

Open Letter by LGBTQ, Women and Survivor Advocacy Organizations in Support of Bail Reform
We believe in survivors. And we believe in real bail reform.

February 8, 2019

Dear New York State Legislators and Governor Cuomo,

As organizations committed to supporting survivors of intimate partner violence, we want to add our voice to the growing call for true, progressive bail reform in New York State.

As anti-violence organizations, we support the elimination of money bail and the implementation of a pretrial system that substantially limits pretrial incarceration and ensures due process and individualized justice. **We strongly oppose the inclusion of *any* misdemeanor charges in the net of pretrial detention, including in misdemeanor domestic violence cases.** As advocates and people who have been impacted by domestic violence, we know that Black and Latinx, immigrant, LGBTQ, and women survivors are often themselves criminalized and that pretrial incarceration can undermine the safety of survivors.

From our experiences and those of our clients, we know that decades of reliance on the carceral system has had damaging effects. Mandatory arrest laws often ensnare IPV survivors in the criminal legal system and feed mass criminalization and incarceration of communities of color and low-income communities. This turn to policing as the primary strategy to fight intimate partner violence has also left out the voices of marginalized survivors, including women of color, LGBTQ people, and immigrants who often experience further harm at the hands of the police and prison system.

Intimate partner violence can be devastating for survivors, families, and communities. The process of healing from trauma caused by an abusive partner can take years, and survivors often face a variety of consequences related to health and wellness, safety, employment, finances, housing, and relationships with loved ones. In order to truly heal from, and end IPV, we must find solutions to violence that are genuinely healing and not themselves grounded in violence.

We oppose **the pretrial incarceration of people accused of misdemeanor domestic violence** because:

- **Survivors are often arrested.** Mandatory arrest laws and poor primary-aggressor assessments by law enforcement mean that survivors are often arrested instead of - or in addition to - the person engaging in a pattern of abusive partner behavior.
 - In a survey of domestic violence survivors, 1 in 4 women reported they had been arrested or threatened with arrest during a partner abuse incident or while reporting a IPV to the police.¹

¹ National Domestic Violence Hotline, Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses. Washington, DC (2015). <http://www.thehotline.org/resources/law-enforcement-responses>

- The Family Violence Program of the Urban Justice Center in New York City found that survivors of IPV had been arrested in 27% of cases received through their hotline in a two-year period. 85% of survivors arrested had a prior documented history of being subjected to domestic violence, and 85% were injured during the incident that led to their arrest.²
- **Pretrial incarceration disproportionately impacts marginalized communities.** Survivors who are women of color, low-income, or LGBTQ are far more likely to be arrested for domestic violence. Racialized gender norms inform who is perceived as a survivor by the police and can increase the possibility of arrest for survivors who deviate from these norms. For example, due to racist stereotypes that position Black women as “aggressive,” Black women survivors are more likely to be seen as a perpetrator when they stand up for themselves, regardless of the circumstances and their actual experience of violence.³ Queer and trans survivors are also more vulnerable to arrest.⁴
 - In a New York City study, 66% of survivors who were arrested alongside or instead of their abusive partner were African American or Latina and 43% were living below the poverty line.⁵
- **Pretrial incarceration puts non-citizen survivors at great risk.** Non-citizen survivors who are arrested and incarcerated pretrial are subject to immigration detainers which can result in prolonged immigration detention, deportation and permanent or prolonged family separation following the conclusion of the criminal case.
- **Pretrial incarceration harms children and families.** Incarcerated and detained women tend to be primary caregivers. Even a few days of pretrial detention can result in the loss of employment and housing and the initiation of child neglect cases with long-lasting impacts on the financial stability, integrity, and well-being of families.
- **Pretrial incarceration does not keep survivors safe.** Research indicates that incarceration often increases risks for domestic violence by decreasing the economic well-being and stability of incarcerated people, increasing risks associated with PTSD

² Haviland, M., V. Frye, V. Rajah, J. Thukral and M. Trinity, The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City (Family Violence Project, Urban Justice Center 2001)

³ Beth E. Richie, Arrested Justice: Black Women, Violence, and America’s Prison Nation, New York University Press, 2012.

⁴ Haviland, M., V. Frye, V. Rajah, J. Thukral and M. Trinity, The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City (Family Violence Project, Urban Justice Center 2001)

⁵ Ibid.

and use of violence, and weakening neighborhood and community support systems that people rely on for violence prevention.⁶

The groundswell of support for bail reform and an overhaul of New York State's pretrial justice system presents a critical opportunity for anti-IPV advocates - and anyone who cares about survivors of IPV and efforts to end IPV - to chip away at the harm caused by our movement's misguided faith in criminal legal responses to gender-based violence. While we are committed to supporting survivor choice, including the choice to utilize law enforcement, we desperately need solutions that are not rooted in criminalization and incarceration. Pretrial incarceration is not a solution. It perpetuates, rather than alleviates, the violence survivors experience and puts marginalized survivors at great risk. Instead of incarceration, we call on legislators to increase funding for safety planning, emergency shelter, and long-term housing. These are the resources that survivors need.

New York State Legislators, we urge you to stand alongside survivors of intimate partner violence and anti-IPV advocates: pass bail reform that ends money bail and guarantees pretrial liberty for the vast majority of people, including (but not limited to) *all* people charged with misdemeanors. Allowing an expansive net for pretrial detention does not serve the interests of survivors or our communities at large.

Signed,

Ali Forney Center
Black Lives Matter Hudson Valley
Day One
Girls for Gender Equity
NYC Anti-Violence Project
STEPS to End Family Violence
Violence Intervention Program, Inc.
Women's Prison Association

For more information, or to sign on, contact Audacia Ray at aray@avp.org

⁶ Coker & Macquiod.