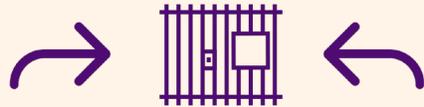


# What is driving mass criminalization of **WOMEN** and **LGBTQ** people?



Many people now know that women are the fastest growing prison and jail populations. Over the past four decades:

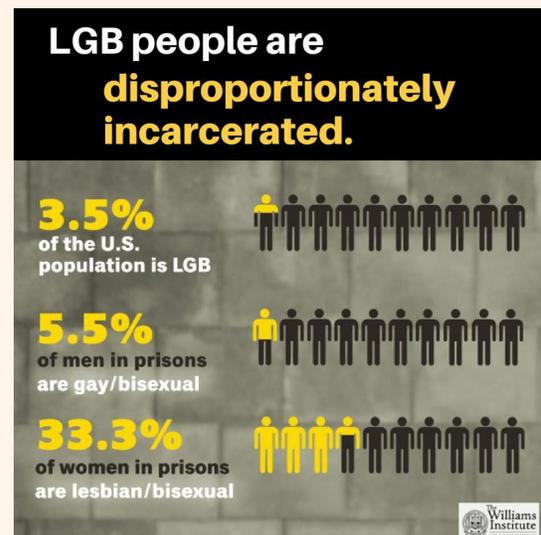
- The population of people incarcerated in women's prisons has increased by over **700%**.<sup>1</sup>
- The population incarcerated in women's jails has increased by **1400%**.<sup>2</sup>
- The population in women's prisons has grown at more than **double the rate** of men's prison populations over the past four decades.<sup>3</sup>

Racial disparities in women's incarceration have decreased, but remain significant:

- Black women are incarcerated at **twice the rate** of white women.<sup>4</sup>
- Black women aged 18-19 are imprisoned at **four times the rate** of white women.<sup>5</sup>
- Nearly **1 in 2** Black trans women report incarceration in their lifetime.<sup>6</sup>
- **Two-thirds** of women in local jails are women of color: 44% Black, 15% Latinx, and 5% other women of color.<sup>7</sup>

It is less commonly known that, according to the Williams Institute, people incarcerated in women's facilities are disproportionately LGBTQ:

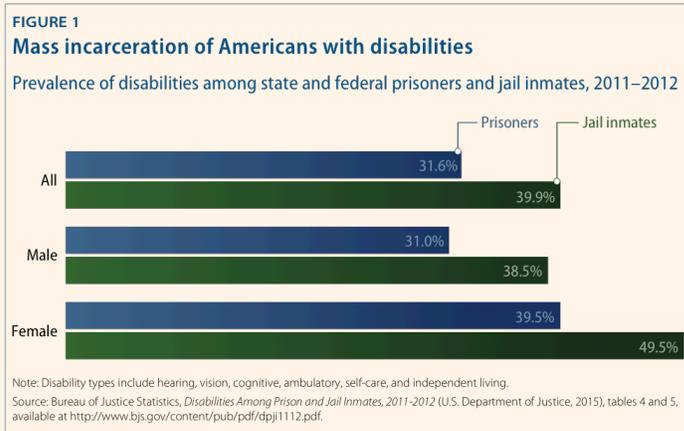
- **33.3%** of people incarcerated in women's prisons identified as lesbian or bisexual before incarceration. This number increases to **42%** if people who don't necessarily identify as LGBTQ, but who have had same gender sexual experiences, are included.<sup>8</sup>



Source: The Williams Institute

People with disabilities experience high rates of incarceration — and incarceration produces high rates of disability.

- Almost **half of people** in women’s jails and **40% of people** in women’s prisons have a disability.



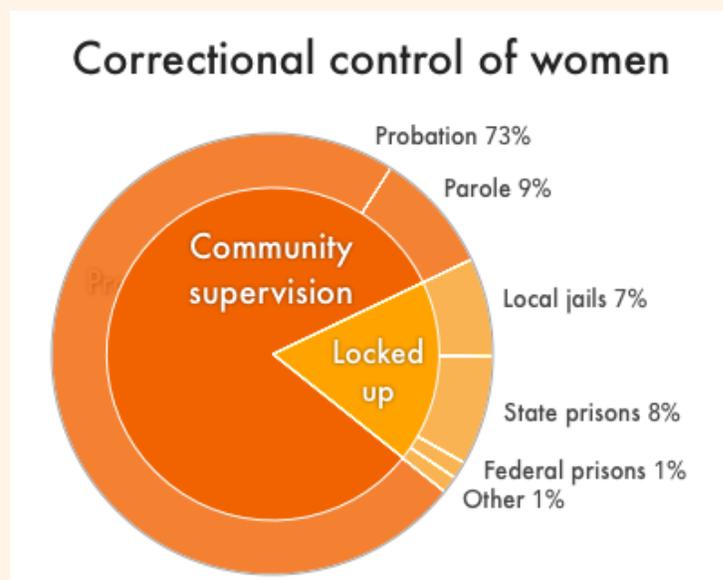
**Jails** are locally-operated facilities that hold individuals awaiting trial or sentencing as well as those serving sentences of one year or less, generally for misdemeanor convictions.

**Prisons** are state- or federal-run facilities, generally for individuals with felony convictions or serving sentences of longer than one year.

Source: Bureau of Justice Statistics

There are 1.3 million women under some form of control by the criminal legal system in the U.S.

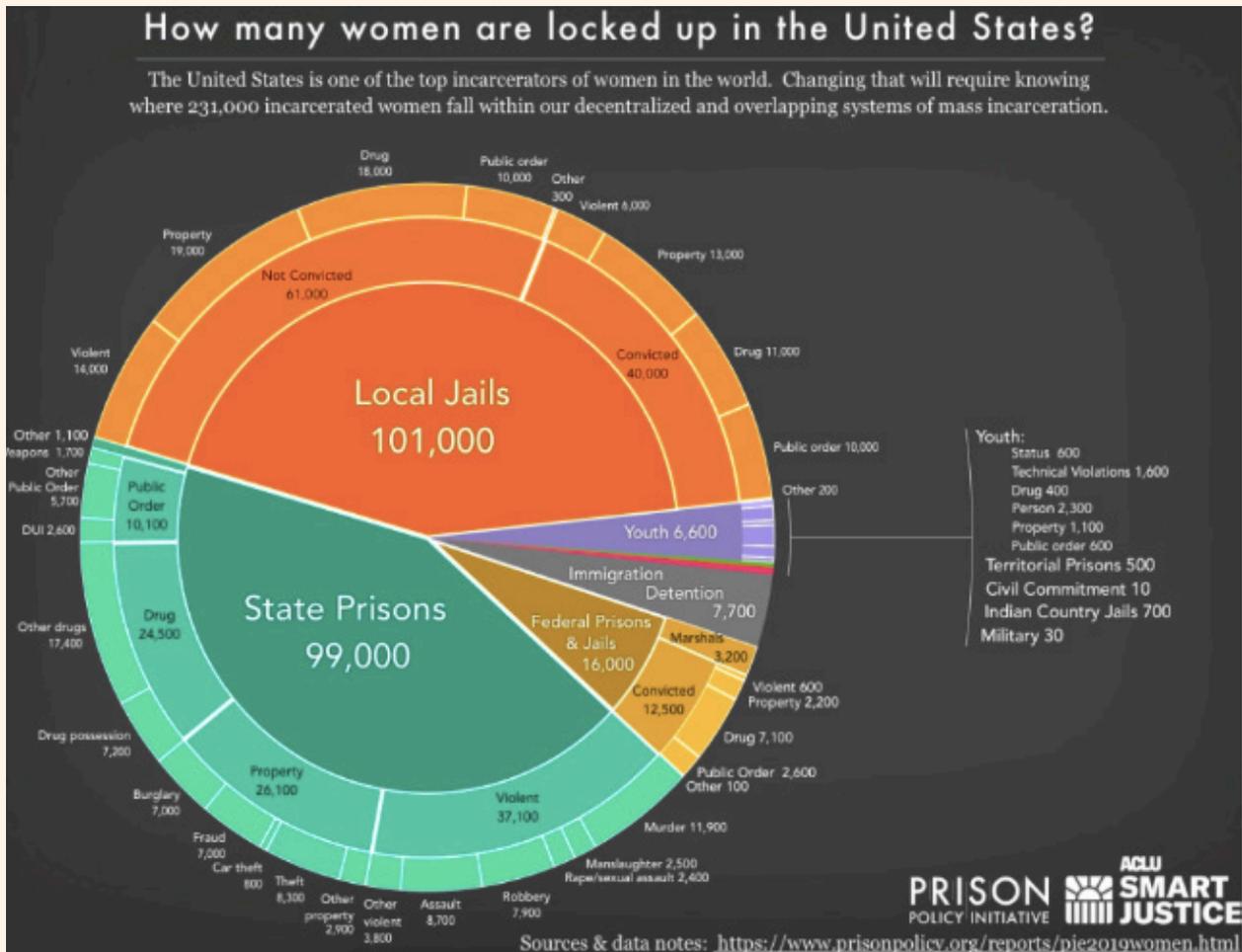
- **Over 80% of women** under the control of the criminal legal system are on probation or parole.<sup>9</sup>



Source: Prison Policy Initiative, 2018

Close to a quarter million people are locked up in women's prisons, jails, and detention facilities<sup>10</sup>

- Drug and property offenses account for **more than half** of women's incarceration. Violent offenses, as well as "public order" offenses, are also significant drivers.



Source: Prison Policy Initiative 2019

# What **POLICING PRACTICES** are driving these trends?



## **POLICE ARE STOPPING WOMEN MORE OFTEN**

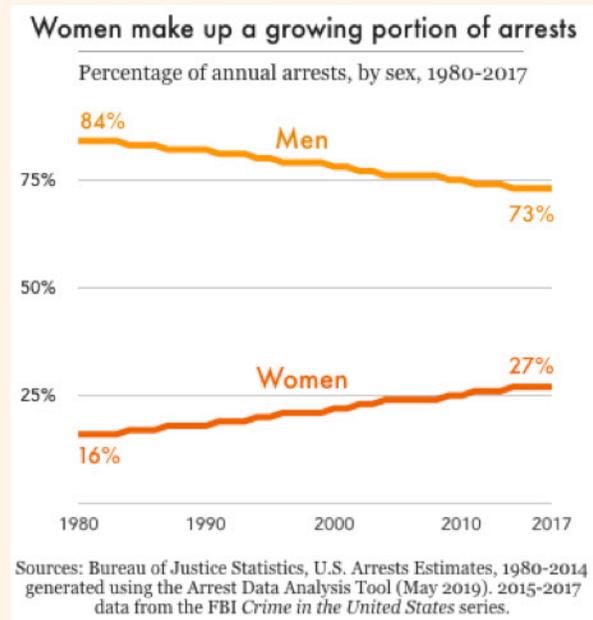
According to a Prison Policy Initiative analysis of the national Police Public Contact Survey conducted by the Bureau of Justice Statistics, **in 2015 there were about 12 million police interactions involving women ages 16 and over.** Police interactions with women made up almost half (44%) of all police-initiated contacts, 41% of traffic stops, and 36% of street stops.<sup>11</sup>

The number of stops involving men is going down, but the **number of stops of women has increased dramatically.** There has been a 378,000 increase in total number of traffic stops of women since 1999, while in 2015 men were stopped 451,000 fewer times than in 1999.

**Racial disparities start at police stops.** Black women were about 17% more likely to be stopped than white women, and 34% more likely to be stopped than Latinxs.<sup>12</sup>

Increasing police contact is contributing to more arrests of women, and to racial disparities in arrests among women. **Black women were arrested roughly three times as often as white women,** and twice as often as Latinas after a police stop.<sup>13</sup>

## ARRESTS OF WOMEN ARE ON THE RISE



Law enforcement officers in the U.S make over 10 million arrests a year.<sup>14</sup> According to the FBI's Uniform Crime Report data,<sup>15</sup> **over 2 million women were arrested in 2018**, making up over a quarter of the total number of people arrested, compared to 16% in 1980.<sup>16</sup>

According to the Prison Policy Initiative, while rates of arrest of men have fallen by 30% since 1980, “women’s arrest rates have barely budged. The upward trajectory of women’s incarceration is undoubtedly reinforced by policing practices.”<sup>17</sup>

While Uniform Crime Report arrest data is not broken down by gender and race, the Prison Policy Initiative analysis of police data found that Black women are 3 times as likely to be arrested following a police stop than white women. Increasing police stops and an increased chance of arrest after a stop no doubt contribute to the fact that Black women are twice as likely to experience incarceration as white women.<sup>18</sup>

Stop and arrest data provides critical information necessary to reduce incarceration of women and racial disparities in women’s incarceration. **Yet published data is rarely analyzed by race and gender at the same time.** Government data should compare stops, arrests, and incarceration rates for men and women by race and gender simultaneously.

# How Can We INTERRUPT CRIMINALIZATION of Women, Trans and Gender Nonconforming People?



**MOVEMENTS FOCUSED ON POLICE AND PROSECUTORIAL REFORM SHOULD FOCUS ON WHERE, HOW, AND WHY WOMEN ARE ARRESTED.**

*Inevitably, incarceration begins with an arrest.*

Over the past decade, the number of arrests of women has decreased more slowly than arrests of men.

- Between 2009 and 2018, arrests of men dropped by 24.2% but arrests of women decreased by only 15.1%.<sup>19</sup>
- In 2018 arrests of men decreased 3.2% and arrests of women decreased 1.7% percent compared with 2017.<sup>20</sup>

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*In some areas, arrests of women have increased:*

**Over the past ten years arrests of men only increased in one category** - motor vehicle theft, by 6.9% compared to 44.9% for women. **But arrests of women increased in nine categories:**

- **Women experienced a 39.7% increase in arrests for drug offenses between 2009 and 2018, compared to a 0.1% decrease for men.** In 2018, 309,000 women were arrested nationwide for drug offenses. Compared to 2017, in 2018 drug arrests of men decreased by 0.5%, drug arrests of women increased by 2.7%.
- Women are increasingly being arrested for **weapons possession** (18.5% increase in arrests).
- Women are experiencing increases in arrests for **“broken windows”** offenses like vagrancy (14.6% increase in arrests).
- Women are also experiencing increasing arrests for having **stolen property** (7.2%).<sup>21</sup>

## 《 IMPLICATIONS FOR ACTION 》

With the number of women arrested for drug offenses continuing to rise even as overall arrest numbers fall, there is no question that the “war on drugs” continues to be a primary driver of women’s incarceration. **We need more information about where and how arrests of women for drug offenses are happening** - are women being targeted for drug enforcement:

- During street or traffic stops?
- At airports?
- While on probation and parole?
- When accessing prenatal services?
- Through buy-bust operations?
- Through conspiracy charges?
- During child welfare investigations?



- Part of the answer might be that **pregnant people and parents are being drug tested by medical providers during prenatal medical care, birth, and delivery or by child welfare agencies, leading to arrest** following referral to law enforcement. Efforts to decriminalize drug possession, use and sales, and to reform conspiracy laws, should also address child welfare laws that contribute to criminalization of women for drug offenses. We can also join with reproductive justice, parent, and health justice advocates to learn more about how to intervene in criminalization of pregnant people and parents seeking health care and parents at risk of contact with the child welfare system.
- Part of the answer might be that **more women are on probation and parole, which routinely mandates regular drug testing**. As we pursue “alternatives to incarceration,” we can work to ensure that they do not result in increased time or surveillance of people on probation or parole, and to remove blanket drug testing requirements.
- Part of the answer may lie in law enforcement’s **focus on arresting low-level, street based users and sellers** under the theory that they will provide information on higher-level dealers. As we pursue drug decriminalization, we need to interrupt street-level enforcement and strategies which disproportionately target or impact women.

## Decriminalization Efforts Must Move **BEYOND DRUGS**

The Interrupting Criminalization initiative's analysis of 2018 Uniform Crime Reporting Data<sup>22</sup> found that women are most frequently arrested for charges listed as "other offenses."

These include offenses related to violations of probation, parole, bail, and sex offender registration requirements, nuisance, and regulatory violations such as unlicensed practice of a profession (e.g. hair braiding, massage, childcare) and violations of street vending regulations, and falsifying documents.<sup>23</sup>

### « **IMPLICATIONS FOR ACTION** »

*To bring down the number of arrests of women, we need to:*

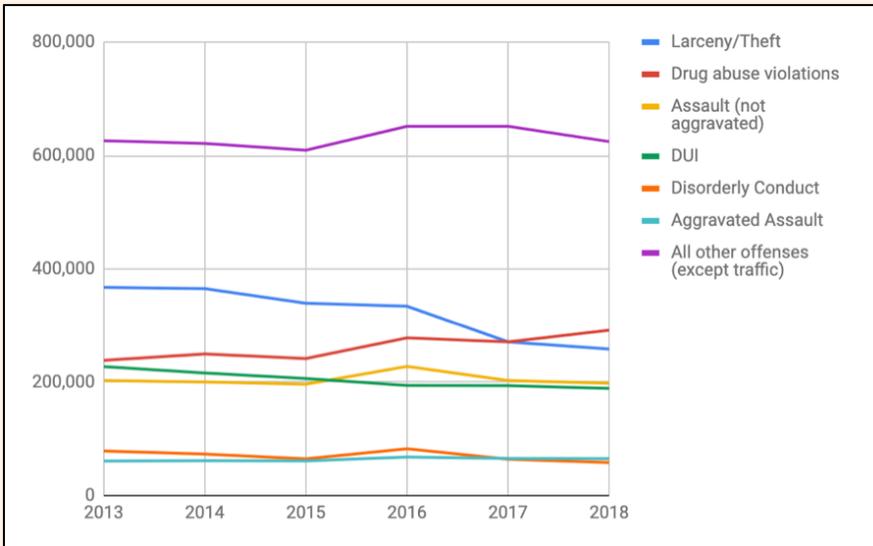
- Reduce the use of probation, parole, bail and pretrial detention, and the length of sentence and types of restrictions imposed.
- Eliminate criminal penalties for regulatory offenses – and eliminate some regulatory schemes altogether.

*After "other offenses," and drug offenses, the top charges for women in 2018 were:*

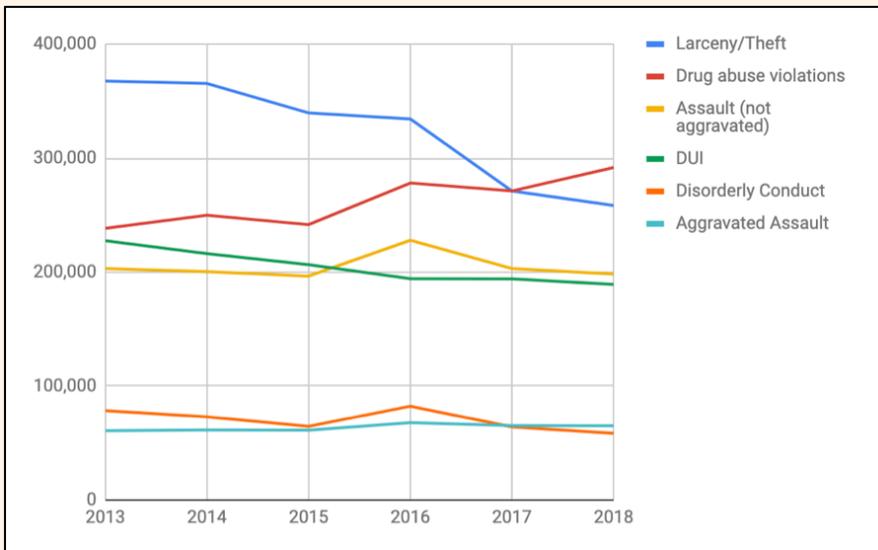
- **ASSAULT:** 23.6% of people arrested for aggravated assault in 2018 were women, and assault charges made up 15% of arrests of women in 2017.
- **LARCENY/THEFT** (e.g. shoplifting): Women made up 42% of people arrested for larceny-theft in 2018, and property offenses made up 13.1% of arrests of women in 2017.
- **DUI:** 25.5% of people arrested for DUI were women.
- **DISORDERLY CONDUCT**

The number of men arrested for offenses characterized as violent decreased by 0.4% in 2018 over 2017, but increased by 2.5% for women.<sup>24</sup> Over the past five years, the number of women arrested for offenses deemed "violent" increased by 6.6%.<sup>25</sup> **In many instances, survivors of violence acting in self-defense are criminalized, contributing to arrests for assault and weapons offenses.**

*Top Arrest Charges for Women*



*Top Arrest Charges for Women (without "all other offenses")*



## 《 IMPLICATIONS FOR ACTION 》

We need to move beyond a focus on non-violent drug offenses to address:

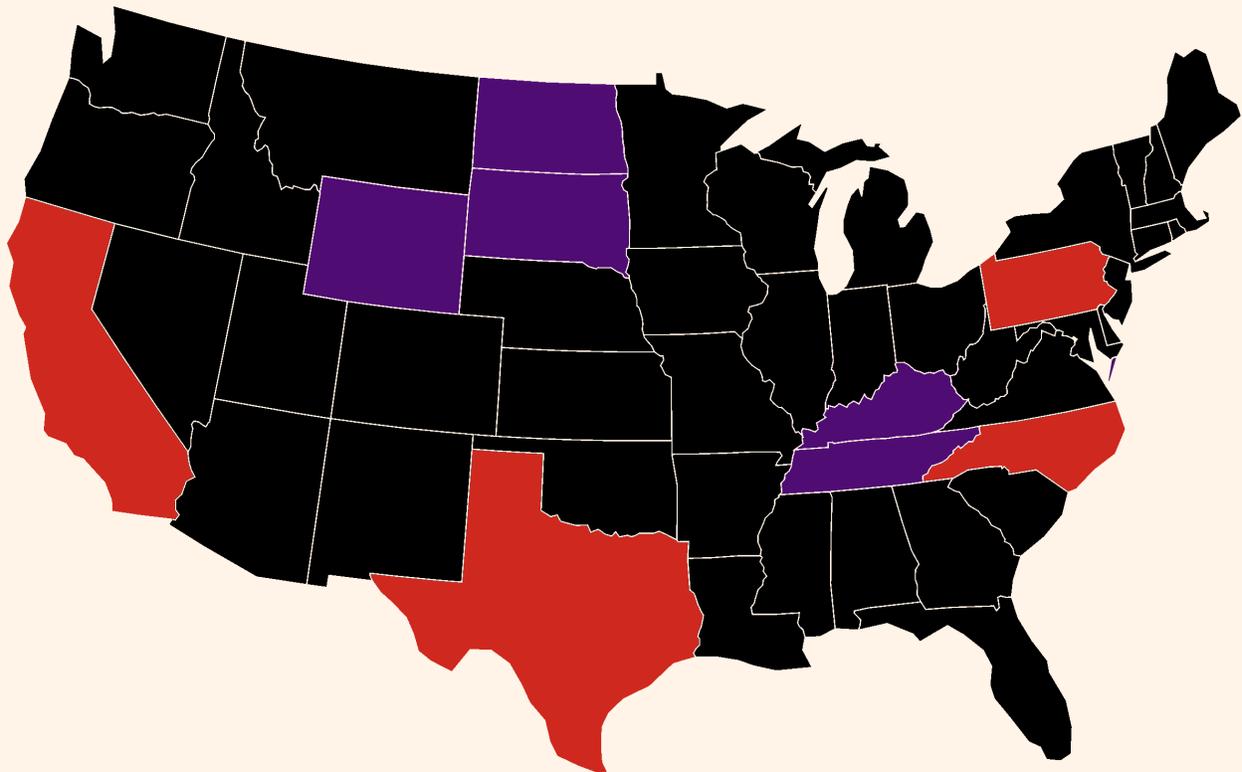
**POVERTY-RELATED OFFENSES** such as shoplifting and theft.

**“BROKEN WINDOWS” OFFENSES**, including “disorderly conduct” and “vagrancy,” often used to regulate and punish the presence of Black, Indigenous and other women of color in public space.

**“VIOLENT OFFENSES”** We can no longer continue to focus solely on “non-violent” offenses given the significant proportion of arrests of women for assault and weapons-related offenses. We need more information about when women are being charged with assault and weapons offenses in the context of domestic violence, “mandatory arrest” laws, and self-defense.

## FOCUS ON PLACES WHERE WOMEN EXPERIENCE THE HIGHEST RATES OF CRIMINALIZATION

Arrest charges in each state tend to be consistent with national trends. The following information on the next page can offer guidance on priorities for action within states.



**According to the Vera Institute, the following states had the highest numbers of arrests of women (2016)<sup>26</sup> :**

California  
Texas  
Tennessee  
Pennsylvania  
North Carolina

**States with the highest rates of arrest for women (2016) per capita include<sup>27</sup> :**

S. Dakota  
N. Dakota  
Tennessee  
Wyoming  
Kentucky

## TOP 5 CHARGES FOR WOMEN IN STATES WITH THE HIGHEST RATES OF WOMEN'S INCARCERATION (2011-2016)<sup>28</sup>

### *Wyoming*

- Drug Abuse
- Larceny
- DUI
- Simple Assault
- Drunkenness

### *California*

- Drug possession & sale
- DUI
- Larceny
- Simple Assault
- Aggravated Assault

### *Texas*

- Larceny
- Drug Abuse
- Simple Assault
- DUI
- Drunkenness

*North Dakota*

Drug Abuse  
DUI  
Larceny  
Simple Assault  
Disorderly Conduct

*South Dakota*

Drug Abuse  
DUI  
Simple Assault (close to)  
Larceny  
Disorderly Conduct

*Pennsylvania*

Larceny  
Drug Abuse  
Simple Assault  
DUI  
Disorderly Conduct

*North Carolina*

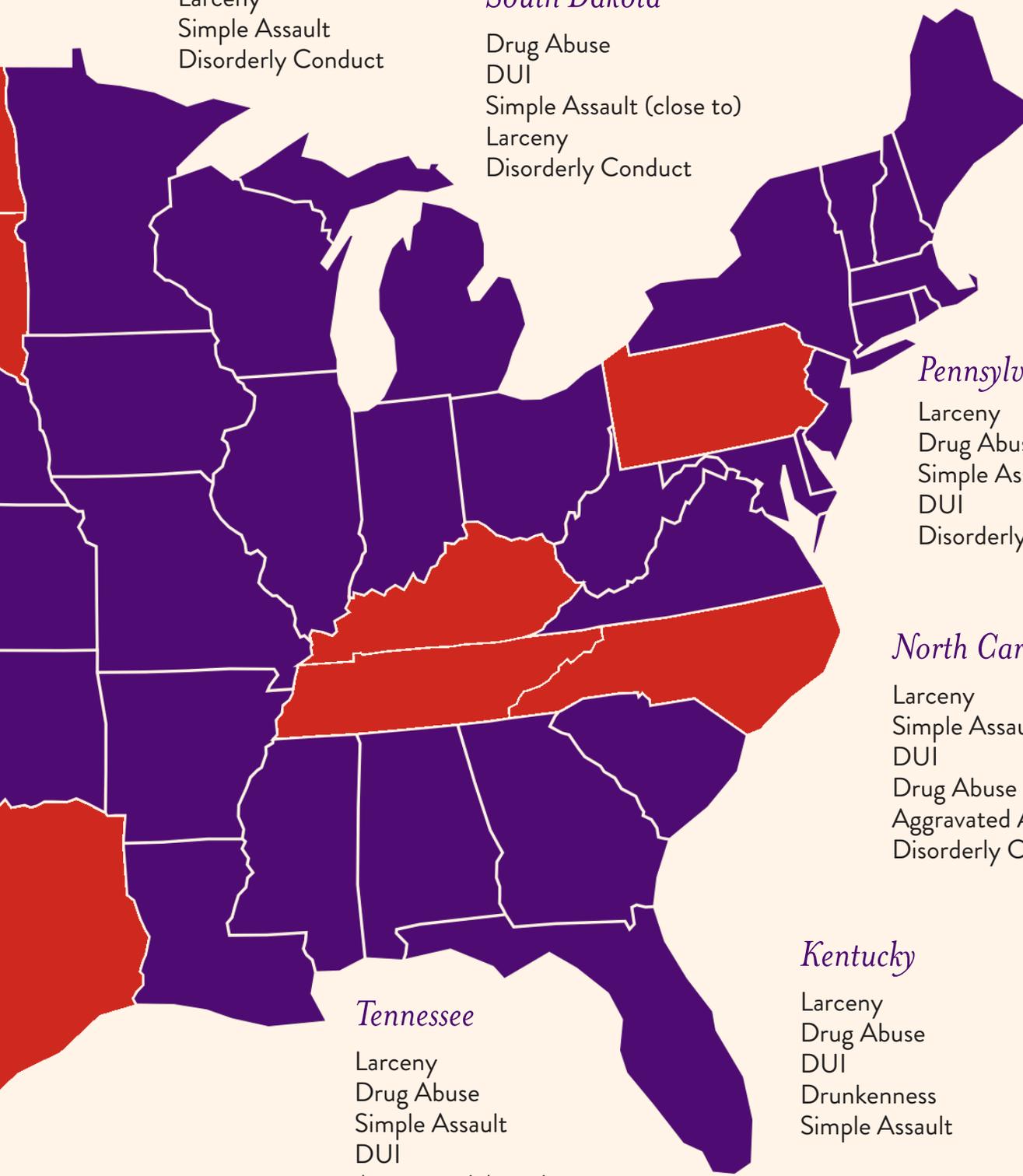
Larceny  
Simple Assault  
DUI  
Drug Abuse  
Aggravated Assault/  
Disorderly Conduct

*Kentucky*

Larceny  
Drug Abuse  
DUI  
Drunkenness  
Simple Assault

*Tennessee*

Larceny  
Drug Abuse  
Simple Assault  
DUI  
Aggravated Assault



*Sometimes, there is more information at the city level about racial disparities in stops and arrests, and about the contexts of police interactions with women.*



## NEW YORK CITY

In 2018, police stopped Black women twice as frequently as Latinxs and three times as often as white women.<sup>29</sup>

In 2014, according to a study conducted by John Jay College, there were 57,119 arrests of women in New York City. Seventy-five percent were misdemeanor arrests, and 25% were felonies, 10-15% of which were classified as “violent.” **Assault was the top misdemeanor and felony charge, and aggravated assault made up 25% of felony charges.** No information is available concerning how many assault charges resulted from arrests in the context of domestic violence response.

The top 5 arrest charges for women in New York City were assault, larceny, drug possession, fraud and “other offenses.”<sup>30</sup> **The most common “fraud” charge is “theft of services” – riding a bus or subway without paying the \$2.75 fare.**

**Figure 3: Top Ten Arrest Charge Categories for Women vs. Men 2014**

	Female, 2014		Male, 2014
	<b>Simple Assault</b> 25.26%		<b>Simple Assault</b> 19.13%
	<b>Larceny</b> 23.39%		<b>Fraud</b> 16.15%
	<b>Drug Possession</b> 10.23%		<b>Marijuana - Possession</b> 13.62%
	<b>Fraud</b> 9.00%		<b>Drug Possession</b> 10.94%
	<b>Other Offenses</b> 8.20%		<b>Other Offenses</b> 9.79%
	<b>Marijuana - Possession</b> 6.50%		<b>Larceny</b> 8.96%
	<b>Prostitution</b> 4.11%		<b>Weapon</b> 4.03%
	<b>Criminal Mischief</b> 3.00%		<b>Criminal Mischief</b> 3.80%
	<b>DWI</b> 2.82%		<b>DWI</b> 3.79%
	<b>Aggravated Assault</b> 2.62%		<b>Marijuana - Sale</b> 3.03%
			

Source: John Jay College Prisoner Re-entry Institute and New York Women’s Foundation

## ENDNOTES

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- 13 "Policing Women: Race and gender disparities in police stops, searches, and use of force, Prison Policy Initiative, May 2019, <https://www.prisonpolicy.org/blog/2019/05/14/policingwomen/>
- 14 Uniform Crime Report: *Crime in the United States, 2018, "Arrests,"* U.S. Department of Justice – Federal Bureau of Investigation, (Fall 2019). This figure is larger than the number of people arrested because some individuals may be arrested more than once. Id.
- 15 Uniform Crime Report data is collected from local, state and federal law enforcement agencies by the FBI. Because reporting is voluntary, many law enforcement agencies, including New York City's Police Department, the largest in the country, do not report or submit incomplete or untimely or faulty data. Additionally, the UCR only collects arrest data on 28 offenses. Uniform Crime Report: *Crime in the United States, 2018, "Arrests,"* U.S. Department of Justice – Federal Bureau of Investigation, (Fall 2019). As a result, these numbers underestimate of the total number of arrests in the U.S. every year.
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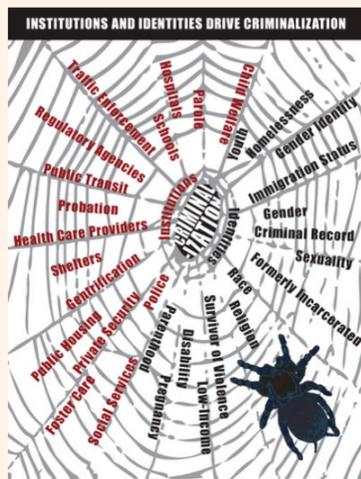
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**INTERRUPTING CRIMINALIZATION: RESEARCH IN ACTION** is an initiative at the Barnard Center for Research on Women working to gather and disseminate information, build analysis, and inform strategy and campaigns to address mass incarceration and criminalization of women and LGBTQ people of color. We work in partnership with organizations, movements and philanthropic partners challenging criminalization at the intersection of race, gender, and sexuality.



*This is the first in a series of publications on drivers of criminalization and incarceration of women and trans people and strategies for reducing and ending mass incarceration and criminalization of women, girls, trans and gender nonconforming people from Interrupting Criminalization: Research in Action.*