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## The Criminalization of Poverty: The Impact of Cash Bail System on Black Women in New Orleans

Salome Kushindana  
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The Criminalization of Poverty: The Impact of Cash Bail System on Black

Women in New Orleans

By

Salome A.Kushindana

A Thesis Submitted in Partial Fulfillment of the

Requirements for the Degree of

Master of Arts

In

Gender and Women's Studies

Minnesota State University,

Mankato, Minnesota

March 2018

March 29, 2018

The Criminalization of Poverty: The Impact of Cash Bail System on Black Women in New Orleans

Salome A. Kushindana

This thesis has been examined and approved by the following members of the student's committee:

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## **Abstract**

An abstract for the thesis of Salome A. Kushindana for the Master of Arts in Gender and Women's Studies at Minnesota State University, Mankato, Minnesota.

Title: The Criminalization of Poverty: The Impact of Cash Bail System on Black Women in New Orleans.

Research on bail practices has shown that most of the people are in jail because of their inability to pay bail set by the court. A 2016 study by the Vera Institute of Justice concluded that the use of the cash bail system disproportionately impacts poor black people in Orleans Parish Prison, the entity that serves as the principal driver of the mass incarceration. With a focus on poor black people in Orleans Parish Prison, the experiences of the impact of the cash bail system on poor black women are still missing.

Using semi-structured interviews and qualitative method of data analysis, this research draws from critical criminology, feminist criminology, and intersectionality theory to examine ways in which the current cash bail system criminalizes poor black women in Orleans Parish. This research has explored actions taken to address the exploitation by the local courts and bail bond agencies. It has also discussed how the intersection of race, gender, and class increases the vulnerability of those already marginalized. Further, I have analyzed through participants' experiences of how they have been impacted economically and socially by the cash bail system. This study found that there is a direct relationship between the bail amount, economic situation, and the

length of stay of black women in jail. Additionally, participants reported the following as some of the consequences of incarceration due to their inability to post the required bail: loss of jobs, loss of government benefits, and family dis-unification.

## **Acknowledgements**

This work would not have been possible without the support from professors, family, and others whose significant contribution has helped me to accomplish this goal. I would first like to thank the courageous Black women in New Orleans who shared their experiences with the criminal justice system and the bail bond agencies. Each person took time out of their busy schedule to voluntarily participate in an interview to share their personal experience, so the world could understand the struggles of many Black women who are caught in the criminal justice system. I thank you for having confidence and trust in me to share your experiences.

Next, I would like to thank black feminist pioneers and activist groups such as Angela Davis, Kimberle Crenshaw, bell hooks, Southerners on New Grounds, Black Lives Matter, and Critical Resistance (to mention a few) whose works, and activism informed and inspired this work.

Third, I would like to thank my academic community at Minnesota State University, Mankato. I am incredibly thankful to my thesis advisor, Dr. Ana Perez, who went above and beyond to provide guidance on this project. I thank you for your numerous feedback and the encouragement you have provided in the past two years. I also would like to thank the rest of my committee, Dr. Shannon Miller and Dr. Barbara Carson. Thank you for your unique insight in this topic and pushing me to analyze deeper. You have all helped me to find my scholarly voice through this project.

I would like to thank Dr. Harrison and the Gender and Women's Studies cohort for their amazing support, especially during my last year in this program. It has really been a blessing to have worked with you in this program.

Lastly, I would like to thank my family members, especially, my partner Kwaku Owusu Kushindana. I thank you for your guidance, support, and pushing me to strive against all odds.

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## **CHAPTER ONE**

### **INTRODUCTION**

In the judicial system, judges have discretion to release people without requiring an up-front payment under Louisiana law. However, most of the people booked into New Orleans Prison are required to pay bail prior to being released while awaiting trial (Laisne, Wool, & Henrichson, 2017). While many county jails are referred to as jails, New Orleans jail is called Orleans Parish Prison (OPP). In Orleans Parish Municipal Court, cash bail was required for 63 percent of booked defendants while 87 percent of defendants in Orleans Parish Criminal District Court were required to post bails (Laisne, Wool, & Henrichson, 2017). Cash bail, is a “bond payment for a defendant’s release from jail prior to court proceedings, and the majority of a bail payment is returned to a defendant after case disposition” (Fines, Fees, and Bail, 2015. p. 1). In theory, bail is intended to ensure that a defendant appears in court to face trial. High bails are charged to keep defendants deemed “dangerous” behind bars for public safety while awaiting trial (Laisne, Wool, & Henrichson, 2017). However, defendants who do not pose a serious threat to society or are at risk of fleeing are required to post bail pretrial.

When required to post bail, defendants have two options: 1) to pay the full amount up-front to the court; a defendant could get the money back after appearing for trial. 2) Pay a bail bond agent about 13 percent nonrefundable fee of the bail amount to post bond on their behalf (Bauer, 2015). To offset the expenses of arresting, prosecuting, and incarcerating due to budget pressure, officials are increasingly resorting to the use of bails, fines, and fees, that has resulted in the incarceration of more people (Fines, Fees,

and Bail, 2015). Research in 2015 shows that Orleans Parish collected millions of dollars in the form of bail, fines, and fees from people held in jail, and by extension from their families and friends (Laisne, Wool, & Henrichson, 2017). While the local government collected a staggering amount of \$1.4 million in bail and related fees, the bail bond industry collected an amount of \$4.2 million in 2015 (Laisne, Wool, & Henrichson, 2017). Out of the total amount collected by the government and bail bond industry, African-Americans population of New Orleans paid 84 percent of the bail premiums and associated fees (ACLU, 2017).

The costs associated with bails and its impact have recently received public attention across the country. Many of the defendants of the system have very low or no income to make these payments. In many districts across the country, as in New Orleans, bail amount does not take into consideration a person's ability to pay. As a result, an increasing number of poor families are forced to pay bail or turn to a bail bond agent. The bail bond agent who works for for-profit bail industry exploits the situation by charging additional fees prior to posting the bail (Kajstura, 2017). In addition to the 10 percent fee collected by bail bond agents in New Orleans, a 3 percent nonrefundable fee is also collected and passed on to the parish government. The proceeds from this 3 percent bond fee are distributed among the district court, district attorney, public defender, and sheriff (Laisne, Wool, & Henrichson, 2017). The use of the cash bail and its associated fees has created a two-tier justice system for the poor and the rich. Defendants who can afford the bail are able to escape the overcrowded and unsafe conditions at the jail while those who

are too poor to pay their bail languish in jail for days, months, and sometimes years before trial (ACLU of Nebraska, 2016).

In New Orleans, a quarter of the residents live below the poverty line. The median income for Black household is 57 percent lower than the median income of white household (Laisne, Wool, & Henrichson, 2017). When race and gender are factored, black women who are heads of the household are 47 percent below the poverty line compared to 17 percent of white female-headed households (Holman & Schwanz, n.d.). In addition, black men and black women are overrepresented in the criminal justice system even though they only represent 59 percent of the population. Because of the income disparity and poverty level, even if bail amounts are more affordable, many black low-income families are still not able to afford to pay and are detained in jail for the entire length before their cases makes it to trial (Laisne, Wool, & Henrichson, 2017).

With jail population reaching admission rates of about 12 million annually nationwide (Vera Institute of Justice, n.d), women incarcerated in jails have also grown about 14-fold from under 8,000 in the 1970s to about 110,000 (Swavola, Riley, & Subramanian, 2016). Women, across the country are disproportionately held in jail— a staggering 60 percent of women have not been convicted of a crime and are awaiting trial (Kajstura, 2017). Compared to men, the offenses committed by women are mostly non-violent (Swavola, Riley, & Subramanian, 2016). Detaining women in jail because they cannot afford to pay their bail could have devastating impact on them and their communities, especially, when we consider the traditional roles of women as care takers of children and the home. This situation may even be worse for many low-income black

women, especially those in New Orleans, who live below the poverty line and are more likely to be incarcerated at a higher rate compared to their white counterpart.

With the growing momentum from activists, law makers, city council members, and politicians fighting for the eradication of the cash bail system, very little attention has been given to the impact it has on women as well as the growing women's jail population across the country. On January 12, 2017, New Orleans city council passed a bail reform ordinance to eliminate its cash bail requirement due to its impacts on poor families. Although this is a path in the right direction, without a critical understanding of how the cash bail system impacts the most vulnerable—poor black women—how can new policies work to protect all women, including the most vulnerable ones?

The purpose of this research is to shift from an exclusive male-centric focus on jail studies to include the experiences of formerly incarcerated black women in New Orleans. With a focus on black women, this research is aimed at exploring the economic and social impacts of the cash bail system and identifying the forms of action that has been taken to address the exploitation of poor black women in the criminal justice system.

To provide context for this research, chapter 2 provides the relevant literature that structures this research. The literature review is divided into 3 bodies of knowledge: 1) mass incarceration; 2) race, gender, crime and punishment; and 3) Black women's resistance against mass incarceration. The first body of knowledge situates the contemporary growth of women in jail within a historical context by reviewing the history of jail and women's presence within this institution. The second body of

knowledge discusses laws and policies that have criminalized black bodies. The third body of knowledge explores the activism and resistance by black women against forms of oppression including mass incarceration. Additionally, this chapter provides a brief overview of the social geography of New Orleans.

Chapter 3 discusses the methodology of this work. This chapter explains the procedures used to recruit and screen participants, collect, and analyze the data gathered. Qualitative research method is used in both data collection and analysis. I conducted semi structured interviews with participants who have been affected by the cash bail system in New Orleans. I employed the Descriptive Coding methods to determine re-occurring themes that emerged from the data. Anticipated potential risk of this study to participants, recruitment issues, and potential limitation of this research are discussed. A reflection on my positionality, the theoretically framework, and the impact of using interview to gather data are also covered in this chapter.

In chapter 4, I present and discuss the major findings on the impact of the cash bail system on black women in New Orleans and how race, gender, and class make black women more vulnerable to be detained pretrial. The findings were based on the responses from the ten participants that were interviewed. I found that participants were likely to be arrested for minor offenses and were also unable to afford the required bail because of their economic situation prior to being incarcerated.

Chapter 5 addresses themes such as distrust of the system, burden on black women, participants beliefs about crime and punishment, and the criminalization of black women, which emerged from the data. These themes were interpreted based on the

literature review and relevant research on this subject. It has been demonstrated that black women in New Orleans are suffering from the use of cash bail as a determinant to secure one's freedom while awaiting trial. I conclude by highlighting on the collaborative effort by organizations working to eliminate the use of cash bail requirement for non-violent offenses in New Orleans Municipal Court. Suggestions on future research in this subject area are also discussed in this chapter.

## **CHAPTER TWO**

### **REVIEW OF LITERATURE**

To understand the disproportionate incarceration and its impact on black women, it is important to review scholarships that address the experiences of black women in the criminal justice system. Drawing from various disciplines, including sociology, African American studies, and criminal justice studies, I discuss the existing research related to the experiences and the incarceration of black women in the criminal justice system. With three bodies of knowledge, the first section: *Racialized Foundations of Mass Incarceration* provides a brief historical connection between slavery, Jim Crow, and mass incarceration. Since this research focuses on jails, I discuss the history of jail in America and examine black women's presence in this institution historically and from the contemporary moment. I also examine the key decisions that impact the use and size of jails in America. The second section of the literature review, *Gender, Race, Crime and Punishment*, looks at the historical construction of black women's criminality and its impact on black women in the criminal justice system today. Finally, after setting the historical and theoretical frameworks in understanding black women's criminality and incarceration, I discuss forms of black women's activism that have influenced contemporary campaigns to end the cash bail policies and mass incarceration in the United States.

#### **I. Racialized Foundations of Mass Incarceration**

To explain the alarming rate of the incarceration of black women in jails, one must revisit past oppressive institutions and their gendered construction to fully grasp

how the past continues to shape black women's experiences in jails today. While there have been several critical works on mass incarceration and its impact on black people from historical scholarship, some of these works focus more on black men in prison. This section of the literature review situates contemporary jails in its historical context by examining the institution of slavery and Jim Crow as the foundations for mass incarceration of black women. Additionally, this section will discuss arrest, charge, pretrial release, and bail as the key decision points that influence the use and size of jails.

### ***Slavery (1619-1865)***

Sociologist and social anthropologist, Loic Wacquant, examines slavery as one of the institution that led the foundation for contemporary mass incarceration of African Americans. In "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh," Wacquant (2001) notes that the enslavement of African Americans aimed at recruiting, organizing, and extracting their labor. Their seclusion was intended to prevent them from "contaminating" the surroundings of white society "that viewed them as irrevocably inferior and vile" (p. 99). Wacquant further explains that slavery was a relation of domination, not a category of legal thought, and the physical violence employed against enslaved Africans on the plantations were channeled to fulfill economic needs of the white elite while suppressing insurgence among them. This physical violence handed out in Negro Court for crimes committed by enslaved Africans were not applicable to whites who committed the same crime (Collins, 2010). The economic growth out of the labor of enslaved Africans maintained the political and economic dominance of the plantation

owners of this era who also had unlimited power over the slaves (Baptist, 2014; Collins, 2010).

Wacquant maintained that although the status of slavery and servant were indistinguishable in the early decades of the colony, by the 19<sup>th</sup> century, the opposition between enslaved Africans and freed men and women had been racialized and the defense of slavery generated an elaborate ideology that justified the subhuman condition imposed upon black people. In “From Slavery to Mass Incarceration: Rethinking the Race Question in the U.S.,” Wacquant (2002) described how religious and pseudo-scientific ideologies predicated on racial difference that encouraged white people in power to view enslaved Africans as live property used to justify their desire for free labor, rather than as humans’ worthy of the natural right or liberty. Slavery, as a system of free labor evolved into a racial culture, which in turn “remade bondage into something it was not at its outset: a color-coded institution of ethno racial division” (p. 100).

Described as “the bible of a social movement” by the San Francisco Chronicle, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, written by Michelle Alexander, continues to be the focal point of study and debate by scholars on incarceration rates among African Americans. As Alexander tells the story, the high demand for labor on plantations was met through slavery. Plantation owners viewed Africans who were relatively powerless as the ideal labor force for the work on plantation. She asserts that following the Bacon Rebellion that threatened the superior status of the white elite, white plantation owners constructed a new strategy to maintain their dominance by abandoning their reliance on indentured servants in favor of the

importation of Africans who did not speak English and were perceived to be easier to control. Whereas Wacquant (2001) did not provide further explanation of how the racialization of enslaved Africans and freed men and women were constructed, Alexander points out that plantation owners strategically and intentionally extended special privilege to poor white, called a “racial bribe,” to prevent them from forming alliances with enslaved Africans. This “racial bribe” laid the foundation for the racialization of enslaved Africans and freed men.

Similar to Wacquant’s (2001) analysis on mythologies and ideologies used to defend slavery, Alexander describes the degraded status of enslaved Africans were justified on the bases that blacks like the Native Americans were viewed as an uncivilized, lesser race that lacked intelligence and meritorious human qualities than the red-skinned native. By justifying the enslavement and the denigration of enslaved Africans, white supremacy became a sort of religion over time, based on the idea that Africans were bestial, and slavery was a good thing for them (Alexander, 2010). As Alexander explains, the end of slavery created a dilemma for plantation owners and poor whites who believed that without the institution of slavery, there would not be any mechanism to maintain racial hierarchy, and that the southern economy would also collapse without the slave labor. After the Civil War, rumors of great insurrections that terrified whites began to spread; these rumors led plantation owners and conservatives to conclude that liberation of enslaved blacks was dangerous. To keep freed black people on the plantation and under white control, southern legislatures adopted the notorious black codes which made it criminal offense for black people to not work, and they were

imprisoned for this offense (Wacquant 2001; Alexander, 2010). Imprisoned black people were then hired out of county prisons, as cheap labor, to plantation owners and private prisons (Alexander, 2010). Prior to the Civil War, imprisonment was unprofitable for the plantation owners because it deprived them of free labor (Collins, 2010); but, after the Civil War, imprisonment of black people became profitable to the white elite because the labor was still cheap.

### ***Jim Crow 1865-1965***

In the first phase under Jim Crow, Wacquant (2001) explains that the Dixie ruling class used the black codes to establish “forced labor and police laws to get the freedman back to the fields under control” (p. 100). In the second phase, white lower classes joined the plantation owners to demand the political exclusion of freedmen from all major institutions. Super exploitative sharecropping arrangements and debt peonage that fixed black labor on the land were backed by custom and elaborate legal statutes. Collins (2010) demonstrates, in *The Imprisonment of African American Women*, that southern law makers created laws that they knew would be broken by former slaves who faced hunger and homelessness. She stated, for instance “the state of ...Missouri secured passage of ...the...’pig’ law, which defined the theft of property worth more than \$10,000—including cattle and swine—as grand larceny, punishable by five years of hard labor” (p. 9). Punished to serve time in jail or prison, freedmen and women became victims of the convict leasing. Convict leasing is a system of penal labor where imprisoned individuals are hired out to work on plantations of private parties to pay off their debts (Alexander, 2010).

Davis (2003) and LefLouria (2015) explored the gender and racial dynamics in convict leasing during this time by noting that black women were barred from accessing femininity that tended to protect many white women from imprisonment. Imprisoned black women held in men's prisons endured the cruelty of the convict leasing without any consideration of their gender (Davis, 2003). Tens of thousands of African Americans were randomly arrested during this period, and forced to pay court costs and fines. Those unable to pay off their "debt" worked to secure their release or were sold as forced laborers to brick yards, railroads, and other corporations (Alexander, 2010). Contemporary use of the cash bail system, which keeps mostly poor African American in jail because they are unable to afford their bail, seems to have a similar pattern to convict leasing. According to Michelle Alexander (2010), the Thirteenth Amendment, which abolished slavery, "allowed one major exception: slavery remained appropriate as punishment for a crime," and the criminal justice system was employed to force African Americans back into a system of extreme repression and control (p. 31).

The thought provoking documentary, *The 13<sup>th</sup>*, discusses the loophole embedded in the 13<sup>th</sup> amendment that ensured that the enslavement and involuntary servitude for those considered criminals allowed the south to rebuild its economy through prison labor. African Americans were arrested in mass for the exploitation of their labor, a process described as the first prison of this nation (DuVernay, 2016). Similar to slavery when pseudo-scientific and ideologies were employed to justify the institution of slavery (Alexander, 2010; Wacquant, 2001), myths about the black criminality began to spread. This mythology benefited the business elite and plantation owners who needed black

labor on their factories and lands (DuVernay, 2016). As the Jim Crow era came to an end, conservatives and white supremacist who wanted to keep black people under control used more covert language backed by the legal system to arrest and incarcerate blacks at a disproportionate rate (Alexander, 2010).

Although Wacquant and Alexander analysis provide an understanding of how race was constructed to maintain black people in bondage, bell hooks (1982) notes that in addition to the racial power dynamic within the institution of slavery, there is the need to analyze the gendered oppression that existed to be able to understand the oppression of black women. Without acknowledgement and discussion of other oppressive forces and how they shaped black women's experiences, they are rendered invisible during the institution of slavery and within other institutions that followed. Looking to Kali N. Gross (2015), the author of "African American Women, Mass Incarceration, and the Politics of Protection," she expressed that laws, such as the Virginia's December 1662 decree, were directly responsible for the denigration of black womanhood. The lack of acknowledgement of the rape of black women by early American law, and mainstream negation of their victimization with destructive myths of the "hypersexual black woman," compounded their subjugation. Gross added that slave labor and practices that distinguished black female labor from white labor, and treated black women as field laborers with a productive capacity and punishment equivalent to that of men, eroded black womanhood.

### ***A Road map to mass incarceration—1960's and beyond***

Some scholars (Davis, 2003, Alexander, 2010, and Wocquant, 2001) have linked mass incarceration to slavery and Jim Crow as the continuation of the subjugation of blacks and other people of color. Alexander and Wocquant argue that mass incarceration evolved following the death of Jim Crow and the passage of the Civil Rights Act. The current exploitative use of the cash bail is only one of the punishment apparatuses used in the United States criminal justice system to trap those from minority groups. A solid understanding of mass incarceration helps one to see how the use of cash bail contributes to the prison and jail population growth. Prior to the 1970s, incarceration rates in the United States remained stable. However, in 1973, the rate of incarceration began to increase, and it has continued to increase annually. In 1990, for instance, the decade of widespread reduction in crime rates, prison growth accelerated, and the already high prison population doubled (Garland, 2001). It is the high imprisonment and a size of prison population above historical and comparative norm for societies that has come to be defined as mass incarceration (Garland, 2001). After a short decline in incarceration rate between 1966 and 1970, there has been a systematic growth in incarceration until it declined between 2013 to 2015. (See Figure 1)

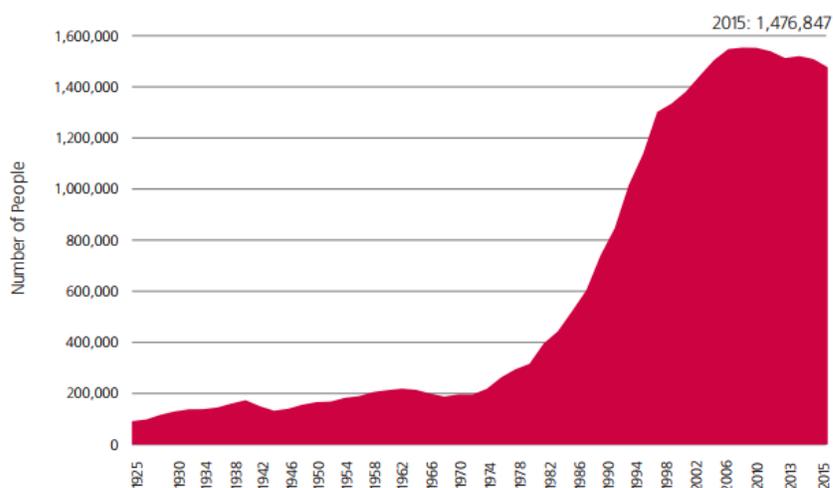


Figure 1. The U.S. state and federal prison population from 1925-2015  
Source: *The Sentencing Project*

To explain the over representation of African Americans in prison and jails, Alexander (2010) contends that discriminatory laws, policies, and rhetoric have contributed to the current mass incarceration. She states, “proponents of racial hierarchy found they could install a new racial caste system without violating the law or the new limits of acceptable political discourse, by demanding ‘law and order’ rather than ‘segregation forever’ (p.40). In the 1950s and 1960s, southern governments and conservatives strategically linked their opposition to civil rights legislation to call for “law and order” by arguing that civil disobedience was a leading cause of crime (Alexander, 2010; Gilmore, 1998). This language of law and order as articulated by Ian F. Haney Lopez (2010), in “Racial Stratification and Mass Incarceration in the Age of Obama,” was to stoke racial anxieties among whites who felt threatened by the gains of the civil rights movement. Criminologists and sociologists have attributed the rise in crime rate during the time when the civil right movement was gaining steam to the baby

boomers generation that came of age after World War II and the sheer demographic change (DuVernay, 2016; Alexander, 2010). The racial imagery associated with riots following the assassination of Martin Luther King Jr. gave fuel to the argument that “civil rights for blacks led to rampant crime” (Alexander, 2010, p. 42).

In his 1964 presidential campaign after the Civil Right Act, Barry Goldwater exploited urban uprisings—which became the means by which blacks and other people of color condemned police brutality, economic exploitation, and social injustice by associating the uprising of the civil right movement with public fear of black crime and subsequently laid the foundation for the “tough on crime” rhetoric (Gilmore 1998; Alexander, 2010). Goldwater called law enforcement to be “tough on crime” after warning the masses that “crime grows faster than population, while those who break the law are accorded more consideration than those who try to enforce the law...our wives, all women, feel unsafe on our streets (Haney Lopez, 2010, pp. 132-133). Goldwater’s rhetoric in his campaign expressed the sentiments of many conservatives who opposed the signing of the Civil Rights Acts which some believed that there was a direct correlation between racial integration and increased crime rates (Alexander, 2010). With the public fear of black crime sensationalized by the media, and the use of “law and order” and “tough on crime” rhetoric, crime became synonymous with black people and other people of color (Alexander, 2010). By using this coded language, conservative politicians conveyed to their constituency and continued to attack and scapegoat black people for social ills. Because this language did not explicitly make any reference to race,

it was assumed that there was no racial motivation behind the “tough on crime” and “law and order” rhetoric (Alexander, 2010).

As race became the organizing principle of American politics, Richard Nixon purposefully made law and order a de facto campaign slogan to appeal to whites in the southern states whom the Republican Party had convinced to see people of color as the enemy (Haney Lopez, 2010; Alexander, 2010). Nixon dedicated seventeen speeches on law and order, in addition to advertisements that linked civil disobedience in the street to crime, a strategy that won him the election (Alexander, 2010). The crime rhetoric of the mid 1960s evolved into anti-crime legislation and programs leading to federal spending on corrections facilities that increased four-fold (Haney Lopez, 2010). Similar to his predecessor, Ronald Reagan used crime and welfare major themes for his campaign, with his favorite and most repeated anecdote being the story of a Chicago “welfare queen” with “80 names, 30 addresses, 12 social security cards, whose tax-free income alone is over \$ 150,000” (Alexander, 2010, p. 49). In their book *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America*, Clear and Frost (2014) identified Reagan’s administration as responsible for launching the war on drugs in the early 1980s. Once elected, the Reagan’s justice department announced its intent to slash the number of specialties assigned to identify and prosecute white color criminals to focus on street crime (Alexander, 2010). Federal law enforcement agencies soared with anti-drug funding with a total of about \$40 billion, approximately 70-75 percent of those funds going towards law enforcement (Clear & Frost, 2014). The funding became an incentive for law enforcement to embrace the war on drugs because, in theory, each drug related

arrest would net a given county \$153.00, while non-drug arrests, even for violent crimes, brought zero federal dollars (Alexander, 2010).

As funding soared for law enforcement to crackdown and arrest drug users, resources that served the marginalized population began to experience significant cuts in their funding. Julilly Kohler-Hausmann (2015) connects the history of the U.S. carceral state and that of the nation's welfare state in "Guns and Butter: The Welfare State, the Carceral State, and the Politics of Exclusion in the Postwar United States." She explains that while the welfare programs serving the most marginalized groups in society sustained major cuts, the penal system also expanded exponentially. She attributed the expansion of the penal system to how the state handled specific social problems by transferring welfare programs to law enforcement. For instance, as the war on drugs expanded in the 1970s and 1980s, the penal system became the main institution managing unlawful drug use in low income communities of color. In 2005, about five hundred thousand vulnerable individuals with mental illness ended up in jail and prisons while only fifty thousand were admitted to psychiatric hospitals. Additionally, the welfare program AFDC also embraced more punitive practices. Recipients of this aid, who were mostly women of color, were constantly subjected to surveillance procedures, such as home searches and drug testing (Kohler-Hausmann, 2015; Ocen, 2012). These policies positioned recipients of these benefits as suspects of fraudulent activities, and even semi-criminal citizens who could be held in jails for any violation (Kohler-Hausmann, 2015). As Kohler-Hausmann states, for those who are recipients of public benefits such as food

stamps or Medicaid, a jail stay can cause termination or suspension of those benefits—outcomes that have disastrous consequences for the marginalized population.

### *America's Jail-Then and Now*

Extensive research on mass incarceration has tended to focus on prison, while growth in jail population, which serve as the entry point of the criminal justice system, has received little attention. While previous research highlights jails in the colonies and early republic, contemporary research has characterized jails as institutions for the control of those considered marginalized (Irwin & Simon 2013). Jails provide confinement for individuals before and after adjudication, inmates sentenced for a year or less, mentally ill persons pending movement to psychiatric facilities, or inmate awaiting transfer to state or federal prison (Collins, 2010). In comparison, prisons are state or federal institutions incarcerating individuals who are serving felony sentences that run for more than one year (Irwin & Simon 2013).

Prior to the American Revolution, imprisonment for crime was rare. Towns dealt with most adjudicated offenders using whips, the stock, and gallows (Tilloston & Colanese, 2017). However, following the American Revolution, corporal punishment and torture were replaced by discipline as authorities subscribed to reform ideologies that maintained that social problems were curable through rehabilitation (Vandal, 2001). In their study on “Jails in Early American Republic,” Tilloston and Colanese (2017) found that the establishment of jails in 1790–1850 served as repositories for the insane, wayward children, debtors, misdemeanor, and felons. States developed specialized institutions to contain other classes of deviants such as the mentally ill and delinquent

children following prison reformers protests against the use of jails for those group of people. As noted by Tilloston and Colanese, by removing the insane, debtors, and delinquents from jail, spaces that have been left fallow began to be filled with masses of petty offenders.

Irwin and Simon (2013) describes the incarceration of petty offenders as the managing of society's "rabble." They clarify that contrary to public impression of jail being the institution for criminals, "the jail holds only a very few persons who fit in the popular conception of a criminal—a predator who seriously threatens the lives and property of ordinary citizens" (p. 1). Irwin and Simon explain that in addition to American jails operating primarily as catchall asylums for poor people, many of those incarcerated are undereducated, unemployed, and belong to minority groups. The arrest of these "rabble" by the police are not based on their crime, rather, their detachment and disrepute—that influence the police to target and arrest them so frequently, regardless of whether or not they have engaged in crime. Collins (2010) highlights on the similarities between American jails and prison, which she argues are occupied with predominantly African Americans. Her discussion on a study released in 2006 by the federal Bureau of Justice Statistics (BJS), for instance, shows a gain of 33,539 inmates in jail, the largest increase since 1977. However, recent data by the Vera Institute of Justice shows a much higher increase in jail population with an annual jail admission rate of about 11.7 million in 2013 compared to 6 million in 1983 (Delany, Roberts, Fisherman, Mcgary, & Subramanian, 2015).

As jail admission rates increase, so has the incarceration rate of women. Recent research shows that the fastest growing population in jail is women (Chesney-Lind, 1998). But, they are rarely on the radar of most Americans. Like men, who are often charged with non-violent crimes, the majority of women in jails are charged with non-violent offenses—with women arrested for property offenses representing 32 percent of the population, 29 percent for drug offenses, and 21 percent for public order offenses (Swavola, Riley, & Subramanian, 2016). Joycelyn M. Pollock (2002) provides an economic explanation of female crime by noting that women's crime is generally sex-specific, involving shoplifting, forgery, and welfare fraud out of the need to support themselves and their children.

In her essay, "Women in Prison: From Partial Justice to Vengeful Equity," Med Chesney-Lind (1998) argues that the imprisonment of women has become an afterthought because of its small number in relation to men. She further points out by comparing women's imprisonment rate in 1985 and 1996 to show the growth in incarceration between women and men. Her analysis indicates that female imprisonment has outpaced male since 1985. As an example, in 1996 alone, women's imprisonment grew at a rate of 9.5 percent compared to 4.8 percent for men. Among women in local jails, there was 9.9 percent increase compared to 6.4 percent for men. However, in 2014, the female arrest rate increased to 26 percent while male arrest rate declined to 74 percent. Overall, women in jail have increased between 1970 and 2014 from under 8,000 to nearly 110,000 (Swavola, Riley, & Subramanian, 2016).

What explains the increase in women's imprisonment? Chesney-Lind (1998) identified the "war on drugs" and the impact of the "tough on crimes" policies as the major factors in the increase in women's drug arrest and other minor offenses. In addition, she illustrates that the sentencing reform, which was aimed at deterring individuals from using drugs, has played major role in the soaring of women's imprisonment. Similarly, Swavola, Riley, and Subramanian (2016) identified policing practice, which evolved from the "broken window" policy and the criminalization of drug offenses, has contributed to the widening of the criminal justice system net in which women have become victims. They further explain using 1980–2009 arrest data to show how drug arrest rates for possession or use tripled for women while the rate for men doubled. Steffensmeier & Schwartz (2004) says the arrest trends for women are based on the increase in the number of women arrested for minor offenses as well as female inequality and economic vulnerability that shapes women offending patterns.

In discussing the characteristics of imprisoned women, Pollock (2002) found that incarcerated women are more likely to be: members of a minority group and poor; have problems related to drug or alcohol use; single, not in a relationship; have committed violent crimes or have been with parties to violent crime; and not taking care of children as at the time of their arrest. Although other research has shown similar findings to Pollock, they have argued that women's involvement in violent offenses are often associated with being victims of various forms of domestic abuse (Swavola, Riley, Subramanian, 2016; Chesney-Lind, 1998). Contrary to Pollock's conclusion that incarcerated women are often single women and not taking care of children at the time of

their arrest, research by Swavola, Riley, and Subramanian (2016) show about 80 percent of women in jails are single mothers. The research also shows that these mothers are solely responsible for their young children and have less extensive criminal histories than men. In addition, 75 percent of women in jail reported having some form of mental illness and high rates of victimization that includes childhood sexual abuse, sexual assault, and intimate partner violence; 30 percent received public assistance and a majority of them are disproportionately women of color.

Within the criminal justice system, there is disparity in the imprisonment rate between women of color and white women. In the jail system, for instance, black women make up 44 percent of the population compared to 36 percent of white women (Swavola, Riley, & Subramanian, 2016). Although the imprisonment rate for African American women has been declining since 2000, they are still overrepresented with current statistics showing an incarceration rate for African American women at 109 per 100,000 compared to the rate for white women at 53 per 100,000 (see Figure 3) (The Sentencing Project, 2015). The incarceration of black women can best be understood through the intersection of race and gender which brings into light the experiences of black women that are different from black men and white women.

		2000	2014	% Change
White	Women	34	53	56% increase
	Men	449	465	4% increase
African American	Women	205	109	47% decrease
	Men	3,457	2,724	21% decrease
Hispanic	Women	60	64	7% increase
	Men	1,220	1,091	11% decrease

Figure 2.: The U.S Imprisonment Rates by Gender, Race, and Ethnicity per 100,000: 2000 vs. 2014. Source: *The Sentencing Project* (2015)

### ***Key Decision Points that Influence the Use and Size of Jails***

Delany et. al (2015) have identified key decision points that influence the use and size of jails. Among these decisions are arrest, charge, and pretrial release/bail.

**Arrest:** In their discussion on arrest, they explain that arrest is a person's entry into the criminal justice system and how police make arrest decisions is influenced by a number of intersecting factors and dynamics. For example, at the local level, local political pressure, policy decisions, and departmental priorities play a role in how police resources are used and deployed. As noted by Irwin and Simon (2013) and Delany et al. (2015), police officers are more likely to target and arrest individuals from communities of color with the aim of meeting their quotas and seeing such individuals as undesirable.

**Charge:** Following a person's arrest and detention by the police for breaking the law, the person must be formally charged in order for the case to proceed (Delany et al., 2015). After a person has been formally charged, the severity of the charge(s) invoked influences the bail amount and eligibility for non-financial pretrial release or community-based sanctions intended to address fundamental problems. These charge decisions

influence whether a person will be held pretrial, and if convicted, could be given custodial sentence.

**Pretrial Release/Bail:** The presumption is that once a person has been arrested they will be released pending trial, but that is not always the case. In their study on bail, Delany et al. (2015) maintain, the presumption that defendants should be released unless they pose danger to their communities, or are at flight risk to avoid trial, is rooted in the principle that people are innocent until found guilty. However, they also argue that the actual pretrial release practices are at odds with the fundamental principle since about six out of ten people in jail are detained pretrial today. Money, or the lack thereof, is now the highest contributing factor in determining whether a person is held in jail pretrial. For instance, while in 1990 about 60 percent felony defendants who were freed from jail pending trial were released on their own recognizance (ROR), in 2009, only 38 percent were released on their own recognizance. The reduction in the use of ROR has paved the way for the for-profit bail industry.

In their research “Private Interest, Public Sphere: Eliminating the use of Commercial Bail Bondsmen in the Criminal Justice System,” Billings (2016) provides findings that are consistent with Delany et. al (2015) study about the non-conviction rate of incarcerated individuals in local jails. Billings describes the 1966 Bail Reform Act requiring non-capital defendants to be released on their personal recognizance unless a judicial officer determined that such release did not ensure a defendant’s appearance at trial; it was replaced by the Bail Reform Act of 1984. The 1984 Comprehensive Crime Control Act containing the Bail Reform Act of 1984 was introduced as a result of the

supposed heightened public concern over crimes committed by defendants on pretrial release (Billings, 2016). Unlike the Bail Reform Act of 1966, the new reform required judicial officers to consider the potential danger or flight risk of defendants to address “the alarming problem of crimes committed by persons on release” (p. 1350). While the new bail reform may have contributed to the growth in the use of bail, the rise of the commercial bail bondsmen also coincided with a rise in bail amount (Billings, 2016).

Billings further maintains that the increase in bail amount has led to a higher rate of defendants held in jails because of their inability to afford their bail. Research has indicated that the main reason why some of the people held in jail are unable to post bail prior to their trial is because they are too poor to afford the bail. In addition, the largest number of defendants required to post bail are people of color who are also victims of discriminatory practices in the criminal justice system (Robuy & Kopf, 2016; ACLU, 2017). According to the research by the ACLU (2017) on bail, they contend that black defendants between the ages of 18 and 29 often receive higher bail amounts and are less likely to be released on their own recognizance. Additionally, because a number of the defendants are too poor to post bail, they rely on the bail bond agent for their pretrial release. The almost exclusive reliance on the bail bond agency has given unfettered control over defendant’s freedom by determining who will be set free and who will not. They also describe the exploitative nature of the contract used by the bail bond industry for people seeking bail, which includes signing away one’s privacy or submitting to invasive surveillance that negate a person’s due process. For defendants who are unable

to afford bail, the fear of continued stay in jail can lead to their acceptance of pleas (Sacks & Ackerman, 2012).

In their study on the factors affecting disposition timing, Sacks and Ackerman (2012) noticed the impact of pretrial detention and guilty pleas. Similar to the findings of Billings (2016), Delany et. al (2015), and ACLU (2017), Sacks and Ackerman discovered that defendants held in jail before trial were more likely to accept plea bargain to get out of jail quickly even if they were innocent. Others have documented the loss of jobs and housing as some of the consequence of pretrial detention (Delany et al., 2015). To reduce the pretrial detention, Billings (2016) suggested the use of pretrial services agencies (PSR) that focus bail decisions around non-monetary release in place of the for-profit bail bond industry. Sack and Ackerman (2012) advocated for a reduction in the amount of cash set by the court for low level offenders. Finally, Delany et al. (2015) have argued for the use of a risk assessment tool that takes into consideration several factors to determine if a person will reoffend following their pretrial release or pose flight risk.

## **II. Gender, Race, Crime, and Punishment**

Research including those by the Vera Institute of Justice have indicated that among imprisoned women, black women are more likely to be arrested and incarcerated at a rate higher than white women. While factors such as the “war on drugs” and “broken window policies” may have contributed to their perceived criminality, historical construction of female criminality that defined black women as inherently criminals seem to also have impact on their womanhood and their ability to parent. This section of the literature review looks at research on how the intersection of race and gender impact the

perception of and the actual crimes black women participate in and the punishment they are subjected to when caught in the criminal justice system.

### ***Criminalization of Black Women***

One view point on the construction of black women's criminality is discussed in "From Slavery to Jane Crow to Say her Name: An Intersectional Examination of Black Women and Punishment." In this essay, Battle (2016) demonstrates how black women were often punished in a way that illustrates a lack of validation of their womanhood. She notes that black women have not been valued as "true women." According to Battle, "[true women] are socially constructed ideology of race and gender created in the nineteenth century labelled 'the cult of true womanhood'" (p. 110). Battle states, this ideology placed higher value on white women than women of different race and encouraged piety, domesticity, submissiveness, and purity among white women. Denying black women this value system "justified violence against and insufficient legal protection for them" (p. 110).

Battle uses the 1855 court case *Missouri v. Celia* to illustrate how the social construction of race and gender has a bearing on the punishment of black women in the legal court system. Celia was a fourteen year's old enslaved girl who was constantly raped by her master, Newton. After pleading with him to stop the sexual abuse, Celia sought Newton's granddaughter for help, but nothing was done to assist her. Celia killed Newton to defend herself when he came to her cabin to sexually assault her. Given her status as a black slave, she did not have any right of due process, and was not "afforded the protection of socially constructed ideology attached to white women," she was

considered guilty until proven innocent (p. 114). In this context, Celia was executed for defending herself and not consenting to sexual violence. The ruling of this case confirmed black women as disregarded objects, who had no honor and did not have the right to protect their bodies. Battle further notes in her analysis, high execution rates among black women compared to white women between 1840–1850 to demonstrate the disparities in sentencing between the two groups. She argues that this disparity was also shaped by laws and ideologies that were aimed at maintaining black people’s social and legal inferiority.

Similar to Battle, Talitha LefLouria (2015), offers an alternative view point based on the “scientific” ideology that was constructed to explain the criminality of black women in “The Gendered Anatomy of ‘Negro Crime.’” The pseudo-scientific and civilian ideologies used to openly denigrate black women’s gendered, racial, and sexual identity also contributed to the proliferation of black female and male criminality. As an example, Cesare Lombroso, an Italian criminal anthropologist purportedly constructed a “scientific” image of black female offenders in which their criminality was based on their supposed distinct racial, biological, physiological, and behavioral categories. Based on his image of black female criminality, he explained, “among brutes, savages, and primitive people, the female is more cruel than compassionate” (p. 46). LefLouria further expressed that ideologies surrounding black female criminality were often devoid of their socioeconomic reality as African American women who embezzled funds from their employers did so “out of economic necessity, or as indignant response to being cheated out of their wages” (p. 34).

To explain other reasons for black women's choice of crime, LefLouria reveals that black women emerged from slavery with a "fragile notion of womanhood" and those who resorted to some form of violent behaviors such as arson, stabbing, and shooting were in response to defend themselves against abuse from their fathers, partners, and white men (p. 37). The scientific ideologies of black female criminality helped justified black women's incarceration and their participation in the convict leasing system. Ultimately, Battle (2016) and LefLouria seem to present diverging analyses of how ideologies about race and gender constructed in the eighteenth and twentieth century influenced how black women's criminality was defined in addition to the justification of punishment meted onto them. These ideologies have grave contemporary consequences for black women who are recipients of government assistance and are victims of the criminal justice system.

### ***Motherhood, Race, Crime, and Punishment***

In "The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing," Ocen (2012) shows how the historically constructed ideas about black women's womanhood and their presumed criminality are mapped onto contemporary policy terrain that labels them as fraudulent and deviant mothers. Ocen writes, "[the] harassment and surveillance of Black female-headed households is predicted on their exclusion from prevailing notions of womanhood and motherhood, which are normatively grounded in constructions of white feminine identity" (pp. 1548–1549). For black women on welfare, the system has become a part of

a continuum of punishment that starts with presumption of their criminality that extends through surveillance and punishment.

Stereotypical images of black women as “welfare queens,” predatory, incubators of criminal activity, and “crack mothers” has been used to justify the excessive monitoring by police, public welfare agencies, and private individuals (Alexander, 2010). The 1996 welfare reform act which reduced the number of years a family can receive assistance regardless of the age of children or availability of jobs was aimed at reducing aid to the stereotypically black, hyperfertile, lazy, and irresponsible recipient (Ross & Solinger, 2017). Additionally, recipients of this government assistance were subjected to intrusive practices of lifelong record keeping and strict monitoring of their behaviors in matters relating to drug consumption, sexuality, and employment that are liable to prompt both administrative and criminal sanctions (Ocen, 2012; Kohler-Hausmann, 2015). An example of the surveillance of certain African American women is seen in the story of Rennie Gibbs.

Rennie Gibbs was a teenager when her baby was stillborn with the umbilical cord wrapped around her neck. Although there were no traces of drug in the baby’s blood, Gibbs was indicted in Lowndes County, Mississippi for “depraved heart murder” because traces of a “cocaine byproduct” were allegedly found in her blood (Ross & Solinger, 2017; Bassett, 2014). Whereas the court dropped the charges against Gibbs, some African American women who tested positive for cocaine during pregnancy were dragged out of the hospitals in chains and shackles (Sulliman, 2002). While some researchers have argued that the dehumanizing act of arresting certain pregnant patients who tested

positive for cocaine when seeking medical help were supposedly intended to deter drug use among women, others have connected these acts that targets predominantly low-income African American women to the control of their reproduction (Ross & Solinger, 2017).

Along similar lines, Collins (2010) analysis of the frequency of imprisoned minority women in their child-bearing years also begs the question whether this is a form of population control. She explains that when one couple the low birthrates and low fertility rates among white women with the overrepresentation of minority women incarcerated for nonviolent offenses, one cannot help but question the reasoning behind their imprisonment. In “Making Reproduction a Crime,” Dorothy Smith (1997) provides examples of some of the attacks on black women’s reproduction in the criminal justice system. Darlene Johnson, a twenty-seven-year-old mother of four and pregnant plead guilty to three counts of felony child abuse. Because of her past criminal record for petty theft and credit card forgery, she risked being sentenced to serve time in prison. The judge agreed to grant her probation, but later stated that Johnson might become pregnant again while receiving welfare. He then made a proposition in which he gave Johnson the choice between seven years in prison or one year in prison with three years on probation, with a condition of being implanted with Norplant. Norplant is an implantable set of capsules used as a method of birth control that caused five-year periods of sterility and could result in infertility following the removal of the implant (Ross & Solinger, 2017).

In another incidence, according to Smith (1997), Cornelia Whitner plead guilty to child neglect following the advice of her lawyer after the hospital claimed that her baby

had traces of cocaine in her urine. The decision to plead guilty assumed that she would be placed on probation while she receives drug treatment, similar to other women. Despite Whitner's plea to be placed in a residential treatment facility, the judge sentenced her to a startling eight-year prison term. The dilemma faced by Whitner and Johnson answers Collins' (2010) questions about population control. Unlike black women, who were arrested and imprisoned for drug related offenses, white middle-class women who were arrested for similar offenses were diverted to rehabilitation programs where they received support and treatment for their addiction (Ross, & Solinger, 2017; Alexander, 2010).

The imprisonment of women of color takes place against the backdrop of a patriarchal, sexist, and racist society (Owen, 1999). In "The Criminal Law and Women," Sokoloff, Price, and Flavin (2004) discusses that poor women and men of color are vulnerable to being victims of violence and labelled criminals because the laws are written by the dominant class of people in our society. According to the authors, these people have the power to label and define behaviors that are punishable and determine the group of people who are likely to be punished. They also add that the trend of incarceration for non-violent drug offenses with lengthy sentences ignores the role that mental illness, addiction, poverty, and desperation may have on a person's behavioral choice. In spite of the racial and socioeconomic disparities between black and white women, white, heterosexual, married, and middle-class females continue to be the yardstick by which all mothers are measured (Flavin, 2009). For poor, single black women who make certain choices based on their social and economic circumstances, they are branded as "bad mothers," a claim that has long been supported by the Moynihan

report that pathologized the black family (Flavin, 2009). Though various intrusive practices have contributed to the unintended consequences of racial profiling and mass incarceration among black women (Ocen, 2012), the assumption that subsidy reliance is an indicator of criminality has been made possible by “the racialization of welfare recipients as Black and the ideological constructs [attached] to Black [womanhood]” (p. 1566).

### **III. Black Women’s Resistance Against Mass Incarceration**

Faced with forms of oppression and injustices, black women have shown resistance through direct action and different approaches to activism in fighting against their subjugation. Despite their contribution, their activism is often sidelined and are given less attention in comparison to black men. This third body of knowledge reviews scholarly works on black women’s activism or resistance to show their contributions in addressing injustices including those related to mass incarceration.

In the wake of mass incarceration and the impact of the cash bail on black women, Southerners on New Ground (SONG), a grass root organization led by black and queer women of color have worked in collaboration with other grass roots organization including Black Lives Matter (BLM) activists to raise awareness about the devastating impact of cash bail system. Their activism and public awareness has influenced and has led some counties and cities to eliminate the use of the cash bail (SONG, 2017). Focused on the bailing out of black mamas held in jail due to their inability to post bail, the campaign that was held on Mother’s Day was a way of reclaiming black motherhood that have longed been denied them through their imprisonment (Ross & Solinger, 2017).

Black women in the Blacks Lives Matter movement have also played a central role in turning “a string of protests into a movement by seamlessly shifting between the roles of peace-keepers, disrupters, organizers and leaders” in the ongoing injustices against black people (Taylor, 2016, p. 165). A movement that have gained national and international visibility has helped propel the conversation around the state-sanctioned violence in addition to their ability to articulate a much broader critique that placed policing within a matrix of racism and inequality (Taylor, 2016). A similarity that SONG and BLM for instance have is the centering of the struggles of the most marginalized which is often ignored by the prevailing established organization. Although SONG and BLM have and continue to make significant contribution in addressing the impact of cash bail and the overall incarceration of black and brown people, their activism should not be separated from earlier forms of activism led by black women.

It should go without saying that black women’s involvement in activism comes from a long history of resistance beginning from the enslavement of African people, post reconstruction, civil right, and post-civil right era until today. For instance, In “Reflections on the Black Woman’s Role in the Community of Slaves,” Davis (1981) discussed the overt forms of resistance that enslaved black women participated in their struggle for liberation. She explains that as part of their resistance against slavery, black women poisoned the food and set the houses of their masters on fire in addition to participating alongside their men in the 1708 revolt in New York. Additionally, freed women also worked to purchase the freedom of their relatives and friends from slavery. A closer look at the activism by SONG in their effort to raise money to bail black women

and men from jail reveals the historical influence of activism by enslaved and freed black women.

After the civil war, black women continued to engage in various forms of activism in the quest to address the problems faced by the black communities. As an example, Feimster (2009) argues *In Southern Horror: Women and the Politics of Rape and Lynching* that Ida B. Wells launched the campaign against lynching that initiated one of the first hearings that addressed both the problems of racial and sexual violence against African Americans. Her writings which were aimed to protest the lynching of black men and the rape of black women raised public awareness to the horrors faced by black men and women in the south. Her activism revealed the truth about the lynching of African American men that was associated with economic competition than the rape of white women. Wells's activism is echoed in contemporary black women's activism that continues to address state violence against black women. Anna Julia Cooper and other black women also engaged in intellectual activism in which they used their writings to address the oppression of women and the black community (Battle, 2016).

Finally, the Combahee River Collective, a black lesbian activist group that evolved in the 1970s also played a significant role in articulating the intersectional nature of black women's oppression and laid the foundation for black lesbians and queer activists today. The absence of bondage between black women and white women resonated with these black feminists who sought the need to establish separate organizations that addressed their needs and concerns that were ignored in both the black and women's movement (The Combahee River Collective, 2014). The Combahee River

Collective shift from single identity related issue as it was in the women's and black movement is reflected in current mission and goals of activists who recognizes that the oppression of black women, black community, and people of color are interlocking and needs to be fought on different fronts (Taylor, 2016). Despite these contributions by black women, few of them receive credit for the role they have played throughout history (Davis, 1981). The role played by black women—whether it is about the abolition of slavery, bailing black women out of jail, campaign against lynching as in the case of Ida B. Wells, or ending police brutality— has been pivotal in these campaigns and will continue to be pivotal for the liberation of the oppressed group.

The works reviewed in this chapter offer an overview of the history behind mass incarceration which black women have become victims. The scholarly contributions to the study of mass the incarceration, the intersection of gender, race, and crime and its impact on punishment, and the role played by black women against forms of oppression inform this study on how black women are impacted by the use of cash bail in the criminal justice system. I am indebted to these works and this project should add to the existing scholarships on how black women are treated in the criminal justice system.

## **THE SOCIAL GEOGRAPHY OF NEW ORLEANS**

I chose to focus this research in New Orleans because of my interest in the experiences of African American women in the criminal justice system. Considering the demographics in New Orleans, the income disparity, and the influx of bail bond agencies in addition to other factors, I knew this location would be ideal for this research. New Orleans, has a unique history. Known for its popularity in tourism, the New Orleans economy is dominated by four major sectors: oil/gas and related activities, tourism, the port and ship/boat building, and aerospace manufacturing (Ward, 2016). The presence of universities, hospitals and other professional services adds further to its diversified economic base (City Data, 2018). The music, food, and other cultural activities reflects its French, Creole, Native Americans, and African roots.

Currently, the city has a population of about 374,059 among which 231,044 represent black or African Americans, 121,086 are white, and 21, 929 are made up of different ethnicities (The Data Center, 2018). The city has recovered about 80 percent of its population and seem to have made some gains following hurricane Katrina. However, areas that is heavily concentrated by white residents have seen tremendous growth compared to their black neighbors (Philip, 2015). New Orleans has continued the pattern of racial segregation in recent years and residents in majority black neighborhood are the most affected by lack of access to jobs, affordable housing, and adequate healthcare (Williams, 2016).

This heightened residential segregation has been exacerbated by the impact of hurricane Katrina. Neighborhoods such as the New Orleans East, The Lower Ninth Ward,

and Gentilly area that were predominantly black neighborhoods and were on lower grounds before the storm has more black residents after Hurricane Katrina due to spike in rent, cost of flood insurance among other factors that forced African Americans out of other neighborhoods (Williams, 2016). Additionally, while the French Quarter, Central Business District, Lower Garden District, and other Uptown neighborhoods are predominantly white, areas that were mostly Black and on high ground such as the Bywater, part of Treme, St Roch, and St Claude are now majority white, a pattern that has been attributed to the ongoing gentrification and strategic city investment (Williams, 2016).

Other racial and wealth disparities are seen in the rates of unemployment, median income, education, and crime/incarceration rates. These disparities are reflections of the inequality from pre-Katrina (Mohammed, 2017). According to McClendon (2014), a report by Bloomberg ranked New Orleans as the second worst city in the country for inequality. The report places inequality in New Orleans roughly on par with Zambia, a country in Southern Africa. On the eve of Hurricane Katrina, it was reported that about 24.5 percent of New Orleans residence lived below the poverty level, a rate that was higher than the national average and much worse among African Americans (Fussell, 2007). In 2005, the year when New Orleans was devastated by hurricane Katrina, the median income for African Americans was \$23,000. In 2013, the median income had only increased to \$25,000. Meanwhile the median income for white city residents jumped from \$49,000 in 2005 to \$60,000 in 2013 (Workneh, 2015). A more recent report has argued that compared to the 29.4 percent of white families, 69 percent of families of

color do not have savings to stay above the poverty line (Mohammed, 2017).

Additionally, while about 30 percent of black households live below the poverty line (\$23, 850 or less for family of four), only 4.9 percent of whites live in such households (Mohammed, 2017).

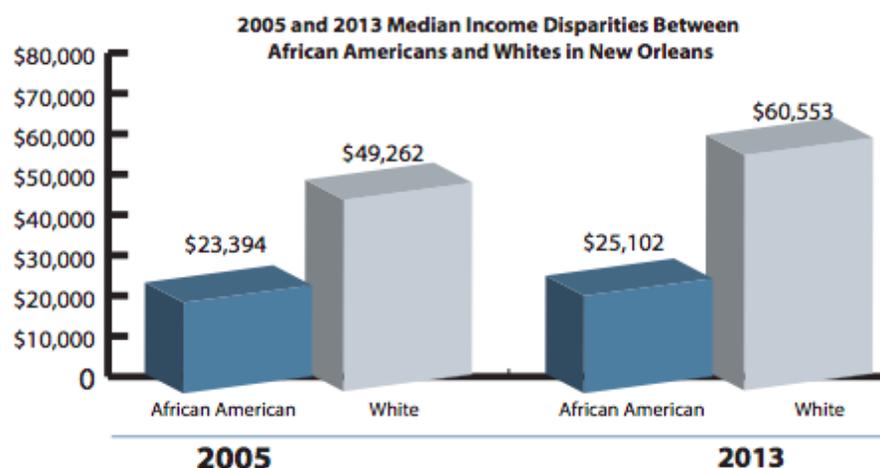


Figure 3: Source: *HuffPost* (2015)

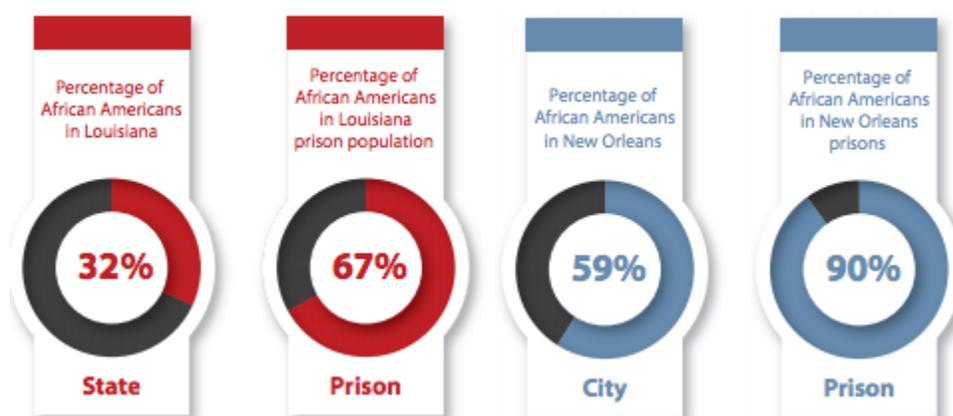
In 2005, the overall black unemployment was 18.5 percent—for white residents it was 4.1 percent. By 2013, black unemployment stood at 13.6 while white unemployment was 4.6 (Workneh, 2015). In comparison, the national unemployment rate in July 2013 was 5.3, a rate that indicates that unlike white residents’ black residents continued to experience high unemployment rate after Katrina. In 2015 almost one third workers in Orleans Parish worked in hospitality and leisure industry (Ward, 2016). As a major contribution to the workforce, the tourism industry in New Orleans employ more than the city’s two next largest export industries: oil and gas, and shipping combined. However, unlike the other industries, the average tourism industry wage is significantly lower and is

less than a third of the average oil and gas wage (Ward, 2016). Due to its nature, the tourism industry is filled with many unskilled individuals from communities of color who may lack the educational credentials to pursue other profession with high paying wages or salaries (McClendon, 2014). Apart from the tourism industry, other low wage jobs in which communities of color are employed includes health care, social assistance, retail, and waste management (Data Center Research, 2015).

Prior to the Hurricane, New Orleans education system was one of the lowest performing system in the country with 46 percent of schools in the city deemed “academically unacceptable” (Urban League of Greater New Orleans, 2015). African Americans from economically depressed communities were segregated, underfunded, and lacked basic resources. After the storm, the state of Louisiana took control of the public schools in New Orleans and launched a complete transformation of a public school system into a system of charter schools (Qulgley, 2017). Despite the transformation in the school system, major problems remain. Similar to earlier public schools, the charter system remains highly segregated by economic status and race (Qugley, 2017). The percentage of African American teachers has decreased, leaving less experienced teachers. The cost of administration has gone up while resources for teaching have declined, and students with disabilities are underserved (Qugley, 2017).

Some New Orleans citizens suffer from range of poverty related issues such as unemployment, poor health, and high incarceration rates. The homicide rates in 2017 shows a reduction in comparison to previous statistics on the city’s murder rate, but it still recorded a total of 157 homicides (Sledge & Simerman, 2017). Until recently, New

Orleans was considered the longtime nationwide leader in urban jail incarceration with a number of defenders being held because of their inability to post their required bails (Vera Institute, 2016). Similar to the nation trend, African Americans in New Orleans experience disparities in arrests and convictions (Urban League of New Orleans, 2015). Over the years, the New Orleans Police Department (NOPD) have been known to have a pattern and practice of unlawful police misconduct and constitutional violations. These unlawful practices have led to the arrest of African Americans leading to their high incarceration rate in the city and the state. See figure 4.



*Figure 4: Percentage of African Americans in Louisiana, Louisiana Prison, New Orleans, and New Orleans Prison. Source: Urban League of Greater New Orleans (2015)*

The various challenges experienced in this city and especially among African Americans demonstrate that these communities might also experience heavy burden if hit with bails, fines, and other costs when caught in the criminal justice system.

### CHAPTER THREE

#### METHODOLOGY

To explore the economic and social impacts of the cash bail system through a gendered lens, this research will utilize semi-structured interviews to gain first-hand understanding about the experiences of black women in New Orleans. The rationale for using this method is its ability to provide participants the freedom to express their views in their own words. The study sample consists of approximately 10 black women who live in New Orleans, have formerly been held in jail, and have been affected by the cash bail system. Three research questions guide this study: *How does the intersection of gender, race, and class increase pre-trial detention? What are the social and economic impacts of cash bail on black women in New Orleans? What action has been taken to address the incarceration and exploitation of poor black women by the criminal justice system and the bail bond industry?*

I have found that most research on the impact of mass incarceration has focused on the experiences of black men. Other research on the abolition of systems of imprisonment has centered on prisons. Since there is a growing population of black women held in jail, which has not received much attention compared to black men (Chesney-Lind, 2006), this research will contribute to the literature by bringing visibility to the experiences of black women held in jail.

For the inclusion criteria, participants must: be 18 years or older, identify as black or African American woman, and have had been affected by the bail bond between 2006-2017. This research was conducted in New Orleans, Louisiana. A parish with a current estimated population of 374,059. Current reports about the impact of the cash bail system

indicate that out of the \$ 4. 2 million collected by the local government and bail bond industry, African-Americans paid 84 percent of the bail premiums and associated fees (ACLU, 2017). Among white and black women, 47 percent of black female-headed households live below the poverty line, compared to 17 percent of white female headed-households. In addition, black women are over-represented in Orleans parish prison. Some report has shown that prior to hurricane Katrina, New Orleans incarcerated more people in its local jail than any other city in the country (Mock, 2015). This report also indicates that New Orleans has reformed its criminal justice system, which has resulted in 67 percent decrease in jail population since Katrina. With the level of economic disparity and changes in New Orleans criminal justice system, I was interested to learn how poor black women are faring in this institution after hurricane Katrina.

### **Recruitment Procedure**

Volunteers and snowball-sampling was the primary method used to recruit participants. A recruitment email and a flyer were shared with friends, acquaintances, local organizations working with formerly incarcerated black women, and former classmates in New Orleans. I requested that acquaintances, local organizations, and friends distribute the recruitment flyer throughout their own networks. The recruitment flyer stated the purpose of the study, the target population, method of collecting data, and ways to contact me. I also met with some local community organizers who are working with formerly incarcerated women to spread the word by distributing flyers to increase participants' chance of responding. In addition, I posted some of the flyers in public areas to increase participants' response.

### **Screening Potential Participants**

Potential participants contacted me by phone and email. I conducted a call with all potential participant to ask if they meet the criteria, reiterate the purpose of the study to ensure that this was something that they were interested in participating, and assured them of how their privacy will be protected. My initial contact provided an opportunity to schedule an interview time, date, and location for the in-person interview. After a confirmation from participants to participate in this research, I scheduled an appointment to meet with them for our one-on-one interview. Although I had initially planned for the interview to be conducted at the library, participants' work schedules and other factors made it impossible to meet at the library. I allowed the participants to choose the location, stating that they had the option to decide which location to meet at that will ensure their access to privacy and comfort. Three participants opted for me to meet them at their jobs, one participant requested to meet at the library, and the remaining six participants preferred to meet in their homes.

### **Data Collection**

Each interview began with me asking the three criteria questions, stating the purpose of the study and explaining the purpose of the consent form to the participants. Participants were reminded that their participation was voluntary and that they were able to decline to participate in this research at any time. Additionally, participants were informed that this interview will reference their experience when they were arrested or held in jail and they had the option to not answer questions they were uncomfortable with. I assured them that the questions asked were aimed at helping me understand their

experience with bail bond but not to judge them for the offense they were charged with. Participants were informed that all identifying markers such as names or location of jobs will be changed in the transcription process to maintain confidentiality. Upon agreement to the terms of the research, participants were asked to sign a consent form which copies were made for their records.

Participants were given a paper with demographic information such as age, annual income prior to arrest, educational level, and marital status and asked to circle the information that applied to them. They were also asked to write their zip code for the purpose of identifying participants who reside in areas with high concentrations of poverty. Once participants had provided their demographic information, I began the audio recording by using the audio recorder. The qualitative research method of semi-structured interviews was used to collect the data. This semi-structured questionnaire aided in collecting qualitative information on the impact of the cash bail and provided space for women to talk and lead the response in the direction they wished. The interview questions aligned with research questions helped keep the conversation focused on the central theme.

The interviews lasted between 20 and 45 minutes. Each interview went through a series of questions focused on the financial situation of the participants before they were arrested, their ties to family and community, the amount in bail and fees terms of the bail bond agreement, impact of the bail, and participants' knowledge of bail. All interviews began with questions related to their financial situation prior to their arrest to help build rapport with participants before delving into more sensitive questions. Each interview

ended with the same closing question: *Is there anything I missed or something else you would like to bring up?* This question was intended to give participants the opportunity to voice other concerns with the bail bond that were not asked about.

### **Theoretical Frameworks**

This research is interdisciplinary in scope and it is guided by intersectionality theory, critical criminology, and feminist criminology. Intersectionality theory as Bonnie Thornton Dill and Ruth Enid Zambrana (2009) assert, “is a product of seeking to have [marginalized] voices heard and lives acknowledged” because this theory recognizes the multiple social locations and identities that people occupy in our society (p. 183). Intersectionality theory also reveals the converging vulnerabilities that render some populations amenable to control (Crenshaw, 2012). In the context of mass incarceration, race-centered and gender-centered frames largely obscures the hyperpresence of women of color within the criminal justice system because those singular identities privilege black and white women experiences (Crenshaw, 2012). Through the intersectionality lens, this study is able to examine how race, gender, and class affect how black women, especially poor black women, are impacted by the cash bail system.

As mentioned previously, this study also used critical and feminist criminology theory as guides for this research project. Contrary to positivist criminologist belief in the inherent criminality of a given population, critical criminologists argue that the concept of criminality is socially constructed (Raffel, Sokoloff, & Flavin, 2004). Critical criminologists’ attributes crime to the injustices in the production of the

criminal law. They note “those in power create the legal code—in their own interest”, thereby defining some acts as serious crime while others are ignored as administrative regulations (p. 20). In addition, critical criminologists recognize that the political economic system promote conditions such as poverty, inequality, and unemployment, which ultimately cause the typical street criminal behavior (Raffel, Sokoloff, & Flavin, 2004).

Similar to critical criminology, feminist criminology deconstructs the traditional understanding of women’s criminality through various perspectives (Raffel, Sokoloff, & Flavin, 2004). This theory challenges the overall masculine nature of crime and social control by drawing attention to the repeated omission and misrepresentation of women in the criminological research (Chesney-Lind, 2006). This theory argues that the exclusion of women’s experiences in criminology are due to oppressive forces such as sexism and patriarchy which they have become victims of (Chesney-Lind, 2006). By raising the profile of women and studying their lives, feminist criminologists highlight the economic basis of female offending pattern that challenge the biological, psychological, and sexual character stressed by earlier researchers (Heidensohn, 2012). Based on critical and feminist criminology, this research attempts to situate black women in New Orleans offending patterns within the social structures that is predicated on blaming the victim.

### **Data Analysis**

After the collection of the data, the recorded interviews were transcribed. The data was analyzed by coding the interviews. Significant themes that emerged from the stories

shared were identified. The themes identified captured and unified the nature of individual experience into a meaningful whole. Although I will focus my discussion on the significant themes, a few unique themes that were also identified will be explored to bring a broader scope to the discussion—one that was not intended. Significant themes that emerged include: 1) distrust of the system, 2) burden on black women, 3) the criminalization of black women, and 4) participants beliefs about crime and punishment. Strengths of the extended family and the resistance and coping mechanisms of black women were additional themes that emerged from the interviews.

### **Anticipated Potential Risk to Participant**

The potential risks the participants encountered were emotional distress in remembering and talking about their experiences in jail. This anticipated risk was minimized by informing participants prior to the interview about their rights to not answer questions they may feel uncomfortable responding to and their right to cease to participate in the interview at any moment. Even though participants were made aware of their option to take some breaks if they feel any emotional distress to consider their participation, none of them requested to take a break during the interview.

### **Recruitment Issues**

Since I am currently residing in the state of Minnesota, and this research required me to travel to New Orleans, Louisiana, a major problem I encountered is that I was not able to recruit the 15 participants I had intended. This was due to the limited time that I spent at the research location. I spent about a month and one week in the data collection process. Although I talked to about 20 potential participants, only 10 volunteers agreed to

participate in this study. Of the 10 potential participants who did not end up participating, two of the participants did not meet the criteria because their experiences with the bail bond system were before 2006. Two participants who wanted to participate in the study were not direct victims of the cash bail system. They had rather raised money to bail out their relatives who were in jail. The remaining 6 participants had expressed to my acquaintance, who identifies as African American, that they were interested in participating in the research, though they lost interest once they called and realized that I was not the person who gave them the flyer. While I had believed that my heavy African accent might not have benefited me during my initial contact with some participants over the phone, meeting others in person was totally a different experience. For some participants, my African ancestry, international status, and interest in their experiences was just enough for them to embrace and trust me to share their experiences with me. Perhaps what I considered as a measure of disinterest by some participants whom I spoke with over the phone might be their perception of me as an outsider or it could have been the discomfort and stigma associated with incarceration.

### **Potential Limitation**

This research cannot be generalized to represent the experiences of all the black women in New Orleans. In addition, because this research was conducted within some areas considered low-income neighborhoods with few exceptions, themes that emerged from this research may not necessarily apply to samples from other regions within the United States. This study may have participants who were more inclined to speak about their experience with bail bond because the offenses they were charged with

were considered low level offenses. Individuals who had been arrested and charged with offenses that are often stigmatized in society (such as those related to drugs, prostitution, child molestation, and first-degree murder) were less likely to participate in this research.

Even more, because this research is focused on the experiences of black women who have been direct victims of bail bond, the experiences of those who are burdened with the financial responsibilities of raising money to bail their relatives out or caring for the children of those incarcerated were not captured. Hence, the findings in this research cannot to be used to generalize the experience of how black women are impacted by the cash/bail bond. Rather, this sample size and data allows for an analysis and the discussion of themes observed from the interviews in providing some understanding of just how the cash/bail bond has impacted these women's lives.

### **Reflexivity**

I came to this project with a great deal of interest in and support for activism and issues of racial and social justice that center the experiences of black women. When I first heard about the Black Mama Bail out campaign early this year, it was a revelation to learn of how black women were often held in jail for little reason with zero likelihood of release. Regarding my own reflexivity, I am aware of my positionality during this research process. My identity as a black woman contribute to my insider and outsider status in the context of this research. As an insider, I have been a victim of false accusation at a store where I was singled out as a suspect of shoplifting, an accusation that has landed some black women in jail. My identity as a black woman allows me to

have a stronger connection with the subject material and how black women are often represented in the criminal justice system.

Additionally, I have my own experience of witnessing the arrest of men and women of color in my neighborhood. Although I may share similar experiences with formerly incarcerated black women due to our race and gender that makes us vulnerable to profiling and being targeted as criminals, I have not lived their experience of being arrested and spending time in jail. Although I have not been incarcerated inside of a women's correctional facility nor have experienced an arrest, I am positioned as an outsider within this community. As a researcher, I am aware that my privilege as an interviewer and a researcher can create a power dynamic between me and the research participants. Further, I am cognizant of my privilege by being a graduate student with working class status and access to cultural capital which many low income black women do not have. My educational background in Women and Gender Studies provide me with a critical lens to understand and analyze the marginalization of black women who are often forgotten in discussions that center around race or gender. All these discussed privileges and identities have influenced my investment in this research.

### **Narratives as a Liberatory Praxis**

My invested interest in the experiences of African American women who have had contact with the criminal justice in New Orleans grounded my ethical responsibility of privileging these women's voices while acknowledging their differences, "to better understand African American women's unique standpoint that engages macrostructural and microstructural issues" (Young & Miller, 2015, p. 291). By engaging in an ethical

discourse that privileges the experiences of women in New Orleans, whose narratives about the cash bail system have not gotten the visibility that is needed, “we can all learn from the lives and [narratives] of those distinct experiences that exist among people in marginalized communities” (Young & Miller, p. 293).

My interview with participants who have been affected by the cash bail system created a space where participants’ experiences were recognize and affirmed. For some participants, the process of sharing their experiences was liberatory. As a participant indicated, talking about her experience is what she believes she must do to be free. Perhaps the greatest achievement of this research is that it is one of the few examinations that gives black women the power to project and tell their own narratives about their experiences in the criminal justice system. Even though participants were impacted and traumatized by their incarceration, they were able to continue their lives, and such stories resonated and showed the kinds of resilience that these women embodied. Through their counter narratives, participants were able to express their agency within an oppressive society. Indeed, it is through these counter narratives that lives lost through dominant narratives can be restored or repaired (Young & Miller, 2015).

## **CHAPTER FOUR**

### **RESULTS**

The purpose of this research was to gain first-hand knowledge of how black women in New Orleans are affected by the cash bail in the criminal justice system. This research is theoretically based on critical and feminist criminology and attempts to understand the condition of women held in the criminal justice system. The frame work of intersectionality is used to frame the experiences of black women and make them visible due to their intersecting identities such as race, gender, age, class, and marital status that shapes their experiences. This chapter presents the findings of my analysis of the interviews conducted with ten participants who reside in the city of New Orleans and have been affected by the cash bail system between 2006-2017. To protect participants' privacy and confidentiality in this research, all the names have been changed. The quotes have been edited for the sake of both confidentiality and clarity, but the meaning and words have not been otherwise changed.

#### **Participant's Profile**

Inclusion criteria for this research required that all participants identify as a black woman, must be 18 years or older, and have been affected by the cash bail between 2006-2017. The sample is racially homogenous, with all participants identifying as black women. Among ten participants who participated in this research, seven identified as single, two identified as divorced, and one identified as a widow. The marital status of these women, is a reflective of the prevalence of female headed households among black

women in New Orleans. Except for three women who did not identified as the head of the household at the time of their arrest, the remaining seven identified themselves as the head of household. Among the three participants who were not the head of the household at the time of their arrest, two identified their mothers as the head of the household. Education level varied among participants, with all ten participants reporting college degree or less as the highest amount of education attained. For instance, five participants had a college degree, three participants had some college degree, a participant had a technical education, and the other participant also reported of high school diploma. If this is a representative sample, this data defies the dominant and pervasive stereotype of jails being filled with blacks who are elementary or high school dropout.

Similar to their educational background, there is more variation with regard to class: four participants reported an annual income of \$5,000 or less. All four participants who reported an annual income of \$5,000 or less, identified as unemployed. Two of the four participants were recipients of government support. One participant reported an annual income of between \$6,000-11,000, two other participants earned between \$16,000- 21,000, two participants earned more than \$27,000; and the remaining participant earned between \$12,000-15,000 annually. Just over half (6 out of 10) of the sample had children in their custody at the time of their arrest. Among the six participants, five participants had children with infants. The youngest among the children was three months old.

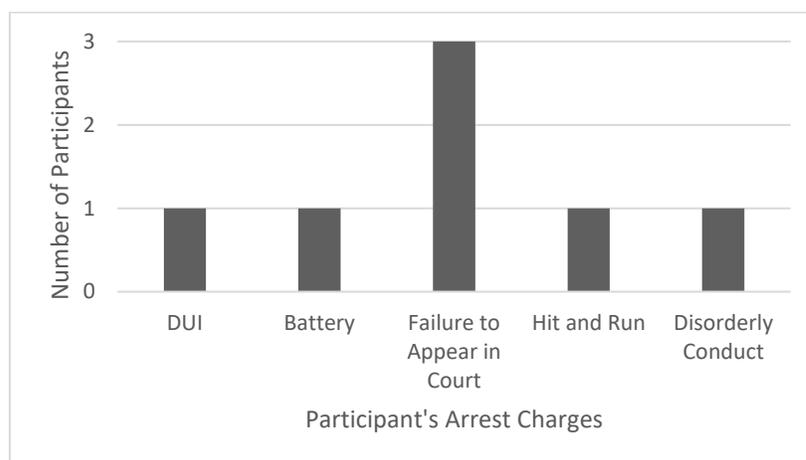
Most of the participants lived in the New Orleans East area and the Mid-city. These areas, according to the Data Center (2012) have greater concentration of poverty

that is between U.S and New Orleans average compared to other areas that has poverty rate that is less than the U. S average.

## FINDINGS

### *Arrest Charges*

Of the 10 persons who participated in this study, the majority (7 out of 10) descriptions of their charges fell under misdemeanor or minor offenses as indicated in the Louisiana Criminal Code and the Municipal and Traffic Court Ordinances. The minor offenses for which participants were arrested included driving under the influence (D.U.I), failure to appear in court for traffic fines, disorderly conduct, hit and run, and battery. See figure 5



*Figure 5: Participants Arrested for Misdemeanor Offenses*

Furthermore, among the 7 participants who were charged with misdemeanor offenses, Jennifer, Emily, and Jackie explained that they were arrested because they missed their court date after they were unable to pay the traffic fines and the related fees. For Emily,

despite being arrested for failure to appear in court, she was informed by the police officer that she was a “flight risk.” Knowing that she has been arrested for a minor offense, Jennifer expressed her frustration:

Knowing that I was pregnant and in jail for traffic ticket, that was freaking me out because I knew there was no way I should have sat there for that long.

In the interview with the remaining 4 respondents, Rose, Lucy, Linda, and Doreen, the charges for which they were arrested also met the description of a misdemeanor. For instance, Linda explained that she was arrested for D.U.I. after being pulled over by the police. Although Linda claims she passed the breathalyzer test, which showed that her alcohol level was 0.07%, the paper work that was submitted to the magistrate by the District Attorney had an alcohol level of 1.59%. According to the Class D & E Driver’s Guide in Louisiana, drivers 21 years and older found to have a Blood Alcohol Concentration of at least 0.08% will be charged with a D.U.I.

Doreen shared that she was arrested for fighting and charged with disorderly conduct. Rose explained that she hit someone’s car but did not flee the scene. During the interview, Rose shared her frustration of being charged with a hit and run, when in actuality, she did not flee. Lucy was charged with battery, an offense that is also considered as a misdemeanor under the Louisiana Criminal Code. Although most participants were arrested for failure to appear in court for non-payment or contesting of traffic fines, the representation of the other misdemeanor offenses provides a variation of the crimes that black women are arrested for in New Orleans.

Three participants (Gifty, Tiffany, and Cynthia) reported being arrested for felony level charges. Among the three participants, Gifty and Cynthia were arrested for aggravated assault after calling the police to their aid during a domestic violence incidence. One of these two participants shared that she was arrested because she was perceived as the aggressor by the police. Gifty-shared that:

I was in the midst of defending myself when the police arrived and was arrested because I was holding a knife and they thought I was the aggressor.

Despite being charged with aggravated assault, Gifty's charge was dropped eventually. Tiffany also elaborated that she was arrested for accessory after the fact to armed robbery, which she did not have any knowledge of. She mentioned that she was arrested because the person who committed the robbery was her then boyfriend. The data presented here demonstrate that among the 10 participants who participated in this research, only two can be considered as "violent offenses."

#### ***Jailed Due to Bail Requirement***

Except for Tiffany and Linda who did not post bail, most of the participants were able to secure their release through the bail bondsman. The bail bondsman charged a non-refundable amount of 13% of the bail in addition to other related fees. Three out of the ten participants (Tiffany, Gifty, and Cynthia) who were arrested for felonies were required to post bail prior to their release pretrial. Tiffany was unable to post the bail which was set at \$500,000. She shared her predicament:

My family could not afford to post the bail because they were required to pay 13% of the \$500,000. For my mother to be able to afford the bail she would have to use her house as a collateral and I could not let her do that, so I stayed in jail. Among the remaining two participants who were able to afford bail, one participant stayed in jail for four months on a \$10,000 bail. The other participant, Gifty, who could not remember the bail amount recollected staying in jail for two days before being released. Though she could not remember her bail amount she remembered paying a non-refundable amount of \$1,150 to the bail bondsman prior to her release.

Similar to participants charged with felonies, some of those charged with misdemeanors (7 participants) were also required to post bail prior to their release while they await trial. Two participants (Emily and Lucy) held on \$1,500 bail, stated that they spent less than 24 hours in jail before being released. Lucy explained that she was able to be bailed out early because she was aware of the warrant for her arrest and had saved the money to be used to bail her out through the bail bondsman. Two respondents (Jackie and Doreen) spent 2 days each in jail before being released. Jackie stated that she was held on a \$5,000 bail. Doreen, who could not remember her bail amount, stated that "I didn't remember the exact amount. But I know that it was not cheap." Two participants, Rose and Jennifer, were also held in jail for a total of three weeks. Rose spent a week in jail and repaid her mother \$3,000 for the overall bail expenses. Jennifer also spent three weeks in jail for a bail she estimated being between \$1,000 and \$2,000. Linda, was released on her own recognizance and explained that "I was given a bond of \$25,000. But I did not have to pay because I was released on my own recognizance."

Among participants (7 out of 10) who were arrested for misdemeanor, only one was released on her own recognizance. This data corroborates with the research by Laisne, Wool, and Henrichson (2017) which indicates that a significant number of people are held in Orleans Parish jail because of financial bail, but not because they have been convicted of an offense. Additionally, this data also shows that fewer people are released on their own recognizance compared to being required to post bail. Participants were affected by bail payment, in three main aspects: loss of job, loss of government benefit, and family dis-unification.

### ***Loss of Job and Benefits***

Among five respondents, Linda, Jackie, Doreen, Lucy, and Cynthia, who were working at the time of their arrest, Doreen, Jackie, and Cynthia reported that they lost their jobs while held in jail. Two of the three participants, Jackie and Doreen, expanded on how they lost their jobs by stating that they missed two days of work while held in jail. Jackie expressed anger about the situation:

I would not have been in jail. Also, there would not have been any record of me being in jail, which could affect my chances of being employed. I would have been in school and not gone through such an experience.

Linda, who was fortunate to be released on her own recognizance and did not lose her job, explained that she could have lost her job if she had missed work. Out of the five participants, Rose, Emily, Jennifer, Tiffany, and Gifty, were unemployed at the time of their arrest, Rose, Emily, and Jennifer reported losing their government benefits. Rose shared that she lost her food stamp benefits and had to appeal to get it back after being

released. She also added that she missed days of class which affected her grades at school. Emily also mentioned that she lost her food stamps which took three months to be reinstated. Jennifer whose situation was similar to Emily and Rose, shared this:

I could not complete my paperwork for food stamps and housing. So, when I got out they just took everything from me even though I had papers to show that I was not able to do what was asked of me.

Also unemployed at the time of her arrest, Gifty explained that she had received a job offer before her arrest but was fortunate to be bailed out a day before she was scheduled to start the new job. Had Gifty been held in jail for more than two days, she would have also lost the opportunity to gain employment. Although Tiffany was unemployed and not a recipient of government benefits, she shared that had there not been financial bail requirement, she would not have stayed in jail for a year. The sentiments shared by these participants indicate that the timing of one's arrest, and the time spent in jail, could affect a woman's life in many ways. For instance, although Emily was bailed out less than 24 hours after her arrest, she lost her food stamp benefit because the arrest coincided with her food stamp appointment.

### ***Family Dis-unification and the Reliance on Extended Family***

More than half of the participants (6 out of 10) had children and had custody of the children at the time of the arrest. Participants shared how their separation from their children affected them and their children's relationship with them. Rose has two children. She mentioned that she was used to seeing and talking with her children all the time but talking on the phone with her children while in jail made her feel very sad. Rose

explained that her children stayed with her mother while she was in jail. Emily said, “My son had a panic attack. My son was affected when he saw the police arresting me.” Like Rose, Emily’s mother and sister took care of her son while held in jail.

Cynthia, who had a 3-month old baby also shared that “I was nursing my new born at the time and being locked away broke the bond we shared. He didn’t even know who I was when I came home.” Cynthia’s mothers assisted in caring for her child when she was held in jail. Jennifer, who also had three children in her custody, had her sister and mother to assist in the care of her children while she was away. As Jennifer puts it: “My children were scattered. And they were very angry.” These participants’ stories underscore the impact that the arrest of mothers often have on their children and the relationship with those children. Despite the impact that one arrest could have on a woman who is held on a financial bail, for some participants (3 out of 10), this experience is too common in their lives. Emily reported of being bailed out two times between 2006-2017. Jennifer also said that she has been bailed out about four times within the same time frame as Emily. She added that all the arrests were related to traffic tickets. Cynthia, who has also been bailed out ten times, reported that most of her arrests were related to domestic violence charges.

Apart from relying on the extended family for the care of the children, most participants relied on the family network to raise the money to bail them out. For instance, Doreen mentioned that her mother organized fish fries to raise the money paid to the bail bondsman. Emily, discussing how her relatives raised the money to bail her out, stated:

My brother pawned his television to raise about \$ 100. My mother, sister, and others raised \$100 each to raise the \$500.

Rose mentioned that her mother pawned and took out small loan to bail her out. Jennifer, Cynthia, and Jackie also said: “family” members bailed them out. The reliance on family network among these participants shows the strength of the family supports, especially in black communities that lacks financial and other resources.

### *Condition and Treatment of Women in the Jail*

Among the majority of respondents who responded to the question on the conditions at the jail, one participant, Gifty, stated that the environment was “suitable.” She elaborated by saying that, at the time she was incarcerated, the Orleans Parish jail had opened a new facility. Even in a new facility, she pointed out that the food was “horrible.” Rose, Doreen, and Cynthia indicated, respectively: “the jail was cold, chaotic, and nasty.” Emily explained that there were used pads on the floor, feces all over, and the ladies were not provided toilet paper. Other participants also gave a disturbing account of the condition and the treatment at the jail. For instance, Jackie said that the women slept on the floor. The bathroom was exposed, and the guards did not provide basic needs such as tampons. Linda and Jennifer expressed similar sentiments. Linda says:

They make you put on an orange jumpsuit that was dirty. You strip naked. It is like walking around in a chain gang. The cuffs they put on your hand is so tight that I had bruises around my wrists and ankles. People urinated on the floor because the bathroom was nasty.

Jennifer, who was nine months pregnant at the time also articulated this:

It was the worse I ever saw. It was horrible. An animal should not even be there. I will probably want to die. You are treated horrible. For instance, if it is cold outside, it is colder inside. If it is hot outside, it is hotter inside. If for instance, the temperature now is 50°F, the temperature will be about 30°F or 20°F inside. You are affected because you can't stand the cold and heat. I was nine months pregnant. Sitting on the side of me, I was watching two black ladies deliver a baby. I was scared to move because I did not want my baby to come. So, I kept my body settled and still to make the baby calm.

Although participants provided different perception of the jail facility, the fact remained that the facility was of subhuman standard. Further, the lack of appropriate care for pregnant mothers has been documented to have devastated impact on the mother and child (Ross and Solinger, 2017).

### ***Outcome of Cases After Trial***

Participants shared the outcome of their cases. Among the nine participants who shared the judgement of their cases, four respondents, Rose, Jennifer, Lucy, and Jackie, shared that they were found guilty of the offense and fined. Among these four participants, three had a public defender and the other participant had a private defender. Jennifer, who shared her frustration regarding public defenders, noted this:

I had a public defender. And when I found out that he was not helping me, I hired a private attorney.

Four participants, Gifty, Doreen, Emily, and Linda, had their charges dropped. Gifty and Doreen reported that they had a public defender while Linda stated that she had a private

defender. Gifty, who was charged with aggravated assault but had her charges dropped indicated that the entire process was a “waste of time.” The other participant, Tiffany, who was charged with felony and had a private attorney got sentenced to a year in prison. The reliance on a public defender is also an indication of the class status of the participants. Low income defendants are often unable to afford to hire a private attorney who is considered a great defense team in comparison to public defenders who are inundated with excessive caseloads and are underfunded (Brunt, 2015).

### ***Participants Reaction to the Criminal Justice System and the Bail Bond Agency***

Most participants (8 out of 10) made comments that demonstrated their distrust of the criminal justice system and the bail bond agency. For example, Lucy expressed that the relationship between the bail bond companies and the judges are corrupt. She further elaborated by referencing an ongoing investigation of a magistrate who refused to set any bail under \$2,500 because of the kickbacks from a bail bond agency. Lucy’s comments echoed the exploitative nature of the criminal justice system that has been recently documented by Laisne, Wool, and Henrichson (2017). Although Lucy acknowledged the exploitative nature of the jail system which she states, “is profiting over people every step of the way,” she explained that there was still a need for jail because not “everyone can function in the society.” Gifty, who was arrested for aggravated assault after calling the police during a domestic violence incident, echoed her distrust by saying:

I don’t trust the penal system and the police force here in New Orleans. I believe if I was a white woman or a woman of another race, the NOPD would have asked

the man to leave instead of arresting me at my house where I pay the rent and bills.

Gifty's response demonstrates her awareness of how her race and gender may have influenced the police response to her. Like Lucy, Gifty believed that people with severe mental illness or those engaged in violent crimes should be held in jail.

Tiffany expressed that most people doing crime are coming from poverty-stricken places with lack of unemployment and resources to meet their daily needs. She believed that bail requirement should be high for persons at "flight risk" or habitual offenders. However, "bails that are too high is not fair" for non-violent offenders. Linda also commented that,

The NOPD is so corrupt. When they arrest you for a charge, they add so many charges that you don't even know. If you sneeze or cough too loud, they see it as intimidation. I have a habit of putting forks and plate in my car. But if they pull me over, they will say 'that is drug paraphernalia.' I could pass the drug test, but I will still be arrested, and the charge will still stay on my record which makes it difficult to get a job. The magistrate set the bail so high that you can't get out.

Linda added that the magistrate, the judges, and the police all work with the bail bond agencies. According to her, the judges get kickbacks and the bondsman make money. For Linda, the penal system is designed to lock people up in jail, not get out of jail. Finally, Jennifer also shared similar thought by noting this:

I think the system is horrible, even how the money is being collected. You have to pay a certain percentage that is usually over your wages. If you're late, you're

automatically disqualified, and you go to jail. They mistreat people. They don't know how to talk to our people. It is a whole cycle of scam and being mistreated. All these and the police brutality all work hand in hand.

When I asked how the bail bondsman responded to her when she was late on her payment, Jennifer explained that the bail bondsman threatened to put her in jail for being four days late on her payment. Although she had made twenty consecutive payments she still threatened to be imprisoned. The comments and sentiments shared by participants about the criminal justice system and the bail bond agency indicate their awareness of how the criminal justice system works together with the bail bondsman to exploit them. In addition, participants also demonstrated through their comments the lack of confidence they have in the criminal justice system.

### ***Participants' Knowledge of Bail Payment***

Participants gave various responses to why they were required to post a bail. Among these responses, (7 out of 10) respondents answered that they did not know why they were required to post the bail. Lucy, who responded "No," demonstrated knowledge of other alternatives to bail. For instance, she explained that she did not understand why she was not summoned but was arrested and required to post bail. Two participants, Gifty and Jackie, said respectively when asked if they knew why they were required to post a bail: "it was requirement for me to get out in time" and "to get out." The remaining one participant, Tiffany, articulated that she was required to post a bail because of the severity of the offense. The responses of participants on bail requirement hints at the fact that

almost all the participants lacked knowledge on bail as a requirement to ensure one appears in court for trial (ACLU, 2017).

## CHAPTER FIVE

### DISCUSSION

This research study centered the voices of formerly incarcerated black women in New Orleans. It is theoretically based on intersectionality framework that acknowledges the lives of marginalized voices (Dill & Zambrana, 2017/2009). In addition, this study utilized critical and feminist criminology theory to understand the underlying causes of crimes and women's treatment in the criminal justice system (Raffel, Sokoloff & Flavin, 2004; Chesney-Lind, 2006). This study analyzed interviews of ten black women in New Orleans, who at some point in their lives have been required to post bail, when held in jail to see how their identities increased pretrial detention and how they were affected. Some research has shown that poor black people in New Orleans are disproportionately impacted by the cash bail system (Vera Institute, 2016). However, there is a lack of research on the perspective of how black women are affected by this system in New Orleans.

This research builds on the works of scholars and activists whose works address mass incarceration and the impact of the cash bail system. This study is unique because it centers on the experiences of marginalized populations in their own voices while also recognizing the diversity that exists among them. This discussion chapter will cover significant themes: the criminalization of black women, financial bail as a burden on black women, distrust of the criminal justice system, and participants' beliefs about crime and punishment. These themes emerged from the findings and will be put in conversation with existing literature. This research will also demonstrate how this study can serve as a

resource to activists and scholars working to end the financial bail system in relation to ending mass incarceration.

### ***The Criminalization of Black Women***

It has been established among researchers that jails do hold people accused of serious and violent crimes (Subramanian et al., 2015). However, a majority of both sentenced offenders and pretrial detainees are in jail for petty offenses (Irvin & Simon, 2013) or non-violent traffic property, drug or public disorder offenses (Subramanian et.al, 2015). Some researchers have also argued that of about 100% of women arrested for various offenses, 82% are arrested for non-violent offenses that includes property offenses, drug offenses, and public disorder (Swavola, Riley, & Subramanian, 2016). Among white and black women who are involved in violent crimes, over half the women offenders were white while a quarter were black (Sokoloff, 2005). The current findings show that black women are more likely to be arrested for non-violent offenses than violent offenses.

Also consistent with prior research is the impact of traffic fines which has been examined as another exploitative system by which poor people, especially black people, are financially exploited in various cities to bolster the city's budget (Taylor, 2016). The arrest of participants who were charged with non-violent traffic offenses, resulting in additional fees and fines due to their failure to appear in court, is an indication that black women in New Orleans are also at risk of being pulled over by the police for minor traffic infractions or arrested for previous violations. The findings for non-violent offenses, however, shows the diverse nature of the offenses that black women are

arrested for, which are not related to drugs as some research have indicated (Chesney Lind, 1998). It appears that some of these minor offenses might not have received a lot of attention due to the harsher punishment that women who are arrested for drug offenses receive compared to other non-violent offenses.

The two participants who were arrested on charges of aggravated assault for defending themselves during domestic abuse correspond with Ross and Solinger's (2017) research that indicate that domestic violence laws intended to protect abuse women has resulted in targeting the battered woman and separating them from their children during an arrest. Further this finding also supports LeFlouria (2016) and Battle's (2016) work that demonstrate how black women have unfairly been punished even when they are victims of domestic abuse. This study goes to show that the legacy of slavery, and the social construction of black female criminality that described black women as inherently criminal and dangerous, continue to influence their lives. This study also supports Swavola, Riley, and Subramanian's claim that women are arrested for violent offenses, and pose less risk than men, but are often classified to be of higher risk than the real level of threat they pose. This is seen especially in the case of Tiffany who was charged with accessory after the fact to armed robbery but had a bail of \$500,00 despite her lack of employment.

The much-cited Moynihan report published in 1965 purportedly claims to have identified the problem of the black family. As quoted by Roberts (1997), the report states:

At the heart of the deterioration of the fabric of the Negro society is the deterioration of negro family. It is the fundamental cause of the weakness of the

Negro Community.... In essence, the Negro community has been forced into a matriarchal structure, which, because it is so out of line with the rest of American society, seriously retards the progress of the group as a whole. (p.16)

This powerful claim, among other factors have demonized black women, and has influenced police and the criminal justice interaction with black women (Law, 2016). The marital status (all single) and the age (18-50) of participants in this study, and their individual encounters with the police who arrested instead of pursuing other options, demonstrates how historical racialized ideologies of black women continue to impact their lives including judge's decision when setting bail.

In terms of the number of women who are released on their own recognizance compared to men, Swavola, Riley, and Subramanian (2016) have found that women have a higher rate of being released on their own recognizance. Among women, Freiburger and Hilinsk (2010) have showed that black women are more likely than white women to be released on their own recognizance. The explanation given to their finding was that family responsibility may have accounted for the number of black women released on their own recognizance as some judges showed concern with the social costs of incarcerating defendants who perform vital family responsibilities. The current study, however, does not support this finding. Perhaps these inconsistencies are due to the exploitative nature of bails used in the New Orleans, where the judges and other parts of the judicial system profit from the bail requirement of defendant. Even those arrested with minor offenses and first-time offenders were required to post bail before their release.

The current study shows that all six participants with children were required to post a bail that was difficult for them to pay without going through the bail bondsman. The almost exclusive reliance on the bail bondsman is an indication of the financial condition of the eight participants who went through the bail bondsman. Although these participants may have had chances of getting their money back if the full bail amount had been paid directly to the court, their inability to make such payments resulted in their exploitation by the bail bond agencies. For some participants, especially those without employment, the required bail became burdensome to the extent that they had to stay in jail longer than 24 hours before being bailed out. It is worth mentioning that for women already living in poverty, a \$100 bail requirement can affect their length of stay in jail. Hence, there is a direct correlation between a bail amount, a defendant's income, and their length of stay in jail. Therefore, this finding supports the argument that the poor people, including black women, are more likely to be criminalized if they are unable to afford their bail (Rabuy & Kopf, 2016).

Similar to the discussion by Swavola, Riley, and Subramanian (2016) and Davis (2003) that women's jail facilities lacked equal access to treatment and services because the jails were not designed with them in mind. This study found similar patterns of mistreatment and lack of proper care for pregnant women. An overwhelming number of participants expressed the mistreatment and the lack of access to necessities such as sanitary pads, prenatal care, and toilet paper. For example, one participant, who spoke of witnessing two black women deliver another's baby, expressed the situation as the "worse" she has seen. Another referenced her experience to the "chain gang." The

mistreatment of black women in this institution should not be separated from the enslavement of African people, as the brutality and oppression of these women in jail are reminiscent of slavery (Alexander, 2010; Wacquant, 2001).

### ***Burden on Black Women***

Some researchers have noted that a bail requirement can lead to other consequences such as loss of job, loss of government benefit, incurring additional debt, and staying in jail for the entire duration of one's case (Delany, et. al, 2015; Sacks & Ackerman, 2012). Although the impact of the bail bond on any woman can be devastating, for black single women this situation is disproportional. As evidenced in the findings, a two day stay in jail because of participant's inability to post bail on time resulted in the loss of jobs of four participants who were employed prior to their arrest. The impact of loss of employment cannot be understated as it has the potential of affecting all aspect of a person's life, including delaying of car note payment, rent, food, and other needs.

Using the U.S. Federal Poverty Guideline, most of the research participants lived below the poverty line prior to their arrest. This finding, therefore, is in line with the research by Rabuy and Kopf (2016) that found that black women entering jail are the poorest among White and Hispanic women. Based on their findings, the average annual income of black women entering jail is \$9,083 compared to white women who earned \$12, 954 and Hispanic women who also earned \$12, 178. Three participants who lived below the federal poverty line and were recipient of food stamps and housing subsidy also lost those benefits due to them being held in jail. For single black mothers, as it was

in this case, without employment, the loss of these benefits can have profound consequences on them and their families.

Swavola, Riley, and Subramanian (2016) have argued that nearly 80% of women in jails are mothers. This research finding seem to support this claim as evidenced in the number of participants (6 out of 9) who identified as mothers with children as young as three months old. Further, this finding supports the argument by Pollock (2002) that imprisoned women are mostly single and poor; it also disagrees with her conclusion that imprisoned women were not taking care of children as at the time of their arrest. This difference in findings may be a result of the demographic involved in this research, which is exclusively black women, and the relatively small number of participants involved in this research. Although some participants reported having infants in their custody, the impacts of being separated from their children shows that children across all age groups can experience negative effect by the absence of their mothers.

It appears that the burden of financial bail through the bail bondsman continues to affect poor families even when charges are dropped or dismissed. Three of the participants whose charges were dropped still had to pay the bail bondsman the remaining balance of the “premium” and other related fees after trial. These participants also shared that they had to set up a payment plan that took anywhere between three to six months to pay off the remaining debt. This continual payment of fees to the bail bondsman can lead to family strain since money that - should be used to take care of other needs has to be diverted to paying the bail bondsman, who threatens to send them back to jail if they miss their payment. As legal defender Jerry Watson has noted, a person using

a for-profit bail “implicitly agrees that the bondsman may use reasonable force in apprehending him [or her]” (ACLU, 2017, p. 33). Perhaps it is this implicit agreement that some bail bondsman have capitalized on threatening people, such as Jennifer, who was not able to make their payment on time. This finding shows that though bail bond agencies present themselves as entities working to help mostly poor families from staying in jail pretrial, they do not serve in the defendants’ best interests.

### ***Distrust of the System***

A report by the *Washington Post* shows that while 25 percent of whites disagreed with the statement that the “courts give all a fair trial,” in comparison to more than 60 percent of African Americans disagreed (Side, 2013). For many black people who have had contact with the criminal justice system, they are likely to agree that the protection, rights to liberty, and due process that are guaranteed to others have been denied them. As one researcher has noted, “policing has always been racist and abusive” (Taylor, 2016). Other similar research has also indicated that black people have been a target of the criminal justice system under the guise of keeping crime under control (Alexander, 2010; Gilmore, 1998; Swavola, Riley, & Subramanian, 2016). Although black men have often been mostly affected by unjust arrest, black women, however, have fallen victims of discriminatory practices of the criminal justice system that is incarcerating them at a rate higher than their white counterparts (Chesney-Lind, 1998). In recent time, bail requirement that has long standing in the criminal justice system has become another exploitative tool used against black people to keep them incarcerated and provide funding for the court system (Laisne, Wool, & Henrichson, 2017).

The people of New Orleans, especially black residents, are not oblivious to the wide spread and rampant injustice against them. The current study finds validity to Taylor (2016), Swavola, Riley, and Subramanian (2016), Chesney-Lind (1998), and Laisne, Wool, and Henrichson (2017) research. Most of the participants expressed various opinions that showed that they do not see the criminal justice system as an institution that can uphold their rights. For instance, Lucy, Gifty, and Linda used “corrupt” to describe the operation of the criminal justice system. Most participants did not separate the role of the bail bond agencies from the practices of the magistrate, who sets high bails for low-income individuals even though such practices by the magistrate violate the eight amendment that speaks against excessive bail requirement (Billings, 2016).

One other important finding that I examined was participants’ knowledge about why they were required to post bail. It appears that existing research on bail requirement has not explored this question. My findings showed that all participants lacked comprehensive and critical understanding of the purpose that bail requirement serves. It also demonstrates that a good civic education is needed and many of the grassroots organizations need to focus on helping people-become aware of their rights in the criminal justice. Given certain circumstances, people who have a good understanding of the criminal justice system will be more likely to request to be released on their own recognizance or pay the full bail amount to the court if they have the means.

### *Participants Beliefs about Crime and Punishment*

Participants that expressed how they have been unjustly treated in the criminal justice system also expressed that jails were still needed in our society. In addition to 1.6 million locked up in both federal and state prisons, there are 646,000 people held in jails pretrial (Rabuy & Kopf, 2016). In New Orleans, as it is in other cities, black men and women are disproportionately represented in jail (Vera Institute of Justice, 2016). Even more, various researchers have argued that prison and jails do not successfully rehabilitate offenders (Davis, 2003). For women, because of the inappropriate care they receive, their overall health can be worsened while held in jail (Swavola, Riley, & Subramanian, 2016). Despite all these limitations associated with incarceration, some of the participants, consider jail as “an inevitable and permanent feature of our social lives” (Davis, 2003, p. 9). Even for the mentally ill, one participant believed that jail, not a mental health facility, was the place for them. Participants’ responses to crime and punishment is an indication that as victims of the criminal justice system, they may have internalized oppressive ideas about jails as a place for society’s misfits and have not envisioned a society without jail and prison or other alternatives.

The incarceration of the participants I interviewed, whose offenses were non-violent and minor, is an illustration of how the American penal system has emerged as a system of control, whose primary targets can be defined largely by race (Alexander, 2010). The experiences of these women, from being profiled to being held in jail because of their inability to post their bail, reflect elements of vagrancy laws and convict leasing systems that targeted African Americans for the exploitation of their labor. As Michelle

Alexander has clearly articulated, biased laws and policies that have come to shape what is known as mass incarceration is reminiscent of slavery and Jim Crow laws. As the legacy of these two oppressive systems, the criminal justice system is no longer concerned primarily with the prevention and punishment of crime, but rather with the management and control of the dispossessed—black and people of color (Alexander, 2010).

## **CONCLUSION**

Research that has addressed mass incarceration has often focused on the experiences of black men. Bail requirement, as used in the criminal justice system has recently gain attention on how it's being used to criminalized marginalized communities who are unable to afford their bail pretrial. With an exclusive male-centric focus on jail studies, the experiences of black women are unknown and neglected. This research has centered on the experiences of black women in New Orleans to understand how they are impacted by the cash bail system. Through their own voices, we can see how their experiences might be different from black men and white women held in the criminal justice system. Four major themes were identified that highlight the impact of bail bond on black women in New Orleans. They include distrust of the system, bail requirement as a burden on black women, criminalization of black women, and participants beliefs about crime and punishment.

The findings have shown that a higher number of black women held in jail have committed low level offenses. In addition, some black women held in jail are there not because they have been convicted of an offense, rather, they are held in jail because they

cannot afford bail. Because of the unique experiences within the intersections of race, gender, and class, a bail reform that does not recognize the intersecting identities of black women will still render them invisible in the system. Additionally, bail reform without an intersectional approach will further marginalize black women, even more so than other defendants like white women and black men.

Inability to post bail should not be the main determinant of a defendant's pretrial detention. For women who are deemed flight or public safety risk, jails should be considered as a last resort in addressing such issues. The 2017 Bail Reform Ordinance passed in the city of New Orleans is a path in the right direction in reducing the jail population through the elimination of the bail requirement and pretrial detention for most municipal offenses. As part of this new ordinance, judges must prove that a defendant is a flight or public safety risk in order to impose the least restrictive non-financial release condition of less than \$2500 (OPPRC, 2016).

This Bail Reform Ordinance has been made possible through the collaborative work of organizations such as Women with a Vision, Hope House, New Orleans Workers Center of Racial Justice, the ACLU of Louisiana, and Voice of the Experienced (VOTE) who are working to end the bail requirement in New Orleans. One specific organization working to address the impact of bail requirement on poor residents in New Orleans includes the Vera Institute of Justice. Through their research, the Vera Institute of Justice has exposed the exploitative relationship between the criminal justice system and the bail bond agencies that profit off the poor residents—mostly black families. The unique perspective of each member organization under the Orleans Parish Prison Reform

Coalition has resulted in an ordinance that might be able to address the specific challenges of the most marginalized in the criminal justice system. For instance, Women with a Vision, a black women-led organization works with marginalized women of color in New Orleans. As part of the coalition to address the bail requirement in New Orleans, the organization brings the perspective of marginalized women to the discussion on ending bail requirement for non-violent offenses which many poor black women are victims.

The participation of this organization in the collective effort in addressing the discriminatory practice of using bail to criminalize poor black women is one that should not be overlooked. Their role speaks to the larger effort by black women around this country working to serve the needs of other marginalized black women, including issues related to the criminal justice system. Further, effort by organizations who worked to introduce the New Orleans bail reform ordinance in 2017 should be tied to the nationwide initiative by other grassroots organizations such as Southerners' on New Ground who are raising money to bail out black women held in jail. In cities where bail reform has not been introduced and passed, activists are collaborating with each other to raise money to bail black women out from jail as a response to the impact of the cash bail on poor communities—especially black women. Indeed, it is through such a collaborative work that also includes the experiences of black women that our society will be able to recognize and understand how poor black women are criminalized and burdened by the cash bail system.

## **FUTURE RESEARCH**

This research has discussed the impact of the cash/bail bond requirement in New Orleans from the perspective of black women who have had direct experience with the system. As it stands, the city of New Orleans has eliminated its bail requirement for certain minor offenses at the municipal court. This research can serve as a resource for community members to learn about the reality of the cash bail system as well as educate them of their rights in the criminal justice system. It can also serve as a catalyst for community organizations and policy makers to work to eliminate bail requirement at the state level because rarely has there been victims' statement on the bail bond system. With the passing of the Bail Reform Ordinance to eliminate the bail requirement at the municipal court, future research could focus on comparing the experiences of black women before and after the passing of this new ordinance to see how this change impacts black women's lives including the rate of domestic violence arrest of victimized women.

As it was identified in this research, the extended family often help in other relatives lives to either raise money to bail them out or take care of their children while they are incarcerated. Future research should consider including the perspective of the extended family to see the larger community impact of the bail requirement. Finally, an expansion on this research could explore the experiences of defendants who are able to afford to post the full bail requirement with regard to their race, gender, and socioeconomic status.

## Appendices

### Appendix A: Recruitment Flyer

# Seeking Study Participants

The purpose of this research is to gain firsthand information about your experience with bail bond

You are eligible if you:

- Are 18 years of age or older
- Identify as Black or African American woman
- Have been affected by bail bond in New Orleans from 2006-2017

Interviews are approximately 60-90 minutes, and will be audio recorded

## Are you interested?

For more information please contact:

**S. Anna Kushindana,**  
Graduate Student in  
Gender and Women's  
Studies at Minnesota  
State University,  
Mankato  
phone: (225) 588-8649  
Email:  
[salome.kushindana@mnsu.edu](mailto:salome.kushindana@mnsu.edu)

This study is done under the direction of:

**Dr. Ana Perez,**  
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State University,  
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Email:  
[ana.perez@mnsu.edu](mailto:ana.perez@mnsu.edu)

MSU IRENet ID#:1168912

## **Appendix B: Recruitment Email**

**MSU IRBNet ID#:1165912**

### **The Criminalization of Poverty: The Impact of Cash Bail on Black Women in New Orleans.**

Hello, I am Ama Kushindana. I am a student researcher under the guidance of Dr. Ana Perez at Minnesota State University. I am researching the economic and social impact of bail bond on Black women in New Orleans.

If you identify as a Black or African American Woman; are at least 18 years of age, have been affected by bail bond in New Orleans between 2006 and 2017, and would be interested in participating in an interview about your experiences with the Cash Bail system. Please contact Ama Kushindana at (225) 588-8649 or email at Salome.kushindana@mnsu.edu so we can arrange a time that you could be interviewed. One to two-hour audio recorded interviews will be held in a private meeting room at the Orleans public library, Keller library, or the Robert E. Smith Regional Library in New Orleans, Louisiana. A modest compensation will be provided after the completion of the interview.

Please feel free to circulate the attached flyer to your contacts.

## **Appendix C: Recruitment Statement**

### **The Criminalization of Poverty: The Impact of Cash Bail on Black Women in New Orleans.**

Hi, thank you for your interest in participating in this research. My name is S. Ama Kushindana, I am a graduate student at Minnesota State University, Mankato and a former resident of Louisiana. My intent with this research is to gain firsthand information about the impact of bail bond on black women in New Orleans. The criteria for this research are 1) identify as black women/ African American women. 2) Are 18 years and older. 3) Have been affected by the bail bond between the years 2006-2017. If you meet this criterion, you qualify to be involved in this research.

In this research, what I am asking you to do is to participate in an interview that will last approximately 60-90 minutes. This in-person interview will be conducted at the Orleans public library, Keller library, or the Robert E. Smith Regional Library in New Orleans, Louisiana. You will be asked questions about demographics that will include race, gender, age, marital status, and educational level. Other questions will be asked about your financial situation before you were arrested, your ties to family or community, the amount in bail fees and terms of the bail bond agreement, and your experience of how you were affected by the cash bail/bail bond. The recording will be transferred to a password protected encrypted computer at Minnesota State University, Mankato. I will change your name for future presentation or publications to maintain your confidentiality.

The risk you may have during this interview is that you might feel emotional distress recalling what you went through when you were trying to raise the money for the bail or when you were unable to post the bail. If you feel uncomfortable with any of the interview questions or want to stop the interview process, you have the right to not answer the question or stop the interview at any time. Any risk will be minimized by storing files and data in an encrypted password protected device that will be available to me and my research supervisor.

Audio-recordings will be transcribed and the transcriptions along with the signed consent forms will be stored in a locked file cabinet at Minnesota State University, Mankato. They can be viewed only by me and Dr. Ana Perez, my research supervisor. No names will be recorded other than the consent forms. If you agree to participate in this research, I will ask you to sign the consent form. I will provide you a copy of the signed consent form for your records. The audio recordings will be deleted after my research. Transcriptions and consent forms will be destroyed after three years from closure of the research.

Your participation is completely voluntary. The decision whether or not to participate will not affect your relationship with Minnesota State University, Mankato, and refusal to

participate will involve no penalty or loss of benefits. There is no direct benefit that you will receive for your participation in this study. A modest compensation will be provided after the completion of the interview. If you are interested in participating, please contact S. Ama Kushindana at (225) 588-8649 or Email at [Salome.kushindana@mnsu.edu](mailto:Salome.kushindana@mnsu.edu).

## **Appendix D: Consent Form**

### **The Criminalization of Poverty: The Impact of Cash Bail on Black Women in New Orleans**

#### **Principal Investigator**

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#### **Additional Investigators**

S. Ama Kushindana, Graduate Student  
Department of Women and Gender Studies  
Minnesota State University, Mankato  
109 Morris Hall, Mankato, MN 56001 Phone:  
225.588.8649; email:  
salome.kushindana@mnsu.edu

You are invited to participate in a research study. The purpose of this study is to gain firsthand information about your experience with bail bond in New Orleans. In this interview you will be asked to answer questions related to your experience when you were raising money to post bail or when you were not able to post the bail. Your participation in the research is voluntary. Please take your time to make your decision. Discuss your decision with your family or friends if you wish. If you have any questions about this project, you may ask S. Ama Kushindana, her contact information is at the top of this document.

If you agree to be part in this study, you will be asked to participate in an interview in a private study/meeting room at the Orleans public library, Keller library, or the Robert E. Smith Regional Library. Before we begin the interview, I will ask you 3 brief questions to determine your level of eligibility. If you meet the criteria, we will proceed with the rest of the interview questions. This interview will take between 60- 90 minutes to complete. In this interview, I will ask you questions about your financial situation before you were arrested, your ties to family and community, the amount in bail, fees and terms of the bail bond agreement.

It is important for you to know that I will be audio recording your responses for transcription purposes. However, if you do not wish for me to audio record your responses, you can tell me that you do not want your responses to be audio recorded and I will take note of the interview. If you agree to be audio recorded, after the interview, I will transcribe your responses from the audio recording device and will remove any mention of names. The sound recording will then be erased from the device within 6

months of transcription. Transcriptions will be secured in a password-encrypted computer.

You can decide to discontinue before the interview is over without penalty or loss of benefits by telling me you would like to stop the interview. If you decide to leave before the interview is over and want your responses to be deleted, please tell me you want your audio deleted before leaving the interview room. If you decide to have your audio deleted later after the interview, please contact S. Ama Kushindana at (225)-588-8649 or email at [salome.kushindana@mnsu.edu](mailto:salome.kushindana@mnsu.edu) to inform me that you want your audio deleted.

The risk you may have during this interview is that you might feel emotional distress when recalling what you went through in your attempt to post the bail or inability to post bail to secure your release from jail. To minimize this risk, I encourage you to not answer questions you do not feel comfortable answering. If you do not feel comfortable answering a question, please tell me that you want to skip the question, so we can proceed to the next.

There is no direct benefit that you would receive for your participation in this study. However, the information that you provide may help professionals better understand/learn more about the impact of the bail bond on black women in New Orleans. For your participation in this research, a \$10 gift card will be provided to you as compensation for your contribution to this research. The gift card will be provided to you after you complete the interview. You have the right to decline to be in this study by informing me that you do not want to be part of this study. The decision whether or not to participate will not affect your relationship with Minnesota State University, Mankato, and refusal to participate will involve no penalty or loss of benefits.

If you have any questions, you are encouraged to contact Dr. Ana Perez (the principal investigator) at Minnesota State University or S. Ama Kushindana (the student investigator). Their contact information is on the first page of this form. If you have any questions about participants' rights and for research-related injuries, please contact Dr. Barry Ries, Administrator of the Institutional Review Board, at (507) 389-1242 or [barry.ries@mnsu.edu](mailto:barry.ries@mnsu.edu).

If you wish to have a copy of this form, ask the researcher for one now. Sign below to confirm your willingness to participate in this research study and to indicate that you are at least 18 years of age.

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Signature	Your Name (printed)	Date
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MSU IRBNet ID # 1165912

Date of MSU IRB approval: 01/01/2018

## Appendix E: Interview Questions

### INTERVIEW GUIDE MSU IRBNet ID #1165912

Introduction: My name Salome Anyankwabea Kushindana, and I am a graduate student in Gender and Women's Studies at Minnesota State University, Mankato. Thank you for choosing to participate in this study. I am interested in gaining firsthand information about your experience with bail bond. Please feel free to answer these questions in a way that you see fit. Take your time with the questions in this meeting and know that you do not need to respond to any questions you don't feel comfortable answering. You can discontinue the interview at any time by telling me you would like to stop the interview.

#### Screening Questions:

1. Are you 18 years old or older?
2. Do you identify as Black or African American?
3. Have you been affected by bail bond in New Orleans between 2006-2017?

If you do not meet these criteria, thank you for your time to answer these screening questions. For this research, it is important that the participants meet all 3 criteria to be eligible.

#### Demographic Information (Please circle one for each number)

- i. Age:
  - a. 18-30
  - b. 31-40
  - c. 41-50
  - d. 51-60
  - e. >60
  
- ii. Educational status:
  - a. None
  - b. Primary
  - c. Secondary
  - d. GED
  - f. High School Diploma
  - g. Some College
  - f. Technical School
  - g. College Degree
  
- iii. Marital status:
  - a. Married
  - b. Single
  - c. Widow
  - e. Divorced
  - f. Separated
  
- iv. Zipcode:.....

**Section 1: To learn about your financial situation before being arrested.**

1. Were you employed before you were arrested? Yes/No
2. What was your annual income before you were arrested?
  - a. \$0- 5,000    b. \$ 6,000-11,000    c. \$12,000-15,000    d. \$16,000-21,000
  - e. \$21,000-26,000    f. > \$ 27,000
3. Where were you working?

**Section 2: To learn about your ties to the family or community.**

Who was the head of household at the time of your arrest?	
Did you have any Infants at that time?	
Number of children below age 18 at time?	
Household member older than 60?	Yes/No
What is their relationship to you?	

**Section 3: To learn about the offense and the bail**

1. Has someone posted bail on your behalf between 2006-2017?
2. Who posted bail on your behalf?
  - a. Friend    b. family    c. organization
3. What was the offense for which you had to post bail?
4. How much was the bail?
5. How did you raise the money to post the bail?
  - a. Loan    b. Pawn    c. Bail bondsman
6. How many times have you posted bail since 2006?

**Section 4: To learn about the fees and terms of the Bail bond agent**

1. How much was the associated fee of the bail bond agent?
2. How did you raise the fee?
3. Did you have to set a payment plan to pay for the fee?
4. How long did it take you to pay off the rest of the fees to the bail bondman?

5. How long did it take for the bail bondman to bail you out after the payment of the fees?

**Section 5: To learn about the outcome of the case**

1. What was the result of your case after you paid the bail?
2. Did you have a private or public defender?

**Section 6: To learn about the impact of the cash bail**

1. Have you been held in jail because of not being able to post bail?
2. Did you lose your job while you were held in jail?
3. Who took care of the children while you were in jail?
4. Who took care of the adult family member while you were in jail?
5. How long were your children with the agency, relatives, or friend?
6. Was your relationship with your children affected because of the time in jail?
7. Did you lose any government assistance or support?
8. What was the condition at the jail facility?
9. How long were you in jail awaiting trial?

**Section 7. To obtain accounts of the women's knowledge of bail**

1. Do you know why you had to pay the bail?
2. In 2017, New Orleans eliminated its cash bail requirement. What do you think about this?
3. How do you think this would have improved your life?
- 4.

**Section 8. Conclusion**

1. Is there anything I missed or something else you would like to bring up?

Thank you for your time. I would like to offer you a \$ 10 gift card as a small token of appreciation.

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