*, 97 N.C. L. REV. 1553, 1555 (2019). North Carolina also lags behind other countries including France, the United Kingdom, Canada, and Australia with regard to the law of self-defense. See Zamouri, *supra* note 40, at 210, 266–68.

“marred by serious constitutional or other procedural or due process errors.”⁹¹ These injustices add an additional burden to enduring incarceration and further impair the possibility of successful reentry and reintegration with families and communities.⁹²

B. *Inadequate Opportunities to Mitigate the Imposition of Punishment*

In addition to North Carolina’s laws that limit the ability of criminalized survivors to avoid or minimize culpability, the state’s sentencing laws further restrict the opportunity to mitigate the imposition of harsh sentences. In 1994, North Carolina enacted the Structured Sentencing Act (“SSA”),⁹³ which was intended “to help the state maintain control over the criminal justice system and to provide credibility to sentencing.”⁹⁴ The SSA imposed mandatory sentencing guidelines requiring the use of two factors to determine punishment: the felony class charged and the defendant’s prior criminal record level.⁹⁵ The Act mandates sentences of LWOP or death as the only possible punishment for convictions of first-degree murder, which is defined particularly broadly in North Carolina.⁹⁶

The SSA promotes uniformity in sentencing at the expense of context and circumstances that otherwise might mitigate punishment. The sentence within the statute’s mandatory range may indeed include a consideration of aggravating and mitigating factors. However, sentencing mitigation factors bearing on an offender’s status as a victim of domestic violence do not exist.⁹⁷ Moreover, mitigating factors are routinely applied in an arbitrary manner. As

91. Zieva Dauber Konvisser, *Psychological Consequences of Wrongful Conviction in Women and the Possibility of Positive Change*, 5 DEPAUL J. FOR SOC. JUST. 221, 229 (2012).

92. *Id.* at 238–40, 261–62.

93. Act of July 24, 1993, ch. 538, 1993 N.C. Sess. Laws 2298 (codified as amended at N.C. GEN. STAT. §§ 15A-1340.10 to .23).

94. N.C. SENT’G & POL’Y ADVISORY COMM’N, A CITIZEN’S GUIDE TO STRUCTURED SENTENCING 2 (2022) [hereinafter A CITIZEN’S GUIDE], <https://www.nccourts.gov/assets/documents/publications/SPAC-Citizen-Guide-to-Structured-Sentencing-2022.pdf> [<https://perma.cc/RWV3-RCRS>]. For a history of the state’s sentencing acts and their asserted goals leading up to the 1994 act, see LORRIN FREEMAN, N.C. SENT’G & POL’Y ADVISORY COMM’N, THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION: A HISTORY OF ITS CREATION AND ITS DEVELOPMENT OF STRUCTURED SENTENCING 18–20 (2011), https://www.nccourts.gov/assets/documents/publications/commission_history_aug2011.pdf [<https://perma.cc/H4KM-KHHH>].

95. Finholt, *supra* note 72, at 75; A CITIZEN’S GUIDE, *supra* note 94, at 2–3; JAMES M. MARKHAM & SHEA RIGGSBEE DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2–3 (2018). There are two exceptions to the application of the Structured Sentencing Act (“SSA”): driving while impaired and drug trafficking. A CITIZEN’S GUIDE, *supra* note 94, at 2.

96. Garrett et al., *supra* note 73, at 293–94 (suggesting a comparison of the definition provided for first-degree murder in N.C. GEN. STAT. § 14-17(a) with the definition provided in N.Y. PENAL LAW § 125.27(1)).

97. See N.C. GEN. STAT. § 15A-1340.16(e) (2024). Although some of the listed mitigating factors may apply to victims of domestic violence, they are neither specific nor responsive to the circumstances of nonconfrontational killing by a criminalized survivor. *Id.*

one North Carolina sentencing expert has explained, “[o]nce sentencing factors are properly found, however, responsibility shifts back to the judge to decide what to do about them. The rules for *weighing* factors are as loosey-goosey as the rules for finding them are rigid.”⁹⁸ Appellate courts have acquiesced to harsh sentencing decisions and have disregarded a “number of highly significant mitigating factors” where there is only one “relatively minor aggravating circumstance.”⁹⁹

The impact of the SSA on criminalized survivors is devastating. As noted above, North Carolina has one of the highest numbers of women serving LWOP.¹⁰⁰ An estimated 400 women are presently incarcerated for homicide in North Carolina.¹⁰¹ This population presumptively includes women convicted for the death of an abuser or other crimes related to DV for which a sentence of LWOP may be imposed. But because the data published by the North Carolina Department of Adult Correction (“DAC”) does not identify the circumstances of female incarceration, the complex circumstances of criminalized survivors often remain unrecognized.¹⁰²

The rigidity of the SSA obstructs access to mitigation relief for a criminalized survivor and has produced harsh results.¹⁰³ One study has found that “[t]here was a clear spike in the number of extreme sentences after Structured Sentencing was enacted.”¹⁰⁴ Another report further explains the impact of structured sentencing on criminalized survivors:

Allegedly gender-neutral sentencing policies, such as mandatory minimums that do not account for differential involvement in crime between major participants and minor participants place women at an extreme legal disadvantage. For instance, sentencing laws require the same punishment regardless of a defendant’s role in the crime, but women are frequently responsible for a comparatively smaller role in

98. Jamie Markham, *Weighing Aggravating and Mitigating Factors*, UNC SCH. GOV’T BLOG: N.C. CRIM. L. (Mar. 29, 2016), <https://nccriminallaw.sog.unc.edu/weighing-aggravating-mitigating-factors/> [<https://perma.cc/5UD3-TRCR>].

99. *Id.* For example, in *State v. Vaughters*, 216 N.C. App. 356, 725 S.E.2d 17 (2012), the North Carolina Court of Appeals affirmed the trial court’s decision that one aggravating factor outweighed nineteen mitigating factors. *Id.* at 358–59, 725 S.E.2d at 20. The broad and virtually unfettered discretion afforded to a court to disregard mitigating factors is evident in *State v. Green*, No. COA01-1297, 2002 WL 2004320 (N.C. Ct. App. Sept. 3, 2002), wherein the North Carolina Court of Appeals stated, “[t]he sentencing judge, even when required to find factors proved by uncontradicted, credible evidence, may still attribute whatever weight he deems appropriate to the individual factors found when balancing them and arriving at a prison term.” *Id.* at *4.

100. Nellis, *In the Extreme*, *supra* note 78, at 6.

101. Madeline Bauer, *A Right Without a Remedy: The Denial of Relief for North Carolina’s Criminalized Survivors* 6 (2023) (unpublished manuscript) (on file with the North Carolina Law Review).

102. *Id.* at 5–8.

103. Finholt, *supra* note 72, at 76.

104. *Id.*

certain violent crime scenarios such as being a getaway driver. Because they are sometimes coerced into involvement in such crimes by romantic partners or husbands, they are also often disproportionately punished where laws require identical punishments for all defendants regardless of their role in the crime.¹⁰⁵

The SSA further obstructs the implementation of more recent legislation in North Carolina, including the Justice Reinvestment Act,¹⁰⁶ which was intended to reduce sentences, decrease the state's prison population, and support reentry efforts.¹⁰⁷ By eliminating parole, the SSA contributes to a sense of hopelessness and further exacerbates already onerous conditions in prison, particularly for women.¹⁰⁸ Sentences are often served in full without the possibility of sentencing credits.¹⁰⁹ Moreover, those serving LWOP are ineligible for compassionate relief regardless of age or illness or the need to reduce prison populations.¹¹⁰ Finally, as with other mandatory sentencing statutes, the SSA bears traces of political factors that diverge from expert judgment about strategies and purposes of punishment.¹¹¹

105. Nellis, *In the Extreme*, *supra* note 78, at 10 (citations omitted).

106. The Justice Reinvestment Act of 2011, ch. 192, 2011 N.C. Sess. Laws 758 (codified in scattered sections of N.C. Gen. Stat. chapters 7A, 14, 15A, 90, 143B, 148, 164).

107. §§ 1–6, 2011 N.C. Sess. Laws at 758–77; *see also* Rebecca E. Murdock, *The Justice Reinvestment Act in North Carolina and Its Impact on Sentencing*, 29 FED. SENT'G REP. 39, 45 (2016).

108. Phillip Vance Smith, II & Timothy Wayne Johnson, *Hope for the Hopeless: The Prison Resource Repurposing Act*, 100 N.C. L. REV. 713, 723–24 (2022).

109. Sentencing Credits are defined as “[t]ime credits applied to the court-ordered term-of-years sentence of any offender for the purpose of reducing the amount of time to be served. These credits are called Good Time, Gain Time, Earned Time, Discretionary Time and Meritorious Time.” N.C. DEP’T OF PUB. SAFETY PRISONS, POLICY AND PROCEDURE: SENTENCE CREDITS § .3002(a) (5th ed. 2021) [hereinafter SENTENCE CREDITS]; *see also* A CITIZEN’S GUIDE, *supra* note 94, at 4. Note that for those sentenced between 1994 and 1998, they may seek sentencing relief after having served a minimum of twenty-five years pursuant to section 15A-1380.5 of the General Statutes of North Carolina. *See infra* Section II.C.1.

110. ASHLEY NELLIS, THE SENT’G PROJECT, NOTHING BUT TIME: ELDERLY AMERICANS SERVING LIFE WITHOUT PAROLE 14 (2022), <https://www.sentencingproject.org/app/uploads/2022/10/Nothing-But-Time-Elderly-Americans-Serving-Life-Without-Parole.pdf> [<https://perma.cc/62BT-KWAT>].

111. Rachel E. Barkow, *Sentencing Guidelines at the Crossroads of Politics and Expertise*, 160 U. PA. L. REV. 1599, 1602 (2012). North Carolina also failed to pass the Prison Resource Repurposing Act, H.B. 126, 156th Gen. Assemb., Reg. Sess. (N.C. 2023), which would have permitted “release for exceptional lifers willing to earn it through stringent requirements.” *See* Smith & Johnson, *supra* note 108, at 718. As Smith and Johnson have observed, “[l]egislators support the smallest, least meaningful measures, because they fear the political stain of sensational headlines from crimes committed by prematurely released felons; thus, their proposals offer no plan to sustain expansions of correctional and post-release budgets.” *Id.* at 719. North Carolina also failed to move forward with a bill intended to allow courts to reduce sentences based on equitable factors. H.B. 625, 154th Gen. Assemb., Reg. Sess. (N.C. 2021).

C. *Inadequate Opportunities to Obtain Sentencing Relief*

Only two statutory enactments apply to criminalized survivors: “[r]eview of sentences of life imprisonment without parole”¹¹² and Motions for Appropriate Relief.¹¹³ Other sentence reduction mechanisms include executive policies, such as clemency and the application of sentencing credits.¹¹⁴ However, these processes promise little remedy for convicted and sentenced criminalized survivors.¹¹⁵

1. N.C. Gen. Stat. Section 15A-1380.5: “Review of sentences of life imprisonment without parole”

At the time of the passage of the SSA, the North Carolina legislature enacted section 15A-1380.5 of the General Statutes of North Carolina to allow “judicial review of life sentences designed to steer appropriate cases toward clemency.”¹¹⁶ The General Assembly repealed the provision in 1998, but it remains applicable to those sentenced during the limited four-year period between the date of its enactment and the date of its repeal.¹¹⁷ The few who might benefit from the statute, however, will find little by way of meaningful resentencing opportunities pursuant to this statute.

The statute allows an incarcerated person sentenced to LWOP to apply for a judicial review of their sentence but only after having served at least twenty-five years.¹¹⁸ Section 15A-1380.5 provides limited guidance to applicants and no instructions on how to initiate an application for sentence review.¹¹⁹ Applicants are not entitled to a hearing, nor are there provisions for legal representation.¹²⁰ A search of North Carolina laws reveals only that the statute

112. Act of Mar. 23, 1994, ch. 21, § 7, 1993 N.C. Sess. Laws 59, 61 (repealed).

113. N.C. GEN STAT. §§ 15A-1415 to -1422 (2024).

114. See *infra* Section II.D.

115. North Carolina did pass the First Step Act that seeks to mitigate the harms that resulted from the harsh and irrational drug laws, but, as sentencing experts have noted, it includes provisions that “substantially limit the law’s applicability.” Jamie Markham, *The North Carolina First Step Act*, UNC SCH. GOV’T BLOG: N.C. CRIM. L. (July 8, 2020), <https://nccriminallaw.sog.unc.edu/the-north-carolina-first-step-act/> [<https://perma.cc/QG2B-RD4S>] [hereinafter Markham, *First Step Act*].

116. Jamie Markham, *Twenty-Five Year Review of Sentences to Life Without Parole*, UNC SCH. GOV’T BLOG: N.C. CRIM. L. (May 19, 2016), <https://nccriminallaw.sog.unc.edu/twenty-five-year-review-sentences-life-without-parole/> [<https://perma.cc/77LC-49NG>]. For an excellent overview of the history of the statute, see Sam W. Scheipers, *An Uphill Battle: Post-conviction Relief for Criminalized Survivors Under N.C. Gen. Stat. § 15A-1380.5 (2023)* (unpublished manuscript) (on file with the North Carolina Law Review).

117. Markham, *First Step Act*, *supra* note 115.

118. Act of Mar. 23, 1994, ch. 21, § 7, 1993 N.C. Sess. Laws 59, 61 (repealed).

119. See *id.*

120. See *id.*

has been repealed,¹²¹ suggesting that the remedy has been extinguished, which may mislead the few for whom the statute still applies.

The statute similarly fails to provide much guidance to the reviewing judge, other than to indicate the need to consider the trial record and to allow additional discretion to review other factors, including the applicant's correctional record.¹²² Moreover, the statute does not authorize a judge to unilaterally resentence upon a review of the application.¹²³ Instead, the court may recommend that the governor alter or commute the sentence.¹²⁴ The statute does not mandate a time frame for the judge to issue a recommendation, a recommendation that is only reviewable for abuse of discretion.¹²⁵ If denied, an applicant must wait two years before requesting a subsequent review of their sentence.¹²⁶

In 2016, the Supreme Court of North Carolina in *State v. Young*¹²⁷ concluded that section 15A-1380.5 failed to provide meaningful sentencing relief for persons sentenced to LWOP.¹²⁸ The court noted that the statute “guarantees no hearing, no notice, and no procedural rights” and “provides minimal guidance as to what types of circumstances would support alteration or commutation of the sentence.”¹²⁹ Referring to the statute as “deeply uncertain” and “rooted in essentially unguided discretion,”¹³⁰ the court concluded that it “does not reduce to any meaningful degree the severity of a sentence of life imprisonment without the possibility of parole.”¹³¹

121. Act of Oct. 30, 1998, ch. 212, § 19.4(q), 1998 N.C. Sess. Laws 937, 1232 (codified at N.C. GEN. STAT. § 15A-1380.5).

122. § 7, 1993 N.C. Sess. Laws at 61.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. 369 N.C. 118, 794 S.E.2d 274 (2016).

128. *Id.* at 125, 794 S.E.2d at 279; *see also* Scheipers, *supra* note 116, at 9.

129. *Young*, 369 N.C. at 124, 794 S.E.2d at 279; *see also* Scheipers, *supra* note 116, at 9.

130. *Young*, 369 N.C. at 125, 794 S.E.2d at 279.

131. *Id.* As Sam Scheipers has observed,

[B]eyond *Young*, N.C. Gen. Stat. § 15A-1380.5 has only been interpreted with any degree of specificity on one other occasion by the Supreme Court of North Carolina. In *State v. Allen*, the North Carolina Supreme Court held that § 15A-1380.5 does not infringe upon the clemency power of the Governor.

Scheipers, *supra* note 116, at 11 n.67 (citing *State v. Allen*, 346 N.C. 731, 488 S.E.2d 188 (1997)). Scheipers notes that “[o]ne question left unaddressed by both *Young* and *Allen* is when review should be conducted if an individual is serving consecutive life sentences,” and points out that “there is not a concrete answer to this dilemma due to the imprecision with which § 15A-1380.5 was drafted.” *Id.* (internal citations omitted).

2. Motions for Appropriate Relief¹³²

Criminalized survivors sentenced before 1994 and after 1998, who are not eligible for relief under section 15A-1380.5, may seek relief in the form of a motion for appropriate relief (“MAR”) under sections 1411 to 1422 of the General Statutes of North Carolina, which provide limited opportunities for defendants to challenge convictions and sentences.¹³³ The statutes set out two sources of relief. First, an MAR may allege errors occurring before or during the trial; such motions must be made within 10 days after the court enters judgment, except that capital cases may be filed within 120 days.¹³⁴ The second type of MAR may be made at any time after judgment if certain grounds enumerated in the statute are met.¹³⁵

MARs are complicated both procedurally and substantively. Statutory right to counsel notwithstanding,¹³⁶ judges do not automatically make such appointments for an MAR.¹³⁷ Furthermore, few of the substantive grounds enumerated in the statute are likely to be applicable to criminalized survivors: newly discovered evidence, ineffective assistance of counsel,¹³⁸ and—as a procedural matter—when a prosecutor consents to the motion.¹³⁹ In addition to the constraints of the statute, North Carolina case law has further narrowed opportunities for relief.¹⁴⁰

132. N.C. GEN. STAT. §§ 15A-1411 to -1422 (2024) (Motion for Appropriate Relief and Other Post-Trial Relief).

133. See Jessica Smith & Christopher Tyner, *Motions for Appropriate Relief*, in NORTH CAROLINA SUPERIOR COURT JUDGES’ BENCHBOOK 3 (2024). Relief may be a new trial, dismissal of charges, or any other appropriate relief. § 15A-1417(a).

134. § 15A-1414(a).

135. § 15A-1415(b). This Article does not consider all of the ten bases for relief enumerated in the statute that are unrelated to the circumstances of criminalized survivors. For a review of all of the grounds, see Smith & Tyner, *supra* note 133, at 6–12. For a discussion of the procedural elements of MARs, see JESSICA SMITH, ADMIN. OF JUST. BULL., MOTIONS FOR APPROPRIATE RELIEF 22–28 (2010), <https://www.sog.unc.edu/sites/default/files/reports/aojb1003.pdf> [<https://perma.cc/H5VE-CSMW>].

136. N.C. GEN. STAT. § 7A-451(a)(3) (2024) (providing a right to counsel to indigent people in proceedings for a motion for appropriate relief (“MAR”)).

137. Smith & Tyner, *supra* note 133, at 21 (“Interpreting this provision, many judges do not appoint counsel unless the MAR passes a frivolity review.”).

138. § 15A-1415(c), (e).

139. § 15A-1420(e). The statutory provisions of an MAR that are unlikely to apply to a criminalized survivor’s substantive issues include the following: the trial court did not have jurisdiction over the person or subject matter; the acts charged were not, at the time of the proceeding, a violation of criminal law; the conviction or sentence was given under an unconstitutional statute; the conduct the person was prosecuted for was protected by a (state or federal) constitution; the sentence was unauthorized at the time imposed; or the person is entitled to release because their sentence has been fully served. See § 15A-1415(b).

140. *State v. Britt*, 320 N.C. 705, 712–13, 360 S.E.2d 660, 664 (1987) (identifying seven factors outside of the statute that create difficulties for defendants filing MARs).

To make matters worse, none of the substantive or procedural grounds for an MAR that may apply to criminalized survivors are likely to succeed. Survivors often do not disclose the abuse they suffered to their defense attorneys,¹⁴¹ so these issues are rarely raised at trial, meaning they cannot subsequently be raised as claims of newly discovered evidence as grounds for relief.¹⁴² Failure to raise these issues on appeal or through a previous MAR constitutes a procedural default that cannot be waived even where the failure to submit evidence may be due to ineffective assistance of post-conviction counsel.¹⁴³ Allegations of ineffective counsel at trial are likewise complicated and difficult to sustain.¹⁴⁴ MARs that seek review of an unduly harsh sentence are also unlikely to succeed because courts are reluctant to meddle with sentencing structures.¹⁴⁵ Finally, it is reasonable to assume that prosecuting district attorneys will be reluctant to consent to the MAR.¹⁴⁶ Prosecutors, particularly those who are elected, frequently depict themselves as “tough on crime.”¹⁴⁷ In sum, MARs are infrequently granted and provide little by way of justice to criminalized survivors.¹⁴⁸

141. KOMAR ET AL., *supra* note 36, at 7 (explaining that survivors may still be under the coercive control of the person who abused them, that the abuser may threaten to harm them or their families if they disclose, and that other survivors may suffer trauma and other mental health issues that interfere with their ability to provide a clear narrative of their circumstances); see Cross, *Criminalizing Battered Mothers*, *supra* note 40, at 269–70 (reviewing the circumstances where survivors may not wish to disclose abuse even during custody litigation).

142. N.C. GEN. STAT. § 15A-1419 (2024). Emerging medical and sociological evidence provides a more complete understanding of the impact of domestic violence on victims. See, e.g., *Largest Brain Autopsy Study of Female Intimate Partner Violence Decedents Reveals Brain Injury Pathology Unlike That Seen Among Male Contact Sports Athletes*, MOUNT SINAI (Oct. 30, 2023), <https://www.mountsinai.org/about/newsroom/2023/largest-brain-autopsy-study-of-female-intimate-partner-violence-decedents-reveals-brain-injury-pathology-unlike-that-seen-among-male-contact-sports-athletes> [https://perma.cc/NA6A-FKAF]. Notwithstanding the development of scientific evidence that might mitigate culpability, it has proven difficult to succeed on such claims. Daniel G. Orenstein, *Shaken to the Core: Emerging Scientific Opinion and Post-Conviction Relief in Cases of Shaken Baby Syndrome*, 42 ARIZ. STATE L.J. 1305, 1315 (2011) (noting the high bar for reviewing convictions related to “shaken baby syndrome” despite shifting opinions).

143. Smith & Tyner, *supra* note 133, at 26–27.

144. *Id.* at 29.

145. State v. Wilkerson, 232 N.C. App. 482, 492, 753 S.E.2d 829, 837 (2014) (“[I]n the absence of legal error, it is not the role of the judiciary to engage in discretionary sentence reduction,’ since ‘that power resides in the executive branch.’” (quoting State v. Whitehead, 365 N.C. 444, 448, 722 S.E.2d 492, 496 (2012))).

146. Anna Somberg, *What Happens After “Guilty?” A Look into North Carolina’s Motion for Appropriate Relief System*, CAMPBELL L. OBSERVER (Aug. 9, 2023), <http://campbelllawobserver.com/what-happens-after-guilty-a-look-into-north-carolinas-motion-for-appropriate-relief-system/> [https://perma.cc/X7ZX-K6EN].

147. Darcy Covert, *Transforming the Progressive Prosecutor Movement*, 2021 WIS. L. REV. 187, 192 (“For decades, the only rational platform for a district attorney candidate was being tougher on crime than their opponent.”).

148. Jerome M. Maiatico, *All Eyes on Us: A Comparative Critique of the North Carolina Innocence Inquiry Commission*, 56 DUKE L.J. 1345, 1351 (2007).

D. *Executive Mechanisms to Mitigate Sentencing*

Sentencing credits established by the DAC and executive clemency through the governor's office offer two additional forms of sentencing mitigation. A review of these processes reveals that they, too, are unlikely to improve the circumstances of criminalized survivors.

First, sentencing reduction credits are days of credit awarded to incarcerated persons when, according to the DAC, they have exhibited good behavior, engaged in prison work programs, or participated in other programs while serving their sentences.¹⁴⁹ The categories that include credits associated with “earned,” “meritorious,” and “discretionary” time do not reduce the minimum sentence to be served; rather, they may be awarded to incarcerated person as a means to reduce the maximum sentence.¹⁵⁰ These credits are not available for criminalized survivors serving “life.”¹⁵¹

Clemency offers a second constitutional option by which the governor can mitigate a sentence.¹⁵² The process, however, lacks transparency. There is no statutory basis for the public to obtain copies of applications or documents pertaining to a decision.¹⁵³ Clemency is extended infrequently and is always subject to political influence. It is an arbitrary process.¹⁵⁴ In fact, North Carolina's clemency process has recently come under critical review as an

149. N.C. GEN. STAT. § 15A-1340.13(d) (2024) (governing persons sentenced for felonies under the SSA).

150. SENTENCE CREDITS, *supra* note 109, § .3002(d)–(f). It should be noted that “good time” and “gain time” credits were eliminated by the SSA. *See id.* § .3002(b)–(c).

151. *Id.* § .3005(f)(8); *id.* § .3006(a), (c) (prohibiting the reduction of a sentence to less than a minimum, which in the case of LWOP, is life); *id.* § .3007 (showing that meritocracy credits are only available to those eligible for earned credits). Note that these crimes would include Class A and B1 felonies including first and second-degree murder. *See* N.C. SENT'G & POL'Y ADVISORY COMM'N, CLASSIFICATION OF A SAMPLE OF OFFENSES 1 (2023), <https://www.nccourts.gov/assets/documents/publications/sample-offense-list-2023.pdf> [<https://perma.cc/2VH8-ZYQ9>]. It is also important to note that criminalized survivors who are sentenced to a term other than LWOP are nonetheless disadvantaged by the sentencing credit schemes because of the ways that trauma and traumatic brain injuries—often suffered by those who suffered domestic violence—are unable to engage in work or the types of “meritorious” activity that results in time off of the maximum sentence. For a review of these issues, see Emily Zoffer, *Post-Conviction Mechanisms for Criminalized Survivors in North Carolina: Inaccessible Sentencing Reduction Credits and Advocacy for Implementing Legislation 8–10* (Apr. 26, 2023) (unpublished manuscript) (on file with the North Carolina Law Review).

152. The state constitution confers on the governor the right to grant clemency. N.C. CONST. art. III, § 5(6).

153. Ryan C. Fairchild, *Giving Away the Playbook: How North Carolina's Public Records Law Can Be Used to Harass, Intimidate, and Spy*, 91 N.C. L. REV. 2117, 2127 n.55 (2013).

154. Maiatico, *supra* note 148, at 1355 (noting that a North Carolina governor “once refused to recuse himself from a clemency decision regarding a case he prosecuted as district attorney—a seemingly obvious example of a conflict of interest”).

obscure and opaque process that violates due process.¹⁵⁵ Advocates argue that “[p]ardons have become political tools rather than tools for justice” and have called for alternative processes to realize the purposes of clemency.¹⁵⁶ It has been further noted that

“The most important factor in successful clemency applications appears to be the widespread support of influential individuals in the community.” Clemency requests are rarely granted, and when they are, it is generally only after the prisoner has been released from the criminal justice system. The governor also has complete and unfettered authority to reject requests.¹⁵⁷

* * *

More just results could be achieved were North Carolina to adopt New York’s DVSJA as a model by which to address the injustices that result when courts are precluded from considering the consequences of IPV on criminal behavior. But meaningful justice requires more than sentencing mitigation. Criminalized survivors have specific needs that must be addressed upon their release. Mitigation of punishment and attention to reentry are necessary, without which reentry is experienced as “punishment’s twin.”¹⁵⁸ Part III addresses these issues.

III. REENTRY

A. *General Considerations on Reentry*

Reentry has been the criminal legal system’s buzz word for more than two decades.¹⁵⁹ After thirty years of runaway imprisonment, policymakers realized that the phenomenon of mass incarceration inevitably spawned an ever-growing number of people returning home from years of prison with few resources to help them acclimate to the requirements of “free” society.¹⁶⁰ This, in turn, prompted an interest in programs and services to help with this transition—the so-called reentry movement.¹⁶¹

155. Ryan Oehrli, *Some Pardon Applicants in NC Wait Years. Experts Point to Broken System*, CHARLOTTE OBSERVER, <https://www.charlotteobserver.com/latest-news/article288722535.html> [<https://perma.cc/GG4R-SKJF> (dark archive)] (last updated May 29, 2024, 12:48 PM).

156. *Id.*

157. Maiatico, *supra* note 148, at 1355 (citations omitted).

158. Byrd, *supra* note 18, at 1.

159. Jeremy Travis, *Reflections on the Reentry Movement*, 20 FED. SENT’G REP. 84, 85 (2007) (noting the “blizzard” of research and reports on reentry).

160. *See supra* notes 12–13 and accompanying text.

161. *See supra* notes 12–13 and accompanying text.

There is not one single model for reentry programs. Variations include the timing of the program introduction (pre- and/or post-release supervision requirements, such as parole or reentry courts), program focus (employment, substance use, cognitive behavioral intervention, and/or eligibility requirements), and funding source (federal, state, local, and/or philanthropic).¹⁶² The needs that reentry programs purport to address are generally seen as individual-level deficits that stand in the way of assuming a life in the community: low education levels, limited work experience and/or job skills, and a multitude of health and mental health problems.¹⁶³

To date, the key metric in assessing the extent to which a reentry program is successful is recidivism.¹⁶⁴ The research findings as to the effectiveness of reentry programs are mixed.¹⁶⁵ Even those programs that have been deemed successful show only modest changes in recidivism rates and ancillary considerations (for example, long term employment and/or sustained recovery from drug use).¹⁶⁶

The lack of success of reentry programs is a source of great frustration for the many scholars who study these efforts and the policymakers who endorse reentry. Evaluation research offers a multitude of reasons for the lack of success: the failure to address the so-called “criminogenic” characteristics of formerly

162. See generally AMY L. SOLOMON, MICHELLE WAUL, ASHELEY VAN NESS & JEREMY TRAVIS, *OUTSIDE THE WALLS: A NATIONAL SNAPSHOT OF COMMUNITY-BASED PRISONER REENTRY PROGRAMS* (2004) (providing a national scan of reentry programs).

163. Tanner Lockhead, *Unlocking the Vote: History as the Key to Felon Disenfranchisement Litigation in North Carolina*, 44 N.C. CENT. L. REV. 1, 7–8 (2022) (noting that reentry programs generally focus on “housing, employment, and access to social services” while acknowledging the insufficiency of such policies and the need to connect persons reentering their communities through “pro-social activity,” including voting).

164. There is not a uniform definition of recidivism. Some programs use arrest rates, others conviction rates, and still others, reincarceration. Elsa Y. Chen & Sophie E. Meyer, *Beyond Recidivism: Toward Accurate, Meaningful, and Comprehensive Data Collection on the Progress of Individuals Reentering Society*, in *BEYOND RECIDIVISM: NEW APPROACHES TO RESEARCH ON PRISONER REENTRY AND REINTEGRATION* 13, 14–15 (Andrea Leverentz, Elsa Y. Chen & Johnna Christian eds., 2020).

165. See, e.g., Damon M. Petrich, Francis T. Cullen, Heejin Lee & Alexander L. Burton, *Prisoner Reentry Programs*, in *HANDBOOK OF ISSUES IN CRIMINAL JUSTICE REFORM IN THE UNITED STATES*, 335–63 (Elizabeth Jeglic & Cynthia Calkins eds., 2022); Cheryl Lero Jonson & Francis T. Cullen, *Prisoner Reentry Programs*, 44 *CRIME & JUST.* 517, 540 (2015); Catriona Connell, Mary Birken, Hannah Carver, Tamara Brown & Jessica Greenhalgh, *Effectiveness of Interventions to Improve Employment for People Released from Prison: Systematic Review and Meta-Analysis*, 11 *HEALTH & JUST.* 1, 16–17 (2023).

166. RONALD D'AMICO & HUI KIM, *EVALUATION OF SEVEN SECOND CHANCE ACT ADULT DEMONSTRATION PROGRAMS: IMPACT FINDINGS AT 30 MONTHS* xiii (2018); CINDY REDCROSS, MEGAN MILLENKY, TIMOTHY RUDD & VALERIE LEVSHIN, *MORE THAN A JOB: FINAL RESULTS FROM THE EVALUATION OF THE CENTER FOR EMPLOYMENT OPPORTUNITIES (CEO) TRANSITIONAL JOBS PROGRAM v* (2012) (showing that increased employment occurred early in the reentry process but that “the effects faded over time”); Jonson & Cullen, *supra* note 165, at 538 (noting that many reentry are not based on credible theories and are not faithfully implemented). The study also found that “employment reentry programs . . . have, at best, a modest impact on recidivism.” *Id.* at 555.

incarcerated people—antisocial personalities and peer associations; inadequate service intensity; inadequate assessment; insufficient treatment dosage; and poor implementation of the program design.¹⁶⁷ The narrow focus on recidivism as the key metric of reentry programming success channels the content of reentry programming and directs our attention to “magic bullet” solutions, like a job or addiction treatment, to prevent return to criminal behavior.¹⁶⁸ An aspect of reentry that tends to be neglected or ignored is the shock that accompanies the return to community from a total institution—a place where every aspect of life is regulated and surveilled; a place where time stands still while the outside world continues to evolve and change.

The efforts by policymakers and applied researchers to fine tune reentry programs to reduce recidivism not only sidestep these fundamental readjustment issues, but they also avoid confronting the most daunting obstacles that are embedded in the very structure of U.S. society. While this may be understandable given the seemingly intractable nature of late-stage capitalism—concentration of wealth, growing inequality, and the dismantling of the welfare state¹⁶⁹—nonetheless it is these factors that explain inherent limitations on reentry as currently envisioned.¹⁷⁰ Loïc Wacquant sharply criticized the current discussion of reentry and reintegration as ahistorical and nonempirical:

To speak of “pathways of reintegration” . . . disregards the hard fact that there was *no integration prior to incarceration* as evidenced by the social profile of jail detainees in America How could former prisoners be

167. Jonson & Cullen, *supra* note 1665, at 544–48; Petrich et al., *supra* note 165, at 335–63.

168. Kelly E. Moore, Robyn L. Hacker, Lindsay Oberleitner & Sherry A. McKee, *Reentry Interventions That Address Substance Use: A Systematic Review*, 17 PSYCH. SERVS. 93, 96 (2020).

169. Angela Y. Davis, *Race and Criminalization: Black Americans and the Punishment Industry*, in THE HOUSE THAT RACE BUILT: ORIGINAL ESSAYS BY TONI MORRISON, ANGELA Y. DAVIS, CORNEL WEST, AND OTHERS ON BLACK AMERICANS AND POLITICS IN AMERICA TODAY 264, 271 (Wahneema Lubiano ed., 1998). See generally David Garland, *The Current Crisis of American Criminal Justice: A Structural Analysis*, 6 ANN. REV. CRIMINOLOGY 43 (2023) (arguing that America’s failing welfare state and lack of class solidarity have shaped the nature of crime and punishment in contemporary America); Raymond J. Michalowski & Susan M. Carlson, *Crime, Punishment, and Social Structures of Accumulation: Toward a New and Much Needed Political-Economy of Justice*, 16 J. CONTEMP. CRIM. JUST. 272 (2000) (exploring the impact of larger-scale, sociological forces on patterns of crime and justice).

170. For more robust discussions on how these structural conditions inhibit profound criminal legal system reform including in the area of reentry, see generally Garland, *supra* note 169. Garland argues that America’s vast carceral project is rooted in economic and racial inequality with these conditions affecting both the level of and response to crime. *Id.* at 45. Garland further maintains that criminal justice reform will need to be aligned with “larger movements for racial and economic justice” in order to be successful. *Id.* at 48. Garland encourages going beyond program fixes to approaches that begin to touch upon structural changes and by linking proposed criminal legal reforms to broader social reforms. *Id.* at 58; see also Sara Wakefield, *Criminal Justice Reform and Inequality*, 47 AM. J. CRIM. JUST. 1186, 1192 (2022) (essentially agreeing with this view but with the caveat that such fundamental changes may sound “unrealistic”).

“re-integrated” when they were never integrated in the first place and when there exists no viable social structure to accommodate them outside? How could there be “reentry” when they are enmeshed in a carceral lattice spanning the prison and neighborhoods deeply penetrated and constantly destabilized by the penal state?¹⁷¹

There is a growing body of scholarship exemplified by the work of sociologists Bruce Western, Shadd Maruna, and Thomas LeBel that recognizes larger socioeconomic challenges to reentry, thus broadening the reentry agenda to incorporate the more holistic concept of reintegration.¹⁷² Professor Western, for example, connects reentry and reintegration to the idea of citizenship, by which he means, “a public declaration of equality.”¹⁷³ Western asserts that, over time, citizenship has come to encompass not only basic civil rights such as voting and free speech, but social welfare rights, such as education and health care.¹⁷⁴ Accordingly, for formerly incarcerated people to become full citizens requires not only arrival home, but also addressing the conditions of inequality that ensnared them in the first place.

Based on their Boston Reentry study research, Western and his coauthors, Anthony Braga, Jaclyn Davis, and Catherine Sirois, elaborate the meaning of reentry success: “a successful transition from prison in our analysis involves attaining a basic level of material and social well-being consistent with community membership.”¹⁷⁵ The Boston Reentry study documents that prison reentry is not just a struggle over basic and immediate material needs—housing and means of subsistence—but an emotional struggle engendering anxiety about day-to-day life experiences, such as how to use public transportation, new technology, and public spaces.¹⁷⁶ The lack of familiarity with these mundane tasks is experienced as a source of embarrassment and stigma—an identifying mark of one’s former incarceration. Professor Maruna calls this “the desistance perspective,” focusing on the importance of personal relationships with family, community members, and formerly incarcerated people to cushion the reentry

171. Wacquant, *supra* note 19, at 612.

172. See generally WESTERN, HOMEWARD, *supra* note 28 (compiling the first-hand accounts of former inmates and their challenges post-release and ultimately concluding that their reintegration is crucial in addressing those challenges); LeBel et al., *supra* note 28 (examining the high rate at which staff members working for prisoner reentry programs were formerly incarcerated themselves and what this says about reintegration).

173. Bruce Western, *Incarceration, Inequality, and Imagining Alternatives*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 302, 302 (2014).

174. *Id.*

175. Bruce Western, Anthony A. Braga, Jaclyn Davis & Catherine Sirois, *Stress and Hardship After Prison*, 120 AM. J. SOCIO. 1512, 1515 (2015).

176. *Id.* at 1535–37.

process.¹⁷⁷ In contrast to the service framework dominating reentry programming that defines formerly incarcerated people as broken and needing to be fixed, desistance has a strength-based orientation.¹⁷⁸

These critiques of the reentry movement pose a conundrum. On the one hand, standing side-by-side with these insights is the reality that people leaving prison themselves acknowledge the need for support in making the transition from years ensconced in a harsh total institution. However, the kind of support valued by many directly impacted people is not just about social service supports, but how to manage the mundane, everyday routines of life—what Nelson Mandela called “the small things.”¹⁷⁹

Yet on the other hand, recognizing and identifying the larger social structural factors underlying mass incarceration and mass reentry are essential reminders that the carceral state is deeply embedded in the mechanisms of the U.S. political economy. This conundrum could begin to be resolved by incorporating reforms to the criminal legal system guided by the proposition that “reentry begins at arrest.”¹⁸⁰ From this vantage point, reentry initiatives could include alternatives to arrest and incarceration, sentencing reform to reduce the length of incarceration, robust expansion of work and educational release so that incarcerated people begin to have real encounters with the outside world, revision of prison programming to more closely approximate real-world experiences (for example, prison-based higher education), and reforms to post-release supervision, such as the “Less is More” legislation enacted in New York State.¹⁸¹

177. Shadd Maruna, *Desistance as a Social Movement*, 14 IRISH PROB. J. 5, 8 (2017). This perspective challenges one of the cornerstones of reentry programming, reliance on the risk and needs model to determine needs of the formerly incarcerated and use the findings to slot people into programs assumed to be responsive to those needs. *Id.*

178. See John H. Laub & Robert J. Sampson, *Understanding Desistance from Crime*, 28 CRIM. & JUST. 1, 26 (2001). Desistance theories note that offenders are influenced by positive social contexts and are more likely to desist when their behavioral choices are influenced efforts to support self-esteem and reconstitute social bonds. *Id.* at 48–49.

179. See *supra* note 1 and accompanying text.

180. Rosenthal et al., *supra* note 69, at 229.

181. Act of September 17, 2021, ch. 427, 2021 N.Y. Laws 1278 (codified as amended at N.Y. EXEC. LAW § 259). The Less Is More Act was passed by the New York legislature and signed into law on September 17, 2021. *Id.* Under Less Is More, people doing well on parole will be rewarded with time reduced from their terms of supervision. § 2, 2021 N.Y. Laws at 1279–80. Re-incarceration for technical violation of parole is no longer permitted except for the most serious and repeated cases. § 6, 2021 N.Y. Laws at 1287–88. For a summary of the Less is More Act, see generally EMILY NAPIER SINGLETARY & GABRIEL SAYEGH, *NEW YORK’S LESS IS MORE ACT: ONE-YEAR ANNIVERSARY REPORT* (Jules Verdone & Yonah Zeitz eds., 2022), <https://lessismoreny.org/coalition-issues-2nd-status-report-on-implementation-of-the-less-is-more-act/> [<https://perma.cc/VFQ3-WBGB>]. For data on changes in the New York State prison population, see generally ELIZABETH JOHNSON, *TRENDS IN THE NEW YORK STATE PRISON POPULATION, 2008–2023* (2023), <https://datacollaborativeforjustice.org/wp-content/uploads/2023/07/PrisonPop.pdf> [<https://perma.cc/3XEZ-RVZ9>]. The Less is More Act has

These policies, with a gender-specific focus, are valuable to reentry initiatives for women. Gender-specific concerns, particularly those of criminalized victims, affect women uniquely, and need to be addressed in reentry initiatives. The State of North Carolina is embarking on an ambitious effort to create responsive resources to support people leaving its state prisons.¹⁸² This presents an opportunity to include elements that not only address instrumental needs such as employment, but also to implement innovative reforms such as those introduced in the DVSJA introduced in New York. These gender-specific reentry needs are discussed next.

B. *Gender-Responsive Reentry Practices*

The promises and challenges of the reentry practices described above are relevant to all individuals who are exiting prisons, although they may impact each woman differently. Women face issues that are often wholly distinguishable from incarcerated men.¹⁸³ Bruce Western forthrightly acknowledges this in his insightful book, *Homeward*:

Most research on the effects of incarceration focuses on the experience of men, but the experience of women is so distinct that I provide a separate discussion in chapter 9. Most people who go to prison have known great vulnerability through trauma, victimization, mental illness, and drug addiction. The biographies of the women we interviewed were regularly the most troubled. They reported the most serious mental health problems and lifetimes of victimization that began in childhood. But these women also retained strong connections to their children and families. Women's incarceration presented the deepest moral ambiguities and underscored the segregative character of incarceration—having one's connection to family and community severed as a mode of punishment.¹⁸⁴

This section addresses the dire reentry circumstances of formerly incarcerated women, the overwhelming majority of whom include victims of

contributed to the 90% decline in the number of people returned to prison from 7,228 in 2008 to 689 people in 2023. *Id.*

182. See *supra* note 24 and accompanying text.

183. See Bruce Western, Anthony Braga & Rhiana Kohl, *A Longitudinal Survey of Newly-Released Prisoners: Methods and Designs of the Boston Reentry Study*, 81 FED. PROBATION J. 32, 34 (2017). See generally ANDREA M. LEVERENTZ, *THE EX-PRISONER'S DILEMMA: HOW WOMEN NEGOTIATE COMPETING NARRATIVES OF REENTRY AND DESISTANCE* (2014) (documenting the results of several interviews with formerly incarcerated women and exploring how the issues they face pre- and post-incarceration are unique to and shaped by womanhood); Miller, *supra* note 8 (examining the unique challenges faced by women reentering society after incarceration and offering potential solutions to address these challenges).

184. WESTERN, *HOMEWARD*, *supra* note 28, at 8.

domestic violence.¹⁸⁵ Demanding attention to gender distinctions and the impact of domestic violence on formerly incarcerated women is congruent with findings asserted from the local to the global: from the North Carolina 2018 SRCC's Women and Incarceration Workgroup¹⁸⁶ to the UN Human Rights Committee's Review of the United States' compliance with its duties and obligations under the International Covenant on Civil and Political Rights ("ICCPR").¹⁸⁷

As set forth in Section II.A, reentry services must consider and address the conditions of inequality that serve as pathways to incarceration in the first place.¹⁸⁸ However, attending to the needs of women exiting prison does not address the entrenched problems of overincarceration or the ways in which the criminal system may harm women differently than men. The recommendations for gender-responsive reentry services, moreover, require an additional cautionary note. Awareness of the different needs and circumstances, as Erin Collins has advised, should not

replicate gender stereotypes that feminism works against. Moreover, a feminism that relies on gender as an exclusive category of analysis to improve conditions for women in the criminal punishment system cannot account for the ways such interventions fortify and expand the reach of the system itself, even if it leads to arguably better outcomes for

185. See Zamouri, *supra* note 40, at 205–06. The National Clearinghouse for the Defense of Battered Women identifies a range of issues such as family reunification, economic needs, mental health, substance use and trauma-informed concerns, barriers to housing, and transportation issues as key concerns. See NAT'L CLEARINGHOUSE FOR THE DEF. OF BATTERED WOMEN, WHEN VICTIMS OF BATTERING REENTER THEIR COMMUNITIES AFTER JAIL OR PRISON: A COMPILATION OF RESOURCES FOR ADDRESSING CIVIL LEGAL ISSUES 6, 8, 10, 17 (2016), <https://drive.google.com/file/d/1BIX8lItYsFaEntZ9aRFwsLyUORhKc5Mh/view> [<https://perma.cc/VDS5-YARP>].

186. STATE REENTRY COUNCIL COLLABORATIVE, 2018 RECOMMENDATIONS 72–78 (2018) [hereinafter SRCC 2018], <https://www.ncdps.gov/documents/files/state-reentry-council-collaborative-2018-report/open> [<https://perma.cc/6K7C-GWLJ>].

187. SARAH A. DÁVILA, ÁMBAR Z. REYES PÉREZ, JACOB BARON, JENNA CORBETT, KATE Y. MCHUGH, MICHAEL MCPHERSON, MIRA GELFMAN, MONIKA JORDAN & WOODLEY JAMES, INT'L HUM. RTS. CLINIC UNIV. ILL. CHI. SCH. L., SUMMARY RECORD OF THE HUMAN RIGHTS COMMITTEE'S 5TH PERIODIC REVIEW OF UNITED STATES REPORT ON COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 161 (2024), <https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1029&context=whitepapers> [<https://perma.cc/Q5T6-M6A9> (staff-uploaded archive)]; see also Courtney Cross, *Reentering Survivors: Invisible at the Intersection of the Criminal Legal System and the Domestic Violence Movement*, 31 BERKELEY J. GENDER L. & JUST. 60, 83–84 (2016) (remarking on two studies that revealed high rates of domestic violence among incarcerated women in the US); Musson, *supra* note 32, at 735 (noting that “the judge cannot take extenuating and mitigating circumstances (such as coercion or duress) into account in the sentencing phase” when sentencing women); LEVERENTZ, *supra* note 183, at 8 (observing the relationship between victimization in childhood, later victimization in adulthood, and experience with the criminal justice system).

188. See *supra* Section II.A (reviewing the limited exculpatory and mitigating options for criminalized survivors).

some women. For those who believe that we must attend both to the ways the criminal system targets people because of their gender (and race, socioeconomic status, sexual orientation, and other axes of identity) and work to deconstruct the carceral system, an abolitionist ethic is also necessary.¹⁸⁹

1. Housing

Housing is fundamental to reentry. It provides a stable foundation without which gaining employment, enrolling in educational programs, and attending medical and other appointments necessary for well-being and reentry success would be nearly impossible.¹⁹⁰ All persons exiting from prisons face barriers to stable housing due to the likelihood of eligibility restrictions for public housing and the stigma of a criminal record which dissuades private market landlords from renting their premises to the formerly incarcerated.¹⁹¹ Women, further, have additional burdens to obtaining housing due to their more severe economic marginalization.¹⁹² Thus, they often experience higher rates of homelessness and housing instability following reentry.¹⁹³

189. Collins, *supra* note 25, at 342–43. Professor Collins also cautions about the ways in which gender-responsive reentry advocacy can reinforce the gender binary. *Id.* at 349–50.

190. *Housing First*, NAT'L ALL. TO END HOMELESSNESS (Mar. 20, 2022), <https://endhomelessness.org/resource/housing-first/> [<https://perma.cc/VD47-64A5>].

191. See U.S. DEP'T OF HOUS. & URB. DEV., OFF. OF GEN. COUNS., GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS 1–2 (Apr. 4, 2016), https://www.thehousingcenter.org/wp-content/uploads/2022/06/HUD_OGCGUIDAPPFHASTANDCR.pdf [<https://perma.cc/4PBH-43B2>]. The Fair Housing Act has offered some protections for persons with criminal records and prohibits housing decisions with discriminatory impacts on persons of color; however, it does not prohibit criminal background checks. *Id.* at 2. It prohibits blanket policies that deny housing to someone with a conviction and requires a landlord to show the necessity of refusing to rent someone with a criminal record poses a “demonstrable risk to resident safety and/or property.” *Id.* at 6. However, “[m]uch of HUD’s guidance on evaluating current and potential tenants is advisory and not mandatory” and has failed to dismantle “barriers for people with criminal records and rais[e] fair housing concerns.” See Kim Johnson, *Housing Access for People with Criminal Records*, 6 NAT'L LOW INCOME HOUS. COAL. 28, 29 (2021). Similarly, housing assistance and protections under the federal Violence Against Women Act are limited and unavailable to many victims. See Deborah M. Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Laws and Policies*, 2020 UTAH L. REV. 1, 16 (2020) [hereinafter Weissman, *Economic Justice*].

192. See Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.) (finding significant economic hardship suffered by survivors of gender violence); Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between “the Truly National and the Truly Local,”* 42 B.C. L. REV. 1081, 1081 n.3 (2001) (citing to the various Senate and House committee hearings).

193. Ariel Roddy, Kaelyn Sanders, Christian Sarver & Emily Salisbury, *Financial Marginalization, Housing Access, Transportation, and Employment: Intersectional Considerations in Women’s Reentry*, 32 KAN. J.L. & PUB. POL’Y, 55, 67 (2023); Nicole Lawson, *It’s a Man’s Prison: How the Traditional Incarceration Model Fails Female Offenders in Kansas*, 25 KAN. J.L. & PUB. POL’Y, 273, 286 (2016).

Moreover, women whose housing history includes evictions and property damage claims due to incidents of DV are likely to face additional challenges to obtaining housing.¹⁹⁴ Additionally, a formerly incarcerated woman with a history of DV may have an erratic work history, diminishing the willingness of a landlord to rent property to her.¹⁹⁵ Frayed personal relations may also limit a woman's ability to reside with family members. Lastly, reentering women of color—as with all aspects of the carceral system—are disproportionately disadvantaged when seeking housing.¹⁹⁶

2. Employment and Economic Stability

Employment, particularly stable employment that offers living wages, enables formerly incarcerated persons improved opportunities to reintegrate into their communities.¹⁹⁷ Women exiting prison, however, often have prior economic challenges that follow them throughout the reentry process. The disturbing long-term economic consequences of DV, including a lack of a stable work history as a result of physical injuries and emotional trauma, financial abuse, and credit crises, have been repeatedly documented to illustrate a survivor's diminished opportunities to successfully (re)enter the workforce.¹⁹⁸

Furthermore, the gendered nature of employment opportunities relegates many women leaving prison to low-paying jobs or entirely disqualifies them from certain categories of work.¹⁹⁹ Women with drug convictions—an offense often related to surviving domestic violence—are often barred from jobs that

194. Rasheedah Phillips, *Addressing Barriers to Housing for Women Survivors of Domestic Violence and Sexual Assault*, 24 TEMP. POL. & C.R. L. REV. 323, 324–25, 328 n.36, 329 (2015) (observing that victims of domestic violence may frequently break their leases in order to escape their abusers).

195. Weissman, *Economic Justice*, *supra* note 191, at 3–4.

196. Roddy et al., *supra* note 193, at 70.

197. See Alese Wooditch, Liansheng Larry Tang & Faye S. Taxman, *Which Criminogenic Need Changes Are Most Important in Promoting Desistance from Crime and Substance Use?*, 41 CRIM. JUST. & BEHAV. 276, 280, 286 (2014).

198. Weissman, *Economic Justice*, *supra* note 191, at 10–12, 18–19; Judy L. Postmus, Gretchen L. Hoge, Jan Breckenridge, Nicola Sharp-Jeffs & Donna Chung, *Economic Abuse as an Invisible Form of Domestic Violence: A Multicountry Review*, 2 TRAUMA, VIOLENCE, & ABUSE 1, 2 (2018); see also NICOLA SHARP-JEFFS, CHILD AND WOMAN ABUSE STUD. UNIT (CWASU) LONDON METRO. UNIV., A REVIEW OF RESEARCH AND POLICY ON FINANCIAL ABUSE WITHIN INTIMATE PARTNER RELATIONSHIPS 7–13 (2015), <https://repository.londonmet.ac.uk/1482/1/Review-of-Research-and-Policy-on-Financial-Abuse.pdf> [<https://perma.cc/6UDY-NQDN>] (describing forms of financial abuse); Jamie Haar, *Women's Work: Economic Security in the Domestic Violence Context*, 31 HOFSTRA LAB. & EMP. L.J. 471, 488 (2014); Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 423 (2013).

199. Jennifer K. Wesely & Susan C. Dewey, *Confronting Gendered Pathways to Incarceration: Considerations for Reentry Programming*, 45 SOC. JUST. 57, 60–61 (2018); Torrey McConnell, *The War on Women: The Collateral Consequences of Female Incarceration*, 21 LEWIS & CLARK L. REV. 493, 504 (2017).

they might otherwise be eligible for.²⁰⁰ Women with criminal records are also likely to be disqualified from many types of jobs that are commonly occupied by women, including nursing, health care, child care, and elder care.²⁰¹

Federal reforms to the welfare system that impose a lifetime disqualification of persons with drug felony convictions from obtaining federal food assistance benefits, Supplemental Nutrition Assistance Program (“SNAP”) and Temporary Assistance for Needy Families (“TANF”), disproportionately disadvantage women who often rely on such benefits to avoid financial dependence on the person who has harmed them.²⁰² Although states may opt out or modify the lifetime ban, as recently as 2023, “half the states remain committed in some fashion to this outdated artifact of the War on Drugs.”²⁰³ Further, “modified versions of the SNAP/TANF bans . . . introduc[ed] greater state scrutiny of recipients’ conformity to state-sanctioned behavioral norms,” and are “‘not inherently less punitive’ than full bans.”²⁰⁴ Other punitive consequences that diminish reentry efforts include restrictions on driver’s license eligibility, denial of voting rights, and ineligibility for student loans.²⁰⁵

Employment discrimination challenges, together with the punitive nature of the U.S. welfare state that restricts much-needed social supports, disproportionately harm women, particularly those with children; interfere with family reunification; and serve to prolong retribution past incarceration.²⁰⁶ These structural policies and practices disenfranchise women from their communities, create financial instability, and render women vulnerable to abusive relationships in order to survive.

3. Health Concerns

Formerly incarcerated women often find few services that attend to their particular and heightened mental health needs.²⁰⁷ Women often seek mental health support to manage stress related to gendered forms of trauma but find

200. McConnell, *supra* note 199, at 504. Over a third of women in prison have felony drug convictions. *Id.* at 505.

201. Eugene M. Hyman, *The Scarlet eLetter and Other Roadblocks to Redemption for Female Offenders*, 54 SANTA CLARA L. REV. 119, 122 (2014) (citations omitted).

202. 21 U.S.C. § 862a; McConnell, *supra* note 199, at 508 (critiquing the failure to recognize the relationship between domestic violence and drug-related offenses).

203. Margaret Love & Nick Sibilla, *Accessing SNAP and TANF Benefits after a Drug Conviction: A Survey of State Laws*, COLLATERAL CONSEQUENCES RES. CTR. (2023), <https://ccresourcecenter.org/national-snap-tanf-drug-felony-study/> [https://perma.cc/P4CP-CBFT].

204. *Id.* (quoting Brittany T. Martin & Sarah K.S. Shannon, *State Variation in the Drug Felony Lifetime Ban on Temporary Assistance for Needy Families: Why the Modified Ban Matters*, 22 PUNISHMENT & SOC’Y 439, 456 (2020)).

205. See Cross, *Criminalizing Battered Mothers*, *supra* note 40, at 296–97.

206. See *infra* Section III.B.5.

207. Miller, *supra* note 8; Musson, *supra* note 32, at 727–28.

few such treatment opportunities congruent with their needs.²⁰⁸ Depression, anxiety, and post-traumatic stress are disproportionately associated with women transitioning from prison, as are mental health issues that co-occur with substance use disorders.²⁰⁹ Indeed, the connection between DV and substance abuse has been well-documented; some have referred to the “War on Drugs” as the “War on Women.”²¹⁰ One national study found

[w]omen’s drug use and associated criminal behavior are more likely to transpire within interpersonal relationships and are strongly associated with the behavior of romantic partners. Histories of childhood maltreatment and abuse, co-occurring psychiatric disorders, familial dysfunction, and negative self-concept are also more common among criminally involved females compared to males.²¹¹

The same national study found that reentry-related mental health programs were “aimed at males who are incarcerated, and that risk assessment instruments were designed for males who commit crimes, with little attention to gender-specific factors.”²¹² Moreover, research has documented that formerly incarcerated women whose DV circumstances were precluded from consideration at trial or sentencing suffer unique harmful psychological consequences.²¹³

Formerly incarcerated women are found to have greater physical needs upon exiting from prison than their male counterparts.²¹⁴ They may suffer the physical and deteriorating consequences of past abuse.²¹⁵ Women decry the lack of access to dentists and poor dental health treatment that has resulted in decay

208. Musson, *supra* note 32, at 728 (noting that the only differentiation in programming, if any, is the addition of a focus on parenting).

209. Miller, *supra* note 8.

210. Cathy Humphreys, Linda Regan, Dawn River & Ravi K. Thiara, *Domestic Violence Substance Abuse: Tackling Complexity*, 35 BRITISH J. SOC. WORK 1303, 1305 (2005) (noting that substance use disorder agencies have observed high rates of persons who have suffered IPV). Rates of women who have substance use problems as high as sixty percent of the population that has suffered IPV. Bryan G. Victor, Stella M. Resko, Joseph P. Ryan & Brian E. Perron, *Identification of Domestic Violence Service Needs Among Child Welfare-Involved Parents with Substance Use Disorders: A Gender-Stratified Analysis*, 36 J. INTERPERSONAL VIOLENCE 2908, 2910 (2021); McConnell, *supra* note 199, at 498; LEVERENTZ, *supra* note 183, at 8; Brenda Wiewel & Toni Mosley, *Family Foundations: A New Program for Pregnant and Parenting Women Offenders with Substance Abuse Histories*, 43 J. OFFENDER REHAB. 65, 67–68 (2006); Musson *supra* note 32, at 768 n.117 (“[L]ongitudinal studies have shown that addiction and substance abuse are more likely to be precipitated by abuse rather than contribute to it.”).

211. Miller, *supra* note 8 (citations omitted).

212. *Id.*

213. Konvisser, *supra* note 91, at 222. Women whose efforts to demonstrate their innocence were wrongfully thwarted and thus who may have been wrongfully convicted may also experience anger and the exacerbation of their trauma. *See, e.g.*, Sandra D. Westervelt & Kimberly J. Cook, *Coping with Innocence After Death Row*, 7 CONTEXTS 32, 36 (2008) (research study on the mental health of exonerees who were on death row).

214. Lawson, *supra* note 193, at 285–86.

215. McConnell, *supra* note 199, at 497.

and the permanent loss of teeth.²¹⁶ And the lack of gynecological or obstetrical care available in prisons places women at a “high risk for lack of detection of many gender-specific diseases that can result in sterility or death.”²¹⁷

The failure to address the particular reentry needs of formerly incarcerated women has a domino effect. For example, ignoring the gendered forms of mental health and chronic physical health problems that these women often experience impairs their ability to gain and/or maintain employment or otherwise access other reentry services.²¹⁸ The cumulative effect of such neglect perpetuates the harms women face before and while incarcerated and will hinder their ability to successfully transition from prison.²¹⁹

4. Transportation

Transportation serves as a “gateway” to participation in all other reentry services and activities as well as the ability to meet day-to-day needs. As Daniel Stainkamp has observed, “[t]he Supreme Court has recognized that a driver’s license facilitates financial stability and has called driving ‘a virtual necessity for most Americans.’”²²⁰ Women returning from prison, especially Black women, are often unable to access transportation to meet their needs.²²¹ The factors described above related to financial deprivation, poor credit, and unstable employment history—often resulting from the consequences of DV—also interfere with car ownership. For reentering women, transportation obstacles

216. Holly M. Warner & Suzanne Reilly, *Factors Contributing to Poor Physical Health in Incarcerated Women* 24 J. HEALTH CARE FOR POOR & UNDERSERVED 788, 793 (2013).

217. Heather M. Moss, *Correctional Facilities*, 9 GEO. J. GENDER & L. 609, 620–21 (2008); NAT’L COMM’N ON CORR. HEALTH CARE, POSITION STATEMENT: WOMEN’S HEALTH CARE IN CORRECTIONAL SETTINGS 1 (2022), <https://www.nmlegis.gov/handouts/CCJ%20091216%20Item%206%20National%20Commission%20on%20Correctional%20Health%20Care%20Women's%20Care%20in%20Correctional%20Settings.pdf> [<https://perma.cc/SH8B-MZBZ> (staff-uploaded archive)]; see also Samiera Saliba, *Rape by the System: The Existence and Effects of Sexual Abuse of Women in United States Prisons*, 10 HASTINGS RACE & POVERTY L.J. 293, 301 (2013); Estalyn Marquis, “*Nothing Less Than the Dignity of Man*”: *Women Prisoners, Reproductive Health and Unequal Access to Justice Under the Eighth Amendment*, 106 CALIF. L. REV. 203, 218 n.100 (2018); *Women Prisoners of D.C. Dep’t of Corr. v. District of Columbia*, 899 F. Supp. 659, 666 (D.D.C. 1995) (finding that defendant prison officials failed to meet the standard for obstetrical and gynecological care causing injuries to female prisoner plaintiffs).

218. The traumatic effects of incarceration are pervasive and all-encompassing particularly with regard to those who suffer PTSD with consequences that affect one’s ability to function in the world. See Katie Rose Quandt & Alexi Jones, *Research Roundup: Incarceration Can Cause Lasting Damage To Mental Health*, PRISON POL’Y INITIATIVE (May 13, 2021), <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/> [<https://perma.cc/HER5-V9ED>].

219. Barbara E. Bloom & Stephanie Covington, *Addressing the Mental Health Needs of Women Offenders*, in *WOMEN’S MENTAL HEALTH ISSUES ACROSS THE CRIMINAL JUSTICE SYSTEM* 160, 164–65 (Rosemary L. Gido & Lanette P. Dalley eds., 2009).

220. Daniel Stainkamp, Comment, *Auto-Jubilee: A Case for Massive Automatic Driver’s License Restoration for Debtor-Suspendees*, 102 N.C. L. REV. 231, 232 (2023).

221. Roddy et al., *supra* note 193, at 72–73.

result in “increased levels of stress, which can result in mental health problems and reduced labor productivity.”²²² In fact, in one study, women noted that the lack of transportation was one of their top reentry-related concerns.²²³ Nonetheless, there is little research on transportation needs as they may relate to formerly incarcerated women, particularly given the additional deleterious consequences of having to rely on public transportation that is often irregular or inconvenient.²²⁴

5. Family Relationships

All of the challenges described above often overlap to produce overwhelming difficulties for women seeking to reintegrate with family members. These problems, of course, affect men as well; however, most women in prison are mothers and more women than men have been separated from their children as a result of incarceration.²²⁵ The stigma attached to women, particularly those who have children, or who have committed transgressive acts that deviate from assumed gendered behavioral norms, creates additional barriers for family reunification.²²⁶ Family and friends may be disinclined or unable to assist with quotidian needs or to provide emotional support.²²⁷ If a woman exiting prison seeks to regain custody from an abusive partner or family member who has cared for the child while she was incarcerated, she often faces skepticism and suspicion from the courts due to her criminal history.²²⁸

For women whose children have been placed with a child protective agency, a lack of employment prevents them from paying child support and threatens their ability to accomplish family reunification.²²⁹ Diminished employment opportunities, ineligibility for public benefits and housing subsidies, child care availability and expenses, and the challenges of unstable transportation all intersect to create nearly insurmountable challenges for formerly incarcerated women to gain or maintain custody of their children.²³⁰

222. *Id.* at 72.

223. *Id.*

224. *Id.*

225. Miller, *supra* note 8. Reentering women may face resistance when reclaiming custody of their children by relatives or others who have served in parental roles. Roddy et al., *supra* note 193, at 69.

226. Roddy et al., *supra* note 193, at 68.

227. *Id.* at 68–69.

228. Cross, *Criminalizing Battered Mothers*, *supra* note 40, at 296–97. It is important to note reentry advocates face the dilemma of advocating for a gender-responsive set of practices which may reify harmful gender norms. See Natalie Booth, *Gendered Prisons, Relationships and Resettlement Policies; Three Reasons for Caution for Imprisoned Mothers*, 61 BRITISH J. CRIMINOLOGY 1354, 1355 (2021); see also Joanne Belknap, “Offending Women”: *A Double Entendre*, 100 J. CRIM. L. & CRIMINOLOGY 1061, 1073–74 (2010) (providing a historical commentary about concerns about the women’s patronizing reformatory movement that facilitated gender stereotypes).

229. See Roddy et al., *supra* note 193, at 61 (discussing an inability to pay various court ordered payments).

230. Cross, *Criminalizing Battered Mothers*, *supra* note 40, at 297–98.

IV. NORTH CAROLINA AND REENTRY

As noted in Part II, North Carolina has especially high rates of incarcerated persons, most of whom will eventually be released.²³¹ These individuals, as well as their families and communities, require multiple forms of support to enable formerly incarcerated persons to reintegrate into social, political, and economic life. This part examines North Carolina's efforts to address the processes of reentry generally and to consider whether it has adopted gender-responsive measures to accommodate women whose reentry needs often differ from those of men.

A. *An Overview of North Carolina's Recent Reentry Efforts*

North Carolina's first "focused" attempt to address reentry challenges occurred in 2009 when then Governor Beverly Perdue issued the "StreetSafe Task Force to Stop Repeat Offenders."²³² The 2009 Executive Order created a statewide structure, established policy goals, and required annual progress reports to be submitted to the legislature.²³³ In 2010, the North Carolina General Assembly established the Joint Select Committee on Ex-Offender Reintegration into Society, a nonstanding committee that issued one report with recommendations to address recidivism; the committee was not continued by the General Assembly.²³⁴

1. Legislative Action

North Carolina renewed its attention to reentry in 2017 when the legislature established the State Reentry Council Collaborative ("SRCC") to "study the needs of ex-offenders who have been recently released from a correctional institution and to increase the effectiveness of local reentry councils" and issue annual reports with findings and recommendations.²³⁵ The

231. Meaning that North Carolina locks up a higher percentage of its people than almost any democratic country on earth. *See supra* notes 71–79 and accompanying text.

232. SRCC 2018, *supra* note 186, at 90. The "StreetSafe Task Force" was designed to bring together civil society and state government to reduce recidivism. *See* N.C. Exec Order No. 12, 23 N.C. Reg. 2219, 2219 (June 1, 2009).

233. N.C. Exec Order No. 12, 23 N.C. Reg. at 2220–22; N.C. GEN. STAT. § 143B-1484(c) (2024).

234. The committee appears to have no current members and has not produced any legislation. *Joint Select Committee on Ex-Offender Reintegration into Society*, N.C. GEN. ASSEMBLY, <https://ncleg.gov/Committees/CommitteeInfo/NonStanding/6456/Membership> [<https://perma.cc/EP7S-UJL2>]; *see also* *Bill Summary for H 269*, UNC SCH. GOV'T LEGIS. REPORTING SERV., <https://lrs.sog.unc.edu/bill/reappoint-ex-offender-reintegration-study> [<https://perma.cc/T5DZ-TT4Y>].

235. N.C. GEN. STAT. § 143B-1484(b) (2024). The statute created a new committee to receive findings, Joint Legislative Oversight Committee on Justice and Public Safety. *Id.* § 143B-1484(c).

SRCC has released annual reports in most years pursuant to its statutory mandate.²³⁶

A review of the SRCC reports provides a sense of North Carolina's progress toward the development of meaningful reentry programs. The first report, issued in 2018, detailed the establishment of ten working groups which offered recommendations categorized by perceived feasibility.²³⁷ The working groups were subsequently "dissolved" and replaced by four teams, each with a different focus.²³⁸

The annual reports suggest that some important measures have been undertaken to assist individuals in reentry processes.²³⁹ In general, the reports identify fundamental reentry needs, including employment, housing, and health-related concerns, and urge collaborations among various state and community entities to address those needs.²⁴⁰ Yet it is difficult to ascertain with any certainty whether the goals of the working groups have been accomplished.

Of particular interest, the most recent SRCC report provides a summary of achievements and notes four SRCC legislative recommendations that were enacted since 2017.²⁴¹ These include changes to the juvenile justice system,²⁴²

236. These annual reports will be referred to as "SRCC" followed by the year of the report. SRCC 2018, *supra* note 186; STATE REENTRY COUNCIL COLLABORATIVE, ANNUAL LEGISLATIVE REPORT (2019) [hereinafter SRCC 2019], <https://www.dac.nc.gov/documents/signed-final-srcc11119pdf/open> [<https://perma.cc/9YWK-BKXG>]; STATE REENTRY COUNCIL COLLABORATIVE, ANNUAL LEGISLATIVE REPORT (2021) [hereinafter SRCC 2021], <https://www.dac.nc.gov/documents/2021-srcc-legislative-reportpdf/open> [<https://perma.cc/XYD9-LJE7>]; STATE REENTRY COUNCIL COLLABORATIVE, ANNUAL LEGISLATIVE REPORT (2023) [hereinafter SRCC 2023], <https://webservices.ncleg.gov/ViewDocSiteFile/75989> [<https://perma.cc/HXF6-QE8H> (staff-uploaded archive)]; STATE REENTRY COUNCIL COLLABORATIVE, ANNUAL LEGISLATIVE REPORT (2024) [hereinafter SRCC 2024], <https://www.ncleg.gov/Files/Library/agency/dac17327.pdf> [<https://perma.cc/UZ2L-FNT6>].

237. See SRCC 2018, *supra* note 186, at 6 (categorizing first by those achievable in 2019 that do not require legislation or funding, second, "top priority recommendations" that may need legislation and funding, and third, "all other recommendations").

238. SRCC 2021, *supra* note 236, at 1 (forming the legislative, executive, communications and awareness, and local/community teams).

239. SRCC 2018, *supra* note 186, at 6; SRCC 2019, *supra* note 236, at 1–2; SRCC 2021, *supra* note 236, at 2–3; SRCC 2023, *supra* note 236, at 3–6; SRCC 2024, *supra* note 236, at 3–8.

240. SRCC 2018, *supra* note 186, at 6; SRCC 2019, *supra* note 236, at 1–2; SRCC 2021, *supra* note 236, at 2–3; SRCC 2023, *supra* note 236, at 3–6; SRCC 2024, *supra* note 236, at 3–8.

241. SRCC 2024, *supra* note 236, at 3–8.

242. SRCC 2024, *supra* note 236, at 3; N.C. GEN. STAT. § 7B-1501(7) (2023); N.C. GEN. STAT. § 7B-1604 (2019). SRCC support for this legislation fits within the goals of improving reentry experiences, yet it is worth noting that the statute had been primarily advanced through "a long-standing campaign" marshaled by the 2015 North Carolina Commission on the Administration of Law and Justice (NCCALJ) convened by then Chief Justice of the North Carolina Supreme Court Mark Martin. LaToya Powell, "Raise the Age" Is Now the Law in North Carolina, UNC SCH. GOV'T BLOG: N.C. CRIM. L. (Aug. 31, 2017), <https://www.sog.unc.edu/blogs/nc-criminal-law/%E2%80%99Craise-age%E2%80%9D-now-law-north-carolina> [<https://perma.cc/64HW-YY2Q>] (including the 2019 statutory updates). This "completed" legislative initiative has recently been abrogated. See *infra* note 259 and accompanying text.

amendments to expunction and certificate of relief statutes,²⁴³ changes to licensing and certification requirements,²⁴⁴ and the removal of a prohibition on the use of state funds for certain higher education in prison programs.²⁴⁵

Beyond the specific improvements, these legislative achievements indicate that reentry initiatives can, in fact, encompass more far-reaching and structural criminal legal system reforms and need not be limited to human services-oriented programs. Other accomplishments noted in the annual reports suggest a recognition that reentry work is a community endeavor, not just the responsibility of government. Notably, the SRCC is no longer solely comprised of cabinet-level personnel and now includes representatives of nonprofits who work directly with current or formerly incarcerated persons.²⁴⁶ Moreover, the SRCC has engaged in numerous efforts to educate stakeholders about issues through statewide and local conferences and the creation of critical networks and partnerships.²⁴⁷ In one instance, the SRCC guaranteed the continuation of housing reentry services after allocated grant funds for time-limited positions were exhausted.²⁴⁸

Reasons for concern persist, however. Most of the legislative recommendations remain stalled year after year.²⁴⁹ Legislative changes failed to address the immediate needs of formerly incarcerated persons. For example, certificates of relief require at a minimum a one-year waiting period before an individual may apply, during which time the obstacles to employment remain formidable.²⁵⁰ Furthermore, while the certificates amendment enlarged eligibility criteria for some persons with multiple misdemeanors, it added new grounds of ineligibility.²⁵¹ The process for obtaining a certificate of relief, moreover, is burdensome, often requiring an attorney, and it ultimately provides no guarantee that prospective employers and landlords will disregard

243. SRCC 2024, *supra* note 236, at 3; N.C. GEN. STAT. §§ 15A-145.5, -146 (2024).

244. SRCC 2024, *supra* note 236, at 3; N.C. GEN. STAT. § 93B-8.1 (2024). At the same time, these legislative changes that enhance work opportunities were further supported by an executive order directed at state agencies to increase employment opportunities for people with criminal records. *See* Exec. Order No. 158, 25 N.C. Reg. 648 (Aug. 18, 2020) (prohibiting state agencies from asking about a job applicant's criminal history during the initial stages of an employment process, banning the consideration of nonconviction records or convictions unrelated to the employment).

245. SRCC 2024, *supra* note 236, at 3–4 (no longer prohibiting funding for an Associate of Arts, Associate of Sciences, and Associate of General Education degrees); N.C. GEN. STAT. § 115D-5 (2024).

246. SRCC 2024, *supra* note 236, at 20–22.

247. *Id.* at 4–5.

248. *Id.* at 4 (noting that local reentry councils would continue with housing assistance after the end of grant-funding housing positions).

249. *See id.* at 8–10.

250. N.C. GEN. STAT. § 15A-173.2(b)(1) (2024).

251. § 15A-173.2(a). The amendments removed Class G felonies previously included in the statute from eligibility. *See id.*

a criminal conviction, however unrelated to employee or tenant status.²⁵² In fact, after reviewing reentry outcome data, the North Carolina Department of Commerce observed that

the first insight that emerges from [the North Carolina Reentry Outcome Reporting System] is that formerly incarcerated individuals experience poor employment and wage-earning outcomes. Even amid the hot labor market of 2021, when job opportunities were plentiful and businesses were desperate to hire workers, fewer than half of people exiting state prisons in North Carolina were employed within a year after release, and those lucky enough to land a job earned a median of only around \$7,500 per year.²⁵³

These findings echo the results of numerous reentry program evaluations as discussed in Section III.A above.²⁵⁴

Furthermore, some of the reforms that were enacted have not been fully effective. North Carolina relief statutes are generally viewed as “unclear, internally inconsistent, or incapable of being literally applied . . . in a word, ambiguous.”²⁵⁵ For instance, although there are a limited number of offenses for which individuals may be eligible for automatic expunction without a petition, there is no identified procedure for correcting a failure by authorities to undertake the expungement.²⁵⁶ Amendments to expungement laws are complex,

252. A certificate can only be issued by a judge after notice to the prosecutor and victim. A judge may request additional investigations by probation. See N.C. GEN. STAT. § 15A-173.4 (2024). “A certificate of relief does not bar an entity from imposing discretionary disqualifications based on the conviction.” See *Relief from a Criminal Conviction (2023 Edition): Certificates of Relief*, UNC SCH. GOV’T (2023), <https://www.sog.unc.edu/resources/microsites/relief-criminal-conviction/certificates-relief> [<https://perma.cc/Z7YY-AM2D>]. The requirement is limited to a recommendation that an employer look upon a certificate of relief “favorably.” N.C. GEN. STAT. § 15A-173.2(d) (2024).

253. Andrew Berger-Gross, *Insights on Post-Prison Employment from the NC Reentry Outcome Reporting System*, N.C. DEP’T COM. (Nov. 13, 2023), <https://www.commerce.nc.gov/news/the-lead-feed/nc-post-prison-employment-outcomes> [<https://perma.cc/3RD2-9HGL>].

254. See *supra* notes 164–66 and accompanying text.

255. See *Relief from a Criminal Conviction (2025 Edition): Interpreting Relief Statutes*, UNC SCH. GOV’T (2025), <https://www.sog.unc.edu/resources/microsites/relief-criminal-conviction/interpreting-relief-statutes> [<https://perma.cc/NJD3-URRM>].

256. See *Relief from a Criminal Conviction (2023 Edition): Procedure to Obtain an Expunction*, UNC SCH. GOV’T (2023), <https://www.sog.unc.edu/resources/microsites/relief-criminal-conviction/procedure-obtain-expunction> [<https://perma.cc/2B9A-K46V>] [hereinafter *Procedure to Obtain an Expunction*]; N.C. GEN. STAT. § 15A-147(a1) (2024). Moreover, following the enactment of automatic expunctions, the process was suspended first through August 2023, and more recently through July 2024, causing confusion and delay. M. JEANETTE PITTS, THE CURRENT PAUSE ON AUTOMATIC EXPUNCTIONS IN NORTH CAROLINA 1 (2023), https://cjlil.sog.unc.edu/wp-content/uploads/2023/11/Expungement-Pause-Update_09.14.2023.pdf [<https://perma.cc/BLT8-4AKF>].

and courts operating without uniform standards appear reluctant to grant these orders.²⁵⁷

Similar criticisms can be made about licensing board changes that lack uniform implementation. The North Carolina Criminal Justice Innovation Lab registered its concern that “many statutes and administrative rules that govern licensing boards are scattered throughout the [General Statutes of North Carolina], and conforming changes were not made to these provisions.”²⁵⁸ Despite the apparent support for expanding educational opportunities, including academic and vocational programs, the data demonstrate a decline in the numbers of people exiting prisons who participated in these endeavors.²⁵⁹ Finally, notwithstanding the statutory mandate of the SRCC, the council’s recommendations are accompanied by a disclaimer that may undermine its efforts: “[t]he findings and opinions contained herein are not official policy of the State of North Carolina and do not represent the official or personal positions of the Office of the Governor, the North Carolina Department of Public Safety (NCDPS), or any other North Carolina state agency.”²⁶⁰

2. Executive Action

Legislative action in the form of the SRCC has been joined by executive action as well. In 2023, Governor Roy Cooper issued Executive Order 303 (“EO 303”) in an effort to improve outcomes for individuals exiting North Carolina prisons.²⁶¹ Notably, the order focused on the development of partnerships within the various state government agencies to achieve shared goals, directing “whole-of-government” coordination to improve reentry for formerly incarcerated people in the most significant effort targeted at strengthening reentry in state history.²⁶²

257. See *Procedure to Obtain an Expunction*, *supra* note 256 (noting how courts that operate differently with regard to deciding whether to hold a hearing and how they address notice-related issues lack uniformity). Moreover, the 2023 Expunctions Report shows a significant decrease in numbers of expunction orders granted. See N.C. ADMIN. OFF. OF THE CTS., 2023 EXPUNCTIONS REPORT 2–4 (2023), <https://webservices.ncleg.gov/ViewDocSiteFile/81229> [<https://perma.cc/D54M-TG98> (staff-uploaded archive)].

258. ALEX PHIPPS & CAITLIN LITTLE, UNC SCH. GOV’T: CRIM. JUST. INNOVATION LAB, NORTH CAROLINA FREEDOM TO WORK ACT & PROFESSIONAL LICENSURE 2 (2024), https://cjl.sog.unc.edu/wp-content/uploads/2024/02/SL2019-91_HB7770-Summary-Final_2024.2.6.pdf [<https://perma.cc/3QDW-2E3A>].

259. North Carolina Reentry Outcome Report Systems, row 2017, 2018, N.C. Dept. of Com. (Aug. 30, 2024), <https://analytics.ncommerce.com/NC-RORS/> [<https://perma.cc/TFJ8-DDBG> (staff-uploaded archive)] (disaggregating data for men and women by academic and vocational programs shows a decline in numbers since 2017 (academic) and 2018 (vocational)).

260. SRCC 2018, *supra* note 186, at 1.

261. See N.C. Exec. Order 303, 38 N.C. Reg. 1057, 1059 (Mar. 1, 2024).

262. See *id.*

EO 303 makes North Carolina the third state to join a national initiative known as Reentry 2030.²⁶³ The national effort has been described as “a group-led national initiative supported by the Council of State Governments Justice Center that takes a human-centered, coordinated, transparent and equitable approach to improving success for those exiting prison.”²⁶⁴ EO 303 incorporates goals nearly identical to those found in earlier executive reentry action plans as well as the current SRCC reports.²⁶⁵ It establishes a “Joint Reentry Council” with representatives from cabinet agencies and executive branch entities tasked with the development of a strategic plan to assist formerly incarcerated persons as they exit prisons and identifies specific goals.²⁶⁶ Although EO 303 contains no timeline for achieving specific tasks, the governor’s pronouncement included specific metrics that must be met, thus potentially promoting greater accountability.²⁶⁷ The order also calls upon the Joint Council to expand reentry assistance to every county in North Carolina through local reentry councils (“LRCs”).²⁶⁸

Since EO 303 was issued, the North Carolina Department of Health and Human Services and the DAC funded a significant expansion of a mental health program, Fit Wellness through North Carolina Formerly Incarcerated

263. Kelan Lyons, *Prison Reentry Council Sets Ambitious Goal for Helping People Released from Prison*, NC NEWSLINE (Feb. 15, 2024, 12:43 PM), <https://ncnewslines.com/2024/02/15/prison-reentry-council-sets-ambitious-goal-for-helping-people-released-from-prison/> [https://perma.cc/FJ4B-GMYN].

264. *Reentry 2030*, COUNCIL STATE GOV'TS (Mar. 13, 2024), <https://www.csg.org/2024/03/13/reentry-2030/> [https://perma.cc/68H6-G964].

265. Compare N.C. Exec. Order 303, 38 N.C. Reg. at 1059 (including goals such as increasing access to education, expanding employment opportunities, and removing barriers to housing and transportation), with N.C. DEPT. PUB. SAFETY, NORTH CAROLINA’S REENTRY ACTION PLAN (2018), <https://www.dac.nc.gov/documents/files/north-carolinas-reentry-action-plan/open> [https://perma.cc/Z57X-E4D6] (same).

266. See Exec. Order No. 303, 38 N.C. Reg. at 1059–60 (naming the Office of State Human Resources, the Office of State Budget and Management, the Parole Commission, and the Task Force for Racial Equity in Criminal Justice). The order specifies benchmarks in terms of rates of increase to be measured with regard to educational opportunities, apprenticeships, and a reduction of homelessness. See Press Release, N.C. Governor Roy Cooper, Governor Cooper Issues Historic Executive Order Directing Whole-of-Government Coordination to Improve Reentry for Formerly Incarcerated People in North Carolina (Jan. 29, 2024), <https://governor.nc.gov/news/press-releases/2024/01/29/governor-cooper-issues-historic-executive-order-directing-whole-government-coordination-improve> [https://perma.cc/BKZ6-62CF] [hereinafter Governor Cooper Issues Historic Executive Order]. It is not clear whether or how the Joint Reentry Council relates to the legislatively mandated SRCC. As of this writing, neither the North Carolina Department of Adult Correction’s (“DAC”) websites on the SRCC or Executive Order 303 reference each other. See *State Reentry Council Collaborative*, N.C. DEPT. ADULT CORRECTION, <https://www.dac.nc.gov/divisions-and-sections/rehabilitation-and-reentry/state-reentry-council-collaborative> [https://perma.cc/F2GE-43TH]; *Reentry 2030*, N.C. DEPT. ADULT CORRECTION, <https://www.dac.nc.gov/divisions-and-sections/rehabilitation-and-reentry/reentry-2030> [https://perma.cc/J999-CKNZ].

267. See Governor Cooper Issues Historic Executive Order, *supra* note 266.

268. *Id.* (noting that the governor has stated that the Joint Council must expand local reentry councils to all North Carolina counties).

Transition (“NC FIT”), to assist formerly incarcerated people—a measure that reflects the benefit of the “whole of government” approach incorporated into EO 303.²⁶⁹ In furtherance of EO 303, in April 2024, the DAC held a three-day conference with a comprehensive agenda addressing a wide range of critical reentry concerns.²⁷⁰ The DAC also expanded funding to increase the number of LRCs across the state, which resulted in increased attention to efforts such as the “Second Chance Employment Initiative.”²⁷¹ As a result of the failure to repeal expunction laws, individuals whose charges were dismissed or who were found not guilty remain able to clear their record—an important factor in reentry efforts.²⁷² Additionally, the DAC helped to organize and publicize a job

269. Sophia Fanning, *How N.C. Is Making Rejoining Society Easier for Former Prison Inmates*, SPECTRUM NEWS (Feb. 14, 2024, 11:34 AM), <https://spectrumlocalnews.com/nc/charlotte/news/2024/02/14/dhhs-inmate-reentry-program> [<https://perma.cc/3WC8-2QZ6>] (noting an investment of \$5.5 million); Makenzie Mills & Darby McBride, *FIT Wellness Receives Grant to Help Formerly Incarcerated People*, DAILY TAR HEEL (Feb. 22, 2024), <https://www.dailytarheel.com/article/2024/02/city-university-ncdhhs-fit-wellness-grant-unc-hospitals> [<https://perma.cc/L7RV-NGQP>].

270. 2024 NC Rehabilitation and Reentry Conference Agenda & Presenter Materials, N.C. DEPT. ADULT CORR., <https://www.dac.nc.gov/speaker-materials> [<https://perma.cc/5FAP-TAQQ>] [hereinafter 2024 NC Rehabilitation, DAC]. Topics included transitional housing for reentering individuals, educational support for persons while incarcerated, pathways to employment, Medicaid expansion and more. *Id.*

271. The Second Chance Initiative refers to efforts to bring resources across government and civil society to address pathways to criminal convictions and to identify how to remove barriers confronting those who exit prison. *See, e.g.*, N.C. SECOND CHANCE ALLIANCE, <https://ncsecondchance.org/> [<https://perma.cc/CA28-7RQG> (staff-uploaded archive)]. The DAC has recently expanded funding for LRCs around the state which are described as “alliances of community organizations that work collaboratively to support formerly incarcerated people with necessary services like housing, transportation, employment, treatment and much more.” *See* Press Release, N.C. Dep’t of Adult Corr., With New Funding, Local Reentry Councils Expanding to Support People Leaving Incarceration (May 6, 2024), <https://www.dac.nc.gov/news/press-releases/2024/05/06/new-funding-local-reentry-councils-expanding-support-people-leaving-incarceration> [<https://perma.cc/GPB5-WFWZ>]. The Wake County Second Chance Employment Initiative is promising; however, formerly incarcerated persons must wait at least six months before they are eligible along with other requirements. WAKE CNTY. LOC. REENTRY COUNCIL, SECOND CHANCE: FIND MEANINGFUL WORK IN WAKE COUNTY, https://www.wakelrc.org/_files/ugd/fd7346_f4161dfbec714d04ba8cef27f7a1b2a2.pdf [<https://perma.cc/6NLW-ULFC>].

272. The legislature attempted to repeal expunction laws but ultimately failed to do so. *See* Laura Webb, *The North Carolina Administrative Office of the Courts Is Now Clearing Approximately 10,000 Cases a Week Through the Automated Process*, N.C. JUST. CTR. (Aug. 16, 2024), <https://www.ncjustice.org/nc-resumes-automatic-expunction/> [<https://perma.cc/SQT3-KTQV>]; Lindsay Bass-Patel, *Opinion, Hundreds of Thousands in NC Will Suffer if Law on Dismissed Charges Is Repealed*, CHARLOTTE OBSERVER (June 13, 2024, 8:49 AM), <https://www.charlotteobserver.com/opinion/article289212999.html> [<https://perma.cc/8CQ2-RKAG> (staff-uploaded, dark archive)] (“Hundreds of thousands of people per year can benefit from automated expunctions. Hundreds of thousands per year would suffer without them, impacting their ability to access housing and jobs — having a ripple effect on the economy.”); Avi Bajpai, *GOP Lawmakers Propose Repealing NC Law They Passed to Erase Criminal Records*, NEWS & OBSERVER (May 22, 2024, 1:03 PM), <https://www.newsobserver.com/news/politics-government/article288635425.html> [<https://perma.cc/S8ZV-K7ER> (staff-uploaded, dark archive)]. *But cf.* Act of June 6, 2024, ch. 17, §§ 1, 3.(b)–(c), 2024 N.C. Sess. Laws __, __ (codified at N.C. GEN. STAT. §§ 7B-

fair that would benefit reentering individuals.²⁷³ Most recently, the DAC has expressed support for a new community-driven initiative establishing a Mobile Recidivism Reduction Center in Raleigh, North Carolina to provide free resources to assist individuals as they exit prison.²⁷⁴

However, general progress regarding EO 303 is difficult to measure because it is a recent initiative.²⁷⁵ To be sure, the goals are forward-thinking and ambitious, and statewide conference materials suggest a foundation for the development of a well-thought-out agenda.²⁷⁶ But questions remain. No new funding has been allocated towards the implementation of EO 303.²⁷⁷ The DAC, tasked with leading the reentry initiative, has not provided much by way of substantive information about specific recommendations or action items that might impact formerly incarcerated persons, particularly in the immediate days and months after people leave prison.²⁷⁸ As argued throughout this Article, immediate transitional adjustment needs and more fundamental criminal legal system and social policy reforms are ignored. For example, the DAC recommends screening people exiting from prison to determine whether they are eligible for food assistance through SNAP but fails to recommend that the state fully opt out of the federal laws that disqualify many formerly incarcerated prisoners from receiving benefits in the first place.²⁷⁹

Moreover, the nature of EO 303 raises concerns about the structure and permanency of its mandates. An executive order is always subject to

1501(7), 15A-145.8, 15A-960) (limiting expunction access for juveniles charged with Class A–E felonies); see Jeff Moore, *NC House Overrides 3 Different Cooper Vetoes*, CAROLINA J. (June 28, 2024), <https://www.carolinajournal.com/breaking-nc-house-overrides-3-different-cooper-vetoes/> [<https://perma.cc/PRH4-LVGK>].

273. *NC Works Career and Resource Fair*, N.C. DEPT. PUB. SAFETY (Aug. 21, 2024), <https://www.ncdps.gov/news/events/ncworks-career-and-resource-fair> [<https://perma.cc/88QQ-FDZ9>].

274. Ahmed Jallow, *NC's First Mobile Entry Service Center for the Formerly Incarcerated Is Launched in Raleigh*, NEWSLINE TODAY (Jan. 15, 2025, 11:44 AM), <https://ncnewsline.com/2025/01/15/ncs-first-mobile-reentry-service-center-for-the-formerly-incarcerated-is-launched-in-raleigh/> [<https://perma.cc/HW54-CLFH>].

275. As of this writing, the deadline for the Council's first report, July 31, 2024, has not been published. Thereafter, the next report is due December 31, 2024, followed by annual reports. N.C. Exec. Order 303, 38 N.C. Reg. 1057, 1057 (Mar. 1, 2024).

276. See *2024 NC Rehabilitation*, DAC, *supra* note 270.

277. Phillip Vance Smith, *On His Way Out, Governor Cooper Expands Support for People Leaving Prison*, NC NEWSLINE (July 18, 2024, 6:30 AM), <https://ncnewsline.com/2024/07/18/on-his-way-out-governor-cooper-expands-support-for-people-leaving-prison/> [<https://perma.cc/3T8R-3E6W>].

278. *Reentry 2030*, *supra* note 264; see Love & Sibilla, *supra* note 203.

279. 21 U.S.C. § 862a(a)–(d); PHIPPS & LITTLE, *supra* note 258, at 3; N.C. GEN. STAT. § 108A-25.2 (2024). North Carolina allows some but not all individuals with drug convictions to qualify for Supplemental Nutrition Assistance Program/Temporary Assistance for Needy Families only after meeting certain conditions that may delay eligibility for much needed support. S. COAL. FOR SOC. JUST., YOUR FIRST 48 TOOLKIT 14 (2021), <https://southerncoalition.org/wp-content/uploads/2022/04/YourFirst48-Toolkit.pdf> [<https://perma.cc/TEW6-87FD>].

modification, if not rescission, with a change of administration.²⁸⁰ Promises of policy changes and progressive reforms by the executive branch to improve the circumstances of persons incarcerated in North Carolina have been disregarded or reversed in the past. For example, the DAC reneged on its pledge to end solitary confinement for juveniles and ignored the specific recommendations of the Governor's Task Force for Racial Equity in Criminal Justice, which called for an end to the practice of isolating juveniles.²⁸¹ Similarly, a North Carolina prison policy that purported to limit time in solitary confinement to thirty days or less has been ignored by the DAC in disregard of the Governor's Task Force for Racial Equity in Criminal Justice recommendation that persons incarcerated be held in solitary confinement for no more than fifteen days in accordance with international standards known as the Mandela Rules.²⁸²

There have been other efforts to repeal or nullify recent gains with respect to reentry. This includes a newly passed law that reversed juvenile justice "Raise the Age" reforms and, once again, expanded the categories of minors to be tried in adult court.²⁸³ The governor's promise to expand educational programs for

280. ABIGAIL A. GRABER, CONG. RSCH. SERV., R46738, EXECUTIVE ORDERS: AN INTRODUCTION 2 (noting that an executive order issued by a current elected official can always be revoked or modified by the next elected official).

281. See Press Release, N.C. Dep't Pub. Safety, State Prison System Announces End to Solitary Confinement for Inmates Under 18 (June 15, 2016), <https://www.ncdps.gov/press-release/state-prison-system-announces-end-solitary-confinement-inmates-under-18> [<https://perma.cc/69YP-FU5D>]; N.C. DEP'T JUST., NORTH CAROLINA TASK FORCE FOR RACIAL EQUITY IN CRIMINAL JUSTICE 119 (2020), https://ncdoj.gov/wp-content/uploads/2020/12/TRECReportFinal_12132020.pdf [<https://perma.cc/KH3E-ZC8E>]; Virginia Bridges, *Lawsuit Demands that NC Stop Locking Minors in Rooms in Detention amid Staffing Crisis*, NEWS & OBSERVER, <https://www.newsobserver.com/news/state/north-carolina/article283736443.html> [<https://perma.cc/6EE9-C477> (staff-uploaded, dark archive)] (last updated Jan. 28, 2024, 9:54 PM). A lawsuit further provides examples of extreme practices of isolating juveniles in violation of state policy. *Id.*; see also Sydney Haulenbeek, *Incarcerated North Carolina Children Put in Solitary Confinement for Weeks, Parents Say*, COURTHOUSE NEWS SERV. (Jan. 8, 2024), <https://www.courthousenews.com/incarcerated-north-carolina-children-put-in-solitary-confinement-for-weeks-parents-say/> [<https://perma.cc/95T6-9Y35> (staff-uploaded archive)].

282. According to the DAC, for one of the most serious offenses, for example, assaulting a correctional officer, the maximum time in solitary confinement would be thirty days. The policy change was based on an acknowledgement that research demonstrates that solitary confinement can cause or exacerbate mental illness. Will Michaels, *New Policy Limits Solitary Confinement Time for Inmates*, WUNC (July 24, 2017, 9:09 AM), <https://www.wunc.org/news/2017-07-24/new-policy-limits-solitary-confinement-time-for-inmates> [<https://perma.cc/34PS-Q4MN>]. In fact, in prisons throughout the state, individuals are often held in solitary cells in excess of a year in contravention of its stated policy. See, e.g., *Dewalt v. Hooks*, 382 N.C. 340, 343, 879 S.E.2d 179, 182 (2022); see also N.C. DEP'T JUST., *supra* note 281, at 118–19. The governor's appointee, Tod Ishee, who leads the Executive Order 303, said at his confirmation hearing that the state would not implement the Mandela Rules. Rachel Crumpler, *People Who Spent Time in Solitary Confinement Say It Had Lasting Effects on Their Mental, Physical Health*, N.C. HEALTH NEWS (Sept. 13, 2023), <https://www.northcarolinahealthnews.org/2023/09/14/people-who-spent-time-in-solitary-confinement-say-it-had-lasting-effects-on-their-mental-physical-health/> [<https://perma.cc/FBP7-RUR8>].

283. See Act of June 6, 2024, ch. 17, 2024 N.C. Sess. Laws __ (codified in scattered sections of N.C. GEN. STAT. chapters 7B, 14, 15A, 115C).

incarcerated persons appears to have been reneged.²⁸⁴ The failure to adhere to executive initiatives described above and the backlash against legislative reforms cannot but cause skepticism about the promises of EO 303 and reentry efforts in North Carolina.

B. *North Carolina's Reentry Efforts and Reentering Women*

North Carolina's promising reentry efforts directed at formerly incarcerated people at large may benefit both women and men who are similarly disadvantaged by the current criminal legal system and the impact of inhumane conditions of confinement. North Carolina, however, has been markedly lackluster in its attempts to adapt reentry efforts to address the particular issues facing women, the vast majority of whom have experienced some form of intimate partner or family violence. Although research demonstrates the need for gender-responsive reentry programming, and despite the increasing rates of women incarcerated in North Carolina, there have been few initiatives to address the identified differentiated needs of women.

When announcing reentry initiatives, elected officials have not referenced the issues faced by formerly incarcerated women.²⁸⁵ This is a missed opportunity to help shape and inform reentry implementation efforts at the state and local levels. The appointments to the 2017 SRCC did not include anyone with particular expertise in women's issues or the mitigation of partner violence, nor are such individuals included in the list of members mandated by the statute.²⁸⁶

However, among the ten working groups initially established by the SRCC, one was dedicated to addressing women and incarceration.²⁸⁷ This group offered several recommendations pertaining to gender-responsive reentry programs including a program "to address the trauma that is unique to women who are reentering society post-incarceration," as well as sentencing reforms that would allow judges to sentence mothers who are their children's primary caretakers to alternative incarceration programs.²⁸⁸

284. See Lyle C. May, *A GED Program on North Carolina's Death Row: A Dream Deferred*, N.C. NEWSLINE (Aug. 8, 2024, 6:15 AM), <https://ncnewslines.com/2024/08/08/a-ged-program-on-north-carolinas-death-row-a-dream-deferred/> [<https://perma.cc/4DWE-JWUQ>] (noting that the reversal of the promise to extend educational programs to persons on death row impacted individuals who might ultimately be eligible to exit prison).

285. See, e.g., N.C. Exec. Order 303, 38 N.C. Reg. 1057 (Mar. 1, 2024); N.C. GEN. STAT. § 143B-1484(b) (2024).

286. See § 143B-1484.

287. See SRCC 2018, *supra* note 186, at 72. The 2018 report drew on the SRCC Women and Incarceration Recommendations which provided research findings to support the recommendations found in the 2018 final report. N.C. DEP'T ADULT CORR., SRCC WOMEN AND INCARCERATION WORKGROUP RECOMMENDATION (2018), <https://www.dac.nc.gov/documents/files/srcc-women-and-incarceration-workgroup-recommendation/open> [<https://perma.cc/PZ3B-32UQ>].

288. SRCC 2018, *supra* note 186, at 76.

The follow-up to these recommendations has been disappointing. In the year following the disbanding of the working groups, none of the recommendations on women and incarceration were reported as completed, in progress, or identified as a legislative priority.²⁸⁹ Three years later, the SRCC report for 2021 acknowledged that the proposed reentry program to address women's trauma had not yet been started, nor had it been identified as a priority.²⁹⁰

The first SRCC report to identify the needs of reentering women was issued in 2023.²⁹¹ It noted that the NC FIT program had expanded to include the North Carolina Correctional Institution for Women in Raleigh.²⁹² The other recommendations offered in relation to the needs of formerly incarcerated women were disregarded or omitted.²⁹³

The SRCC 2024 report, the most recent report issued as of this writing, describes seventeen "completed recommendations" undertaken since 2017.²⁹⁴ All of these recommendations may benefit men and women alike as they exit prison. However, only one of the seventeen recommendations pertains to the specific needs of incarcerated women: the expansion of NC FIT to the women's prison in Raleigh, as noted above.²⁹⁵ None of the completed recommendations address the proposals offered by the Working Group on Women and Incarceration related to women's reentry.²⁹⁶ And, especially disappointing, the 2024 SRCC report indicates that no action has been undertaken to promote sentencing reforms that would affect reentering women.²⁹⁷

The widespread disregard for women's issues includes EO 303. Perhaps this is to be expected given that Reentry 2030, the national initiative with which

289. See SRCC 2019, *supra* note 236, at 1–5, 9.

290. SRCC 2021, *supra* note 236, at 7. Note that a one-and-a-half-page report on SRCC efforts in 2020 was attached as an addendum to the SRCC 2021 report. It is reasonable to speculate that the brevity and timing of the report may have been a consequence of COVID.

291. SRCC 2023, *supra* note 236, at 6.

292. *Id.* at 5.

293. *Id.* at 8–9. For example, there were no efforts to enact a statute to toll the statute of limitations on child support to protect parents unable to pay but who were accruing debts that would affect their status with the courts and with their families. Requests to revise sentencing laws for mothers who are primary caretakers were apparently disregarded. A proposal for a substance disorder treatment initiative could not get underway at the women's prison in Raleigh due to the lack of medical staff suggesting a lack of funding and thus the lack of political will.

294. SRCC 2024, *supra* note 236, at 3–8.

295. SRCC 2024, *supra* note 236, at 6.

296. *Id.* at 3–8. Sixteen of the general recommendations were categorized as "in progress," only one of which related to women's reentry needs. *Id.* 8–14. This recommendation calls for programs "to address the trauma that is unique to women who are reentering society post-incarceration." *Id.* at 12. However, according to the report, although Arise Collective has begun to establish such a program, the project is still incomplete. *Id.*

297. *Id.* at 14. There has been no action or efforts with regard to the recommendations to reform sentencing for mothers who are primary caretakers of their children. *Id.*

EO 303 has joined, also does not include any directives specific to women.²⁹⁸ The DAC's 2021–2023 Strategic Plan fails to register any acknowledgement of women's reentry circumstances.²⁹⁹ As of this writing, at the state level, no screening tool to assess for trauma resulting from IPV has been developed.³⁰⁰ Nor are women's concerns found in the executive branch's Reentry Action Report.³⁰¹ Moreover, inattention to women's circumstances at the national and state level has repercussions at the local level. LRCs are provided no charge or guidance about the particular challenges faced by formerly incarcerated women, thereby diminishing the promise of progress at the local level.³⁰²

Reentry services for formerly incarcerated women in North Carolina are largely due to the efforts of nonprofit organizations underscoring the importance of community involvement in reintegration. For example, Benevolence Farm, located in Alamance County, North Carolina, offers a residential and employment program for formerly incarcerated women.³⁰³ Their residential and employment program includes gender-responsive trauma-informed care, employment, and family reunification assistance for its participants.³⁰⁴ Arise Collective in Raleigh, North Carolina, has provided important reentry services since 2004.³⁰⁵ Reentry Center for Women, serving

298. See *Our Vision*, REENTRY 2030, <https://reentry2030.org/> [<https://perma.cc/LBG6-3GES>].

299. N.C. DEP'T PUB. SAFETY, 2021–2023 STRATEGIC PLAN 30, 33 (2021), <https://www.dac.nc.gov/documents/files/nc-department-public-safety-2021-2023-strategic-plan/open> [<https://perma.cc/2Q6R-83W2>].

300. A copy of the screening assessment is on file with the North Carolina Law Review. At the local level, the Orange County LRC has reported important collaboration with several groups with expertise in sexual assault matters to create a tool for LRC staff when a “re-entrant discloses previous or current traumatic experiences of sexual assault, sexual abuse, or sex trafficking.” See N.C. COAL. AGAINST SEXUAL ASSAULT, SUPPORTING SURVIVOR REENTRANTS RESOURCE 43, https://ocrcc.org/wp-content/uploads/2024/04/Supporting_Survivor_Reentrants_Resource_Manual.pdf [<https://perma.cc/VRG4-6MQ7>].

301. See generally N.C. DEP'T PUB. SAFETY, NORTH CAROLINA'S REENTRY ACTION PLAN (2018), <https://www.dac.nc.gov/documents/files/north-carolinas-reentry-action-plan/download> [<https://perma.cc/B2A2-6Z48>] (noting that reentry initiatives are meant to prepare “incarcerated individuals who are returning to their communities,” with no mention of women's struggles).

302. Although not focused on women's issues but worth noting, a recent promising initiative organized by a nonprofit entity led by a formerly incarcerated activist includes a “Recidivism Reduction Hotline” available to reentering persons throughout North Carolina as well as persons incarcerated in the Wake County Detention Center. *Recidivism Reduction Hotline*, RECIDIVISM REDUCTION EDUCATIONAL SERVICES, INC., <https://rreps.net/recidivism-reduction-hotline> [<https://perma.cc/P9J2-VJL8>]; see also @KerwinPittman, X (July 25, 2024, 1:50 PM), <https://x.com/KerwinPittman/status/1816531502861369380> [<https://perma.cc/7LYB-CBMR>] (announcement of the hotline in the Wake County Jail).

303. *Housing and Community Resources*, BENEVOLENCE FARM, <https://benevolencefarm.org/programs/housing/> [<https://perma.cc/3EQR-JBF2>].

304. *Id.*

305. *About Us*, ARISE COLLECTIVE, <https://arise-collective.org/about/> [<https://perma.cc/53PN-U2GW>] [hereinafter ARISE COLLECTIVE, *About Us*] (serving formerly incarcerated women in Wake

the Triangle area, offers expertise to assist reentering DV and human trafficking survivors.³⁰⁶ Other organizations may offer reentry services, but there is no single website maintained by the State of North Carolina with up-to-date identification of these entities, making it more difficult for women to identify resources or strategize about referrals. Moreover, these organizations have limited or no capacity to offer housing, which is fundamental to reentry success.³⁰⁷

* * *

Over the past fifteen years, North Carolina has intermittently acknowledged the need to address reentry issues. The motivation to do so is largely driven by the effects of overincarceration and the reality that the overwhelming numbers of individuals held in prisons will be released.³⁰⁸ The success or failure of reentering women is dependent on their interactions with individuals and institutions and the degree to which programs and services are responsive to their “unique needs and risk factors.”³⁰⁹

At the inception of exposure to the criminal legal system, North Carolina’s treatment of criminalized survivors, as described in Part I, creates overwhelming obstacles to women’s successful reentry.³¹⁰ Thus, at the point of exit from the carceral system, the state has provided little demonstration of a commitment to implement gender-responsive reentry services to address the increasing number of women leaving prisons.

V. INSIGHTS FROM EMUNAH (MONA) EVANS: HOW CRIMINALIZATION AFFECTS WOMEN AND REENTRY

In this part, we describe how the issues raised in the Article thus far are experienced by women who have lived through the multiple traumas and

County and its outskirts); *see also* *Arise Collective (formerly IPMW): The First 40 Years*, SUTORI, <https://www.sutori.com/en/story/arise-collective-formerly-ipmw-the-first-40-years--bjRB7gnVT7rdcK451XivgEQm> [<https://perma.cc/H6LX-QYMY>].

306. Reentry Center for Women in North Carolina does not provide housing; instead, it refers women to homeless and drop in shelters. *See* REENTRY CTR. FOR WOMEN, <https://www.reentrycenterforwomen.org/> [<https://perma.cc/A75G-FSVX>].

307. Housing is limited to formerly incarcerated individuals in Wake County and its outskirts. *See* ARISE COLLECTIVE, *About Us*, *supra* note 305. Benevolence Farm offers housing but their inability to meet the housing needs of reentering women is one of their greatest challenges. *See* BENEVOLENCE FARM, 2023 IMPACT REPORT 3 (2024), <https://benevolencefarm.org/wp-content/uploads/2024/03/BF-2023-Impact-Report.pdf> [<https://perma.cc/NBL8-YE62>].

308. *See supra* note 12 and accompanying text.

309. *Five Things About Reentry*, *supra* note 8.

310. *See supra* notes 34–39 and accompanying text.

challenges of IPV, incarceration, and reentry.³¹¹ The observations and analysis of one of the co-authors of this Article, Emunah (Mona) Evans,³¹² offers a rich and nuanced understanding of the long and painful journey to and from incarceration. We write this part in the first person to underscore her personal experience and story.

A. *Pathway to Prison: Domestic Violence*

I grew up in Detroit, Michigan, to a single mother and three siblings. My early childhood was pretty normal until I was five years old when I experienced my first childhood trauma: parental separation due to incarceration when my father went to prison for five years. The experience of losing my father to incarceration was painful for all of the family, especially my mother, my siblings, and me. We missed the presence of my father, and we struggled financially as we went from a two-income family to a household where my mother was the sole support. Our mother tried to support us without his income. She struggled to support his incarceration-related expenses. For example, she struggled to deposit funds into his phone account so that he could call us and stay connected. I never thought this was something my own children would have to deal with, but after eight years of living in an abusive relationship with the father of my children, I fled Detroit and this abuse and moved to North Carolina in order to be close to other members of my family. I had been living in constant fear and anxiety and was isolated from friends and family. Nonetheless, leaving was challenging. I was embarrassed and did not want to be a burden on anyone, but I felt like having my family to help with caring for my children would be best.

That turned out to be a life-changing act. When I arrived in North Carolina, a family member badly abused one of my children. When I found out,

311. This Article incorporates the methodology of Participatory Legal Scholarship (“PLS”), which, as described by Professor Rachel López who first coined the term, is legal scholarship written in collaboration with authors who have no formal training in the law but rather expertise in its function and dysfunction through lived experience. See Rachel López, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795, 1803–07 (2023). Virginia Law Review’s most recent symposium was on the topic of PLS. *Virginia Law Review Online Symposium | Participatory Law Scholarship: A Seat at the (Legal) Table*, UNIV. VA. SCH. L., <https://www.law.virginia.edu/event/virginia-law-review-online-symposium-participatory-law-scholarship-seat-legal-table> [https://perma.cc/CD2Y-552H (staff-uploaded archive)]; see also *Call for Submissions: Justice in Transition Online Symposium*, VA. L. REV., <https://virginialawreview.org/symposia/virginialawreview-org-symposia-virginia-law-review-to-host-sixth-annual-symposium/> [https://perma.cc/3K9J-TR2J].

312. Ms. Emunah (Mona) Evans is the community advocacy director at Benevolence Farm in Graham, North Carolina. *Staff*, BENEVOLENCE FARM, <https://benevolencefarm.org/staff/> [https://perma.cc/L7FV-SG2U]. Benevolence Farm’s mission is “to cultivate leadership, promote sustainable livelihoods, and reap structural change with individuals impacted by the criminal legal system in North Carolina” and focuses on programs for formerly incarcerated women. *About*, BENEVOLENCE FARM, <https://benevolencefarm.org/about/> [https://perma.cc/42D3-ZVAS].

I was so angry and felt so betrayed. I confronted this man, trying to protect myself and my child. He overpowered me and tried to strangle me, something that the father of my children did regularly to me to the point of causing me to black out. The experience of having anyone touch my neck to this day causes me overwhelming panic and fear. Because of this, I lost control and took his life. I didn't intend to do so. In 2019, I pled guilty to manslaughter and was sentenced to four and a half years in a North Carolina state prison.³¹³

B. *Prison and Its Consequences on Reentry*

Prison conditions and the opportunities for incarcerated women have a tremendous impact on reentry and the chances for successful reintegration back to families and communities. I spent the first sixteen months of my incarceration in the Union County jail in Monroe, North Carolina. My jail time was applied to my prison sentence, so by the time I was sent to North Carolina Correctional Institute for Women ("NCCIW"), I had less than three years on my sentence. For seven weeks, I was held in "reception," where persons newly admitted to a prison are held for a risk assessment. I was then transferred to Neuse Correctional Institution in Goldsboro, North Carolina, for "orientation," during which incarcerated people learn prison rules. Prison staff perform medical and classification assessments to determine an individual's security level and housing situation. During this time, I was not allowed to mix with the "regular" population. I had no access to jobs or educational opportunities, and I had no opportunity to enroll in any programs.³¹⁴ I remained in Neuse for almost two years and was then transferred to Anson Correctional Institution in Polkton, North Carolina.

1. Prison Programs: Limitations and Impediments

I arrived at Neuse Correctional Institute in April 2020 and was transferred to Anson Correctional Institute ("Anson") in April 2021. At that time, my release date was May 2022, and, thus, I had less than two years of my prison

313. See *North Carolina Department of Adult Correction Offender Public Information*, N.C. DEP'T ADULT CORR., <https://webapps.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=1610203&searchLastName=evans&searchFirstName=emunah&searchDOBRange=0&listurl=pagelistoffendersearchresults&listpage=1> [https://perma.cc/4EDG-3JDL].

314. Based on my experiences and the information explained to me by prison officials when I arrived, the North Carolina Correctional Institute for Women ("NCCIW") requires that upon admission to the prison, women are subjected to a form of quarantine where they are unable to mix with the general population. The prison refers to this as "reception." Women are not allowed to go in the yard or eat dinner with the general population. Although NCCIW offers a number of programs including, but not limited to, dental assistance programs, license plate manufacturing, and various educational programs, they are not available to women when they first enter the prison and until they are through their assessments and evaluations. Aside from health evaluations, I received no medical or therapeutic treatments. This was a very isolating experience.

sentence left to serve. Anson had some programs for women, but I was disqualified from participating in nearly all of them. For some job programs, an incarcerated person must have a certain minimum amount of time left in order to be eligible to participate. For example, I was unable to participate in the license plate program or horticulture program because I had too few years left on my sentence. In other circumstances, jobs or other educational programs require that a person must not be too far off from her release date. Women who have infractions for disciplinary matters are denied entrance into many of the programs even when their infractions are related to untreated mental health and trauma-related problems.

Even when prison programs do offer a chance to learn skills, they generally do not transfer to employment opportunities upon release, especially for women. Anson has a dental lab program for which I was not qualified because of how much (or little, in my case) time I had left when I arrived. However, if I had completed it and obtained a certificate of completion, it would have been useless to me as my criminal record would have made me ineligible for hire at a dentist's office. I know a woman who enrolled in every program for which she qualified. She came home with stacks of certificates, but after a ten-year sentence, she could not use any of them to obtain employment. As for myself, I was able to obtain a job in the kitchen as a first shift baker in order to secure my minimal release date.

2. The "Small Things" and the Challenges of Getting Ready for Reentry

Reentry begins far before a person leaves prison.³¹⁵ Yet the programs offered in the prison system do not focus on what a person will need when they first return home from incarceration. There are so many skills that individuals need once they are released. For example, if someone is lucky enough to get a job interview, the first thing they are going to be asked for is a resumé. But there are no classes on how to develop a resumé. Additionally, someone who has been incarcerated for ten years is going to need to practice for a job interview. It would be useful if prisons offered mock interview sessions with women as they prepare for release. Prisons should offer full workshops about work-ready skills to help build confidence and knowledge about the process. Although there are some prison staff who are supposed to help people with certain aspects of transitions to reentry, it seems that there are not enough people in these positions and the ones who are do not respond to incarcerated persons who are looking for that sort of assistance.

315. *Reentry Programs*, FED. BUREAU PRISONS, https://www.bop.gov/inmates/custody_and_care/reentry.jsp [<https://perma.cc/7CGP-W78B>] (“[R]elease preparation begins the first day of incarceration, [and] focus on release preparation intensifies at least 18 months prior to release.”).

3. Disparities Between Programs for Men Versus Women That Affect Reentry

There are significant differences between what men are offered in prisons and the options provided to women. Anson, where I was held, was previously known as Lanesboro Correctional Institution for men (“Lanesboro”). Before Lanesboro closed down, the prison had a work center where incarcerated men made cardboard boxes.³¹⁶ Based upon conversations among incarcerated women, family members, and friends of formerly incarcerated men who were at Lanesboro, we learned that men were paid approximately eleven dollars per hour. When the prison transitioned to Anson, incarcerated women continued to work at the center making boxes but were paid significantly less. After women organized, and during the time I was held at Anson, the pay was increased to approximately eight dollars and fifty cents per hour, still less than what men were paid.³¹⁷ In addition, Anson added additional qualifications to the eligibility requirements for women than had existed for men, making it more difficult for women to obtain these jobs.

Lanesboro also offered a welding class for men which promised higher wages for incarcerated persons, but it was discontinued after the transition to Anson. Similarly, training in other trades such as HVAC and plumbing were no longer available for women after Lanesboro was changed to a prison for women. These job programs for men prepared them for factory jobs that were likely to pay a decent wage upon reentry and less likely to disqualify applicants with a criminal history.³¹⁸ Nor was there a prison library for women for the first

316. Natalie Davis, *Lanesboro Now Officially Anson Correctional Institution*, ANSON REC. (Aug. 6, 2019), <https://ansonrecord.com/news/8176/lanesboro-now-officially-anson-correctional-institution> [<https://perma.cc/7BRP-43SY>] (noting the closing of Lanesboro which transitioned to Anson Correctional for women). It was announced that Lanesboro’s packaging operation would continue with female offenders. *Id.*

317. I could not work at the center where the boxes were made because incarcerated women had to have at least five years left of their sentence and I had fewer years than five years left. Prison officials did not discuss wages that had been paid to men when the prison was Lanesboro. We learned about the wage discrepancy based on what the women who made the boxes were actually being paid and from conversations with friends and family and formerly incarcerated men who disclosed what they had been paid when the prison was Lanesboro. Since I left Anson, it is possible that they have increased the pay for women; however, women are often offered fewer program and work opportunities that might assist with career opportunities upon release. As a community activist, I know that this is common practice in many systems of incarceration. See Elizabeth Allen, *For Incarcerated Women and Their Families, Equal Access to Education Transforms Lives*, VERA INST. JUST. (Oct. 3, 2023), <https://www.vera.org/news/women-in-prison-need-equal-access-to-education> [<https://perma.cc/EAP4-2WDL>].

318. See Delores Thomas, *Something Wonderful Behind the Prison Walls of Lanesboro*, ANSON REC. (Oct. 17, 2017), <https://ansonrecord.com/opinion/columns/5598/something-wonderful-behind-the-prison-walls-of-lanesboro> [<https://perma.cc/8VXG-N539>] (describing the prison when it incarcerated men and noting welding opportunities for men prisoners). Cf. *Anson Correctional Institution*, N.C. DEP’T ADULT CORR., <https://www.dac.nc.gov/divisions-and-sections/institutions/prison-facilities/anson->

year and a half that I was housed in Anson. Women did their best to share books sent by family and friends.

4. Prisons' Particular Misfit for Women That Hinders Reentry

Prisons are inhumane in general, but particularly so for women. Prisons are not designed for women. If the United States is going to continue to incarcerate women, especially at the increased rates at which women are being imprisoned,³¹⁹ it needs to make sure that they are also considering issues like dignity and privacy. The disregard for privacy was very traumatic to me. Male guards regularly walked by while I was on the toilet or while in the shower. Women, especially when placed in solitary confinement, are deprived of menstrual products. When I was held in solitary confinement, one of the hardest things for me was when I had my monthly period (menstruation) and was not able to shower every day. I had to sit there and bleed through my clothing and onto my bedclothes. I was only able to change my sheets or clothes once a week. These are the very dehumanizing and cruel experiences that caused me and other women significant trauma and affected our ability to function and adjust in the world.

5. The Failure to Address the Consequences of Gender Violence and the Impact on Reentry

In my own experience, and from speaking with other formerly incarcerated women who have experienced DV, the prison system in North Carolina does not provide any specific mental health services to address the lasting trauma of such violence. There are no individualized services, counseling, or treatment, nor are there any peer or support groups. Although I was diagnosed with post-traumatic stress disorder, I only met with a therapist every several months and that was only for the purposes of refilling the medication that was prescribed for me. I thought I would have benefited from some sort of group meetings or individual sessions, especially as I was coming up upon my release date. I know from my own experiences, and from the stories that I hear from other formerly incarcerated women, that the failure to provide mental health services—particularly for the effects of DV—has a major impact on their reentry efforts. Loud noises and unexpected touches from other people are often stressful. I often experience anxiety around groups of people and have difficulty sleeping.

correctional-institution [<https://perma.cc/MVB9-RR3D>] (listing educational, vocational and training programs for men and women that do not include welding). Moreover, the DAC website does not indicate which of the programs that are listed are available to both women and men. *See id.* During my incarceration at Anson, these programs were not available to women.

319. *See* DICHTER & OSTHOFF, *supra* note 10, at 2–4.

C. *Reentry Services*

1. General

North Carolina's reentry efforts started off working with men, and only in the last two years has the state begun to include women as a group with particular needs. Of course, many of the services that government agencies and other groups offer apply to both men and women, for example, helping people who are coming out of prison get their birth certificates and driver's licenses.³²⁰ One program that helps people with medical needs, particularly mental health and medications, is NC FIT, noted earlier in this Article.³²¹ This organization helps train formerly incarcerated people to become certificate-approved peer supporters who are community health workers with personal histories of incarceration.³²² NC FIT is helpful to people who are trying to gain employment, and the use of peers as service providers makes the program more accessible and useful than many other programs.³²³

Some counties, but not all, have official LRCs.³²⁴ In many places, coalitions have been formed—usually a group of executive directors of reentry agencies who meet to discuss gaps in services and to have a better understanding of needs and referral services.

2. Reentry Services for Women

I have been actively involved in reentry issues for women and have tried to become aware of the services that might be available. EO 303 was issued to help increase awareness around reentry issues and encourage people to work together.³²⁵ But EO 303 included no specifics on supporting women.³²⁶

Those of us who are active in reentry work have noticed that in North Carolina there are few reentry programs for women. The programs that do exist lack funds or have restrictions on the use of funds and are not able to house

320. See, e.g., DEAR, <https://www.deardurham.org/> [<https://perma.cc/72FV-XS6R>] (describing a program that helps those with criminal convictions obtain driving privileges). Local Reentry Councils are also tasked with helping reentering persons with documentation. See *Local Reentry Councils*, N.C. DEP'T ADULT CORR., <https://www.dac.nc.gov/divisions-and-sections/rehabilitation-and-reentry/local-reentry-councils> [<https://perma.cc/GN8V-GB28>].

321. See *supra* notes 269, 291–97 and accompanying text.

322. *NC FIT Program*, UNC SCH. MED., <https://www.med.unc.edu/fammed/service-to-the-community/clinical-care/formerly-incarcerated-transition-program/> [<https://perma.cc/483J-XD7K>]; *Formerly Incarcerated Transition (FIT) Program*, UNC SCH. MED., <https://www.med.unc.edu/psych/cecmh/services/clinical-services/reach/fit/> [<https://perma.cc/8544-JMR4>].

323. *NC FIT Program*, *supra* note 322; *Formerly Incarcerated Transition (FIT) Program*, *supra* note 322.

324. See *supra* notes 268, 271, 302 and accompanying text.

325. See *supra* Section IV.A.2.

326. See *supra* Section IV.A.2.

many women at a time.³²⁷ The few programs that can house women do not have sufficient space to meet the needs. Programs are often at capacity, as is the case with Benevolence Farm where I work: we have a waiting list through 2027. Because of the shortages in services for women, we do our best to know what other organizations can do, and those of us interested in supporting women meet regularly for that purpose.

A person leaving prison faces many barriers that do not easily or quickly fade away. Problems keep popping up even if we think we have fixed them, and that is especially true when it comes to women who are mothers trying to reunite with their children. These problems are complicated. For example, if we succeed getting a woman into housing, and she is reunified with her children, she is often threatened with losing her job because she cannot find or pay for adequate child care. If she loses her job, she loses her residency.

My reentry was complicated by trying to reunite with my children. I realized that was literally the hardest thing I've ever done, and I did not have much of a support system. It can be difficult to seek support from reentry program staff, especially if they do not have shared experiences and it was difficult for me to know where to turn. The stigma attached to having a criminal record makes it worse. When my school-age son was returned to me, I tried to join parent groups, and other typical PTA mom groups. Once the other parents found out about my criminal record, I stopped getting invitations to school outings and events. I felt very sad, alone, and isolated. I was cut off from access to school enrichment activities that would have supported my child's growth and socialization. I was not allowed to chaperone any school trips. I constantly worry about the effect that my criminal record will have on my children's well-being.

3. Mental Health and Gender Violence

I work with many women who struggle with the aftermath of violent partner relationships, made worse by the lack of attention to the trauma we continued to experience while in prison. The needs are great, and I have seen many women at Benevolence Farm struggle with their mental health issues that affect their children. Fortunately, there is one organization, RHA Health

327. Based on my personal knowledge as a community organizer working with other formerly incarcerated women who meet regularly to try to assist other women, I know that there are few reentry programs that provide any housing or otherwise have too few or no beds available. If a woman is on the sex offender registry even if she has never had any inappropriate conduct with a child, programs within a certain radius of schools, daycare centers, churches, or other places where children might be will not allow her onto the premises. At organizing meetings where formerly incarcerated women discuss resources, we share what we know and call around to try to see what we might do to support reentry efforts. Because there is no readily searchable state guide on reentry programs for women, it is mostly word of mouth or individual advocates searching on the internet.

Services,³²⁸ that operates out of various community centers and is responsive to the mental health crises that formerly incarcerated women experience upon reentry. RHA Health Services provides individual treatment and offers peer support, which connects formerly incarcerated persons to other services they may need, including driver's training and referrals to vocational programs.³²⁹

4. Sex Offender Registry Issues

Sex offender registry issues are often ignored with regard to formerly incarcerated women. Yet it has been a terrible obstacle for returning women, many—if not most—of whom should not be on the registry.

Women on the registry face significant stigma that affects every aspect of their lives. There are destructive myths about who is on the registry and the commonly accepted idea that everyone who is on the registry had to have actually sexually abused a child or had otherwise engaged in some type of exploitation of a child—beliefs that are not true. Women may have been compelled to register when, in fact, it was their partners who committed the harmful act against a child. They were placed on the registry because they were present or failed to report the harm. The sex offender registry laws do not acknowledge the role DV plays in these circumstances.³³⁰ I was incarcerated with a number of women who were so badly abused that they were unable to protect themselves or their child. I work with women at Benevolence Farm who never were accused of touching a child but were still placed on the sex offender list because of the actions of their abusive husband or partner. As researchers have noted, in North Carolina, women have been “convicted as an accessory to their boyfriend or husband’s sex crime, even if they did not even know the abuse was occurring. At the time of the crime, they just didn’t have money for a lawyer and took a plea deal, not realizing the implications of life on the registry.”³³¹

Mental health problems may also land a woman on the registry even if there was no sex crime. One client of Benevolence Farm struggled with mental health issues, including untreated schizophrenia and bipolar disorder. During a bipolar episode and without authorization, she took the child of a friend from a

328. *Home*, RHA HEALTH SERVS., <https://rhahealthservices.org/> [<https://perma.cc/WK3E-ZVEN>]. RHA includes a Certified Care Management Agency by the North Carolina Department of Health and Human Service. *Tailored Care Management*, RHA HEALTH SERVS., <https://rhahealthservices.org/tailored-care-management/> [<https://perma.cc/8HJU-WDAE>].

329. *Tailored Care Management*, *supra* note 328 (noting, for example that the organization offers “Care Managers [who] can help in other areas that may affect your health and wellbeing, such as finding appropriate resources for housing, employment, food insecurity and more”).

330. *See* N.C. GEN. STAT. §§ 14-208.5 to .46 (2024).

331. Elizabeth Thompson, *Sex Offender Registry Makes Reentry a Balancing Act of Restrictions Without Resources*, N.C. HEALTH NEWS (Apr. 13, 2022), <https://www.northcarolinahealthnews.org/2022/04/13/sex-offender-registry-makes-reentry-a-balancing-act-of-restrictions-without-resources/> [<https://perma.cc/7GAT-3VYM>].

park. She took the child to a store, purchased snacks, and went home. Although she thought that she was babysitting this child, and never harmed the child, she was convicted of kidnapping and placed on the sex offender registry.

Women who are on the sex offender registry have very few options to enroll in reentry programs because of the limitations on physical proximity to children. For example, they are prohibited from being near a school, library, or park.³³² They are ineligible for homeless shelters.³³³ The registry restrictions last for a minimum of ten years.³³⁴ This makes efforts to find reentry housing for individuals who are on the registry extremely challenging. In fact, at Benevolence Farm, we are one of the only programs in North Carolina that will take women on the registry. At times, we may prioritize these applications because of their lack of options elsewhere.

5. Gender Violence and Outdated Laws

Currently, the law does not reflect the reality of women who have suffered domestic and other types of gender violence. The problem with the sex registry laws as described above is one example.³³⁵ People seem to recognize the need to change the laws for women who commit crimes and whose actions are affected by the past violence they experienced, but the pace of changes, if there are any changes, is not fast enough. There are many women that I left behind in prison who had been in DV relationships in the 1970s and 1980s. At the time of their trial, no one seemed to even understand what DV was or how such violence affects mental health and behavior. But there are no pardons or clemency or any possibilities to help these women leave prison earlier than their final sentence date.³³⁶ Women who serve long sentences will of course have a difficult time when they are released, especially because there are no DV services or support for them while they are serving time. The adoption of a law like New York's DVSJA would provide opportunities to reconsider prison sentences for criminalized survivors.

There is also little attention paid to conditions related to postpartum experiences and the ways that physical changes a woman undergoes may affect her brain and behavior. We may have a better understanding of postpartum

332. N.C. GEN. STAT. § 14-208.18 (2024).

333. There is no comprehensive list of reentry programs by which to ascertain what programs exist and what services they provide. Because those on the registry are prohibited from being around children, they are not eligible to remain at a place where children may be present. *See* N.C. GEN. STAT. § 14-208.18 (2024). Recently, Arise Collective has partnered with us at Benevolence Farm to better serve women on the registry.

334. N.C. GEN. STAT. § 14-208.12A (2024).

335. *See supra* Section V.C.4.

336. *See id.*

issues now,³³⁷ but I know that there are women in prison who never had a chance to be evaluated for postpartum problems although they might have affected the outcome of their cases. Why are these women still in prison? What reentry services will be available to them when they finish their prison sentences?

The state of legal representation for women who are charged with harming their children is also very worrisome. We know that some of the lawyers who are appointed in these cases do not seem especially trained to understand the circumstances of women in DV relationships whose children are harmed by the abuser. Women are often wrongfully convicted for failing to protect their children although they did the very best they could have, given the dangers they faced from the abuser. They and their children were failed by the legal system. They suffer the trauma of living with the harm their children suffered, the harm they suffered, and knowing that they were helpless. How will reentry services address their trauma when they are released?

D. *Community Work*

1. Challenges

We do not have enough reentry programs, and those that exist are at capacity. To address this, we have created a Housing First Fund and are always brainstorming other initiatives to support individuals who cannot get placed into reentry housing.³³⁸ But there are significant challenges that we face at Benevolence Farm. We are a nonprofit organization. We do not receive any public funds from the government in order to avoid the statutory restrictions attached to public funding that would prevent us from serving formerly incarcerated women who are on the sex offender registry list.³³⁹ These women would otherwise have few, if any, residential or service options.³⁴⁰ We primarily rely on community donations, and that is a struggle.

337. See, e.g., Maeve Wallace, Veronica Gillispie-Bell, Kiara Cruz, Kelly Davis & Dovile Vilda, *Homicide During Pregnancy and the Postpartum Period in the United States, 2018–2019*, 138 *OBSTETRICS & GYNECOLOGY* 762, 762 (2021) (finding that “homicide is a leading cause of death during pregnancy and the postpartum period in the United States”); *More Than A Third Of Women Experience Lasting Health Problems After Childbirth, New Research Shows*, *WORLD HEALTH ORG.* (Dec. 7, 2023), <https://www.who.int/news/item/07-12-2023-more-than-a-third-of-women-experience-lasting-health-problems-after-childbirth> [<https://perma.cc/TCZ3-E8SU>] (reviewing a series of medical reports focusing on the problem of health-related issues for women after childbirth, with a focus on the ongoing research on post-partum issues).

338. *Housing First Fund: M’s Keys*, *BENEVOLENCE FARM* (Sept. 18, 2023), <https://benevolencefarm.org/housing-first-fund-ms-keys/> [<https://perma.cc/VYC4-4ZUX>] (explaining that the Housing First fund supports formerly incarcerated women to find housing by paying such expenses as the security deposit).

339. See *supra* Section V.C.4.

340. See *supra* Section V.C.4.

Benevolence Farm is in a rural area and does not seem to readily attract grant funding. Because of these funding challenges, we incorporated a social enterprise to help generate income. We support people who identify as women, and our only criteria is that they come from a jail or prison in North Carolina. Because we provide resources broadly, we miss the mark of philanthropies that often prefer to target a specific issue when it comes to grants. As a result, our funding is somewhat unstable, with ups and downs. To deal with financial problems, we sell body-care products that were produced based on research conducted by a Benevolence Farm resident, including candles infused with the herbs and flowers grown at Benevolence Farm and healing salves. At times, it is our social enterprise that keeps us afloat.

2. Strength of Community Activism

We know that one organization alone cannot do what needs to be done for formerly incarcerated women. It is challenging for women or any one organization to try it alone. In order to plan better and share knowledge about what each organization has to offer and to serve the community better, reentry advocates meet regularly. I participate in “Bridge” meetings as part of Sustainable Alamance,³⁴¹ where we strategize about how to find solutions for reentry. Since I have begun to attend these meetings, I have encouraged the group to focus on women and that has been slowly evolving. We have connected with another program that supports women called the Jubilee Home,³⁴² whose staff had been serving men for years. They recently bought a home in order to accept women, and they reached out to us for guidance about serving women. Our collaboration is a form of mutual aid, that is, we are doing what government has not done—but should.

Mutual aid is key to responding to the challenges of family reunification. I realized how important it was for individuals like me to be successful in my community and especially as a parent. It was difficult to find support. I started support groups for women with lived experiences related to family reunification so that we might come together and offer each other advice or support.

I have been working to build connections with child care providers and daycare centers. I have also been working with a church to develop a low-cost child care and after school care. I have been working out strategies to get furniture to women coming out of prison. I inquire whether they need car seats, baby clothes, or other items for their children and then search online and contact organizations that might have these items.

341. SUSTAINABLE ALAMANCE, <http://www.sustainablealamance.org/> [<https://perma.cc/NWA6-26YG>].

342. JUBILEE HOME, <https://www.jubilee-home.org/> [<https://perma.cc/T3CE-PUGX>].

Our efforts are about building relationships with other organizations and putting resources together to support “the whole woman.” Recently, we had a meeting with the Arise Collective, which also provides reentry services to women.³⁴³ This meeting and the “Bridge” meetings are a way for us to develop partnerships, so that together, we can more efficiently fill the gaps and make appropriate referrals. We have been doing this on our own. The call for support for women’s particular needs is not coming from the state. The local councils do not get that message or direction from the state. It has been the work of community groups coming together for mutual aid—really, that is how the reentry work for women is being accomplished.

3. Domestic Violence and Reentry Activism

I am starting to see progress as a result of the advocacy of formerly incarcerated women who are bringing attention to DV issues and how they affect women in the criminal legal system, and especially around reentry. I participated with North Carolina Justice Center’s second chance lobbying day along with other formerly incarcerated women who were survivors of DV.³⁴⁴ The second chance lobbying day provided us with the opportunity to speak with legislators, state reentry council members, and talk about issues that impact us.

Formerly incarcerated women are using their own voices to advocate for themselves and tell stories as a way to raise awareness. I have been able to use my position at Benevolence Farm to share my story and connect with people who can hopefully assist to in making needed changes. I use the family support group to encourage other women to tell their stories and point them in the right direction in order to get their stories out. Undergraduate and law students who are interested in DV and reentry issues have been helpful in writing papers that explain our circumstances and share our stories.

The improvement we have seen for formerly incarcerated women is a result of more of us talking about women’s issues, especially DV. Because of my organizing, I have been able to insert myself in different spaces where I would otherwise not be included. My presence and the presence of other formerly incarcerated individuals at the governor’s meetings and legislative meetings have been important. Most of the time, these meetings are led by individuals who have never been impacted by incarceration. But more recently, there are a few formerly incarcerated individuals who lead these meetings, and it is their lived experience that will make a difference in terms of bringing about system reform and dignity for women.

343. See *Arise Reentry Support*, ARISE COLLECTIVE, <https://arise-collective.org/reentry-support> [<https://perma.cc/3V8S-UN9R>] (describing reentry services including residential, educational assistance, and supplies and resources for daily needs).

344. Timothy Young, *April Is Second Chance Month*, N.C. JUST. CTR. (Apr. 1, 2024), <https://www.ncjustice.org/april-is-second-chance-month/> [<https://perma.cc/FPZ2-S37P>].

CONCLUSION

This Article has sought to interrogate the reentry circumstances of incarcerated women whose pathway to the criminal legal system is inextricably related to their experiences of gender violence. While we raise overarching concerns about reentry, our focus on women's issues drives attention to the structural causes specific to this growing segment of the incarcerated population. We look closely at the particular circumstances of criminalized survivors, a problem that the criminal legal system has failed to mitigate.³⁴⁵

The Article, and especially Part V written by Mona Evans, a woman who has lived through the degradation of incarceration and the uncertainties of reentry, underscores the need to reconsider the overincarceration of criminalized survivors and the punitive sentencing schemes which do not admit the determinants of transgressive behaviors. North Carolina now has the opportunity to consider dehumanizing prison conditions for women denied treatment and educational and vocational opportunities that might support successful reentry. Moreover, a focus on gender responsive services for trauma and other strategies might serve to help and heal all incarcerated people.³⁴⁶

What we argue in this Article is that reentry is more than a bundle of services and programs, as useful as these may be. Reentry may be deemed as a celebratory process—the end of the imprisonment of people under conditions that are generally cruel and dehumanizing; but like all celebrations, they are short-lived, and day-to-day adjustments must be met. Bruce Western describes reentry in this way: “I view a successful transition from prison as the attainment of a basic level of well-being consistent with community membership. This view of success after incarceration captures something of what [criminologist John Irwin] called the ‘dignity, fulfillment, [and] achievement of life goals.’”³⁴⁷

As reiterated in this Article, North Carolina has the opportunity to improve reentry services. EO 303 and the legislative directives to address reentry identify the fundamental programmatic services needed to support formerly incarcerated individuals. There is skepticism about whether this opportunity will be squandered: Will the effort persist past the current governor's term; will funding be allocated for implementation?³⁴⁸ Ultimately,

345. Deborah M. Weissman, *The Personal is Political—And Economic: Rethinking Domestic Violence*, 2007 B.Y.U. L. REV. 387, 399–404. See generally LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED APPROACH TO INTIMATE PARTNER VIOLENCE* (2018) (describing how the legal system has failed to mitigate intimate partner violence).

346. See Collins, *supra* note 25, at 355.

347. WESTERN, *HOMEWARD*, *supra* note 28, at 35.

348. In an interview, the newly appointed Secretary of the Department of Adult Corrections, Leslie Cooley Dismukes, indicated an interest in reentry efforts. See Rachel Crumpler, *The Adult Correction Has a New Leader. What Challenges Will She Face?*, N.C. HEALTH NEWS (Jan. 16, 2025), <https://www.northcarolinahealthnews.org/2025/01/16/nc-department-of-adult-correction-new-leader-what-challenges-will-she-face/> [https://perma.cc/XCY5-DMUG].

the answers to these questions are a matter of the political will to be forged through the leadership of directly impacted women.

We offer an array of recommendations that build out a reentry process that would allow formerly incarcerated people to build a life of “dignity, fulfillment, [and] achievement of life goals.”³⁴⁹ First, reentry must be founded on structural reforms to North Carolina’s criminal legal system at both the front and back ends. At the front end, North Carolina laws that pertain to self-defense must incorporate a proper understanding of imminence in the context of DV—a change that has been enacted elsewhere. These front-end changes should be accompanied by expansion of gender-responsive alternative-to-incarceration programs. Post-sentencing reforms included in a reentry project menu would be second chance statutes such as New York’s DVSJA that are responsive to the irrational punishment scheme that criminalized survivors face.³⁵⁰

Second, reentry must be understood as a process that begins at arrest and continues during incarceration through the days, months, and years after release. Thus, conditions of confinement must also reflect approaches and services that help prepare incarcerated women for release. These approaches run the gamut from trauma counseling while incarcerated to prison jobs that have a nexus to post-release employment (and pay at a rate commensurate with incarcerated men), educational programming (including higher education), and eliminating the inhuman conditions of confinement.

Third, immediate reentry supports should respect the dislocation that comes with release—the adjustment to the “little things.” Peer support is critical for this transition, a sharing of experiences and a message of hope that one gets through it.

All reentry services for women must be trauma-informed, and, of course, include trauma counseling for childhood abuse as well as IPV. Reentry services must also help women reestablish family relationships, especially those with their children. Family reunification is often first among women’s concerns once released from prison.

“Traditional” reentry services such as job training and placement should be well-funded. These too need to have a gender-specific focus given women’s exclusion from better paying jobs and child care responsibilities.

Finally, reentry services must be informed and led by formerly incarcerated people. The progress thus far, as Mona Evans has explained,³⁵¹ is a result of formerly incarcerated women engaging in storytelling, policy, and legislative work. They are the ones accomplishing the small and the large things.

349. WESTERN, HOMEWARD, *supra* note 28, at 35.

350. See Act of May 14, 2019, ch. 31, 2019 N.Y. Laws 144 (codified at N.Y. PENAL LAW §§ 60.12, 70.45; N.Y. CRIM. PROC. LAW §§ 390.50, 440.47, 450.90).

351. See *supra* Section V.D.2.

Wholesale transformation of the carceral system requires more than resentencing initiatives, “better” prison conditions, and improved reentry services. Change must take place outside of the system of punitive social controls. But “[t]his is what we do while we’re waiting for the world to change.”³⁵²

352. Jason DeParle, *Sisyphus on the Street*, N.Y. REV. BOOKS (Apr. 24, 2024), <https://www.nybooks.com/articles/2024/04/04/sisyphus-on-the-street-rough-sleepers/> [<https://perma.cc/6SUW-S4FL>] (quoting Dr. Jim O’Connell, physician to the homeless in Boston).