President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue NW, Washington, DC 20500  
Via email  

Vice President Kamala D. Harris  
The White House  
1600 Pennsylvania Avenue NW, Washington, DC 20500  
Via email  

January 31, 2021  

Dear President Biden and Vice President Harris,  

We are leaders in the movement to end gender-based violence. We represent—and we include—survivors of rape, sexual assault, battering, stalking, child abuse, cybersexual abuse, and trafficking. We congratulate you on the commencement of your historic presidency and vice presidency, and we look forward to working with you to end gender-based violence and discrimination.  

President Biden, you were the lead sponsor of the groundbreaking Violence Against Women Act and a champion of the Sexual Assault Kit Initiative. Vice President Harris, you led innovative prosecutions of gender-based crimes, particularly human trafficking, and you inspire the hopes of women and girls as our first woman Vice President. We write now to you, two leaders in the struggle for gender justice, to urge reform of the criminal justice system to meet the needs of women and girls and all survivors.  

The fairness and effectiveness of the criminal justice system are badly compromised by systemic racism, systemic misogyny, and the profound intersections between them. A national reckoning with systemic racism continues to reveal a legal system that oppresses communities of color through police violence, mass incarceration, racial profiling, and excessive sentences for non-violent offenses. Women of color disproportionately bear the burden of struggling to uphold community resilience, stability, and hope in the face of these systemic injustices.  

At the same time, the lived experiences of the survivors we represent show that the criminal justice system has tended to under-protect marginalized groups. This includes all women, especially women and girls of color; it includes Black, Latino/Latina, indigenous, and immigrant communities, communities of color, LGBTQ communities, disabled survivors, and all survivors of gender-based violence including male survivors. Victims of rape, domestic violence, trafficking, and stalking who seek a criminal justice response and want their attackers to be prosecuted often
encounter law enforcement officials who are unwilling even to investigate their cases. Too often victims whom the system failed are doubly victimized—punished for taking action to protect themselves when they did not receive the assistance they desperately needed.

**Gender bias and racial bias in the criminal justice system**

We believe that it is possible to undo both of these forms of injustice: overcriminalization and under-protection. Indeed, the pioneering efforts of the Obama-Biden administration proved as much. Empowered by 1994 anti-violence legislation sponsored by you, President Biden, the U.S. Department of Justice undertook civil rights investigations that revealed patterns and practices of racially discriminatory conduct, including police abuse, excessive force, and racially targeted enforcement strategies.

Those same Justice Department investigations also revealed deeply rooted gender bias, which often took the form of underactive, rather than overactive, policing. In a clear manifestation of systemic misogyny, many officials declined to take reports of rape, domestic violence, and other gender-based violent crimes seriously; refused to exercise basic diligence in investigating those reports; and failed to hold perpetrators of these violent crimes accountable.

In Missoula, Montana, the Justice Department found evidence of gender bias within the police department, the University of Montana Missoula campus, and the county prosecutor’s office. In its report, the DOJ said that county prosecutors ignored rape cases so completely that they were leaving women in Missoula “at increased risk of harm.” In New Orleans, Louisiana, Justice Department investigators found “a sweeping failure to properly investigate” many potential cases of rape, attempted rape, and other sex crimes.” In Maricopa County, Arizona, the Justice Department found that hundreds of cases of sexual assault and child molestation went without a proper investigation by the Maricopa County Sheriff’s Office over a three year period. In Puerto Rico, the Justice Department cited a police department’s failure “to adequately police sex assault and domestic violence” cases. In Baltimore, Maryland, the Justice Department found that Baltimore police officers often treated sexual assault survivors in a humiliating manner, often failed to gather basic evidence, and sometimes flat-out disregarded sexual assault complaints. Some officers and prosecutors blamed victims, tried to discourage them from filing reports, or made demeaning comments about them.

In many instances, these investigations shed light on the intersection of racial bias and gender bias. In Baltimore, for example, rape and domestic violence survivors in this majority-black city faced an especially cruel dilemma over whether to report rape to a police department known not only for mistreatment of survivors but also for systematically harassing black residents and violating their Constitutional rights. Years of mistreatment by police officers had left residents feeling “sceptical and furious” about the police department’s role, according to community leaders who cooperated with the Justice Department’s investigation.

The Justice Department reached court-approved consent decrees with these and many other cities. The decrees required police departments to implement better police training, accountability measures, improved investigative protocols, and other steps. The Justice Department also provided
federal monitors to oversee compliance with the consent decrees.

The actions of the DOJ made a gradual but real difference. Advocates in many of the affected cities reported meaningful change and said that compliance with the consent decrees improved police officers’ treatment of survivors, police preparedness to investigate gender-based violence, and police relations with communities of color. In New Orleans, police shootings and civilian complaints declined, while investigation and prosecution of “cold” rape cases increased. In Cleveland and Portland, use of force numbers dropped by nearly a third. Even some of the police officials and mayors whose cities were targets of federal investigations eventually said that the federal reviews helped them identify strategies for improving police effectiveness and police-community relations. In the words of a New Orleans based rape victim advocate, “We’ve been under a consent decree for six years, and that’s why we’ve made the progress that we have.”

The regrettable decision to discontinue the Justice Department’s impactful efforts to confront race and gender bias in criminal justice has had concrete and harmful consequences for women, for survivors, and for communities. It allowed law enforcement agencies to halt the progress that some jurisdictions were making in confronting race and gender bias, and even to backslide.

Some believe reform is hopeless; we believe reform is critical

We represent and include survivors who wanted a criminal justice response to violent crimes committed against them but encountered misogyny and victim blaming. We represent a rape victim who suffered permanent eye damage and brain injury as a result of a rape, but whose investigating officer tried to talk her out of pressing charges, asking her, “what if this was your father or your brother?” We represent a woman battered brutally by a boyfriend and left with a concussion, a broken rib, and long-lasting internal injuries, whose investigating officer flipped through her file and said, “I don’t know why they gave me this case. This is never going to be a felony.” We represent a sex trafficking victim who was forced by police to sign a recantation, even as she scribbled a small, defiant note on the form that the recantation was untrue. In two of these three cases, the perpetrators are known to have committed extremely violent subsequent crimes, soon after police and prosecutors failed to take action against them for the assaults on our clients. Our organizations collectively could share thousands of cases with facts at least as egregious as the ones described above.

The frequent failure of the criminal justice system to address gender-based violence, combined with the deep distrust generated by over-incarceration and police abuse of communities of color, have left some advocates feeling that efforts to reform the criminal justice system are hopeless and should be abandoned.

We respectfully disagree. Many of the survivors we serve, including many survivors of color, unequivocally want a criminal justice response to the violent crimes committed against them. The main reason is their conviction, born of first-hand experience, that their attackers pose a danger to others. The high rates of recidivism for perpetrators of gender-based violence support this
conviction. Moreover, society needs a criminal justice response for the most egregious and predatory forms of violence—both gender-based and otherwise. From the stalking and killing of Ahmaud Arbery by white vigilantes, to the sexual assaults of black women by police officer and serial rapist Daniel Holtzclaw, to attacks on Native women who are targeted for murder at a rate ten times the national average, there are crimes that call for criminal investigation and prosecution. To abandon the project of making the justice system fairer, less oppressive, and more trustworthy would be to turn our backs on victims and survivors, and to leave the shaping of criminal justice policy to those who do not place a high value on women’s rights, racial justice, or equal protection for all.

Moreover, we know that the makings of progress are already present within the justice system, in the many genuinely honorable law enforcement professionals we have encountered in our work. A diligent police detective, or a compassionate and skilled prosecutor, acting in cooperation with supportive and therapeutic service providers, can contribute in vital ways to a survivor’s recovery and to the protection of public safety. Efforts to improve the practices of police officers and prosecutors really do change outcomes; the difference between good and bad law enforcement conduct, between good and bad law enforcement leadership, has profound effects for victims of violence and for all of us. We hope that under a Biden-Harris administration, reform initiatives will be continued and intensified.

*Gender and racial biases also result in over-criminalization of women and girls*

Women and girls encounter the criminal justice system not only as victims but as defendants, and in this context the intersecting harms of racism and gender bias are also deeply pervasive. Women, especially Black and Latina women, are the fastest growing segment of the prison population, often for offenses that stem from economic deprivation, addiction, or sexual abuse. Women are incarcerated for property crimes in higher proportions than men, reflecting the sharp income disparities and economic insecurities facing women and their children. Women in state prison are more likely than men to be incarcerated for drug offenses, despite the fact that women are less likely than men to play a central role in the drug trade. The sexual-abuse-to-prison pipeline is an ongoing outrage: many girls who are subjected to sexual abuse are routed into the juvenile justice system precisely because of their victimization, such as sexually trafficked girls who are prosecuted for prostitution. In shocking numbers, our system incarcerates survivors of domestic violence for using force, including lethal force, in self-defense: one study found that two-thirds of women incarcerated for killing someone close to them (excluding children) had been abused by the decedent. The vast majority of survivors incarcerated for offenses related to their abuse have no prior history of violent behavior and pose no threat to public safety.

Many incarcerated women are mothers. Sending mothers to prison harms children and has ripple effects across generations. When a mother is incarcerated, her children are five times more likely to end up in foster care than they would be if their father was incarcerated. Her children become far more vulnerable to abuse, neglect, and abandonment.

The harms of over-prosecution and under-protection are entwined. In many cases, domestic violence survivors who use force against their abusers do so only after the criminal justice system
has repeatedly failed to protect them or to take action against their abusers. Simultaneously, women of color who are subjected to gender-based violence are often reluctant to seek protection from the criminal justice system because of well-founded fear of police abuse.

Accordingly, **criminal justice reform must be wholly intersectional if it is to succeed.** In order to address over-incarceration, we must address under-protection, and vice versa. In order to combat gender bias in the justice system, we must combat racism, and vice versa. To reflect the needs and the rights of women, we need criminal justice reform that shifts decision making and priority-setting as to which crimes are prosecuted and which are addressed by non-carceral services. **We need police, prosecutors, and policymakers to discern those defendants who pose a danger to others from those who do not.** The recommendations below, which address the under-prosecution of gender-based violence, do not encompass the full spectrum of reforms needed to address the over-criminalization of non-violent offenses. But these two mandates are deeply consistent and deeply intertwined.

Moreover, a strong and effective criminal justice response to gender-based violence, grounded in human rights principles, should be one component of a massive and sustained commitment of resources in order to prevent and heal the harms of violence, through wrap-around services that ensure that survivors’ physical, mental, emotional, and legal needs are met. While improving the criminal justice response to gender-based violence is a crucial and complex undertaking and is the focus of this letter, we recognize that it is not sufficient by itself to reverse the tide of violence against women, LGBTQ communities, and other marginalized communities, that blights lives and stands as a barrier to true equality.

**The way forward**

President Biden and Vice President Harris, we ask you to convene experts on women’s rights and criminal justice to construct a multi-faceted plan for reforming the criminal justice response to gender-based violence—a plan that is intersectional and that initiates a unified undertaking to confront racism and gender discrimination simultaneously within the criminal justice system.

That plan should include the following components and more:

- Immediately resume the Justice Department’s exemplary and impactful civil rights initiative to **investigate and combat patterns and practices of race and gender discrimination in law enforcement**, and ensure that the issue of under-protection from gender-based violence is fully integrated within these efforts.
- Continue funding **SAKI grants** to enable the testing of rape kits, and to provide training and technical assistance to law enforcement in order to promote better investigations and practices. We applaud your campaign proposals to end the rape kit backlog, create regional sexual assault investigative training academies, and increase funding for SAKI, to support a community-based response to ending the rape kit testing backlog.
- Secure reauthorization of the **Violence Against Women Act** (VAWA). Continue awarding **VAWA grants** to organizations that strive to improve the work of police and prosecutors as well as to provide healing and prevention services.
• Increase state and local law enforcement’s access to federal forensic resources that local agencies cannot duplicate, such as toxicology experts and state-of-the-art lab testing in drug-facilitated sexual assault cases; highly skilled cyber-investigations to secure evidence of cyber stalking or to detect digital communications between accomplices; and offender databases. We applaud your proposal to convene a national task force on online harassment and abuse.

• Immediately halt anti-immigrant policies that inflict further harm on immigrant survivors of gender-based violence, such as courthouse detention of witnesses and victims by ICE. Restore asylum eligibility for domestic violence survivors, increase visas for domestic violence survivors, and work for repeal of state laws that chill the ability of survivors to seek safety and justice.

• Empower Native survivors of sexual violence by lifting the restrictions on tribal authority to prosecute all sexual assault, trafficking, and stalking crimes against Native people by non-Natives in Indian Country. Ensure Native women are protected by the federal government adequately carrying out its unique jurisdictional responsibility to prosecute crimes committed in Indian Country.

• Reinstate Title IX standards and guidance initiated by the Obama-Biden administration, including the “Dear Colleague” letter, reverse recent alterations that weaken those standards, and continue your administration’s commitment to preventing and reducing sexual violence on campus.

• Rescind the Executive Order on Combating Race and Sex Stereotyping issued on Sept. 22, 2020.

• Promote and encourage enactment of legislation at the state level to reduce sentencing for incarcerated survivors of gender-based violence. Promote the use of non-carceral forms of justice for domestic violence victims who harm their abusers or who engage in criminal conduct under duress from their abusers.

• Promote legislative reform to end the practice of prosecuting victims of commercial sexual exploitation.

• Promote revision of sentencing guidelines to take into consideration a defendant’s status as a primary caregiver of dependent children. Promote compassionate release for pregnant and parenting women where possible, and fund services to help incarcerated mothers parent their children when release is not possible.

• Expand access to holistic healing services for survivors and multi-disciplinary efforts at violence prevention.

• Increase funding for integrated, holistic teams to enhance survivor services from the initiation of a police report on, and to increase access to independent advocacy services to victims during the course of criminal investigations and prosecutions. Support collaborative initiatives such as family justice centers.

• Use Medicaid funds to improve trauma-related services for girls in child welfare, and prioritize healing and prevention of violence-related trauma within health care initiatives.

• Ensure cost coverage of forensic examinations and medical treatment for survivors of domestic violence, sexual violence, and non-fatal strangulation, including treatment for anoxic and concussive brain injuries, at no cost to them as victims of crime.
• Improve trauma-informed outreach and services for foster youth who have been subjected to trauma and abuse.
• Research and fund initiatives to develop alternative methods for responding to calls for assistance with mental health crises.
• Research and fund policies and training to reduce police use of deadly force and to increase use of non-violent interventions and de-escalation. Address personal and structural causes of women’s involvement in drug and property crimes and reduce the use of incarceration as a response to non-violent offenses.

There are survivors in every community who want to access a criminal justice response to gender-based violence. But the gender discrimination and racism that are still endemic within criminal justice mean that equal protection of the law is still an ideal rather than a reality. We look forward to working with your history-making administration to bring our nation closer to realizing the promise of equal justice for all.

For further information please do not hesitate to contact Jane Manning at jane@wejustice.org or Yasmeen Hassan at yhassan@equalitynow.org.

Sincerely,

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