

# **T H E   C R I S I S   O F C R I M I N A L I Z A T I O N**



# ABOUT THIS REPORT

In March 2017, the Ford Foundation, Wellspring Advisors, and the Barnard Center for Research on Women (BCRW) convened a two and a half day gathering of over 100 funders, advocates, issue experts, and grassroots organizations working at the intersections of race, faith, gender and reproductive justice, sexuality, poverty, HIV status, and criminalization. Participants discussed the need for a philanthropic framework to guide a comprehensive response to the crisis of criminalization, and outlined key funding strategies for the field. This report and recommendations reflect the collective wisdom that emerged from these conversations. For more information about the convening, see Appendix D.

## ACKNOWLEDGEMENTS

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## NEW FEMINIST SOLUTIONS SERIES

This report is part of the Barnard Center for Research on Women's (BCRW) New Feminist Solutions series. Marking the newest direction in BCRW's more than thirty-five-year-old tradition of print publications, New Feminist Solutions is a series of reports based on conversations and ideas emerging from conferences sponsored by Barnard College that are geared toward informing and inspiring policy-makers, activists, and philanthropic partners. Each report was written in collaboration with organizations and individuals who, like BCRW, have made a concerted effort to link feminist struggles to those of racial, economic, social and global justice. For more information, please visit [bcrw.barnard.edu](http://bcrw.barnard.edu).

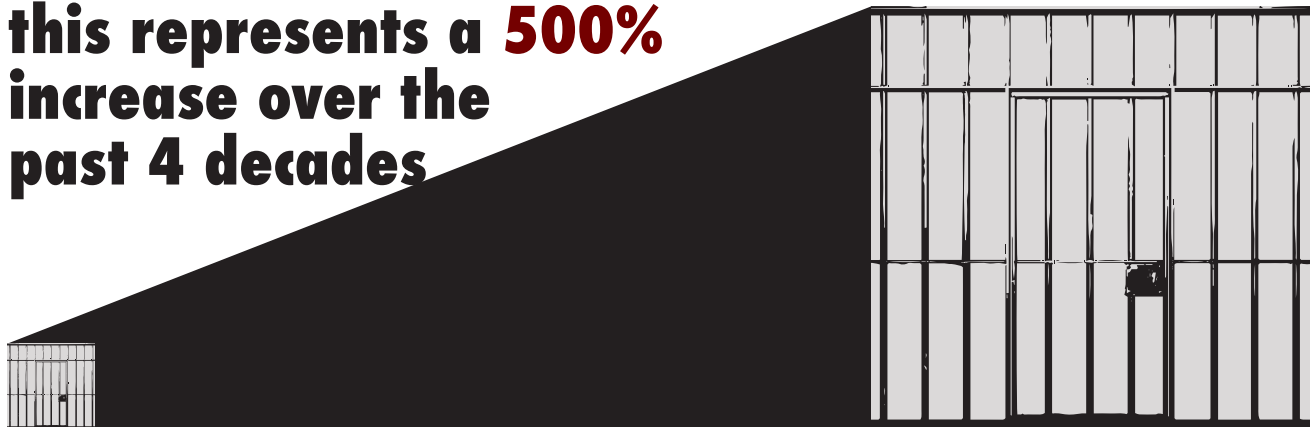
# TABLE OF CONTENTS

<b>Executive Summary</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
• Impacts of Criminalization on Funding Fields	<b>7</b>
<b>What is Criminalization?</b>	<b>9</b>
<b>How Can We Interrupt the Process of Criminalization?</b>	<b>11</b>
<b>The Case for a Comprehensive Philanthropic Response</b>	<b>15</b>
• Urgent Threats, Urgent Need	16
• What Does it Look Like in Practice?	17
• Taking an Intersectional Approach	18
• Intersectional Frameworks: Expanded Sanctuary and Freedom Cities	23
<b>Recommendations to Funders</b>	<b>25</b>
• Invest in organizations currently working to challenge criminalization	26
• Invest in organizations in fields facing increasing criminalization	26
• Invest in building alternative responses to violence and harm	27
• Commit specific and significant funds to grassroots organizations led by people directly targeted by criminalization, and particularly criminalized people of color	28
• Encourage communications and accountability from national organizations and policy advocacy groups to local grassroots groups led by people directly impacted by criminalization	28
• Commit to funding consensual, equitable, accountable and non-extractive partnerships	29
<b>DO's and DON'Ts</b>	<b>30</b>
<b>Conclusion</b>	<b>32</b>
<b>Endnotes</b>	<b>33</b>
<b>Appendix A: 9 Key Strategies You Can Fund to Interrupt the Crisis of Criminalization</b>	<b>34</b>
<b>Appendix B: Reflection Questions</b>	<b>38</b>
<b>Appendix C: Funder Perspectives</b>	<b>39</b>
<b>Appendix D: About the Convening</b>	<b>40</b>
<b>About the Authors</b>	<b>42</b>

at this moment, 2.2 MILLION people are  
locked up in the nation's prisons and jails  
and 60% of them are people of color



this represents a 500%  
increase over the  
past 4 decades



Annually, there  
are over 10 Million  
arrests & over



26%  
of arrests  
were of Black people,  
who make  
up only  
13%  
of the population



# EXECUTIVE SUMMARY

**This report is an urgent call for a comprehensive philanthropic response to the growing crisis of criminalization.**

Over the past decade mass incarceration - the reality that over 2.2 million people are locked up in the nation's prisons and jails, and 60% are people of color - has emerged as a central social justice issue of our time. Advocates, organizers, and philanthropic partners have confronted this crisis by working to reduce both racial disparities and the overall population of incarcerated people, and to mitigate the collateral consequences of criminal convictions.

While these interventions remain critical, mass incarceration represents the tip of a much larger iceberg - the growing crisis of criminalization. **Over 10 million arrests take place annually across the country. Four million people are currently on probation, parole or otherwise under the control of the criminal legal system without being incarcerated. These daunting statistics reflect a growing crisis in the United States - not of increasing violent crime, but of an ever-expanding web of criminalization.**

Beyond passage of criminal laws, criminalization represents a broader social and political process by which society determines which actions or behaviors - and by who - will be punished by the state. Increasingly, surveillance, policing, arrest, and criminal punishment have become the default response to drug use and addiction, poverty, mental illness, youthful behavior and school discipline, and countless other social problems, real and imagined. Criminalization is seeping into virtually every aspect of society and every institution, including schools, hospitals, social services, public and private housing, and child welfare, dramatically increasing the number of people caught in the web of the criminal legal system, often with devastating consequences beyond the walls of a jail or prison cell. Collectively, we have invested far less attention and resources in interrupting the process of criminalization - which drives mass incarceration - and on the broader impacts of criminalization beyond incarceration.

The crisis of criminalization is dramatically intensifying in the current political climate. Criminalization is increasingly being used as both a mechanism and justification for mass detention and deportation of immigrants. And policymakers at all levels are pursuing increased policing and harsher punishment of drug offenses, poverty, reproductive autonomy, and of trans and gender nonconforming people. **This report calls on philanthropy - including those who are *not* traditional criminal justice funders - to seize this moment to challenge criminalization as a default response to social problems.**

Criminalization - of individuals and entire communities - is increasingly impeding progress in virtually every field of philanthropic investment: racial and economic justice, civil liberties and human rights, women's and LGBTQ equality, education and youth leadership, reproductive justice, and public health. **But it is a process in which we can - and must - intervene** to build safe, healthy, and thriving communities.

Groups across the country are working to interrupt criminalization through grassroots organizing, policy advocacy, legal and legislative challenges. Current interventions include decriminalization, breaking the school and foster care to prison pipelines, police and bail reform, and pre-arrest diversion programs, among others. Communities are also exploring and elaborating responses to violence and harm that don't implicate criminal punishment. And advocates are increasingly working toward diversion of resources away from systems of policing and punishment into programs that meet community needs such as housing, health care, treatment, employment, and education. However, the vast majority of groups working to confront the crisis of criminalization have access to very few resources for this work, in a climate where both need and obstacles are exponentially increasing.

**An immediate, concerted, comprehensive, sustained, cross-sector, collaborative philanthropic response to the growing crisis of criminalization is urgently needed - to more effectively tackle mass incarceration, to stop the spread of surveillance and punishment, and to meet the challenges of the current political climate.** Such a response requires an injection of resources into organizations currently working to challenge criminalization on the front end – including those working to develop alternate responses to violence and to redirect social resources to meeting basic needs. It also requires targeted investment in fields where criminalization is rapidly expanding, such as immigrant, gender, sexual and reproductive justice, and LGBTQ rights. While there is no “one-size-fits-all” approach to challenging criminalization, there are a number of key principles and strategies that should guide our response outlined throughout this report.

Ultimately, confronting the crisis of criminalization is an essential element of strategies to promote social, racial, gender, sexual, and economic justice. And perhaps most importantly, by confronting the crisis of criminalization, we will ultimately create the communities, human relationships, and world we want to see.

# INTRODUCTION

At this moment, there are 2.2 million people incarcerated in the nation's prisons and jails. This represents a 500% increase over the past four decades. Stark racial disparities exist in the population of incarcerated people – 60% are people of color, almost twice the percentage of Black and Latinx people in the general population. Black people are five times more likely, and Indigenous people four times more likely, to be incarcerated in state prison than white people.<sup>1</sup> Women are the fastest growing incarcerated population: the number of women in prison has been increasing at a rate 50% greater than men's over the past four decades, growing a total of 700%.<sup>2</sup> The number of women in jails has increased 14 fold since 1970.<sup>3</sup> Black women continue to be incarcerated at twice the rate of white women.<sup>4</sup> And almost one in two Black transgender women report experiencing incarceration in their lifetime,<sup>5</sup> representing the highest rates of incarceration of any group. Over the past decade, advocates, policymakers and philanthropic communities have increasingly focused on how to tackle the issue of mass incarceration in the United States, and the racial disparities it produces.



**Indigenous people are **four times** more likely and Black people are **five times** more likely to be incarcerated than white people**



**Black women continue to be incarcerated at **twice the rate** of white women.**

An exponentially greater number of individuals come into contact with the criminal legal system on a daily basis. **Over 10 million arrests take place annually across the country.**<sup>6</sup> Racial disparities in arrests are equally stark: over 26% of arrests were of Black people, who make up only 13% of the population. Black youth are twice as likely to be arrested as white youth, despite few differences in rates of involvement in criminalized activity. **3.7 million people are currently on probation or otherwise under the control of the criminal legal system, and another 840,000 are on parole following incarceration.**<sup>7</sup> An even larger number of people are stopped, questioned, harassed, physically or sexually assaulted by law enforcement agents, without being arrested, every year. In some cases, people taken into police custody are directly transferred to immigration detention or the foster care system without being sent to jail or prison. Racial disparities have also been documented in stops, police violence and immigration enforcement.

**These daunting statistics reflect a growing crisis in the United States – not of increasing violent crime,<sup>8</sup> but of increasing criminalization.** Beyond passage of criminal laws, criminalization represents a broader social and political process by which society determines which actions or behaviors – and by who – will be punished by the state. **Policing, arrest, and criminal punishment have become the default response not only to violence and other harms, but also to poverty, mental health crises, drug use and addiction, HIV and other health conditions, and school discipline.** Systems of policing and punishment are seeping into virtually every aspect of society and every social institution – schools, hospitals, social services, child welfare, public and private housing, and public spaces, contributing to increased contact with the criminal legal system, often with devastating consequences beyond the walls of a jail or prison cell. The overwhelming majority of people targeted for criminalization are people of color, including immigrants, youth, women and LGBTQ people of color, Indigenous people, and people of color with disabilities, reflecting structural patterns of racial discrimination within and beyond the criminal legal system. As a result, for a more than a generation of young people of color, police and the criminal legal system represent a primary point of contact with public institutions.

**This report calls on philanthropy – including those who are not traditional criminal justice funders – to seize this moment to challenge criminalization as a default response to social problems.**







**Almost one in two Black transgender women report experiencing incarceration.**

**The crisis of criminalization is dramatically intensifying in the current political climate.** For instance, criminalization of immigrants is increasingly serving as both a tool and justification for mass detention and deportation. Federal resources are being poured into law enforcement through expansion of surveillance, militarized policing, the “war on drugs,” and “broken windows” policing,<sup>9</sup> while simultaneously being withheld from “Sanctuary Cities” seeking to protect immigrant communities. Exercises of reproductive, gender, and sexual autonomy are increasingly being restricted through criminal laws and criminalizing practices. Across the country, state and local policymakers are promoting legislation and regulations furthering criminalization of homeless and low-income people.<sup>10</sup> The presence of transgender and gender nonconforming people<sup>†</sup> in public spaces and institutions is also increasingly subject to criminalization through repeal of anti-discrimination laws. And resistance to these and other policies is increasingly being targeted through criminalization of protest and dissent.

The consequences of mass criminalization are devastating on an individual level, contributing to physical and emotional trauma, lost time from school and work, exorbitant fees and fines, loss of access to education, employment, housing, health care, social benefits, shelters, public spaces, and voting rights, removal of children, deportation of family members, surveillance, and loss of liberty. They are also devastating on a systemic level: mass criminalization diverts a significant proportion of our collective resources to systems of policing, control and punishment. This drain on city, state and federal budgets prevents us from addressing the economic and social drivers of criminalized behaviors by investing resources into building safe and thriving communities.

**[S]tudy after study shows that a living wage, access to holistic health services and treatment, educational opportunity, and stable housing are far more successful in reducing crime than police or prisons.**

**– Center for Popular Democracy, Law for Black Lives, BYP100, Freedom To Thrive: Reimagining Safety & Security in Our Communities**

<sup>†</sup> “Transgender,” or “trans,” refers to people whose gender identity or gender expression is different than typically associated with the sex assigned at birth. “Cisgender,” or “cis,” is used to describe people whose gender identity is consistent with that typically associated with the sex they were identified with at birth. “Gender nonconforming” is an umbrella term used to describe people who may not identify as transgender, or with any gender whatsoever, but whose appearance or gender expression is read as inconsistent with the gender they were assigned at birth or with normative understandings of gender.

**Criminalization - of individuals and entire communities - is increasingly impeding progress in virtually every field of philanthropic investment:** racial and economic justice, civil liberties, women's and LGBTQ equality, education and youth leadership, reproductive justice or human rights. **But it is a process in which we can – and must – intervene** to build safe, healthy, and thriving communities, movements, and country through a collective philanthropic commitment to confronting the crisis of criminalization. In the current climate, resistance to criminalization – of immigrants, of communities of color, of women and LGBTQ people of color, of social movements – is fast becoming a central organizing principle across sectors, bridging issues, communities, and funding streams. For many young people, resistance to criminalization has become a primary point of entry into movements for social change.

Immediate action on the part of philanthropy is urgently needed to effectively interrupt the crisis of criminalization, and to maintain progress and advance current goals across philanthropic fields. **This report calls on funders concerned with promoting civil rights and liberties and advancing racial, economic, gender, reproductive, disability and LGBTQ justice to increase investment in efforts to challenge criminalization, and offers concrete options for doing so.**



**Black youth are twice as likely to be arrested as white youth.**



# IMPACTS OF CRIMINALIZATION ON FUNDING FIELDS

## Philanthropic field

## Impacts of Criminalization

<b>Racial Justice &amp; Migrant Justice</b>	<b>Civil Liberties &amp; Human Rights</b>	<b>Gender &amp; Reproductive Justice</b>	<b>Educational &amp; Youth Leadership</b>	<b>LGBTQ Rights</b>	<b>Economic Justice</b>	<b>Public Health</b>
Stark racial disparities in criminalization drive racial inequality in education, employment, housing, and wealth	Criminalization is accompanied by widespread violations of civil liberties and human rights	Criminalization of youth creates structural barriers to educational and economic opportunity for young people of color	Arrest and incarceration threatens the safety and wellbeing of women and girls through physical and sexual violence, poor health care and separation from children	LGBTQ people experience high levels of discrimination and disproportionate punishment at every stage of the criminal legal system	Criminalization drives people further into poverty through fees, fines, bail, asset forfeiture, and interference with education and employment opportunities	Criminalization adversely impacts public health through detrimental conditions and inadequate or nonexistent health care in prisons and jails
Criminalization contributes to disenfranchisement and disempowerment of people and communities of color	Civil rights are abridged upon criminal conviction	Criminalization impedes the leadership and human potential of young people	Criminalization fuels structural inequities and contributes to women's economic insecurity through job loss and housing & employment discrimination	Criminalization facilitates enforcement of discriminatory legislation targeting the presence of LGBTQ people in public spaces	"Broken windows" policing and criminalization of poverty fuels violations of the rights homeless and low-income people	Diversion of resources into systems of policing and punishment siphons funds away from housing, public services, and economic development
Criminalization contributes to increased exclusion of immigrants from social and economic life, and drives mass detention and deportation	Exercises of civil liberties and human rights defenders are increasingly being criminalized	Young people are increasingly naming criminalization as a primary concern	Women bear the economic burden of criminalization their families and communities, driving economic insecurity	Structural exclusions drive LGBTQ youth and adults, and particularly transgender and gender nonconforming people, into criminalized activities and spaces		
		Criminalization is a primary mechanism of policing gender for Black girls in schools, and a primary response to trauma experienced by young girls of color	Criminalization of pregnant and parenting women has adverse impacts on maternal health and reproductive rights			

# TENTACLES OF CRIMINALIZATION: LAWS, POLICIES, NARRATIVES, IDEOLOGIES



# WHAT IS CRIMINALIZATION?

**Criminalization is the social and political process by which society determines which actions or behaviors – and by who – will be punished by the state. At the most basic level, it involves passage and enforcement of criminal laws. While framed as neutral, decisions about what kinds of conduct to punish, how, and how much are very much a choice, guided by existing structures of economic and social inequality based on race, gender, sexuality, disability, and poverty, among others. To give just one well-known example, the decision to punish possession of crack cocaine up to 100 times more severely than possession of powder cocaine – which is chemically identical to crack – was largely driven by perceptions about who used which drug: Black people were perceived to use crack at higher rates than white people.<sup>11</sup>**

Criminalization extends beyond laws and policies to more symbolic – and more deeply entrenched – processes of creating categories of people deemed “criminals.” This process is fueled by widespread and commonly accepted stereotypes. These highly racialized and gendered narratives – whether they are about “thugs,” “crack mothers,” “welfare queens,” or “bad hombres” – are used to fuel a generalized state of anxiety and fear, and to brand people labeled “criminal” as threatening, dangerous, and inhuman. In this context, violence, banishment and exile, denial of protection, and restrictions on freedom, expression, movement, and ultimately existence of people deemed “criminal” within our communities becomes a “natural” response. Criminalizing narratives are also projected onto entire groups of people to justify practices such as “stop and frisk” programs targeting Black youth in low-income communities of color or immigration checkpoints in Latinx<sup>†</sup> communities. As a result, even as criminal laws change, the same populations continue to be targeted through ongoing practices. For example, even though “vagrancy” has been decriminalized, the existence of people who are, or are perceived to be, homeless or unemployed is regulated and punished through “broken windows” policing practices which may involve enforcing other laws or policies, or no official policy at all. For these reasons, the ways in which laws are enforced, policy changes are implemented, and policing takes place require our attention as much – or more – than the letter of the criminal law.

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<sup>†</sup> The term Latinx is used to refer to people of all gender identities and expressions of Latin American descent, and may include people of African descent.

# INSTITUTIONS AND IDENTITIES DRIVE CRIMINALIZATION





# HOW CAN WE INTERRUPT THE PROCESS OF CRIMINALIZATION?

**At the most basic level, confronting the growing crisis of criminalization raises fundamental questions about what kind of society we want to build, and how we respond to harm and social and economic inequality: with violence, policing and punishment, or by promoting safety, accountability, redemption and transformation.** While the process of criminalization is given legitimacy that appears beyond challenge, **ultimately, the crisis of criminalization is the product of political and policy decisions and daily practices which can and must be challenged.**

Social movements, and the philanthropic partners that support them, can play a critical role in turning the tide by intervening in the narratives, policies, and process of criminalization. If we are to effectively put an end to address mass incarceration, we need to move beyond efforts to reform sentencing practices and reduce collateral consequences of criminal convictions to interrupt the process of criminalization itself. This requires an investment of significant attention and resources to the front end of the criminal legal system. Across the country, grassroots groups, legal and policy advocacy organizations are successfully challenging criminalization using a number of strategies outlined throughout this report. These include:

-  **Breaking the School to Prison Pipeline**
-  **Interrupting the Foster Care to Prison Pipeline**
-  **Decriminalization**
-  **Diversion**
-  **Police Reform and Accountability**
-  **Uncoupling Policing and Immigration Enforcement**
-  **Changing Prosecutorial Practices**
-  **Bail Reform**
-  **Advocacy in Individual Case**
-  **Developing Alternative Responses to Violences**
-  **Promoting Public Health**
-  **Fighting For Reproductive Justice**
-  **Changing the Narrative**
-  **Ensuring Survival**
-  **Investing in Communities**

**Breaking the School to Prison Pipeline:** Reduce or eliminate the presence of police in schools to reduce criminalization of youth of color through school-based arrests and referrals to the criminal legal system.



**Interrupting the Foster Care to Prison Pipeline:** Stop the criminalization of children in foster care – who are disproportionately Black, Indigenous, LGBTQ youth of color, and youth with disabilities – for curfew violations, running away, homelessness, survival sex, and violation of court-imposed conditions. Invest in supportive services for youth and families.

**Decriminalization:** Stop criminalization at the source by ending arrests and eliminating criminal penalties for “public order,” poverty, drug and prostitution-related offenses, and end criminalization of HIV and other stigmatized health conditions.



**Diversion:** Create and support diversion programs that prevent arrest and creation of a criminal record, and identify and meet basic needs such as lack of housing, mental health and addiction treatment, or employment options within a harm reduction framework that respects individual rights and autonomy.

**Police Reform and Accountability:** Interrupt criminalization by regulating and eliminating discriminatory policing practices such as “broken windows” policing and building community power and capacity to hold police accountable.





**Uncoupling Policing and Immigration Enforcement:** Eliminate collaboration and information sharing between police and immigration authorities, as well as policies criminalizing people perceived to be immigrants, funneling immigrants into the detention and deportation system, and deterring immigrant survivors of violence from seeking help.



**Changing Prosecutorial Practices:** Like police, prosecutors exercise considerable discretion with respect to who and what crimes to charge. Communities can exercise considerable pressure on both elected and appointed prosecutors to reduce criminalization.

**Bail Reform:** Eliminate pre-trial detention based on inability to pay money bail to mitigate adverse effects of criminalization such as job loss, family disruption or loss of housing or benefits.



**Advocacy in Individual Cases:** Amplify individual cases – like Kalief Browder, Purvi Patel, Marissa Alexander, Bresha Meadows, and Monica Jones – to illuminate mechanisms and impacts of criminalization and counter dehumanization.

**Developing Alternate Responses to Violence:** Organizations are piloting and practicing peer and transformative justice practices in schools, as well as community based responses to violence, in order to reduce criminalization.



**Promoting Public Health:** Increased access to health care, including mental health care, drug addiction treatment, and gender affirming care is critical to reducing criminalization.



**Fighting For Reproductive Justice:** Resist efforts to criminalize reproductive choices, pregnant people, and parents, and challenge economic and social conditions, including criminalization, interfering with the ability to raise children in safe environments.

**Changing the Narrative:** Develop messaging and communications campaigns challenging logics of criminalization, and lift up the voices and leadership of people who are criminalized to shift public understanding and opinion.



**Ensuring Survival:** Support organizations providing direct services to criminalized communities and grassroots organizations made up of and led by criminalized people who can bring their expertise to bear in public and policy discourses and mass movements.

**Investing in Communities:** Reinvest funds from systems of surveillance, policing and punishment toward meeting community needs.



# THE CASE FOR A COMPREHENSIVE PHILANTHROPIC RESPONSE

**An immediate, concerted, comprehensive, cross-sector, collaborative and sustained philanthropic response to the growing crisis of criminalization is necessary to more effectively tackle mass incarceration and deportation, and to meet the challenges of the current political climate.** To date, philanthropic investment in the field of criminalization has been limited – both in terms of the number of funders in the field and the dollar amounts invested. The vast majority of these limited resources have been directed toward addressing the consequences of criminalization after the fact through sentencing reform, re-entry, and mitigating collateral consequences of criminal convictions such as felony disenfranchisement and employment discrimination. A significantly smaller portion has been invested in police reform and accountability efforts.

In order to meet the challenges of the growing crisis of criminalization, **criminal justice, racial justice, civil liberties, and human rights funders must significantly increase their investment in efforts to reduce the number of people who come into contact with the criminal legal system in the first place.** Additionally, new funders are needed to generate the resources necessary to effectively tackle the ways in which criminalization impedes youth leadership, education, gender, sexual and reproductive justice, immigrant and LGBTQ rights.

An increased injection of resources into addressing criminalization across sectors represents a strategic investment:

- **Challenging criminalization gets at the root of the problem.** By identifying and interrupting mechanisms driving people into the criminal legal system, we can more effectively prevent mass incarceration, detention and deportation.
- **Challenging criminalization across sectors increases impact.** A focus on criminalization creates fertile ground for building connections across communities and advocacy sectors toward shared goals, increasing the impact of investment.
- **Criminalization is a primary driver of racial injustice.** Focusing on the process of criminalization allows us to more clearly identify and disrupt systemic forces that produce racial disparities at every stage of the criminal legal system and contribute to deprivation and disenfranchisement of communities of color.
- **A focus on criminalization facilitates resistance to multiple fronts of attack on communities of color.** In the current political climate, challenging narratives and processes of criminalization will advance efforts across a range of fields, including immigrant rights and racial, reproductive, sexual, gender and economic justice.
- **Challenging criminalization challenges us to envision the society we want to build.** Attention to the process of criminalization brings to light harmful impacts on individuals, and on public safety more broadly, calling into question our priorities for social investment. It pushes us to envision, research, develop, practice, and scale up new visions of safety and more effective and humane responses to violence and harm.

## Urgent Threats, Urgent Need

Federal, state and local governments are rapidly ramping up criminalization on a number of fronts, creating an urgent need for increased philanthropic investment in this field.



**The war on drugs:** Drug-related arrests, primarily for possession, already make up the majority of arrests. Discriminatory policing and prosecution practices associated with the “war on drugs” are primary drivers of criminalization and mass incarceration of communities of color. The federal government has announced that it will make substantial investments in increased drug law enforcement and will seek maximum penalties for drug offenses. The war on drugs is also being advanced as a justification for intensified policing and deportation of immigrants.



**Increased policing and punishment of immigrants:** The current administration is advancing an agenda of mass detention and deportation through increased powers and resources to federal law enforcement agencies, aggressive promotion of collaboration between local law enforcement agencies and immigration authorities, and banning or limiting entry of people from predominantly Muslim countries.



**“Law and order” agendas:** The federal government is fueling an atmosphere of fear and anxiety in spite of the lowest crime rates in decades in order to falsely justify increasing resources toward militarized policing. Simultaneously, it is abdicating responsibility for federal oversight of local police departments, opening the door to increased police abuse and criminalization of communities of color.



**“Broken windows”:** The Department of Justice is promoting “broken windows” policing – aggressive enforcement of minor offenses such as “disorderly conduct,” sleeping in public, or unlicensed vending. This policing paradigm facilitates criminalization of communities of color, immigrants, and low-income communities, and particularly youth, homeless people, women, and LGBTQ people of color.



**“Gang” policing:** Targeting gangs is central to the current federal administration’s agenda. “Gang databases” containing information about individuals tagged by police as “known gang members” are a particularly dangerous tool of gang policing. Individuals placed in gang databases without notice or process, based subjective criteria such as color of clothing, presence of tattoos, or “association with known gang members,” face devastating consequences in terms of surveillance, enhanced punishment, and deportation.



**Attacks on reproductive, sexual, and gender autonomy:** Federal and state governments are aggressively pursuing legislation and policies limiting reproductive, sexual, and gender autonomy through further restrictions on access and funding for reproductive health services, increased discrimination against transgender and gender nonconforming people, and more aggressive enforcement of prostitution laws under the guise of combating human trafficking.



**Criminalization of poverty:** Dramatic cuts to federal funding for virtually all public benefits and income support programs will push increasing numbers of people deeper into poverty and homelessness, and into the crosshairs of “broken windows” policing and discriminatory law enforcement in low-income communities and public housing.



**Increased criminalization of dissent:** Federal and state governments are pursuing legislation that would dramatically increase penalties for protest-related offenses, as well as for actual or perceived threats or offenses against law enforcement officers.



**Increased militarization of police, surveillance, and electronic monitoring:** The federal government has eliminated restrictions on transfers of military equipment, surveillance and monitoring strategies to local and state police departments.

**These trends, alone and in combination, create an urgent need for a concerted philanthropic response that transcends existing funding and advocacy silos to support organizing and advocacy on multiple and intersecting fronts.** Individual funders need not go it alone – the philanthropic community can come together to creatively and collectively advance these goals.

## What Does it Look Like in Practice?

There is no one-size fits all approach to tackling the crisis of criminalization, no model program or campaign that can be implemented, cookie-cutter style, in communities across the country. Organizing and advocacy campaigns challenging criminalization, advancing alternative responses to violence and harm, and tackling the conditions that contribute to criminalization come in multiple forms, often profoundly shaped and influenced by local conditions, circumstances, communities and stakeholders. While national organizations can make important contributions to research and development of advocacy tools, local grassroots groups are most directly connected to the ways in which criminalization is affecting their communities, and the solutions that will keep more people out of the system. Similarly, efforts to address harm and violence without criminalization often operate on a small scale at the local level, shaped by unique relationships, and painstakingly built through trial and error. As a result, initiatives led by or genuinely accountable to local grassroots efforts are likely to be more effective and have greater impact in the long term than national advocacy disconnected from local conditions and organizing.

**The challenge for funders seeking to support this work is to find, support, and scale up local grassroots organizing to meet the level of need, and to support coordination of efforts across the country to national impact.** Short descriptions of ongoing work that is consistent with the approaches described in this report are included in Appendix A – 9 Key Strategies You Can Fund to Interrupt the Crisis of Criminalization. In Appendix B, funders will find reflection questions that can guide their assessment of how much - and how well - the organizations they currently support are engaging the crisis of criminalization, and how they might expand their funding partners to do so more effectively. We encourage funders to learn more about this work directly from organizations working to interrupt criminalization on multiple fronts and in multiple forms across the country. Please see Appendix D and visit: [fundersforjustice.org/organizations](http://fundersforjustice.org/organizations) for more information.

## **Taking An Intersectional Approach**

It is well established that racial disparities exist at every stage of the criminal legal system, from initial police interactions to arrests, prosecutions, and sentencing. Organizing and advocacy have highlighted the roles played by racial profiling and discriminatory enforcement, heightened presence of police in schools and communities of color, criminalization of poverty, surveillance of Muslim communities, and criminalization of unauthorized entry in the United States in driving these disparities.

Much of the criminal justice data and discourse focuses on the experiences of men of color (who are generally not understood to be gay, bisexual, transgender or disabled). Expanding this lens to bring into view the experiences of women, LGBTQ, gender nonconforming, and disabled people of color offers a more complete picture of the problem. By examining the process of criminalization from multiple perspectives, we gain a better understanding of its reach and impacts on the communities we serve and the movements we support, and we are better equipped to confront it.

## **WHAT IS INTERSECTIONALITY?**

**“[I]ntersectionality is the idea that we have multiple identities—such as our race, gender, class, sexuality, ability, and more—and that these identities intersect and create unique experiences of marginalization that are best understood together rather than in isolation... intersectionality put into action can also facilitate cross-movement organizing and advocacy. ...while some social movements may be born out of a specific issue area or identity, they are stronger when they recognize peoples’ full lived experiences, identify shared interests, and pursue the hard work of collaborating with other movements. The Transforming Movements Fund (TMF) believes that that this approach most accurately reflects how movements can build power, sustain victories, and defend vulnerable communities, particularly during periods of backlash and political uncertainty.”**

**– Rickke Mananzala, Borealis Philanthropy**

# INTERSECTIONALITY



A number of arenas of criminalization, outlined below, come into view more clearly when the issue is examined through the lens of intersectionality.



**Criminalization of Pregnancy and Abortion:** The over 6 million people who become pregnant every year are uniquely vulnerable to criminalization through several routes. Drug laws are used to arrest and charge pregnant people with delivery of drugs to a minor, often based on non-consensual blood tests administered during pregnancy or birth. Child endangerment laws are used to criminalize pregnant people for any number of actions while pregnant – drinking alcohol, having sex, failing to seek prenatal care, or electing a home birth or C-section under their doctor’s supervision. And feticide laws are used to criminalize pregnant people for choosing to terminate their own pregnancies, often in the face of legislative and access restrictions on abortion. In some cases, tragically, they are also used to punish people for negative pregnancy outcomes. Additionally, over half of states currently have laws that are hostile to abortion rights, including laws punishing medical professionals who perform abortions even when women request them.

## WHAT INTERVENTION COULD LOOK LIKE

### National Advocates for Pregnant Women / Center on Reproductive Rights and Justice

National Advocates for Pregnant Women partnered with researchers to document and analyze over 400 arrests of pregnant women to identify patterns of prosecution. The Center on Reproductive Rights and Justice at Berkeley Law School engages in litigation and advocacy to stop criminalization of self-induced abortions.



**Criminalization of Survivors of Violence:** All too often, survivors of violence – and particularly women, girls, and LGBTQ people of color – are criminalized through mandatory arrest policies, enacted in an effort to increase protections for survivors of violence. Survivors of color also disproportionately experience criminalization of self-defense. Additionally, many survivors are compelled participation in criminalized activities by abusers. Criminalization has profound impacts on survivors’ lives, subjecting them to additional violence of arrest and detention, and creating barriers to access to services, interference with child custody, and deportation.

## WHAT INTERVENTION COULD LOOK LIKE

### Survived and Punished

Survived and Punished challenges criminalization of survivors of violence, and issued a toolkit for anti-violence and criminal justice groups, available at [survivedandpunished.org](http://survivedandpunished.org)





**Criminalization of Gender and Sexuality:** Women and LGBTQ people, and particularly women and LGBTQ people of color, experience criminalization through unique mechanisms and contexts. For instance, discrimination against transgender and gender nonconforming people in use of public restrooms and accommodations is facilitated by both laws and practices resulting in arrest of for trespassing or “disorderly conduct” when using facilities consistent with their gender identity. Prostitution enforcement is a primary site of racial and gender profiling and criminalization of women, including trans women, and LGBTQ people of color. Additionally, current approaches to human trafficking have led to heightened criminalization of all people perceived to be engaged in commercial sexual exchange, of individuals perceived to be playing a supporting role in the industry, and of migrant communities and communities of color as a whole. Discriminatory enforcement of “lewd” conduct offenses in public restrooms profiles and targets gay and gender non-conforming men of color and transgender women of color.

## WHAT INTERVENTION COULD LOOK LIKE

### Legal Aid Society of New York

Based on the experiences of clients in its criminal defense practice, the Legal Aid Society of New York found that Black and Latinx women, including trans women, make up 85% of arrests under the “loitering for the purposes of prostitution” statute in New York City. They filed suit to strike down the statute on the grounds that it is unconstitutional on its face and impermissibly discriminates based on race, gender and sexual orientation as applied.



**Criminalization of HIV:** Based on outdated science – or without any scientific basis whatsoever – HIV criminalization laws mete out harsh sentences for conduct such as biting, spitting, or engaging in sexual contact without disclosing HIV status, or trading sex while HIV positive, often regardless of whether precautions were taken or whether there was transmission or any significant risk of transmission. Even where there are no HIV-specific criminal laws, assumptions that people with communicable diseases inherently pose a threat to public safety are used to criminalize and exclude people with stigmatized health conditions. Criminalization of HIV disproportionately impacts people of color, and particularly Black gay men and Black women, and queer, trans and gender nonconforming people, who have the highest rates of new infections due to structural social, economic and health care discrimination, and are simultaneously disproportionately targeted in enforcement efforts.

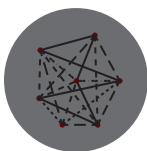
## WHAT INTERVENTION COULD LOOK LIKE

### Positive Women’s Network

The Positive Women’s Network, led by women living with HIV, works to eliminate HIV transmission and exposure laws through legislative and policy advocacy and grassroots organizing to shift community perceptions of people living with HIV.



**Child Welfare Enforcement:** The child welfare system represents an often invisible site of criminalization, placing mothers of color and low income mothers under harsh surveillance and control by state agencies enforcing rigid and sometimes arbitrary standards of care without attending to underlying conditions such as poverty or mental illness. Black mothers in particular are subject to discriminatory policing, criminalization, and removal of children instead of being offered the support they need to raise their children in safe and healthy environments.



**Criminalization at the intersections of multiple systems:** The state is increasingly targeting individuals and communities for criminalization at the intersections of systems as well as of identity. For instance, racial profiling in traffic stops, or the increased presence of law enforcement officers in schools and other institutions in communities of color, increases the likelihood that immigrants of color will come into contact with the criminal legal system, where arrests, charges and convictions lead to detention and deportation. Gender non-conforming and queer people are more likely to be perceived by police as suspicious or law breaking in the context of “broken windows” policing, and criminalized for offenses such as “disorderly conduct” as a result. Pregnant people who use drugs or alcohol and who are HIV positive are dually impacted by the criminalization of pregnancy and the criminalization of HIV. Immigration authorities stationed in public hospitals seek to apprehend undocumented mothers seeking prenatal care, while the criminal legal system targets these same mothers if they fail to do so. When Black women defend themselves against an abusive partner, they are much more likely to be arrested than their white counterparts – and to be criminalized for child neglect if they allow the abuse to continue in front of their children.

**Philanthropic responses to the crisis of criminalization must therefore extend beyond narrow frameworks and transcend current funding silos to more effectively combat criminalization across communities, institutions, and sectors. Funders must take an expansive view of criminalization,** encourage funding partners to do the same, and support efforts that address the mechanisms through which women, trans and gender nonconforming people, LGBTQ people, people living with HIV, Indigenous people, people with disabilities, and Muslim people experience criminalization.

## WHAT INTERVENTION COULD LOOK LIKE

### Western States Center

In 2017, the Western States Center published *Tribal Equity Toolkit 3.0: Tribal Resolutions and Codes to Support Two Spirit and LGBTQ Justice in Indian Country*. The publication—the first of its kind—provides sample legal language to help reduce the criminalization of LGBTQ and Two Spirit people.

## WHAT INTERVENTION COULD LOOK LIKE

### Intersectional Frameworks: Expanded Sanctuary and Freedom Cities

*“In order to effectively respond to these threats, cities must both provide undocumented and other non-citizen residents effective protections and safeguards from immigration enforcement, while also reducing the over-policing and criminalization of immigrant communities, Black people, and other people of color, that leads to mass incarceration and deportation.” — Mijente*

As the federal government has sought increased collaboration from local law enforcement agencies in enforcing immigration laws in recent years, cities have responded by becoming “sanctuary cities,” offering varying degrees of protection to immigrants. In the current climate, sanctuary cities are both sites of potential resistance and targets of federal and state government coercion. In this context, groups such as Mijente and BYP100 have launched “Expanded Sanctuary” campaigns, which seek to increase protections for immigrants while simultaneously challenging criminalization of communities of color as a driver of both mass deportation and mass incarceration. Groups like the Urban Youth Collaborative are using a similar frame to demand sanctuary in schools, not just for immigrant youth, but for all youth targeted for school-based arrests and referrals to law enforcement. HIV advocates are calling for sanctuary in health care institutions and social services so that people can access the care they need without fear. The principles of Expanded Sanctuary can be applied on a smaller scale to community spaces, and beyond cities in rural areas.

*“As communities, we have an opportunity to connect our struggles, to expand ideas and strategies, to go beyond protection from one system because the systems are interconnected. We need to come together and collectively transform our institutions, communities and cities into sites of resistance and protection for everyone.” — Urban Youth Collaborative*

Simultaneously, groups like Black Alliance for Just Immigration (BAJI) are working to build Freedom Cities,<sup>†</sup> based on a platform which also calls for an end to immigration-police collaboration and criminalization of communities of color, as well as divestment from policing and prisons, promotion of workers’ rights, and investment in meeting community needs.

*“In contrast to the imposed vision of safety as policing, borders, deportation and incarceration, we envision safety as equal access to decent work (economic security), education, affordable housing and health care.” — Black Alliance for Just Immigration*

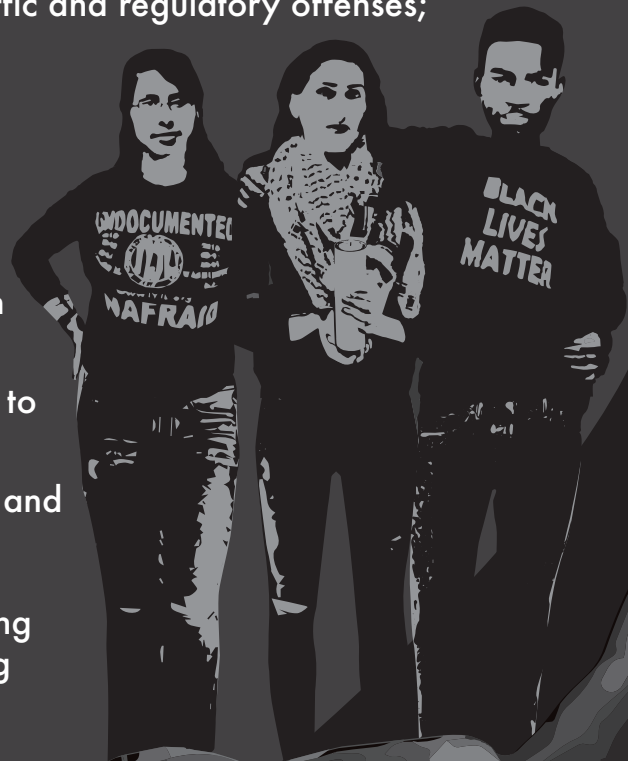
By focusing on shared experiences of profiling, criminalization, economic marginalization, and exclusion, Expanded Sanctuary and Freedom Cities campaigns tie together local grassroots organizing efforts to challenge criminalization of immigrants, Muslims, and communities of color across the country, and leverage them to national impact. They also encourage communities to go beyond reducing harms of criminalization to affirmatively envision the world they want to see and build.

*“As long as the immigration and criminal justice systems are interconnected, creating real sanctuary cities is an issue of linked fate and real practical, principled solidarity.” — Janaé Bonsu, BYP100*

<sup>†</sup> When referring to the Freedom Cities campaign, we are referring to the campaign led by the Black Alliance for Just Immigration, Ella Baker Center, ENLACE, and New York Worker Center Federation (more information at <http://freedomcities.org>), not the Freedom Cities campaign later launched by the American Civil Liberties’ Union.

## Basic Principles of Expanded Sanctuary and Freedom Cities Campaigns include:

- Barring information sharing or collaboration of any kind between municipal institutions, including, but not limited to, police and federal immigration authorities, without exception;
- Barring immigration enforcement from community institutions such as schools, universities, hospitals, social services, and public spaces;
- Eliminating criminal penalties for traffic and regulatory offenses;
- Reducing police contacts, stops, and arrests by eliminating profiling;
- Decriminalizing and deprioritizing enforcement of low-level poverty, survival, and drug-related offenses;
- Increasing use of pre-arrest diversion programs;
- Eliminating cash bail and ICE access to local jails and places of detention;
  - Decreasing investment in policing and punishment and increasing investment in meeting community needs, including mental health and drug treatment.



# RECOMMENDATIONS TO FUNDERS

**If there ever was a time to broaden our vision of what we're about and what we want to achieve, it is now...If we stay in our silos and only support those organizations and campaigns that closely match our program requirements, we will probably miss opportunities to make a bigger difference.**

**– Aaron Dorfman, National Committee for Responsive Philanthropy, Cathy Cha, Evelyn and Walter Haas, Jr. Fund, Jacqueline Martinez Garcel, Latino Community Foundation, Lateefah Simon, Akonadi Foundation, "Questions for Philanthropy to Consider After 100 Days of Trump"**

**The rules have changed and we need a new playbook.**

**– Participant, Challenging Criminalization Through an Intersectional Lens Convening**

We are living in a rapidly changing and dangerous political climate in which criminalization, police violence, mass incarceration and deportation are poised to dramatically increase. In order to effectively respond to the growing crisis of criminalization, **philanthropic partners will need to take risks, act boldly, make room for trial and error** as groups elaborate responses to emerging conditions, **and invest for the long term. Shifting deeply entrenched policies and public narratives around violence, safety, and "criminals" takes a long time, and doesn't lend itself to frequent, visible or short-term "wins."** It also requires organizations to have space and time to innovate, be creative, and seize on opportunities as they present themselves in a rapidly evolving political climate – which requires flexible resources.

## WHAT IT COULD LOOK LIKE

### Solidaire

Through its Movement R&D Fund, Solidaire supports movement leaders to explore, iterate, and test new ideas and tactics with flexible funding, without requiring specific answers, deliverables or outcomes. This approach is based on the foundation's core principle of following the lead of those on the front lines of social change.

## I. INVEST IN ORGANIZATIONS CURRENTLY WORKING TO CHALLENGE CRIMINALIZATION

Organizations currently focused on challenging criminalization will require a **significant injection of new, long-term resources** to flexibly and nimbly meet the challenges of the current political climate. **Specifically, support is urgently needed to:**

- **Build and expand the existing knowledge base** around mechanisms and impacts of criminalization on different communities and identities;
- **Build skills and power to resist** efforts to increase or expand criminalization;
- Expand, scale up and amplify current efforts through **leadership, organizational and infrastructure development and increased communications capacity;**
- **Convene and build networks** at the national, state and local levels across immigrant rights, criminal justice, Indigenous rights, and reproductive, sexual, gender, and disability justice sectors.

## II. INVEST IN ORGANIZATIONS IN FIELDS FACING INCREASING CRIMINALIZATION

Organizations working in the **fields of reproductive, gender, sexual and disability justice** will require resources to:

- **Build knowledge, capacity and expertise** on criminal legal issues;
- **Support thought leadership and research** to develop and advance theories of criminalization through a gender, sexual and reproductive justice lens;
- **Participate in larger coordinated efforts** to challenge criminalization and advance gender-specific and gender-inclusive advocacy goals.

## WHAT IT COULD LOOK LIKE

### Astraea Lesbian Foundation for Justice

Building on a 40 year history of funding at the intersections of criminalization and LGBTQ rights, since 2013 the Astraea Lesbian Foundation for Justice has supported an Anti-Criminalization and Freedom from Violence cohort of grantees through multi-year grants to groups working to reduce criminalization of LGBTQ communities, develop community-based systems of care, healing and justice, and bring national visibility to criminalization of LGBTQ people within dialogues around racial justice, mass incarceration and migrant justice.

### III. INVEST IN BUILDING ALTERNATIVE RESPONSES TO VIOLENCE AND HARM

In order to effectively reduce criminalization, it is necessary to develop and scale up alternative responses to violence that promote safety while creating meaningful opportunities for accountability and transformation. It is therefore critical for funders to **invest in groups envisioning, practicing and piloting responses to violence** – including gang violence, domestic violence and sexual assault, and violence against trans women - that don't further criminalization.

## WHAT IT COULD LOOK LIKE

### Audre Lorde Project & Arcus Foundation

In 2010 organizations and individuals working to develop alternative responses to violence from the perspective of women and LGBTQ people of color came together, with the support of the Audre Lorde Project and the Arcus Foundation, for an unprecedented national meeting to share frameworks, strategies, successes, sticking points, critical questions and challenges to continuing and scaling up local efforts to address harm without engaging the criminal legal system.

Participants identified a number of areas for future work and collaboration that could benefit from funding support, including regular convenings and publications, an online clearing house, radio programs/podcasts, videos and other multi-media tools, national days of action, and regular strategy labs for skill sharing, problem-solving and evolving strategies and infrastructures.<sup>†</sup> Convening participants have created a number of tools for organizations and individuals seeking to develop alternative responses to violence, including the Safe Outside the System organizing framework, available at [alp.org](http://alp.org), and the Creative Interventions Toolkit, available at [creative-interventions.org](http://creative-interventions.org).

<sup>†</sup> The Audre Lorde Project, *Report of the National Gathering on Transformative Justice & Community Accountability Strategies for Women of Color and Lesbian, Gay, Bisexual, Two-Spirit, Trans & Gender Non-Conforming People of Color*, 2010.

**When leveraging resources toward these goals, funders should:**

**A. Commit specific and significant funds to grassroots organizations led by people directly targeted by criminalization, and particularly criminalized people of color.**

Common sense tells us that people closest to the problem are closest to the solution. Individuals and communities targeted for criminalization are experts in the multiple and shifting forms it takes, the contexts in which it manifests, and the impacts it has on their lives and those of their families and communities. They are also best positioned to identify what is needed to address the conditions contributing to criminalization, including harm within our communities. This is particularly true of people living at the intersections of multiple identities and experiencing criminalization on many fronts, including women and LGBTQ people of color, and people of color living with HIV. Additionally, supporting the leadership, voice, and vision of people directly impacted by criminalization is critical to disrupting narratives that dehumanize and demonize criminalized people.

## **WHAT IT COULD LOOK LIKE**

### **Open Society Foundations & Atlantic Philanthropies**

The Fund for Fair and Just Policing was initiated by the Open Society Foundations and Atlantic Philanthropies in 2011 to support a multi-year campaign to challenge discriminatory “stop and frisk” practices, “broken windows” policing, and criminalization of communities of color in New York City. Funding partners made a commitment to awarding the majority of funds to grassroots groups led by or people impacted by discriminatory policing and criminalization, including women, LGBTQ people, immigrants, and people involved in the drug and sex trades. This enabled these groups to effectively partner with policy and legal advocacy organizations, service providers, and researchers in a successful multi-strategy campaign. The fund also made a substantial commitment to supporting campaign infrastructure that would amplify grassroots voices and build the skills and power of grassroots groups.

**B. Encourage communications and accountability from national organizations and policy advocacy groups to local grassroots groups led by people directly impacted by criminalization.**

All too often, national legal and policy advocacy organizations receive the bulk of criminal justice funding and resources, but remain disconnected from the communities who are direct targets of the issues they work on. This ultimately diminishes the impact of their work and disempowers criminalized communities. Funding to advocacy groups not led by people directly impacted by criminalization should include both incentives and requirements to meaningfully consult with and be accountable to the communities they work on behalf of.



### **C. Commit to funding consensual, equitable, accountable and non-extractive partnerships.**

Fund consensual, equitable, accountable and non-extractive partnerships between grassroots groups and organizations and technical assistance providers of their choice who can offer additional expertise in areas of research, communications, and legal, policy, and budgetary advocacy. **Funding grassroots groups at a level that enables their full and equal participation is essential to the success of such partnerships.**

## **WHAT IT COULD LOOK LIKE**

### **Women With a Vision & Center for Constitutional Rights**

In 2010, Women with a Vision, founded in 1989 by a grassroots collective of Black women in response to the spread of HIV/AIDS in communities of color, heard from women coming into their offices that they were facing insurmountable obstacles in accessing services and employment because they had been branded as “sex offenders” upon conviction of “crime against nature by solicitation” (CANS), which penalizes offers of oral or anal sex in exchange for compensation.

The organization identified and partnered with individual public interest lawyers, a local civil justice clinic and the Center for Constitutional Rights to develop a communications, organizing, litigation and legislative campaign centering the voices of their constituents. The campaign brought together civil, women’s, reproductive, sex workers’ and LGBTQ rights organizations, and ultimately led to the elimination of disparate penalties, including the sex offender registration requirement, for individuals convicted of CANS. Over 800 individuals were removed from the sex offender registry. Women with a Vision was able to leverage the success of this campaign to negotiate a harm reduction-based diversion program for women charged with prostitution-related offenses in New Orleans, and is working to reduce criminalization through a state legislative campaign.

# DO'S AND DONT'S



**Consistently set aside funding to make sustained, long term investments** in efforts to challenge criminalization across sectors and program areas, and to facilitate cross-issue and cross-community organizing in this field.



**Redefine “wins”** to include building individual, organizational, and community power, as well as subtle shifts in criminalizing narratives that will yield long-term results in policy and practice. Develop innovative indicators of success, using transformational rather than transactional metrics. Recognize that what constitutes a “win” differs depending on context and communities – sometimes, just surviving is winning.



**Expand support beyond campaigns targeting criminal laws**, policies or practices to long-term movement building that develops knowledge, builds leadership, shifts culture, and generates the genuine solidarity across communities that is necessary to make policy campaigns successful, ensure effective implementation, and transform the political landscape.



**Invest in infrastructure, including centralized coordination**, to support nationally networked local and state organizing, while simultaneously funding network partners to ensure capacity to fully participate in network activities.



**Prioritize development of thought leadership from directly impacted communities.** Invest in fellowships for grassroots organizers, and support increased research and communications capacity among grassroots groups and think tanks led by people directly impacted by criminalization.



**Look beyond current grantees.** The most effective work to challenge criminalization often happens on a local, grassroots level, and sometimes outside of traditional 501(c)(3) structures. Look for creative ways to support grassroots groups working on the frontlines without access to significant sources of support from major philanthropic partners.



**Make resources available for healing, supporting individual and collective leadership, and ensuring individual and organizational sustainability.** Criminalization, and efforts to combat it, are deeply traumatizing, and ongoing. Recognize that organizations may need to set aside time and resources to focus on a campaign to support a member or leader who is currently being criminalized, to address internal conflict fueled by trauma, or to recover from a grueling campaign or intense period of threat or organizing.



**Invest in meeting immediate needs of criminalized people** by supporting pre-arrest diversion programs, bail funds, and funds to provide legal services to people targeted for criminalization and deportation while simultaneously supporting efforts to end criminalization.

# DO'S AND DONT'S

Groups currently working to challenge criminalization have very clear recommendations to philanthropic partners about strategies that are counterproductive to their work:



**DON'T invest in police, prisons, detention centers or other systems that contribute to increased criminalization** or harm to communities. Do support organizations working to reduce the harm of these institutions through training, policy change, and individual and systemic advocacy.



**DON'T create rapid response funds that require groups to identify "new" or "urgent" problems.** Instead, create easily accessible pools of funding that groups can tap into as needed to deepen their work, act on a strategic opportunity, come together to strategize collectively, build their capacity, or secure healing resources.



**DON'T support campaigns that contribute to increased criminalization by advancing criminalizing narratives of "good" vs. "bad" people, or "deserving" vs. "undeserving" communities** (or victims, drug users, immigrants, etc.).



**DON'T support campaigns that call for increased or expanded policing and punishment.**



**DON'T support campaigns that tokenize or silence** the participation of people directly impacted by criminalization.



**DON'T set unrealistic standards of "success"** for criminalized individuals or communities – not everyone will be able to successfully avoid subsequent criminal charges, set backs, or the effects of ongoing trauma of criminalization given the structural obstacles faced by criminalized individuals and communities.

# CONCLUSION

We are living in dangerous times, in which the communities we are a part of and support are under threat on multiple fronts – mounting immigration raids and deportations, increasing police militarization and violence against communities of color, emboldened discrimination against transgender and LGB people, expanding attacks on health care and reproductive autonomy, massive divestment from social programs. Each of these threats is mediated and amplified by the narratives and machinery of criminalization.

**“What would it look like if LGBTQ people, Black folks, Brown folks, immigrants, women, working class and poor people could live Free From Fear in the variety of places we call home?”**

**– Southerners on New Ground**

We are also living in a time of tremendous opportunity – to take bold stands for the values we embrace, and take bold steps to protect our communities, defend the gains we have achieved, and articulate a vision of the society we want to build. Confronting the crisis of criminalization is central and essential to meeting these challenges. We simply cannot make or even maintain progress in advancing social, racial, gender, immigrant and economic justice without recognizing and addressing the ways in which the web of criminalization impedes our individual and collective goals in each of these fields.

**While the scale of the crisis may seem daunting, there are concrete steps funders can take today** – by assessing the ways in which criminalization is operating in their field, evaluating the effectiveness of their current grant making in interrupting criminalization and its consequences, and making a commitment to a substantial and sustained investment across program areas, foundations, and sectors in efforts led by, or accountable to, diverse communities directly impacted by criminalization. No matter the funding strategy, there are opportunities to take immediate action – in Appendix A, we outline 9 key strategies for challenging criminalization and offer examples of efforts consistent with our recommendations that can guide investment by funders.

Confronting the crisis of criminalization is not an end point, but rather a means to an end. It is an essential element of strategies to end mass incarceration, deportation and detention, end poverty and homelessness, promote youth leadership, protect the rights of people with disabilities, and achieve reproductive justice and LGBTQ liberation. It is also a goal that is aligned with efforts to increase safety and security in our communities – which must include safety from the violence of policing, criminalization, and prisons.

Ultimately, by confronting the crisis of criminalization, we are creating the communities, human relationships, and world we want to see, in the face of threats to our values, our progress, and our humanity.

We urge you to answer this call.

# ENDNOTES

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- 8** See Ames Grawert and James Cullen, *Crime in 2017: A Preliminary Analysis*, Brennan Center for Justice (2017), available at: [brennancenter.org/publication/crime-2017-preliminary-analysis](http://brennancenter.org/publication/crime-2017-preliminary-analysis).
- 9** “Broken windows” policing is based on the unproven theory that aggressive enforcement of minor offenses prevents violent crime.
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- 11** Deborah J. Vagins, Jesselyn McCurdy, *Cracks in the System: Twenty Years of the Unjust Federal Crack Cocaine Law*, American Civil Liberties Union (2006), available at: [aclu.org/other/cracks-system-20-years-unjust-federal-crack-cocaine-law](http://aclu.org/other/cracks-system-20-years-unjust-federal-crack-cocaine-law)

# APPENDIX A: 9 KEY STRATEGIES YOU CAN FUND TO INTERRUPT THE CRISIS OF CRIMINALIZATION

## Knowledge Creation and Resource Sharing

- Support community-driven and participatory research and analysis of forms and impacts of criminalization for different communities, including women, LGBTQ people, pregnant people, Muslim communities, Indigenous peoples, people with HIV and other stigmatized health conditions, people with disabilities, and rural communities;
- Support infrastructure and mechanisms for sharing and disseminating research findings in accessible forms among advocates and organizers;
- Support development of model policies and legislation, toolkits, communications strategies, and public education materials that address multiple communities' experiences of criminalization;
- Supports grassroots based think-tanks working to develop solutions to criminalization, violence, and harm rooted in community needs and resources;
- Support convenings of grassroots groups to share knowledge and analysis of current conditions of criminalization.

## WHAT IT COULD LOOK LIKE

### Black & Pink

In 2014, Black & Pink, an organization made up of over 7,000 LGBTQ prisoners and allies conducted a survey of its prisoner membership. Nearly 1,200 prisoners responded to a survey collaboratively developed with incarcerated members, producing the largest ever dataset on LGBTQ prisoners in the country. The results were used to develop dozens of policy recommendations aimed at ending the criminalization of LGBTQ people. These recommendations now drive the advocacy efforts of local Black and Pink chapters across the country, and of other local and national advocacy groups.

### Get Yr Rights Network

In 2014 the Get Yr Rights Network developed a map of model policies for police interactions with LGBTQ people and a toolkit gathering organizing strategies, successes, and tools for challenging criminalization of LGBTQ youth. In 2017, BreakOUT! released a Vice2ICE toolkit on organizing across identities including race, sexual orientation, gender identity, age, country of origin, immigration status and language, developed in partnership with the New Orleans Congress of Day Laborers.

### Solutions Not Punishment Coalition

In 2014 the Solutions Not Punishment Coalition (SNaPCo), a Black trans led coalition of organizations working to challenge criminalization in Atlanta, conducted a survey of transgender residents of Atlanta designed primarily by Black trans people. Based on results analyzed by peer researchers and summarized in a report titled *The Most Dangerous Thing Out Here is the Police*, the organization developed campaign demands, including decriminalization of “broken windows” offenses used to criminalize Black trans women, reform of police policies for interactions with transgender people, and investment in meeting needs identified by the transgender community.

**We can't fend off the threats we face, much less advance, if we fight alone in our own sectors and silos. It is time for a new era of collaboration across communities.**

**– Mijente**

## **Power building**

- Support political education, leadership development, and community led-campaigns that shift power to individuals and communities targeted for criminalization;
- Invest in youth leadership cohorts that focus on criminalization, and support leadership pipelines that track and support growth of grassroots leaders over the long term.

## **WHAT IT COULD LOOK LIKE**

### **Transgender Law Center**

In partnership with the Trans Justice Funding Project, ACLU and GSA Network, the Transgender Law Center is building the leadership of transgender and gender nonconforming people in states facing anti-trans legislation through organizing, on the ground support for advocacy and direct action, training institutes and technical assistance to local activists, creation of videos and other public education resources, and legislative tracking.

### **Desis Rising Up and Moving**

Desis Rising Up and Moving (DRUM) wages policy campaigns for immigration reform and against racial profiling and Muslim surveillance at the local and national levels led by members and leaders directly affected by detention, deportation, profiling and surveillance. For instance, DRUM spearheaded the formation of a national campaign to combat criminalization based on racial and religious discrimination targeting Muslim businesses, organizations, communities, and places of worship.

## **Movement/relationship building**

- Support coalition building and networking across movements and philanthropic fields through informal strategic gatherings, conferences, and dialogue;
- Support efforts to build relationships with groups who can contribute to or help interrupt criminalization, such as medical professionals;
- Support information sharing and exchange, shared strategy development and partnerships between groups working on criminal justice, migrant justice and groups working for economic justice to inform efforts to reallocate resources from criminal legal and immigration enforcement systems to meeting community needs.

## **WHAT IT COULD LOOK LIKE**

Groups challenging criminalization of HIV and other stigmatized medical conditions, as well as those challenging criminalization of reproductive choices and pregnant people, could be funded to seek out and partner with medical and public health professionals to interrupt the process of criminalization in individual cases and on a structural and policy level.

## Campaign building

- Support efforts to identify and map potential points of intervention in the process of criminalization – including specific laws, policies, policymakers, or institutions;
- Support infrastructure for coalitions bringing together grassroots, policy and advocacy groups representing multiple communities affected by criminalization on equal footing to seize on short and long-term opportunities for intervention;
- Support safety planning and holistic support for campaign spokespeople and leadership who may be targeted for intimidation and violence in the current climate.

## WHAT IT COULD LOOK LIKE

### Communities United for Police Reform

A 2016 case study of Communities United for Police Reform (CPR), a highly successful New York City campaign challenging discriminatory, unlawful and abusive “stop and frisk” and “broken windows” policing practices, found it to be successful because it built “the capacity of impacted communities to hold police accountable and to organize and advocate for reforms. To achieve that, CPR provided members with a range of training to build their leadership, knowledge, advocacy and communications skills, and political power. Members could also draw upon the expertise of the array of CPR members, as well as the knowledgeable staff who provided on-going technical assistance... By working to build members’ capacity, CPR ensured grassroots organizations working with impacted communities could equally engage in all facets of the campaign, from the development of the strategy to legislation... CPR’s strong infrastructure enabled it to coordinate across groups and strategies... engage on multiple fronts, and quickly adapt and respond to political changes and circumstances. In addition, it respected the diverse members’ individuality while allowing them to speak with a single and powerful voice and present a united front.”<sup>†</sup>

### The Federal LGBTQ/HIV Criminal Justice Working Group

The Federal LGBTQ/HIV Criminal Justice Working group brings together over 40 national, state and local LGBTQ organizations working on criminal justice issues to identify and seize opportunities to reduce criminalization of LGBTQ people through legislative and policy change. The Working Group’s efforts at the federal level are informed by ongoing relationships with state and local LGBTQ groups working on criminal justice issues, as well as with national organizations focused on racial and criminal justice issues. The Working Group also serves as a source of information and technical assistance to state and local organizations about federal criminal justice initiatives.

<sup>†</sup> Gigi Barsoum, *Communities United for Police Reform - From the Streets to the Courts to City Hall: A Case Study of A Comprehensive Campaign to Reform Stop-and-Frisk in New York City*.

## Building alternatives narratives and institutions of safety

- Support grassroots groups to envision, develop, practice, test, pilot, and scale up alternate responses to violence, including violence against women and trans communities of color;
- Support initiatives that will increase the capacity of schools, social services, and other institutions to develop a continuum of responses to conflict and harm that don’t rely on criminalization.

## WHAT IT COULD LOOK LIKE

Researchers, policy advocates, and youth organizers are working to reduce school-based arrests and referrals to the juvenile or criminal legal systems by removing police officers from schools and creating restorative and healing justice practices that don’t invoke systems of coercion and punishment.



## Shifting resources

- Support community efforts to reallocate city, state and federal resources from police, jails, prisons and systems of surveillance and control to meeting community needs.

### WHAT IT COULD LOOK LIKE

#### Ella Baker Center

The Ella Baker Center (EBC) is working at the city and state level toward reinvestment of resources from law enforcement to programs and services through its Jobs Not Jails campaign and monitoring implementation of California's Proposition 47, which redistributed savings from decarceration through a Safe Neighborhood and Schools Fund. In Alameda County, EBC and allies at the Justice Reinvestment Coalition are campaigning for a budget that prioritizes job training, education, healthcare, and housing instead of more policing and jails, and for mental health services in the community, not in jails.

## Resilience building

- Support grassroots groups working with and led by people directly impacted by criminalization to develop and deepen skills to align different agendas and communities, increase capacity to address immediate needs and trauma of criminalized communities, and to mediate and resolve conflicts;
- Support healing spaces and practices, organizational retreats, and opportunities for reflection as essential strategies for long-term resistance and health.

## Communications/Culture Shift

- Support research, polling, and development of messaging and communication strategies to challenge criminalizing narratives and processes, lift up the voices and perspectives of communities targeted for criminalization, and advance alternative visions of public safety;
- Support organizations using art, culture, and creative engagement to shift culture and narratives of criminalization.

### WHAT IT COULD LOOK LIKE

#### Young Women United

Some groups are explicitly challenging the narratives that facilitate criminalization and the stigmatization and dehumanization of people labeled as "criminals." For instance, Young Women United has been challenging the criminalization of drug use by pregnant and parenting people through a multi-media art and communications campaign. Many grassroots organizations are working toward and achieving the same result by lifting up the voices, visions and leadership of people who are targeted for criminalization in all of their complexity.

## Evaluation

- Support efforts to develop and assess progress toward interrupting criminalization, including movement connectivity and cohesion, cultural and system level change, and evaluation of the impacts and effectiveness of interventions such as diversion programs from the perspective of the populations they are intended to help;
- Provide resources to grantee partners to conduct any required evaluations of their work.

## APPENDIX B: REFLECTION QUESTIONS

The following reflection questions are offered as suggestions to funders seeking to more effectively support efforts to challenge criminalization through an intersectional lens:

- How does criminalization intersect with work of grantees you support? How does it interfere with their ability to achieve their goals, or affect the people they organize, advocate on behalf of, or serve?
  - What questions can you ask your grantees if you don't know the answer?
- What proportion of your current grant budget is allocated to groups working to stop criminalization by seeking changes to policing or prosecution practices, advocating for changes to criminal law, or addressing economic, social or health conditions that may contribute to criminalization?
  - If you aren't aware if any organizations on your docket are currently doing this work, create a brief survey of grantees inquiring about their work in these areas.
- Among these groups, how many are led by people directly impacted by the criminalization - are people who have experienced criminalization and immigration enforcement employed in leadership roles? Do they sit on the organization's Board of Directors or Advisory Board, or otherwise set the organization's organizing, policy or advocacy agenda?
  - If you don't have this information, ask grantees this question during the next round of proposals or grant reporting.
- Among these groups, how many are working to address criminalization on multiple fronts or as it affects multiple communities? How many are addressing the experiences of women and LGBTQ people? Immigrants? Indigenous people? Muslim communities? People with disabilities? Rural communities (including rural communities that depend on jails, prisons and detention centers for employment and income)?
  - If you don't have this information, ask grantees this question during the next round of proposals or grant reporting.
- If you are not currently supporting groups working to challenge criminalization, why not? How might this work fall within existing funding priorities? How might you push the boundaries of current priorities to support this work?
  - What information do you need to make a case for supporting this work?

## APPENDIX C: FUNDER PERSPECTIVES

Funders who attended the *Challenging Criminalization Through an Intersectional Lens* convening deeply appreciate the work that organizations are doing on the ground to resist, interrupt and prevent the profound impacts of criminalization on the communities they work in. For some, confronting the crisis of criminalization is completely aligned with the mission of their grant-making organizations. For others, a focus on criminalization represents a new way of understanding the problems of injustice and inequality their foundations are committed to. Yet all **agreed that there is a deep urgency surrounding the issue of criminalization**, and articulated a firm commitment to listening to priorities, sharing information, taking recommendations, and engaging in thoughtful and open dialogue about how to build authentic and effective partnerships to grow resources in this field.

Funders offered the following perspectives on making the case for increased and expanded support for cross-sector work challenging criminalization:

- Funders include people with very significant experiences of harm caused by criminalization of their families, their communities and themselves. Their commitment to challenging criminalization is thus built on personal lived experiences as well as a sense of professional responsibility.
- Funders and grantees who share a sense of urgency around issues relating to challenging criminalization should partner to make the case to additional philanthropic partners for increased and long-term funding in this field.
- It is critical to demystify the funding process and to be transparent about limitations and opportunities for funding, and to explore creative approaches to supporting the work of smaller grassroots groups through intermediaries, partnerships, and funding collaboratives.
- The pressure to secure resources and the power differential between grantee partners and funders often limits opportunities for straightforward conversations about partners, long and short-term objectives, hopes, dreams, challenges, limitations, failures and lessons. Spaces should be created in which such information can be safely shared. The best work will happen when funding partnerships benefit from full information from both sides.
- Funders would benefit from shared learning communities around forms, contexts, and impacts of criminalization of different communities.

## **APPENDIX D: CHALLENGING CRIMINALIZATION THROUGH AN INTERSECTIONAL LENS • MARCH 6-8, 2017**

The Barnard Center for Research on Women, in partnership with the Ford Foundation and Wellspring Advisors, invited over 100 organizers, advocates, funders, and thought leaders from across the country to participate in a convening held in March 2017 to inform a comprehensive and intersectional philanthropic strategy to meet the challenges of intensifying criminalization on multiple fronts in the current political climate.

Participants, drawn from movements advancing racial, gender, sexuality, and reproductive justice and working to challenge racial profiling and police violence, surveillance of Muslim communities, intensifying immigration enforcement, and mass incarceration and detention, came together over three days to learn from each other, share strategies and successes, chart new paths forward, and inform strategic expansion of philanthropic support to challenge criminalization of communities of color on multiple fronts. A full list of participants is appended below.

The goals of the convening were to:

- Assess current conditions and share information on the evolving policy environment around policing and criminalization, immigration enforcement, surveillance, and reproductive justice, with particular attention to potential impacts on women, girls, and LGBTQ people of color;
- Share current thinking around organizing frameworks, strategic opportunities, and potential collaborations to effectively challenge criminalization of communities of color in the current climate, through a lens that explicitly addresses the experiences of women, LGBTQ, gender nonconforming, and HIV+ people of color;
- Identify funding strategies that will most effectively support organizing and advocacy work at the intersection of race, gender, sexuality and criminalization.

The rich fruits of these discussions served as the basis for this report and recommendations. The authors, the Barnard Center for Research on Women, the Ford Foundation, and Wellspring Advisors wish to express their profound gratitude to convening participants for sharing their experience and expertise, and for taking time away from the demands of daily organizing and advocacy to engage in collective brainstorming and strategic thinking to more sharply articulate the theories of change, movement infrastructure, and resources necessary to effectively meet the challenges ahead.

## **Convening participants**

Sarah Abelow, *The Overbrook Foundation*  
Jennifer Arieta, *North Star Fund*  
Dara Baldwin, *National Disability Rights Network*  
Tristia Bauman, *National Law Center on Homelessness & Poverty*  
Flor Bermudez, *Transgender Law Center*  
Xochitl Bervera, *Racial Justice Action Center*  
Janaé Bonsu, *Black Youth Project 100*  
Judith Browne Dianis, *Advancement Project*  
Tina Campt, *Barnard Center for Research on Women*  
Shelby Chestnut, *New York City Anti-Violence Project and National Coalition of Anti-Violence Programs*  
Gina Clayton, *Essie Justice Group*  
Tanya Coke, *Ford Foundation*  
Kimberlé Williams Crenshaw, *African American Policy Forum*  
Avi Cummings, *Barnard Center for Research on Women*  
Kate D'Adamo  
Farah Diaz-Tello, *SIA Legal Team/Berkeley Center for Reproductive Rights and Justice*  
Se-ah-dom Edmo, *Western States Center*  
Kenyon Farrow, *Treatment Action Group*  
Desiree Flores, *Arcus Foundation*  
Kesi Foster, *Urban Youth Collaborative*  
Rebecca Fox, *Wellspring Advisors*  
Kassandra Frederique, *Drug Policy Alliance*  
Malachi Garza, *W. Haywood Burns Institute / Community Justice Network for Youth*  
Che Gossett, *Barnard Center for Research on Women*  
Katherine Grainger, *Civitas Public Affairs Group*  
Jaime Grant, *Barnard Center for Research on Women*  
Kyllynn Grier, *Girls for Gender Equity*  
Tyrone Hanley, *National Center for Lesbian Rights*  
Amber Hollibaugh, *Barnard Center for Research on Women - Queer Survival Economies*  
Mary Hooks, *Southerners on New Ground*  
Andrea James, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*  
Alli Jernow, *Wellspring Advisors*  
Cristina Jimenez Moreta, *United We Dream*  
Janetta Johnson, *TGI Justice Project*  
Mark-Anthony Johnson, *Dignity and Power Now*  
Angie Junck, *Immigrant Legal Resource Center*  
Mariame Kaba, *Project NIA and Survived & Punished*  
Joo-Hyun Kang, *Communities United for Police Reform (CPR)*  
Laura Katzive, *Wellspring Advisors*  
Brook Kelly-Green, *Ford Foundation*  
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Carl Lipscombe, *Black Alliance for Just Immigration*  
Jarrett Lucas, *Stonewall Community Foundation*

Patrisia Macias-Rojas, *University of Illinois, Chicago*  
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Tami Navarro, *Barnard Center for Research on Women*  
Isa Noyola, *El/La para Translatinas*  
Lynn Paltrow, *National Advocates for Pregnant Women*  
Mayra Peters-Quintero, *Ford Foundation*  
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Takema Robinson, *Converge Consulting, LLC*  
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Mayo Schreiber, *Center for HIV Law and Policy*  
Waheedah Shabazz-El, *Philadelphia FIGHT/Project TEACH*  
Monica Simpson, *SisterSong Women of Color Reproductive Justice Collective*  
Jonathan Smith, *Muslim Advocates*  
Marbre Stahly-Butts, *Law for Black Lives*  
Charles Stephens, *The Counter Narrative Project*  
Chase Strangio, *American Civil Liberties Union*  
India Thusi, *The Opportunity Agenda*  
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**Andrea J. Ritchie** is a Black lesbian immigrant whose writing, litigation, and advocacy has focused on policing and criminalization of women and LGBT people of color for the past two decades. She is currently Researcher in Residence on Race, Gender, Sexuality and Criminalization at the Barnard Center for Research on Women, and was a 2014 Senior Soros Justice Fellow. She is recognized as a national expert on policing issues, and serves as consultant to national, state and local grassroots, advocacy, and philanthropic organizations, offering research, policy analysis, technical assistance and campaign development support. She leads the policing subgroup of the Federal LGBT Criminal Justice Working Group, served as co-chair of the Anti-Violence/Criminal Justice Working Group of the New York City Council's Young Women's Initiative, and was a founding member of the steering committee of Communities United for Police Reform (CPR). She is author of *Invisible No More: Police Violence Against Black Women and Women of Color*, and co-author of *Say Her Name: Resisting Police Brutality Against Black Women*, *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*, and *Queer (In)Justice: The Criminalization of LGBT People in the United States*.

**Barnard Center for Research on Women (BCRW)** Since its founding in 1971, BCRW has been at the very forefront of feminist action and scholarship. BCRW promotes women's and social justice issues in the local spheres of the Barnard College community and academic and activist networks in New York City, and has a voice in national and transnational feminist organizing and research. The Center is a well-recognized nexus of feminist thought, activism, and collaboration for scholars and activists alike. In 2016, BCRW launched the Social Justice Institute, through which it provides support for activists to deepen their thinking; connect with new collaborators; begin or continue their projects; and build a broader platform for their critical perspectives and on-the-ground movement building work.

# NEW FEMINIST SOLUTIONS

## VOLUME 9 – NEW FEMINIST SOLUTIONS

### THE CRISIS OF CRIMINALIZATION: A CALL FOR A COMPREHENSIVE PHILANTHROPIC RESPONSE

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