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# Judicial Bench Card to Center Gender and Racial Equity

This bench card is intended to be used as a reflective tool to consider gender and racial equity issues when making pretrial release decisions.

## BEFORE...

**Before making a decision, ask yourself:**

- Do the court conditions consider family unification and stability?
- Can we safely address harm with a more restorative alternative to incarceration?
- Are the conditions the least restrictive necessary to support the person's return to court and the community's safety and well-being?
- Can a peer support navigator be engaged to facilitate community support?
- Can the risk be mitigated through offering additional community support?
- How can we reduce or waive fines and fees (e.g., the cost of drug tests, electronic monitoring, or other conditions that require payment) based on low income?

**If you decide to ask the person any of these questions, tell them:**

"I want to ask you a few extra questions that help me think about how to make the best decisions. Your answers to these questions are important because they'll give me more information about you. Those answers will also help me use my discretion, to ensure public safety and the well-being of you, your family and your community."

**Why say this?** *It is essential that people know that judicial officers want to help them be successful. Questioning gender, race, and social conditions can inform judicial decisions.*

## AFTER...

**Before scheduling the next court appearance, ask the person:**

**Ask:** "What can we do to help ensure you return to court?" "Does this date work for you?"

*Returning to court may be one of many responsibilities a person may be facing and, depending on individual circumstances such as location, finances, and transportation, it may be more challenging for some than others. Asking questions related to people's ability to reappear may increase appearance results. Collectively, you can decide what times are most convenient and discuss any potential barriers.*



## RESPONSIVITY & EQUITY FACTORS TO CONSIDER

### GENDER?

*Nationwide, women's state prison populations have grown 834% over nearly 40 years. This is twice the pace of the growth of men in prison. More than 75% of the women held in local jails pretrial are there on accusations of nonviolent behavior. Moreover, women are at a higher risk for sexual abuse and retraumatization inside jails and prisons, where they are often not believed as survivors of violence.*

### GENDER IDENTITY?

*Transgender people—especially Black and Brown transgender people— experience restrictive housing and solitary confinement more than the general population and are almost four times more likely to be victims of sexual violence. Transgender people, who often don't receive adequate care while incarcerated, usually experience acute mental health, substance use, suicide, and early mortality in prisons and jails.*

### RACE?

*Disparities that disproportionately impact Black, Brown, and Indigenous people are well documented across the criminal legal system. It is vital to ensure that judicial decisions are not perpetuating racial and gender based outcomes.*

### TRAUMA?

*More than half of all women will experience at least one traumatic event over the course of their life. According to a 2017 study, women are exposed to more interpersonal and "high-impact trauma," such as sexual assault, than men, and they are exposed to it earlier in life. Women are often criminalized and punished for reacting to traumatic behaviors and for acting in self-defense. Outside of these circumstances, they are otherwise a very low risk to public safety.*

### ADVERSE CHILDHOOD EXPERIENCE?

*Eighty percent of women in jails are mothers. Even a short time in jail may disrupt family stability and lead to the intervention of child welfare services. Unnecessary incarceration contributes to adverse childhood and community experiences. Many women are also primary caregivers for aging parents, disabled adults, and others. Jails are inadequate vehicles for providing necessary prenatal health care for mothers and their unborn children.*

### EDUCATION / EMPLOYMENT?

*Women earn less than their male counterparts, they have limited work opportunities, and their dollars must stretch to cover housing and the needs of children. These economic realities are worsened by fines and fees (beyond restitution) added by the criminal legal system. Women and girls have disconnected pathways to education and are often subject to harsher discipline for minor behaviors, which contributes to disruptions in opportunities.*

### HOUSING?

*Housing instability is often a key underlying factor for people's involvement in the criminal legal system. While the relationship between housing and system involvement is complex, studies have shown that people in high-poverty areas are more likely to be involved in the system as a victims, witness, accused, or arrested.<sup>24</sup> Providing safe, stable, and sober housing can lessen people's likelihood to commit new survival offenses such as theft and, or women in particular, can mitigate the collateral sanction of felony disenfranchisement.*

### DISABILITY?

*This may explain behavior previously attributed to risky behavior or noncompliance because of defiance. Mental health behaviors often co-exist with and are exacerbated by trauma.*

### LANGUAGE ACCESS?

*In 2019, almost 1 in 5 people in the U.S. spoke a language other than English at home. To help ensure due process for all accused people, the court should identify and provide skilled, trained court interpreters promptly. The accused person may not fully understand why they are being charged or allowed to provide the court with important information that can determine case outcomes.*

### SUBSTANCE USE?

*Too often, addiction is criminalized rather than viewed as a public health issue. If your jurisdiction offers a specialized drug court docket, referring a person to long- or short-term treatment may yield more positive, long-lasting outcomes. Substance use treatment programs can decrease or eliminate dependency.*