

October 2020

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1) Why is JDI reexamining Our Relationship to the Criminal Legal System?

As JDI calls for justice for survivors and a public reckoning with the history and legacy of racial injustices, we must also reflect on how our own policies, practices, approaches and analyses have perpetuated and upheld systemic racism and other oppressions. A part of this work includes a reflection and reexamination of our reliance on criminal legal system (CLS)¹-focused approaches to ending sexual and domestic violence. The murders of Breonna Taylor, George Floyd, Ahmaud Arbery, Tony McDade, Dion Johnson and so many others compel each of us to act and lead in ways that affirm that #BlackLivesMatter. For many of us, this has meant reflecting on our own complicity in a culture that supports white supremacy – how we have benefited, where we

have remained silent, and where we can do more to intervene and interrupt racist harm.

¹We use the term criminal legal system (CLS) in this text instead of criminal justice system in response to critiques that the system we currently have to punish wrongdoers is fraught with inequities and does not promote “justice” as traditionally understood. The criminal legal system is comprised of criminal law and institutions including police, courts, prosecutors/defense attorneys, prisons, and probation.

It has also meant witnessing, acknowledging, and understanding oppression, as it exists in policing practices and our criminal legal system.

For some years now, our policy work has been grounded in an intersectional analysis² of how policies and systems impact those who are most marginalized in our communities.³ We invite you to join us as we deepen this analysis to more explicitly address our collective reliance on criminal legal system approaches. As survivors, advocates, and leaders within a movement to end gender-based violence –especially those of us most closely allied with non-profit, state-funded sexual and domestic violence programs-- we must also recognize our roles in promoting and reinforcing the use of systems that disproportionately harm Black, Indigenous, and other People of Color (BIPOC)⁴. We must recognize that approaches that center criminal legal system responses do not always serve, and in fact can cause harm, to survivors of color, LGBTQQI+ survivors, immigrant survivors, and/or survivors with disabilities, among others.

As a statewide membership organization, we appreciate your openness to engaging in these critical discussions with us. We hope these updates and materials we have compiled will help you understand our approaches to these issues. In a nutshell, JDI will always center and uplift the needs of survivors in our policy priorities and system advocacy. We approach our work with a commitment to resisting the root causes of sexual and domestic violence by centering the voices, experiences, and direction of the most marginalized survivors.

We hope you will explore these resources and share your questions and thoughts with us as we engage in these discussions in the coming months and beyond.

2) What is JDI's perspective on policing and law enforcement?

Some survivors turn to the criminal legal system and law enforcement to find safety. At the same time, for a number of reasons – ranging from fears of retaliation, distrust of the criminal legal system, or fears of additional system involvement (like child welfare, immigration, etc.) – the vast majority of survivors never report the harm they experienced to law enforcement. It is also true that many actions and behaviors that many survivors of sexual and domestic violence engage in to survive (i.e. self-defense,

² **Intersectionality** is a theoretical framework for understanding how aspects of a person's social and political identities (e.g., gender identity/expression, race, class, sexuality, religion, disability, physical appearance, height, etc.) combines to create unique modes of discrimination and privilege. Through this lens, we can understand that a black transgender survivor will experience oppression in different and compounded ways as compared to a white, cisgender survivor.

³ We believe centering the most marginalized (unserved, underserved and inadequately served) individuals and communities will result in understanding of systemic barriers and gaps that improve outcomes for all survivors.

⁴ The acronym **BIPOC** refers to black, indigenous, and other people of color and aims to emphasize the historic oppression of black and indigenous people.

substance use or trade, sex work, etc.) are criminalized and therefore disproportionately harm survivors of trauma.⁵

All of this is against the backdrop of the fact that people of color and people in poverty are routinely and disproportionately targeted for incarceration for crimes that others are not.⁶

Centering the needs of the most marginalized survivors, JDI is committed to a multi-pronged approach to addressing the complex intersections of survivorship and criminal legal system responses. To this end, we:

- are committed to approaches that improve outcomes for survivors who choose to access criminal legal system remedies;
- challenge practices and policies that criminalize survivorship (i.e. mandatory arrest laws, failure to protect policies, criminalization of people working in sex trades, etc.);
- resist approaches that increase mass incarceration (i.e. increasing criminal penalties for harm);
- explore avenues for alternative forms of healing and justice; and
- prioritize investment in housing, healthcare, and other resources for all of our communities.

Because survivor experiences and needs are deeply varied, we are aware that, at times, tensions and conflicts may arise amongst our many stakeholders. We hope to navigate these moments with dialogue, compassion, and a deep grounding in an understanding of the impact of any decision on the most marginalized amongst us.

We look forward to engaging you in dialogue and action on each of the approaches outlined above.



3) What Policy Work is Currently Being Done by JDI on these Issues?

JDI's policy work on these issues has most recently emerged through the lens of the double pandemic of COVID-19 and white supremacy.

⁵ Survived and Punished: <https://survivedandpunished.org/quick-statistics/>

⁶ Center For American Progress:
<https://www.americanprogress.org/issues/race/reports/2018/06/05/451647/massincarceration-stress-black-infant-mortality/>; Bias in Policing and COVID-19:
<https://www.nbcnewyork.com/news/coronavirus/nypddistancing-arrests-many-non-whites-at-times-violently/2407586/>

JDI on COVID-19 Disparities

Amidst the crisis of the COVID-19 pandemic, JDI stepped into action to ensure that survivors and their advocates across the Commonwealth would have access to necessary information and resources as we collectively navigated this public health emergency. As COVID-19 laid bare and heightened inequities already rampant in our communities, JDI focused our policy initiatives to 1) ensure that the needs of all survivors are actively represented in COVID-19 state and federal responses and 2) address the disparate impact of this virus on those most impacted by structural racism and poverty. [**JDI would like to share this updated policy framework and set of priorities with you.**](#)

COVID-19 and Decarceration

With the unknowns of COVID-19 and the escalation of infections across the Commonwealth, many of our partners in advocacy were highlighting the needs of a particularly vulnerable and often forgotten population – people in prisons, jails and detention centers. Grounded in our commitment to racial equity and the clear need to mitigate the harm of this pandemic on this particularly vulnerable population, we joined many of our partners (such as Families for Justice As Healing, ACLU of Massachusetts, Prisoners Legal Assistance) in calling for the release of some people in prisons and jails in MA and supporting legislation that would achieve this goal. [**We issued a statement, linked here, to our supporters outlining why JDI supported these measures and how this could be done in ways that center the needs of all survivors.**](#)

Omnibus Policing Reform Legislation

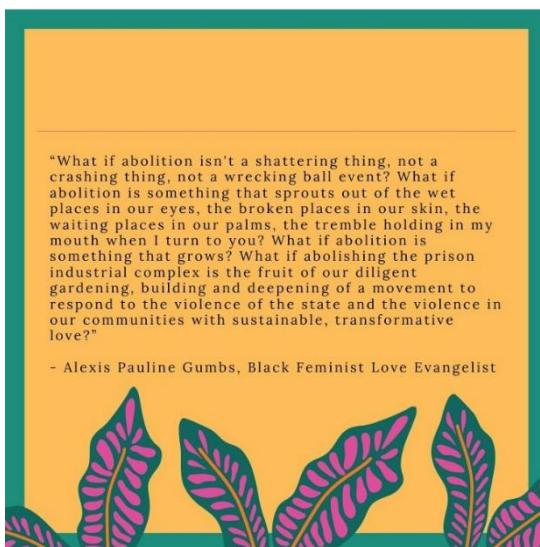
As a coalition to end sexual and domestic violence, JDI has an important voice in advancing efforts towards harm reduction in policing practices. The needs of survivors of sexual and domestic violence are often cited as reasons to oppose measures that increase police accountability within criminal legal systems. During the currently pending Omnibus Policing Reform Legislation, JDI advocated for police reform that would seek to reduce the harm of some of the most violent policing practices. This includes seeking a complete ban on the most violent of police tactics, a ban on the use of facial recognition technology, strict limits on qualified immunity, and measures to prevent sexual assault of people in police custody.

We understand that policing reform can only go so far and support efforts that go hand-in-hand with additional legislation that comprehensively addresses the harm caused by incarceration, structural racism and separation of families who are disproportionately Black and Brown. This means resourcing Black and Brown communities, getting police out of schools, and releasing some people from prisons and jails in Massachusetts. As we set our policy agenda for 2020-2021, we anticipate that we will center the school/trauma-to-prison pipeline as an area of increased advocacy and are actively developing relationships with partners engaged in this work.

4) **JDI Joins National Partners: Moment of Truth National Sign-on Letter**

Nationally, SDV Coalitions are engaging in this reflective work as well. In July, JDI joined nearly 50 sexual and domestic violence coalitions across the country as signatories to the [“Moment of Truth” statement](#). We signed onto this statement because it is consistent with JDI’s policy framework and because it can serve as a catalyst for discussions within our membership and with other stakeholders.

The “Moment of Truth” statement outlines a commitment to centering BIPOC experiences and voices, reframing the idea of public safety, addressing the school/trauma to prison pipeline, challenging the ways survival is criminalized, the importance of investing in communities – especially BIPOC communities— in lieu of over-policing, and advocating for safe housing for everyone. While we know that everyone will have varying degrees of support or connection to the specific positions outlined in the statement, JDI signed on knowing that these commitments align with the coalition’s values and reflect the general perspective of JDI’s members and supporters. We believe that in this moment it is helpful – indeed imperative – to state what we envision and believe is possible for our communities.



community-based resources. This position is consistent with our ongoing commitment to racial equity, education and prevention, economic justice and human rights.

For all of us who have worked with survivors as they navigate seeking support and services, we know that the criminal legal system was never designed to meet all of the many needs of survivors. Law enforcement intervention can be life-saving for some survivors, and we recognize that many of our programs work closely with law enforcement partners. The compassion, creativity, and the survivor-centered perspectives advocates bring to these roles can and do make many individual survivor experiences with these systems better.

5) **What does “defund the police” mean and where does JDI stand regarding funding and policing?**

#DefundPolice is a demand made by grassroots organizers such as the 8toAbolition⁷ coalition to redirect *all* funding and resources from police departments and prisons and invest in services and community programs that make communities safer by directly supporting individuals whose needs are not being met.

As a state coalition, JDI supports the strategic reallocation of *some* funds from law enforcement and prisons to social services and

⁷ <https://www.8toabolition.com/>

Whether or not survivors choose to turn to law enforcement to find safety and accountability, we know that what helps survivors thrive is access to resources including safe and affordable housing, comprehensive, affordable health care, living-wage employment, access to quality education, and safe options for childcare and youth programming. When we see examples where funding and support for policing is prioritized over these life-sustaining needs, JDI will demand a survivor-centered approach to allocation of resources that uplifts investment in our communities over policing.

For example, for the past several months, Massachusetts has considered investing in the building of a new women's prison. The cost for a project like this could be in the range of \$50 million. While funding for this project has not yet been approved, JDI stands with our partners at Families for Justice As Healing in opposing funding of a new prison when those funds could be used more productively to provide comprehensive services and support to so many survivors.

6) **Transformative and Restorative Justice: A New Look at Old Approaches to Accountability and Healing**

Like you, we are deeply interested in exploring alternative approaches to accountability and healing. Outside of the criminal legal system, what other forms of accountability exist?

Transformative Justice (TJ) is a political framework and approach for responding to violence, harm and abuse. At its most basic, it seeks to respond to violence without creating more violence and/or engaging in harm reduction to lessen the violence. TJ can be thought of as a way of "making things right," getting in "right relation," or creating justice together. Transformative justice responses and interventions:

- 1) do not rely on the state (e.g. police, prisons, the criminal legal system, I.C.E., foster care system, though some TJ responses do rely on or incorporate social services like counseling)
- 2) do not reinforce or perpetuate violence such as oppressive norms or vigilantism; and most importantly
- 3) actively cultivate the things we know prevent violence such as healing, accountability, resilience, and safety for all involved.

Restorative justice, although recently popularized in Western approaches to criminal justice reform, particularly in response to mass incarceration, has deep roots in indigenous peacemaking.⁸ Restorative justice, as defined by Howard Zehr from the

⁸For example, please follow the work of one of JDI's member programs, Visioning B.E.A.R. Circle Intertribal Council <https://visioningbear.org/>. We look forward to uplifting the work of these and other practitioners in our exploration of applications of transformative and restorative justice practices in addressing sexual and domestic violence.

[Zher Institute for Restorative Justice](#) is constructed from three main assumptions. These are:

- 1) When people and relationships are harmed, needs are created.
- 2) The needs created by harms lead to obligations.
- 3) The obligations are to heal and “put right” the harms; this is a just response.

Restorative justice approaches may intersect with criminal legal system approaches through diversion programs or alternative system-based approaches to accountability and justice.

For decades, mainstream advocates for sexual and domestic violence have pushed back against suggestions (usually from system actors) for mediation, couples counseling, or other efforts to facilitate reconciliation between a survivor and the person who caused them harm. Transformative justice or restorative justice is not mediation or couples counseling. We look forward to beginning the journey of expanding options for survivors of sexual and domestic violence in Massachusetts through an exploration of transformative and restorative justice practices.

These issues will be addressed through the ongoing work of the JDI Policy Committee and standing convenings as well as through specific trainings and forums for our membership. We will look to the wisdom of practitioners who have created transformative justice approaches that specifically address the harm of sexual and domestic violence.

Check out the calendar to find opportunities to deepen your own knowledge and help transform our work.

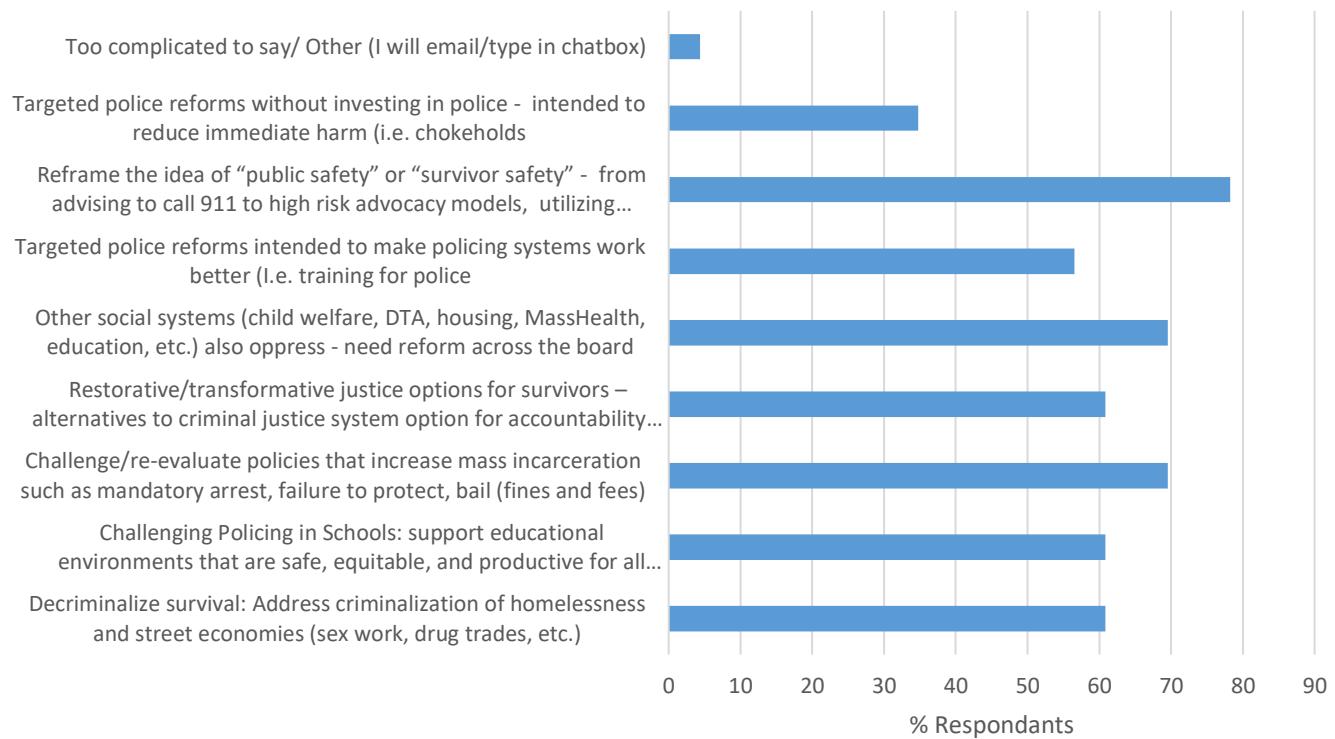
7) Where do we go from here? We want to hear from you!

During a June 2020 JDI directors meeting, we asked JDI directors which approaches JDI should explore in the coming months and years. The responses of the 24 directors that participated in this meeting are reflected below and provide a snapshot of our options and possibilities!

We plan to continue these conversations with the full JDI membership, our partners, allies, and you. In the coming months, we are excited to offer you more opportunities to discuss our relationship to criminal legal system responses. You can always check the JDI Public Calendar for forums, trainings and more on these and related topics:

<https://janedoeinc.wildapricot.org/page-1280109>.

We Asked JDI Directors : Which Approaches Should JDI Explore?



You'll find more background and resources on this topic, on the following pages.

For more information, please contact JDI at policy@janedoe.org or 617-248-0922.

Some Helpful Background on Policing History, Funding, and the DSV Movement

What is the History of Policing?

- Policing in the South emerged from [slave patrols](#) in the 1700s and 1800s that caught and returned runaway slaves to their enslaver. Slave patrols exerted control over Black bodies in order to maintain the position and power of white slave owners.⁹
- In the North, the first municipal police departments in the mid-1800s helped quash [labor strikes](#) and riots against the rich.¹⁰
- Mass incarceration especially took hold in the 1970s, as thinly veiled racial rhetoric pushed "tough on crime" policies.
- From 1980 to 1988, [the prison population in the U.S. had doubled](#). These rates of incarceration undoubtedly hit communities of color the hardest, with the highest populations of Black and Brown individuals imprisoned.¹¹

What is the level of funding of law enforcement in MA as compared to other community resources?

- Massachusetts saw a 25% increase in state funding for the Department of Corrections between FY11-FY18; a time when the number of incarcerated people actually decreased.¹²
- Massachusetts invests over \$1 billion each year into funding for incarceration in the Commonwealth.¹³
- The Domestic Violence and Sexual Assault Prevention and Treatment Services' state budget for FY20 was only 9% of the city of Boston's policing budget. Boston police department received more local funding than the state allocated to community-based sexual and domestic violence services providers across the Commonwealth.
- Nearly 60% of people in women's prison nationwide have a history of physical or sexual abuse before being incarcerated.¹⁴

Who is in prison?

- As of September 1st, 2020, there are [221 total women](#) in prison in Massachusetts. This number includes both those detained before their trials and those who were criminal sentenced.¹⁵

⁹ "How the U.S. Got Its Police Force," by Olivia B. Waxman, 2017, *Time*.

¹⁰ "The History of Police In Creating Social Order In The U.S.," by Ailsa Chang and Chenjerai Kumanyika, 2020, *NPR*.

¹¹ "The History of Mass Incarceration," by James Cullen, 2018, *Brennan Center for Justice*.

¹² "Over 8 Years, Mass. Spending On Incarceration Is Up 25 Percent Despite Inmate Numbers Dropping 21 Percent," by Benjamin Swasey, 2018, *WBUR*.

¹³ "Prisons, Probation & Parole," by Massachusetts Budget and Policy Center, Retrieved from <https://www.massbudget.org/browser/subcat.php?id=Prisons%2C+Probation+%26+Parole>

¹⁴ "Prison Rape Elimination Act of 2003 (PREA)," by ACLU, 2011, *ACLU*.

¹⁵ "Quick Statistics," from Massachusetts Department of Correction, Retrieved September 11, 2020 from <https://www.mass.gov/service-details/quick-statistics>

- African American girls are 14% of the general population, but nationally, 33.2% of Black girls are detained and committed.¹⁶
- Native American girls make up 1% of the population, yet 2.5% of incarcerated girls.¹⁷
- Youth that identify themselves within the LGBT or GNC community comprise of 5 to 7% of the general population, but stand overrepresented in incarceration at 13 to 15% of youth in the justice system.¹⁸
- In Massachusetts, Black people received sentences an average of 168 days longer and Latinos an average of 148 days longer than their White counterparts¹⁹
- These statistics are even more jarring when considering the intersections of these demographics -- thus, a group such as Black trans women are disproportionately affected at both state-wide and national levels.

How does this Relate to S/DV Programs?: Structural Violence, Policing, and the History of VAWA

The history of this movement is varied in terms of its relationship to criminal legal systems.

- For decades now, leaders of the mainstream movement to end sexual and domestic violence chosen to prioritize relationships with law enforcement over community wisdom, and in particular, the experiences of people of color.
- The intent behind this reliance on the criminal justice system was in part motivated by the indifference of state and local institutions to survivors of sexual and domestic violence. To respond to this indifference and/or hostility, the demand for improved institutional responses, including state protection, became part of the platform of the mainstream sexual and domestic violence movement.²⁰
- The impact of advocating for stronger criminal legal responses was at the expense of survivors of color, trans survivors and so many other communities who were left more vulnerable and in fact often punished for their survival.
- The S/DV movement began with grassroots organizing primarily led by women of color. Over time, as funding became attached to this work, white women dominated the policy directions of this work with many women of color pushed into primarily advocacy-related roles within agencies fraught with racist policies and practices.
- In 1994, Congress passed the VAWA, the first federal law acknowledging SDV as crimes. While VAWA felt like a legislative victory after decades of attempting

¹⁶ "The Sexual Abuse to Prison Pipeline: The Girl's Story," by Malika Saada Saar, Rebecca Epstein, Lindsay Rosenthal and Yasmin Vafa, 2015, *Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequity, and Ms. Foundation for Women*.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ "Racial Disparities in the Massachusetts Criminal System," by the Criminal Justice Policy Program, Retrieved from <http://cjpp.law.harvard.edu/publications/racial-disparities-in-the-massachusetts-criminal-system>

²⁰ Mimi E. Kim, VAWA @ 20: The Mainstreaming of the Criminalization Critique: Reflections on VAWA 20 Years Later, 18 CUNY L. REV. F. 52 (2014), <http://www.cunylawreview.org/vawa-20-the-mainstreaming-of-the-criminalizationcritique-reflections-on-vawa-20-years-later-by-mimi-kim/> [<https://perma.cc/FXSS-95CD>].

to legitimize violence against women as a reality, it was undoubtedly part of a large crime bill that fostered mass incarceration, among other harmful policies.²¹ From its inception, VAWA was and is complex and not without controversy. Women of color in the movement were concerned that these funds were administered by the Department of Justice, whose primary role was law enforcement. Women of color also expressed many concerns about mandatory arrest which increased the criminalization of survivors, particularly those most marginalized.²²

²¹ Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 Wm. & Mary J. Women & L. 39 (2017), <https://scholarship.law.wm.edu/wmjowl/vol24/iss1/4>

²² *Ibid.*