

# GENDER INJUSTICE

System-Level Juvenile Justice Reforms for Girls



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In partnership with:



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# I. Introduction

Despite decades of attention, the proportion of girls in the juvenile justice system has increased and their challenges have remained remarkably consistent, resulting in deeply rooted systemic gender injustice. The literature is clear that girls in the justice system have experienced abuse, violence, adversity, and deprivation across many of the domains of their lives—family, peers, intimate partners, and community. There is also increasing understanding of the sorts of programs helpful to these girls. What is missing is a focus on how systems—and particularly juvenile justice systems—can be redesigned to protect public safety and support the healing<sup>\*</sup> and healthy development of girls and young women.<sup>†</sup>

Juvenile justice systems reform is occurring across the country as a result of a growing understanding of developmental and neurological differences between youth and adults, the high cost of incarceration, and the consistent failure of a punitive juvenile justice model. However, even as systems are initiating reforms and changing their approach, they are routinely failing to modify those reforms for girls or even to collect data on how girls, specifically, are affected by the problems they are seeking to remedy. As a result, the particular impact on girls of failures in the juvenile justice system is not understood and few juvenile reforms are tailored to girls' needs and pathways into the system—meaning girls and young women are unlikely to fully benefit from system reforms.

Many of the problems discussed in this report are not unique to girls—and many of the suggested paths forward can benefit both boys and girls. However, because girls are frequently left out of reform discussions, an intentional focus on girls is needed to ensure that they fully benefit from system reforms. Indeed, in writing this report we were struck by the number of promising national and large-scale juvenile justice reform efforts that have not fully considered the role of gender in the problems they address or in the solutions they propose. If this intentional gender focus does not coexist with current large-scale system reforms, an important opportunity for gender justice and equity and developmental system reforms will be missed.

**To facilitate developmental juvenile justice system reform for girls, this report will:**

- 1 Map girls' current paths into and through the juvenile justice system;
- 2 Describe the social contexts driving girls' behavior and involvement in the juvenile justice system; and
- 3 Detail recommendations for an alternative, developmental approach to redesign juvenile justice systems to address harmful social contexts and girls' resulting behaviors, rather than penalize and punish girls for challenges beyond their control.

The recommendations included in this report are consistent with decades of research on adolescent development, as well as newer data on the development of girls in particular. With continued research on girls and an intentional focus on their needs, system stakeholders and policymakers can capitalize on current reforms that are already underway and ensure girls are not simply wedged into solutions meant for boys.

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<sup>\*</sup> We recognize that the term “healing” can be a sensitive term for some victims. Our intent in using the word is to encourage systems to intentionally address the physical, psychological, and emotional trauma girls experience due to victimization, and to provide these girls with the tools and resources they need in order to thrive.

<sup>†</sup> Throughout the report we use “girls” as shorthand for “girls and young women.” As the report details, many of the issues and solutions apply to girls and young women up to age 26.

## II. A Quick Look at History: Why Systems Over-Intervene and Often Fail to Help Girls

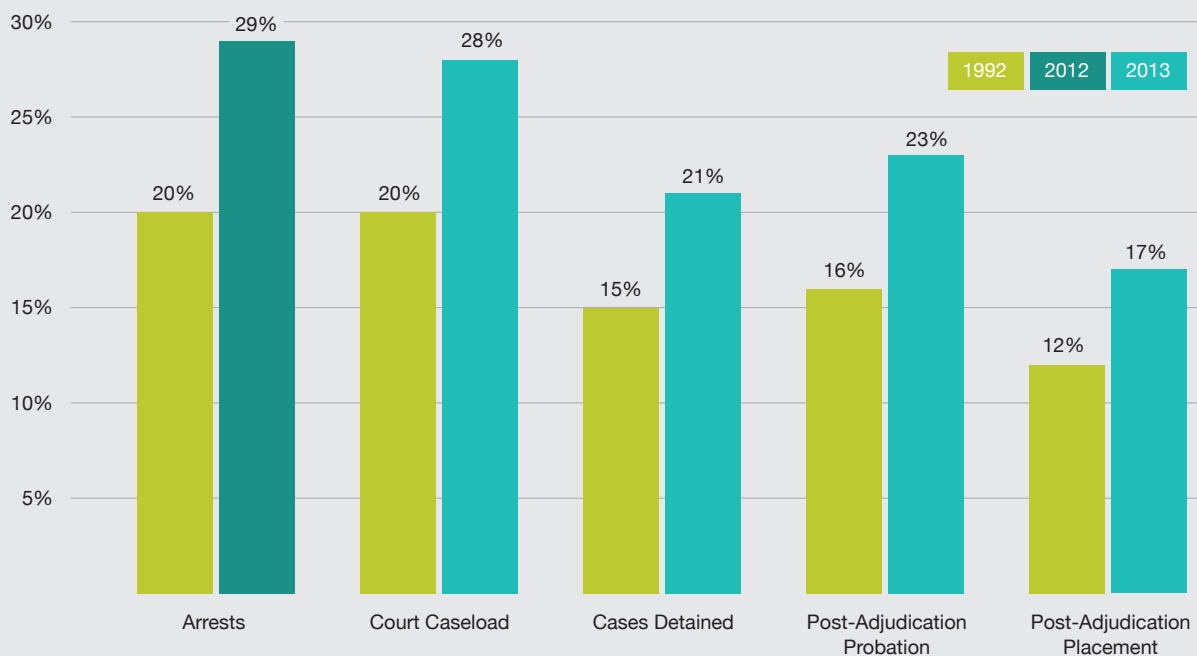
The juvenile justice system is animated by two competing goals that are in tension in the cases of girls—social welfare and social control—and that tension in part explains why systems struggle to respond to and meet girls’ needs. The early history of juvenile justice tells the story of a social welfare approach used to reform the morality of “wayward” immigrant girls and shape them into wives and mothers living lives acceptable to mainstream and non-immigrant society.<sup>1</sup> This protective and paternalistic social welfare mission is even reflected in early status offense laws that applied to girls longer than to boys (some courts had jurisdiction over girls until they were 18, but only until age 16 for boys).<sup>2</sup>

Today, many judges would describe the practice of detaining girls who run away, or violate curfew or rules of probation in much the same way—as an effort to protect the girl. “What am I supposed to do, when she’s out there and could be hurt?” is a common refrain. These girls very often have histories of trauma, conflict, and deprivation and need social supports, but many of the traditional tools of juvenile justice systems are ill suited to support healthy environments for girls and provide for their social welfare. They are blunt instruments—formal petitions, court proceedings, detention, and findings of rules violations—rather than individualized approaches, consistent with developmental research and tailored to each girl’s social environment, risk level, and needs. As a result, even the most well-intentioned juvenile justice systems tend to push girls further into the system, with arrest leading to petitioning, leading to detention, leading to incarceration, etc.—all the while underutilizing opportunities to reduce system involvement.

The goal of helping girls causes courts and systems to over-intervene, often to girls’ detriment. Girls’ share of the juvenile justice system is growing, yet evidence shows that greater restriction is rarely the answer and cannot address the violence and deprivation underlying so many girl offenses. Taking a developmental approach in line with the recommendations in this report will help systems focus on the social contexts driving girls’ behavior and create effective solutions, without being overly paternalistic or controlling.



## Girls' Increasing Share of the Juvenile Justice System, 1992 to 2012/2013\*



Source: Adapted from Charles Puzzanchera, "Juvenile Arrests 2012" (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2014): 3, <http://www.ojjdp.gov/pubs/248513.pdf>; Melissa Sickmund, Anthony Sladky, and Wei Kang, "Easy Access to Juvenile Court Statistics: 1985-2013," <http://www.ojjdp.gov/ojstatbb/ezajcs/>.

\* At the time of this writing, 2012 is the most current available juvenile arrest data and 2013 is the most current juvenile case processing data.

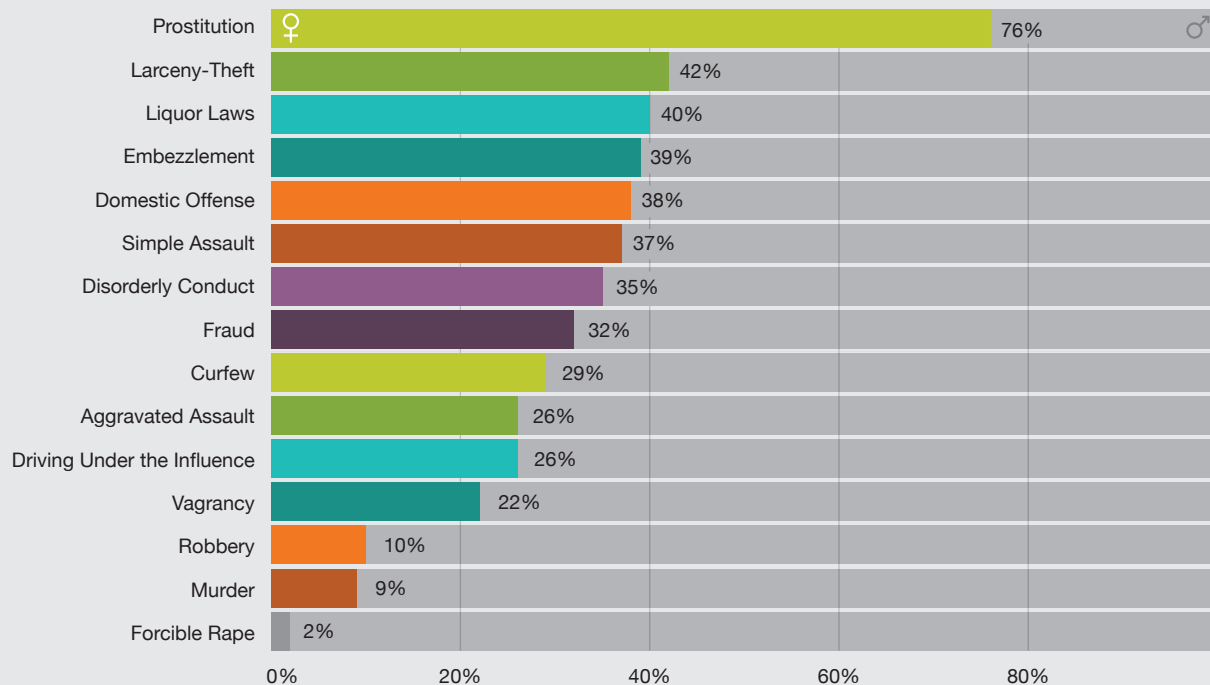
### III. Mapping Girls' Justice System Paths: How Abused and Traumatized Girls Enter and Are Pushed through the Justice System

There are a number of ways in which girls who pose no threat to public safety and whose behavior is directly related to experiences of abuse, violence, and deprivation enter and are pushed through the juvenile justice system. Each system decision point (e.g., arrest, petition, detention, and disposition) presents an opportunity for girls to either be diverted to the services they need or get pulled into the system more deeply. Currently, the system is structured to pull girls in, rather than to use available “off-ramps” to divert them to more appropriate interventions. Certain subgroups of girls fare especially poorly: although far more research is needed, intersectional analysis of girls by race and ethnicity shows significant disparities disadvantaging Black, American Indian/Alaska Native, and Latina girls as they move through the system process (see sidebar pp. 22-23).<sup>3</sup> Moreover, 40 percent of girls in the juvenile justice system across the country describe themselves as lesbian, bisexual, questioning/gender non-conforming, or transgender (LBQ/GNCT).<sup>4</sup> While very little is known about the role a girl's sexual orientation or gender identity/ expression may play in her arrest, detention, or other system decisions, it is likely LBQ/ GNCT girls face discrimination at each decision point.<sup>5</sup>

#### Arrest and Charging

In 2012, girls represented 29 percent of youth arrested nationwide and their arrests were disproportionately for offenses that pose little or no threat to public safety—such as prostitution or theft—but rather, are connected to poverty and abusive homes, relationships, and communities.<sup>6</sup> In 2012, girls represented 76 percent of arrests for prostitution, 42 percent of arrests for larceny, 40 percent of arrests for liquor law violations, 35 percent of arrests for disorderly conduct, and 29 percent of arrests for curfew violations.<sup>7</sup> Also clearly connected to girls' experiences with violence and abuse in their homes and communities are arrests for domestic offenses (38 percent) and simple assault (37 percent).<sup>8</sup>

## Female Proportion of Juvenile Arrests, 2012



Source: Adapted from Charles Puzzanchera, "Juvenile Arrests 2012" (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2014): 3, <http://www.ojjdp.gov/pubs/248513.pdf>.

Generally, there is a promising national trend of declining arrest rates for youth. However, from 1996-2011 girls arrest rates declined less than did boys arrest rates (42 percent versus 57 percent).<sup>9</sup> From 2003-2012, arrests of boys for simple assault declined by 32 percent, while arrests of girls for the same offense declined by 19 percent.<sup>10</sup> For property crimes, arrests of boys declined 39 percent, but only 29 percent for girls.<sup>11</sup> Clearly, the forces that are driving arrest rates down for boys are not affecting girls in an equitable way.

Arrest often leads to referral to court, and multiple offenses can be charged from one incident. Girls represented 28 percent of delinquency court referrals in 2013 and 24 percent of formally petitioned delinquency court cases.<sup>12</sup> The relative rate of formal processing for girls increased 32 percent (11 percentage points) from 1985 through 2013.<sup>13</sup>

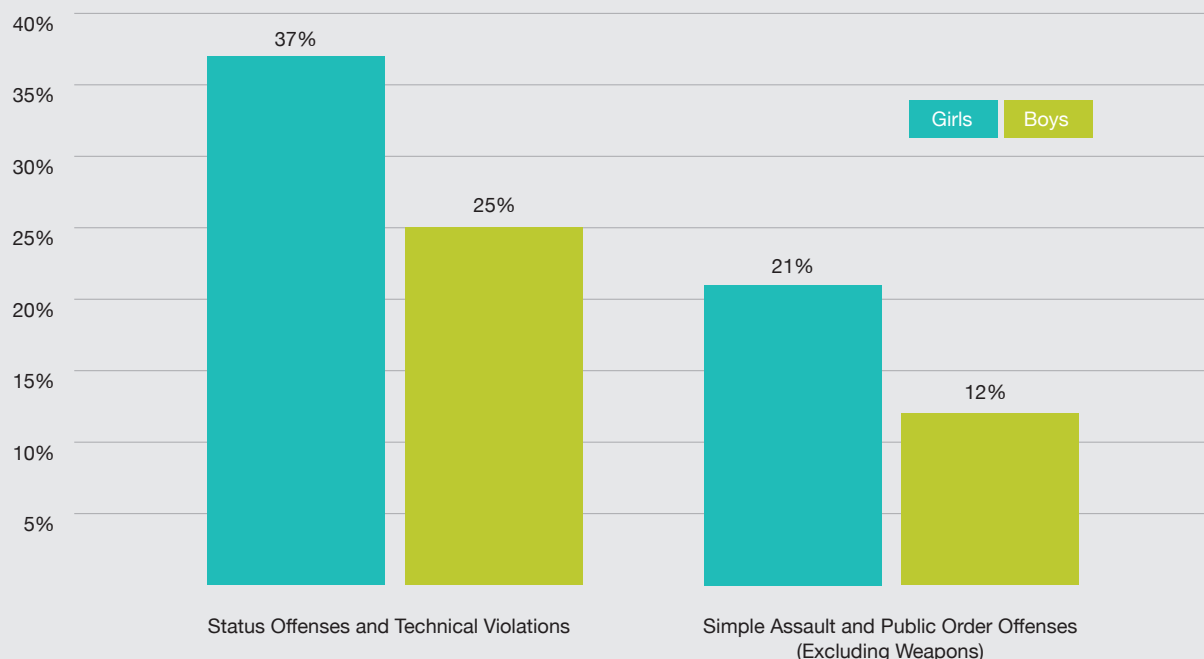
The commencement of formal processing limits girls' options for community programming that can help address their environments and behaviors outside the juvenile justice system, and instead sets in motion an often lengthy and complicated court process. Once girls have disentangled themselves from the system, they generally leave with a juvenile record, further limited opportunities for success, and few resources to change their behavioral responses to damaging and unhealthy social contexts. Girls of color are especially vulnerable to being formally charged: in 2013, both Black girls and American Indian/Alaska Native girls were 20 percent more likely than white girls to be formally petitioned.<sup>14</sup> Police, prosecutors, judges, and probation staff are the critical decision-makers at the point of arrest and charging, deciding who is arrested and whether she should be formally charged or diverted from the system.

## Detention

Arrest and petitioning frequently lead to detention, driving girls deeper into the system. Detention is harmful for all youth, and the present and future harms resulting from disrupted relationships and social supports, loss of control, and lack of safety are particularly problematic for girls.<sup>15</sup> Nonetheless, nationally girls are consistently detained for status offenses (offenses that would not be considered crimes if committed by an adult, such as truancy or running away), technical violations of probation (violations of the rules of probation, not new offenses), misdemeanors, and other minor offenses that pose no threat to the public and would be more effectively addressed in their communities.

Statistics reveal gender disparity in detention for minor offenses and misbehavior. In 2013, 37 percent of detained girls were locked up for status offenses or technical violations, compared with 25 percent of boys, and 21 percent of girls were detained for simple assault and public order offenses (excluding weapons), compared with 12 percent of boys.<sup>16</sup> Technical violations of probation appear to drive girls—and particularly girls with mental health needs—into detention<sup>17</sup> where they are not given the tools needed to succeed in their communities. Given the proportion of girls detained for minor offenses, lengths of stay in detention are particularly troubling: 25 percent of detained girls remain in detention longer than 30 days and 11 percent remain after 60 days.<sup>18</sup> Among girls in detention, racial and ethnic disparities persist. In 2013, Black girls were 20 percent more likely to be detained than white girls and American Indian/Alaska Native girls were 50 percent more likely to be detained.<sup>19</sup>

### Selected Detention Offenses by Gender, 2013



## Court Processing

Throughout the formal court process, a fragmented legal system and isolated juvenile justice system consistently miss opportunities to take a developmental approach and move girls' delinquency cases into other more appropriate systems—such as child welfare—or out of the formal court process entirely. Gender disparities persist in court processing of minor offenses resulting from harmful social contexts: in 2013 girls comprised 28 percent of juvenile court cases overall, but 40 percent of larceny-theft cases, 37 percent of simple assault or disorderly conduct cases, and 31 percent of liquor law violation cases.<sup>20</sup>

Girls also lack consistent legal representation to address the full range of their issues, including education, trauma, mental health, and family violence, but instead have multiple cases and multiple attorneys who are isolated from one another.<sup>21</sup> Furthermore, court data on youth is often not well integrated; in many jurisdictions courts cannot link dependency and delinquency cases involving the same girl.<sup>22</sup> While confidentiality for youth is certainly a priority, this lack of integration creates a barrier to a holistic approach, inhibits effective communication among agencies, and can make advocacy for less restrictive juvenile justice system involvement more difficult.

Shackling of youth during court proceedings, ostensibly to increase courtroom safety and decrease the risk of flight, remains far too common and is particularly damaging to girls. Thirty states have no limitations on shackling youth in court.<sup>23</sup> The practice is allowed despite the physical and psychological damage it causes to youth and the fact that it interferes with youth's ability to communicate effectively with their attorneys.<sup>24</sup> Shackling can negatively affect girls' self-esteem and sense of fairness, and re-traumatize girls who have been physically or sexually abused or have witnessed domestic violence.<sup>25</sup> Shackling reinforces girls' feelings of powerlessness, and could be a setback in their recovery from trauma.<sup>26</sup> Moreover, adolescent girls may be particularly vulnerable to the humiliation and shame that stems from being shackled in public.<sup>27</sup>

Lastly, once girls are adjudicated and receive a disposition, they typically lose legal representation, as statutes guaranteeing youth counsel typically apply only through adjudication. The lack of post-disposition representation is particularly problematic for the high number of girls who enter detention for failure to comply with technical violations of probation and parole. Without post-disposition representation, girls may be unable to access dispositional services in their communities, address conditions of their confinement, or argue against re-detention for technical violations.<sup>28</sup>

Assessments of state juvenile defense systems reveal common problems with the quality of the representation girls receive as they move through the court process. Juvenile defense as a whole is often marginalized, minimized, and underfunded; youth do not receive counsel at all key stages, including early in their processing and post-disposition; and inadequate training of juvenile defenders, excessive caseloads, and excessive waiver of counsel reduce due process protections.<sup>29</sup> Gender can actually become a barrier to effective representation, as more girls enter the system, but often defenders do not adequately understand their special needs and how the circumstances that bring them into court differ from boys'.<sup>30</sup> Once in court, girls who mistrust their attorneys are likely to feel further loss of control over the court process and a lack of fairness, which is particularly salient to adolescents.<sup>31</sup>

## THE RISE OF “GIRLS COURTS”

“Girls courts” have received a lot of attention in the last decade and take a variety of forms—from girl-only dockets to years-long court-based programming. They are unified by a commitment to gender-responsive principles—relationship continuity, promotion of safety, and empowerment of girls.

Continuity is typically provided through a single judge, who hears and follows all girl cases. Judges may oversee regular group meetings at which girls report their progress, sometimes with their peers or families in attendance. The court’s authority is also used to respond to or sanction program violations with community services, restitution, or detention. Some courts expand continuity by employing a consistent cast of court personnel, prosecutors, public defenders, and probation officers, all of whom have both relationships with the girls who appear in court and knowledge of gender-responsive services in the community. Girls court programming might be located within the court, run by probation, or delivered through referrals to community-based organizations.

Girls courts have varied intake criteria: some focus on girls who are trafficked (Los Angeles, California) or at risk of trafficking (Alameda County, California), some take girls charged with status offenses or delinquency (Hawaii), and some focus on girls who have already failed conventional probation and for whom the next disposition is likely to be commitment (Bernalillo County, New Mexico). Programming ranges from 24 weeks to two years and common components are family engagement (families are often required to participate), therapy (individual, group, and family), specialized probation officers, peer support, and a competency-building approach.

However, girls courts are not a panacea for girls. Few have been evaluated and there are legitimate concerns that they may net-widen, expanding the reach of the formal juvenile justice system to minor offenses and status offenses that otherwise would not lead to court involvement; increasing the use of detention; and extending case processing time and formal probation supervision (and with it close scrutiny). Girls courts also isolate girls’ services within courts, potentially making reentry more challenging once programming is completed. Girls courts that use community- rather than court-based programming may best help girls establish long-lasting supportive relationships within their communities.

The Hawaii Girls Court began in 2004 and is one of the oldest girls courts in the U.S. It is a one-year program administered through the court. Girls are assigned a probation officer with expertise in gender-responsive programming. Programming includes individual, family, and group therapy and opportunities to build girls’ competencies by exposing them and their families to new experiences and skills. Peers participate in a court session every five weeks, providing girls with peer support and helping to improve peer relationships. Hawaii Girls Court is one of the few girls courts to conduct ongoing evaluations. Evaluations from 2005 to 2011 show reduced law violations, fewer status offenses, fewer instances of running away and reduced length of runaway episodes, and reduced commitments during the year of programming and up to six months after. However, during the year of programming, Hawaii Girls Court participants have more shelter admissions and shelter days and more admissions to and days in detention than their non-Girls Court peers. These detention and shelter admissions decline following the Girls Court year. Evaluators conclude that the increased scrutiny accompanying Girls Court participation in turn leads to increased short-term detention and shelter use.<sup>32</sup>

Properly designed girls courts may be a way for systems to better respond to girls in the juvenile justice system. However, without a focus on avoiding net-widening and without ongoing evaluation, girls courts risk expanding the number of girls in the system and increasing system intervention to the possible detriment of girls.

## Post-Adjudication

### Probation

Probation is the most common post-adjudication disposition for all youth and in 2013, 67 percent of adjudicated girls received a disposition of probation: 67 percent of white girls, 67 percent of Black girls, 60 percent of American Indian/Alaska Native girls, and 81 percent of Asian/Native Hawaiian or Pacific Islander girls.<sup>33‡</sup> Accountability models of probation that hold girls to court-imposed rules such as curfews and frequent reporting—with little to no focus on the social, psychological, and physical challenges they face—result in disproportionate detention of girls for technical violations of these rules.

Probation officers typically receive no training on the specific needs of girls, and gender and cultural stereotypes can influence the treatment of girls and outcomes. One study of girls on probation in Arizona found that probation officers often perceived girls as manipulative, whiny, promiscuous, and not truthful.<sup>34</sup> Rather than connecting these perceptions to girls' social contexts, such as sexual and physical abuse or poverty, the probation officers treated them as personality traits, disconnected from girls' needs; therefore, girls' needs were not directly addressed.<sup>35</sup> Black girls may face further discrimination: research has shown that probation officers may attribute causes of crimes committed by Black youth more often to internal deficits (e.g., personality flaws), while they attribute external deficits (e.g., coming from a broken home) more frequently to white youth.<sup>36</sup> These attributions can then affect probation officers' assessments of the risk a girl poses, as well as sentencing recommendations. Even when probation officers do recognize the unique needs of girls and the underlying causes of their behavior, they often lack the ability to find appropriate gender-responsive programming due to poor connections with community resources or shortages of programs for girls.

### Out-of-Home Placement

In 2013, 19 percent of adjudicated girls were placed outside of the home.<sup>37</sup> Among committed girls who were removed from their homes, 88 percent were placed in a locked facility.<sup>38</sup> While the overall number of girls placed in state “deep-end” secure facilities is

declining, states vary in their handling of the declining population. A few states have voluntarily closed or been forced to close their hardware-secure girls facility due to allegations of abuse or declining need (e.g., Iowa, Alabama). In some cases, states place girls in county detention facilities after adjudication (e.g., Minnesota) or contract with private corrections providers to run secure facilities in their state (e.g., Florida, Pennsylvania). Other states have a very small number of girls in their deep-end secure facility (e.g., Massachusetts, Rhode Island) or have no such facility. Instead, some states send girls to out-of-state facilities, where they are far from their families and conditions may be difficult to monitor (e.g., Delaware, California). Some states have collapsed medium- and high-security post-adjudication placements into campus-like facilities with different housing units (e.g., Nebraska) or house girls in a unit of a larger boys secure facility (e.g., Virginia). And one state, Missouri, rejects girls deep-end secure institutions as a matter of policy, opting for smaller non-secure community-based placements when placement is deemed necessary.

The vast majority of girls who remain in deep-end secure placements are there as a result of experiences of violence and trauma and the failure of less secure placements to adequately address their needs; few have been found delinquent for serious person offenses. Yet, the focus of deep-end secure placement often remains on punishment rather than healthy development and healing, which runs directly contrary to what is known about the causes of girls' behavior and the social supports they need to overcome issues of violence and trauma. Girls may have unnecessarily long lengths of stay in facilities due to a lack of community-based alternatives for reentry services, family conflict making return home more difficult, high concentrations of mental health needs, and a general lack of understanding of how to best address girls' needs.

Sending girls to institutions is harmful to their development and does not improve public safety.<sup>39</sup> In the deep end of the juvenile justice system, girls may confront maltreatment, sexual abuse, inadequate education, and lack of appropriate mental and physical health care, all of which can negatively affect their development.<sup>40</sup> Likewise, institutional settings do not provide girls opportunities to develop healthy peer relationships, which are so critical to their development, but instead subject them to social isolation.<sup>41</sup> This lack of attention to healthy development in secure facilities leads to high rates of recidivism, with girls leaving institutions in worse shape than when they went in.<sup>42</sup>

‡ Although many jurisdictions face ethnic disparities in arrests and juvenile justice processing for Latinas, at the time of this writing, Hispanic ethnicity has not been incorporated into the OJJDP national estimates for juvenile case activity and hence there is no national RRI (relative rate index) data for Latinas.

Lastly, institutions are expensive. A recent survey found that the average cost for deep-end incarceration of youth is \$407.58 per day, or over \$148,000 per year.<sup>43</sup> These costs are just for institutional care; the price increases further due to social costs related to decreased education, lost future earnings, lost tax revenue, and increased reliance on public benefits.<sup>44</sup>

Despite the decline in the number of girls in juvenile justice systems and the failure and cost of secure confinement for girls, some states are opening new facilities (e.g., Connecticut, Alabama) or continue to place large numbers of girls in secure placement (e.g., Texas, Florida). Connecticut opened a new 12-bed secure girls facility, called the Pueblo Unit, giving the state a total of 24 secure girls beds. The Pueblo Unit cost the state \$2.4 million. The state justified the construction by citing the number of girls who ran away from less secure placement, missing the opportunity to take a developmentally-appropriate approach to these girls and address the root causes of why they ran away. In January 2015, there were only four girls in the facility.

### Girls in the Adult System

Thousands of youth are prosecuted in the adult system each year, some automatically through age of jurisdiction laws, some via prosecutorial or judicial discretion, and others through statutory exclusion laws that mandate transfer of cases involving certain crimes. All states have one or more of these mechanisms to send youth to adult court.

Data on girls in the adult criminal system is elusive. There is no accepted count of girls in adult corrections due to state variation in age of adult jurisdiction (e.g., girls are considered “adults” in New York at age 16, but are not considered “adults” in Massachusetts until age 18) and variation as to states’ mechanisms for prosecuting minors in the adult system. However, the Bureau of Justice Statistics (BJS) is conducting the Survey of Juveniles Charged in Adult Criminal Courts, to be released in 2016. The BJS 2014 mid-year one-day count estimates 300 girls under age 18 were being held in adult jails either as juveniles or awaiting trial as adults.<sup>45</sup>



What is clear is that girls who are placed in adult jails and prisons are unlikely to receive the services they need to promote healthy development and are at risk of violence and abuse.<sup>46</sup> Girls in adult facilities do not receive even the bare minimum of rehabilitative and educational services that are provided in the juvenile justice system, and are instead placed in an environment more focused on punishment and control. These girls are at greater risk of suicide, physical and sexual abuse, isolation, and disruptions to their development, without any evidence that sending youth to the adult system actually produces safer communities.<sup>47</sup> The Prison Rape Elimination Act of 2003 (PREA) and its subsequent 2012 regulations extend sight and sound protections to youth under age 18 in adult facilities. However, due to the amount of time and resources required for some states to come into compliance with PREA and the physical limitations of adult prisons and jails—as well as a lack of willingness on the part of other states—PREA's protections do not yet fully safeguard girls (or boys) in adult facilities.



## THE PLIGHT OF CONNECTICUT'S “JANE DOE”

The case of “Jane Doe” in Connecticut highlights a particularly disturbing twist in the use of adult womens facilities. In 2014, the Connecticut Department of Children and Families (DCF), through a little used law, petitioned the juvenile court to place Jane, a 16-year-old transgender girl of color, in Connecticut's adult womens prison. Connecticut does not have a separate facility for girls under age 18 in the adult system (it does have such a facility for boys); all transferred girls are sent to the one state prison for women, a maximum-security facility that houses women convicted of the most serious crimes. Between December 2006 and July 2008, nearly 250 girls were placed in the prison, many of them for violations of probation, running away, or fighting.<sup>48</sup>

Jane, however, had never been charged with an adult crime, had an open child welfare case, and had been charged with delinquency. She had a long history of being abused and sexually trafficked, including abuse that Jane says she experienced at the hands of employees of DCF. Citing concerns with Jane's aggressive behavior—which was clearly tied to her traumatic past—and DCF's inability to meet her particular needs, DCF sent her to the womens prison, where she was isolated in order to comply with federal laws mandating the separation of youth and adults.

Following a months-long public outcry, Jane was moved to a treatment facility in a neighboring state and then to isolation in a secure facility for boys, in denial of her gender expression as a girl. Jane's case is a stark example of the way juvenile justice systems too often prioritize control over treatment, disregarding the clear need for a developmental approach that focuses on the totality of a youth's experiences and social context, and instead causing further trauma through deprivations of liberty and humanity.

## Feeder Systems as Points of Entry into the Juvenile Justice System

While the focus of this section has been the process by which girls enter and get stuck in the juvenile justice system, a closer examination of exactly how girls are “fed” into the juvenile justice system reflects broader problems with the social systems that are supposed to be helping girls and addressing the social and environmental challenges they face. Girls in the justice system frequently have prior, unsuccessful contact with these “feeder systems,” such as education, child welfare, and mental and public health. These systems fail to adequately meet girls’ needs and foster their healthy development, and instead criminalize the misbehavior they should be working to address—blaming girls for circumstances beyond their control.

There are well-documented racial and ethnic disparities in the ways feeder systems move girls into the juvenile justice system, reflecting the over-surveillance and policing of many girls of color.<sup>49</sup> For example, in 2013 Black girls were almost three times as likely as white girls to be referred to juvenile court and American Indian/Alaska Native girls were 1.4 times more likely to be referred.<sup>50</sup>

## Law Enforcement

For many girls, entry into the juvenile justice system is due to over-policing of their normative adolescent behaviors or misbehaviors that are more appropriately addressed by programs in the community or other systems (e.g., mental health, education), rather than the justice system. Mere police presence can increase the number of youth who are arrested. For example, research on school resource officers has shown that an increased presence of police in schools leads to increased arrests of students.<sup>51</sup> Law enforcement policies and practices can sweep girls into the front door of the justice system for behaviors that would be better addressed elsewhere; once they are there, it’s hard to get out. Girls are frequently called to the attention of police for shoplifting, truancy, running away, family arguments, “prostitution,”<sup>§</sup> fights at school, or drug use. Law enforcement policies and officer training can then dictate how the situation is handled—whether the officers turn to arrest and punishment, or find ways to address the problem outside the justice system, given an understanding of girls’ social contexts and development.

Despite their role as first responders to incidents involving youth, most police do not receive adequate training on adolescent development, how to communicate with teens, and how to recognize and respond to youth with mental health and trauma-related needs—all of which are important when responding to girl behavior. Results from a 2011 survey revealed that only two states’ police training curricula included a focus on youth development, and only eight states provided officers with best practices for interacting with adolescents.<sup>52</sup> Moreover, despite higher arrest rates for youth of color, only eight states focused a part of police training on reducing disparities.

§ Technically, girls in the vast majority of states can be and are charged with prostitution and prostitution-related crimes while they are minors. However, we are placing “prostitution” within quotation marks to reflect our view that these girls are sexually exploited minors rather than culpable for the intentional crime of trading sex for a fee.

## Child Welfare

The child welfare system is designed to support youth from troubled homes, and, if functioning properly, can help keep girls out of the juvenile justice system by addressing the underlying family violence or neglect that can lead to girls to make bad decisions. However, the child welfare system as a whole is ill-equipped to provide girls and their families with the services they need. Moreover, child welfare officials or placements may directly funnel girls into the justice system by referring them to law enforcement or court for problem behaviors, even when those behaviors are manifestations of child maltreatment. Hence, there is a growing population of so-called “crossover” or “dually-involved” youth who experience both child maltreatment and delinquency or are part of both the child welfare and juvenile justice systems.

According to data from 13 jurisdictions that were the original participants in the Crossover Youth Practice Model (a systems-level model for addressing the needs of crossover youth), girls are especially prominent in the crossover population—comprising a greater share of all crossover youth (37 percent) than of youth charged only with delinquency (21 percent of arrested youth).<sup>53</sup> Girls made up 41 percent of child welfare-involved youth subsequently arrested for delinquency and 47 percent of child welfare-involved youth subsequently referred for a status offense.<sup>54</sup> Moreover, African American youth were the most over-represented population of crossover youth in the original jurisdictions.<sup>55</sup> Consistent with other data on the number of girl offenses resulting from family conflict, approximately one fifth of the charges among crossover youth were related to the youth’s living situation.<sup>56</sup>

Involvement in the child welfare system can create additional problems for girls and negatively affect their development. Girls in the child welfare system who are removed from their homes can suffer residential instability for years, moving among foster or group homes. Girls in placement often lack a consistent adult role model, switching schools repeatedly and struggling to learn to adapt to new communities and social environments. Not surprisingly, these challenges can result in behaviors such as running away or substance use, which may be girls’ efforts to cope with their challenges, but which often lead to justice system involvement.

## Status Offense

Many girls who commit status offenses are initially served through child welfare systems. States have created status offense or “child in need of services” systems in an attempt to address behavior before it leads to more serious juvenile or criminal justice system involvement. Nearly 48,000 girls were petitioned and formally processed for status offenses in 2011.<sup>57</sup> Girls make up a substantially larger share of status offense cases than delinquency cases: in 2011, girls were 28 percent of delinquency cases but 41 percent of status offense cases.<sup>58</sup> Furthermore, for certain status offenses, rates for girls are even higher. For example, 53 percent of runaway cases in 2011 involved girls (see sidebar, p. 29).<sup>59</sup>

Unfortunately, the solutions offered by status offense systems too often fail to provide girls with services to address the roots of their behavior and nurture their healthy development. Instead, a girl may be separated from her family or required to comply with court-ordered rules that are unrealistic given the girl’s social context. Fifty-eight percent of adjudicated girl status offense cases in 2011 resulted in formal probation, and 7 percent resulted in out-of-home placement.<sup>60</sup> Removal from her family and home community, socialization with other girls who are struggling, and high expectations for improved behavior—minus the supports needed to achieve that—very often lead a girl to more trouble, including offenses chargeable in the delinquency system.

While judges are prohibited by the federal Juvenile Justice and Delinquency Prevention Act (JJDP) from locking girls up for status offenses, there is a powerful exception to this rule: girls who do not comply with a valid court order (VCO)—such as an order to go to school or obey a curfew—may be detained.<sup>61</sup> This “VCO exception” creates a direct gateway from the child welfare-focused status offense system to the delinquency system. Through the VCO exception, courts create a set of unreasonable expectations and raise the stakes immeasurably by linking girls’ behavior to their freedom. In 2014, nine states used the VCO exception between one and 100 times, and 12 states used the VCO exception more than 100 times. Kentucky used the VCO exception 1,048 times, far more than any other state.<sup>62</sup>

## Education

Schools are increasingly recognized as problematic feeders of youth directly into the juvenile justice system, as zero-tolerance and harsh school discipline policies have created a “school-to-prison pipeline.” Girls are referred to court directly from their schools for fighting with their peers, disrupting class, and talking back—normal and predictable adolescent girl behaviors, especially for girls who have experienced trauma. Prior to the crackdown in school discipline in the 1990s, these types of fights and misbehavior were handled by school officials, rarely resulting in court referral. However, one recent study of referral practices in five states found that one in 10 youth in the delinquency system had been referred by schools; the study notes that this number may actually be an underestimate of the rate of referral from schools.<sup>63</sup> The researchers additionally found the odds of girls being referred by schools have increased over the past ten years.<sup>64</sup>

While some states are beginning to roll back zero-tolerance policies, use of these policies over the past two decades has contributed to the number of girls in juvenile justice systems nationally. Many states deploy school resource officers (SROs) to enforce these policies, which significantly increases arrests for disorderly conduct, fighting, or threats—common offenses for girls.<sup>65</sup> Girls have stated that SROs make them feel less safe and less likely to attend school.<sup>66</sup> Schools also push girls into the justice system through exclusionary discipline—suspension, expulsion, and referral to alternative schools—that disengages girls from education and can lead to increased problem behavior. And, girls may become disengaged from school due to caretaking responsibilities at home, pregnancy and parenting, assault and harassment in school, and counseling needs that are overlooked by schools.<sup>67</sup>

Responses to truancy also drive girls into the juvenile justice system. In each year from 1995 through 2011, the rate of girls truancy petitions was higher than the rate of girls petitions for any other status offense category.<sup>68</sup> Truancy is often an indication of other problems in a girl’s life—strained relationships with peers, harassment at school or on the way to and from school, pregnancy or parenting responsibilities, untreated trauma, or unidentified learning disabilities.<sup>69</sup>

## Mental and Physical Health

Girls in the juvenile justice system have high levels of mental and physical health problems, a reflection of a failure on the part of health systems to fully address these girls’ needs. Some studies have found that nearly 80 percent of youth with mental health needs in the U.S. go without services, with certain groups of youth, such as Latinos or the uninsured, experiencing even higher rates.<sup>70</sup> For girls with mental health needs, the juvenile justice system becomes a proxy for the mental health system in too many cases.<sup>71</sup> Higher percentages of girls than boys in juvenile facilities report an above-average number of mental or emotional problems and traumatic experiences: 42 percent of girls (versus 22 percent of boys) report past physical abuse, 44 percent of girls (versus 19 percent of boys) report past suicide attempts, and 35 percent of girls (versus 8 percent of boys) report past sexual abuse.<sup>72</sup> Additionally, 71 percent of girls in juvenile facilities report recent substance-related problems.<sup>73</sup> Girls fall through the large cracks in the mental health system and end up in the juvenile justice system, where the focus is on symptoms rather than causes. Behaviors such as substance use or aggression at home present clear opportunities for public health rather than juvenile justice solutions, yet girls engaging in these behaviors often come to the attention of law enforcement instead, which is likely to take a criminal justice approach.

Girls in the juvenile justice system often come from high poverty, urban environments that may contribute to poor physical health<sup>74</sup> while offering less access to health care. When girls enter the justice system, they frequently become disconnected from community health services, which can have long-term consequences. Federal law and policy prohibit states from using Medicaid or Children’s Health Insurance Program (CHIP) dollars to pay for health care for “inmates of a public institution”; this prohibition applies to youth in detention and commitment facilities with some limited exceptions.<sup>75</sup> This “inmate payment exception” or “inmate exclusion provision” causes many girls to lose their health coverage if they are placed in facilities.<sup>76</sup> The prohibition does not mean youth become ineligible for Medicaid; nevertheless, many jurisdictions immediately terminate coverage when girls are detained or committed—even when only for short periods of time—negating any chance of Medicaid coverage for those services that are eligible and causing great difficulties with Medicaid reenrollment and connection with services and public health supports upon reentry to the community.

## Domestic and Intimate Partner Violence

An increasing number of girls are being arrested for violent behavior in the home. In 2012, girls comprised 38 percent of arrests for domestic offenses and 37 percent of arrests for simple assault.<sup>77</sup> Researchers have attributed the increase in girls assault arrests over the past 15 years to changes in law enforcement policies, especially with regard to domestic violence.<sup>78</sup> Twenty-three states have domestic violence laws making arrest mandatory in all cases of domestic battery or family-based assault; nine states have pro-arrest laws (which establish a preference for an arrest in a domestic violence situation); and 19 states give law enforcement officers discretion, although local policies and police practice in many of these states favor arrest. Mandatory and pro-arrest laws and policies are designed to address adult intimate partner violence; however, they are routinely applied to intra-family conflicts for which such a response is inappropriate.<sup>79</sup> Only five states' domestic violence laws make a specific exception for youth or qualify the rigid policies in some way for minors.

As a result, many girls are arrested for fights in their homes stemming from family chaos—girls may become involved in a domestic fight when defending themselves against victimization or as part of a pattern of violence and chaos among family members (see sidebar, p. 20). This leads girls to contact with law enforcement, at which point they are treated as aggressors rather than victims. Despite a consensus that these girls and families are a better fit for the child welfare system, girls are pushed into the juvenile justice system where they and their families are less likely to receive adequate support to address the underlying causes of family violence.

## Housing Policies and Residential Instability

Housing and child welfare policies that result in residential instability negatively impact girls' abilities to maintain consistent social, educational, and health supports and are closely connected to girls' risk of involvement with the juvenile justice system.

Girls' and their families' access to existing housing may be restricted due to criminal records or presence on sex offender registries. Moreover, a paucity of housing resources catering to sub-populations of system-involved girls, such as victims of domestic violence or sex trafficking, pushes girls into the juvenile justice system due to a lack of alternative housing. Pregnant and parenting girls face similar difficulties with housing stability; studies show 10 percent of homeless girls living on the street or in shelters are pregnant (see sidebar, p. 25).<sup>80</sup> Pregnant and parenting girls are offered no formal protections or support through any national housing policy. This housing instability can directly feed girls into the justice system by leading them to increasingly engage in survival behaviors such as "prostitution," selling drugs, or stealing.<sup>81</sup>

Girls in the child welfare system are also profoundly impacted by housing policies. The instability of foster care and group home placements can cause ongoing disruption to girls' lives, making them more vulnerable and more likely to engage in behaviors leading to justice system involvement.<sup>82</sup> Through the John H. Chafee Foster Care Independence Program and the Fostering Connections to Success and Increasing Adoptions Act of 2008, the federal government has taken some steps to help older youth who are transitioning out of the foster care system, but limitations and conditions continue to inhibit permanence and stability for older girls who are also involved in the juvenile justice system. For example, the Fostering Connections Act is tied to Title IV-E Social Security funding for qualifying foster care placements, which specifically excludes detention centers and facilities for youth who have been adjudicated delinquent.<sup>83</sup> For the many crossover girls involved in both the child welfare and juvenile justice systems, this exclusion introduces a significant hurdle—if a crossover girl happens to be detained or in a juvenile facility on the day of her 18<sup>th</sup> birthday, she is ineligible for state-funded foster care as she transitions to adult living. Additionally, both federal laws reserve assistance (in policy and in practice) for youth who are in school or working, thereby excluding girls who are most at risk of facing significant difficulties when transitioning to adulthood.<sup>84</sup>



## IV. Why Focus on Girls? The Long Overdue Need to Address Deeply Rooted Trauma and Inequity

### A. Traumatic and Unhealthy Social Contexts Result in Behaviors that Drive Girls into the Juvenile Justice System

Although the vast majority of research on causes of delinquency and effective interventions has focused on boys, there has been a recent surge of research about girls. While more research is certainly needed, social context in every sphere—family, peers, community, and society—has clearly emerged as particularly influential on girls’ development and behaviors.

Below, ecological systems theory, risk and resilience theory, and feminist theory help guide an analysis of:

- a. The **social contexts or environments** that coexist with delinquency for girls; and
- b. The **behaviors** that are driven by those traumatic social contexts and lead girls into the juvenile justice system.

This analysis helps to explain girls’ behavior and the manner in which trauma from abusive and unhealthy family and peer relationships, unhealthy and dangerous living conditions, and failed structural supports mold girls’ development. In order to produce better outcomes for girls, systems must craft reforms that directly address the root causes of their behavior and provide an alternate, non-justice-system path for girls’ healthy development and healing.

## THEORETICAL FRAMEWORKS FOR UNDERSTANDING GIRLS’ CONTEXTS AND BEHAVIOR

A few theoretical frameworks recur in the research on justice system trajectories and experiences of girls. They serve as helpful, broad frames for the developmental approach to juvenile justice system reform discussed in this report.

**Ecological systems theory** is a useful framework for understanding the complex interplay of factors related to social context and how those factors shape individual behavior and development. Applying this theory to girls in the juvenile justice system, ecologically-minded researchers would view each girl (youth) as an individual nested in concentric circles of family, community, and society—each circle exercising influence on the girl’s development and the girl in turn influencing back.<sup>85</sup> This framework also presents a way to think about system and programmatic responses to girls, ensuring a focus on the individual girl as well as each circle of influence.

**Risk and resilience theory** specifies the psychological and social risks that make it more likely that a girl will become involved with the juvenile justice system. Recently, the field has also become interested in identifying the mechanisms—personal, familial, social, and institutional—that help girls cope with and sometimes overcome those risks. Resilience theory sheds light on the processes by which girls make positive adaptations in their lives in the face of the considerable risks they encounter.<sup>86</sup>

**Feminist theory** re-frames girls’ delinquency in light of their experiences of victimization, sexism, and socialization. Rather than just taking research about boys and applying it to girls, feminist researchers propose gendered pathways into the juvenile justice system that reflect the unique pressures, roles, and experiences of girls and women in our society.<sup>87</sup>

## Social Contexts and Girls

While there is overlap among the adverse social contexts or environments that coexist with delinquency in boys and girls, research suggests that due to their unique development and socialization, girls might be more vulnerable to certain negative outcomes from these contexts. For too many girls, adversity in their homes, in their communities, and in the way they experience society is traumatizing. This trauma—with its attendant psychological, emotional, and physical challenges, long-term health complications, and adversity in adulthood—plays a particularly powerful role in the lives of girls and young women.

## Conflict and Abuse at Home

Violence and abuse at home—especially sexual abuse—are strong predictors of juvenile justice involvement in girls.<sup>88</sup> Girls in the justice system experience sexual and physical abuse in their homes at extremely high rates—they have reported experiencing sexual abuse at 4.4 times the rate of their male peers<sup>89</sup>—and that exposure has been connected to delinquency and later crime, particularly later aggression.<sup>90</sup> Family conflict in general has a heightened impact on girls. This is likely due to a combination of the high rates at which girls experience family abuse and conflict to begin with, as well as the exacerbated effect of family conflict on them as a result of spending more time in the home and their gendered socialization to be particularly concerned about relationships and family.<sup>91</sup>

## TYOLOGIES OF GIRLS INVOLVED IN INTRA-FAMILY VIOLENCE

A national six-site study found that girls accounted for 40 percent of adolescent domestic battery (ADB) arrests, which exceeds their overall share of arrests by 11 percent.<sup>92</sup> Unlike the adult domestic battery targeted under the Violence Against Women Act, which is characterized by a dynamic of power and control, adolescents may have less power in the family structure and their involvement in domestic disputes is often a response to family chaos and conflict. Recognizing this, the study aimed to validate an Adolescent Domestic Battery Typology Tool (ADBTT) that can be used by jurisdictions to tailor their responses to youth charged with ADB and avoid the broad brush of arrest and detention that is currently the practice in most jurisdictions.

The study identified four typologies of adolescent domestic battery:

- Defensive: the youth defends him or herself from abuse by a parent or caregiver;
- Isolated: unusual stress resulting in a one-time event;
- Family Chaos: generalized chaos in the home resulting in the ADB; and
- Escalating: youth who have a more typical profile of delinquency and are most likely to commit another offense.

The study looked for differences across the typologies by gender and race. No race differences were found, but the researchers did find gender differences:

- A higher percentage of boys (46.1 percent) were in the escalating type than girls (36.3 percent), although among girls the highest proportion still fell within the escalating type.
- Girls (17.8 percent) were more likely to be in the defensive type than boys (11 percent).
- Girls were also more likely to be in a fifth category of youth who did not fit any of the four typologies.<sup>93</sup>

The ADBTT study is notable for its gender analysis, which will allow jurisdictions to tailor a developmental response to girls thanks to a fuller understanding of the contexts resulting in their behavior. Given this developmental and family systems understanding of adolescent domestic violence, blunt, one-size-fits-all mandatory or pro-arrest policies make little sense.



### Community Violence

Youth from both urban and rural communities report witnessing violence at extremely high rates. Over 85 percent of urban youth report witnessing some form of community violence and, consistent with previous findings, a 2004 study found that 61 percent of rural youth had witnessed at least one violent act and 45 percent had witnessed multiple violent acts.<sup>94</sup> While boys are more likely than girls to be exposed to community violence, girls experience different kinds of violence and may react to exposure to violence differently.<sup>95</sup> For girls, community violence is linked to sexual harassment and consequent feelings of sexual vulnerability in their communities. Indeed, many girls live in “coercive sexual environments”—communities where harassment, domestic violence, and sexual exploitation are a part of everyday life and are even normalized.<sup>96</sup> In poor, distressed communities, both girls and boys are subject to violence related to gangs and drug trafficking, but girls additionally suffer traumatic effects from sexual harassment and violence and live in constant fear.<sup>97</sup>

Girls who are exposed to community violence—as both victims and witnesses—have higher rates of PTSD (post-traumatic stress disorder), depression, anxiety, and substance use, often co-occurring with one another.<sup>98</sup> Exposure to violence and harassment can increase family conflict, lead girls to feel unsafe in their neighborhoods, cause girls to disengage from their communities, and increase the risk of delinquency.<sup>99</sup> Supportive parents and teachers can help ameliorate these effects, but many girls lack this support to cope with the trauma.<sup>100</sup>

## Physical and Mental Health

Girls who enter the juvenile justice system often have poor physical and mental health. According to the Survey of Youth in Residential Placement, girls in placement report significant health needs related to illness, vision, dental, and hearing.<sup>101</sup> Sexually transmitted diseases (STDs) pose a significant health risk for system-involved girls who are sexually active and have inconsistent access to health care; for example, the Centers for Disease Control found that in 2011, 15.7 percent of girls and young women in selected juvenile correctional facilities tested positive for chlamydia (compared with 8.3 percent of girls and young women aged 15-24 years in the general population), and 4.4 percent tested positive for gonorrhea (compared with .7 percent of girls and young women aged 15-24 in the general population).<sup>102</sup>

Moreover, girls in detention have high rates of PTSD and there is evidence that vulnerability to PTSD may be gendered.<sup>103</sup> This may be connected to the concentration of interpersonal trauma among these girls and girls' heightened sensitivity to relationship stress.<sup>104</sup> The Northwestern Juvenile Project, a longitudinal study of 1,829 youth detained in Cook County between 1995 and 1998—including 657 girls—found that almost three-quarters of detained girls had one or more psychiatric disorder and 57 percent met the diagnostic criteria for two or more disorders.<sup>105</sup> Depression and PTSD were particularly prevalent, both of which are often linked to experiences of trauma.<sup>106</sup>

For girls who enter detention, significant physical and mental health consequences continue into adulthood. The Northwestern Juvenile Project found that before age 29, girls who had been detained were nearly 5 times more likely to die than non-detained youth and young adults; Latinas were 9 times more likely to die.<sup>107</sup>

## Sexism, Racism, Homophobia, Transphobia, and Historical Trauma

Societal-level forces are risk and resilience factors for girls and all youth. For girls in the justice system, experiences of sexism, racism, and homophobia contribute to their risk of problem behaviors by complicating girls' identity development in adolescence and contributing to feelings of vulnerability in their schools and communities. For many Black and American Indian girls, this is further complicated by the individual and community-level impact of generations of historical or intergenerational trauma.

## INTERSECTIONALITY: THE EFFECTS OF GIRLS' LAYERS OF IDENTITY

Intersectional theory looks at how the interaction of different layers of identity bears on individuals' experiences. Gender, race/ethnicity, sexual orientation, gender identity, and class have a collective effect on how girls experience their social contexts and, in turn, how they behave. Intersectionality is also important when examining how girls experience the juvenile justice system and how the system responds to and affects girls' different identities.

Gender and race intersect to create categories of girls who are especially vulnerable to certain system policies and practices. Existing patterns of both sexism and racism collide in their effect on girls of color, increasing their chance of arrest and driving them deeper into the system. For example, Black girls are the fastest growing segment of the juvenile justice system, and in 2013, Black girls were almost three times as likely as their white peers to be referred to court for delinquency.<sup>108</sup> Moreover, instead of fully benefiting from intentional efforts to reduce gender or racial and ethnic disparities, girls of color are caught between the two, marginalized because they don't fit neatly into one category or the other, and have complex experiences that result from different sources of discrimination.<sup>109</sup> Girls of color may suffer a cumulative disadvantage based on historical traumas related to racism and poverty, layered with struggles stemming from recent traumatic experiences, family chaos, and environmental stress—common experiences for girls.

Data on the experiences of Black girls in schools sheds further light on how intersectionality can come into play for girls. Researchers have found striking differences in the ways school discipline is applied to Black girls versus white girls. Black girls are particularly vulnerable to schools as feeders into the juvenile justice system and are subject to increased, disproportionate rates of exclusionary discipline—suspended 6 times as often as white girls.<sup>110</sup> Furthermore, despite representing less than 17 percent of all female students, Black girls make up 43 percent of girls arrested at school.<sup>111</sup> These disciplinary measures are often tied to racial and cultural biases or subjective expectations of what makes a “good” girl.<sup>112</sup> While Black boys are subject to discipline and court referrals more often for perceived threats to safety, Black girls are disciplined for nonconformity with standards of white, middle-class femininity—for using profanity or being loud, wearing revealing clothing and being perceived to be promiscuous, or being defiant and challenging those in authority.<sup>113</sup> The intersection of gender and race creates a unique experience for Black girls, subjecting them to notably different—and harsher—treatment than white girls.

LBQ/GNCT (lesbian, bisexual, questioning/gender non-conforming, transgender) girls provide another example of the importance of understanding layers of identity. LBQ/GNCT girls experience different and more harmful social contexts than their straight and gender-conforming peers, including higher rates of abuse and homelessness. A study of youth in California’s juvenile justice system found that 38 percent of LBQ/GNCT girls had been removed from their homes because someone was hurting them, compared with 25 percent of their straight and gender-conforming peers.<sup>114</sup> The same study found that 49 percent of LBQ/GNCT girls had been homeless, compared with 30 percent of their straight and gender-conforming peers.<sup>115</sup> LBQ/GNCT girls face additional challenges in school: 90 percent of LBQ/GNCT girls in the California juvenile justice system have been suspended or expelled prior to juvenile incarceration;<sup>116</sup> and in their homes they experience high rates of family discord that may lead to adolescent domestic violence.<sup>117</sup>

These differing social contexts presumably play a role in driving greater numbers of LBQ/GNCT girls into the juvenile justice system. According to a 2015 survey of seven sites across the country, 40 percent of girls in the juvenile justice system identify as LBQ/GNCT.<sup>118</sup> And a recent California study found higher rates of detention and incarceration of LBQ/GNCT girls for certain offenses: 41 percent of LBQ/GNCT girls were detained or incarcerated for status offenses and 8 percent were detained or incarcerated for sexual exploitation, compared with 35 percent and 3.5 percent of their straight or gender-conforming peers, respectively.<sup>119</sup> Once in the juvenile justice system, LBQ/GNCT girls report higher levels of self-harming behavior and are more likely to be discriminated against, become targets of violence and sexual victimization, and be placed in isolation.<sup>120</sup>

While there is increasing awareness of the prevalence of girls of color and LBQ/GNCT girls in the juvenile justice system and the unique challenges and dangers they face, jurisdictions still lack a deeper understanding of how exactly these and other layers of girls’ identity bear on their social contexts and drive their behavior. Understanding the varied layers of girls’ identity is admittedly complex. For example, studies of LBQ/GNCT girls of color show that they have further differing experiences than their white, LBQ/GNCT peers or straight/gender-conforming girls of color: the vast majority (85 percent) of LBQ/GNCT girls in the juvenile justice system are girls of color, and Black LBQ/GNCT girls are incarcerated at higher rates than white LBQ/GNCT girls.<sup>121</sup>

In order to craft solutions that are effective and affirming for girls as a group, jurisdictions must examine the effects of girls’ layers of identity at each stage of the juvenile justice system—from the policies and practices that sweep girls into the system to begin with, to the way girls are treated in the deep end of the system, to the resources provided to girls when they are released. Intersectionality makes it clear that, just as a system designed for boys will not meet the needs of girls, a one-dimensional approach to all girls will also not be effective. Rather, responses must employ an intersectional lens and be tailored to the needs of individuals, based on an informed, nuanced understanding of girls’ identities and experiences.

## Poverty

Both family and neighborhood poverty are well established as causes of poor mental, emotional, and behavioral outcomes for children and youth.<sup>122</sup> Poverty, of course, is tied to and feeds into other unhealthy and damaging social contexts for girls—poverty is associated with family conflict, exposure to violence, exposure to discrimination, and residential instability.<sup>123</sup> The stress of poverty compounds upon itself, and can lead to significant challenges for girls, who are more vulnerable to stress in the family, and particularly susceptible to anxiety and depression stemming from poverty-related stress.<sup>124</sup> Girls living in poverty are at higher risk of substance use, pregnancy, dropping out of school, emotional and social challenges, acute and chronic stress, deficits in cognitive development, poor physical health, and safety issues.<sup>125</sup> Poverty has been shown to put girls at risk for involvement with the juvenile justice system, and girls from poorer neighborhoods are more likely to be charged with delinquency.<sup>126</sup>



## PREGNANT AND PARENTING GIRLS AND YOUNG WOMEN

Girls who are pregnant and parenting face unique and additional struggles in their communities, when they enter the juvenile justice system, and upon release from the system. Socio-economic status, family structure, race and ethnicity, psychological distress, family violence, and the quality of parent-child relationships can all affect the likelihood of a girl becoming pregnant, with girls from poor neighborhoods who suffer from depression, girls who have been victims of childhood abuse, girls in foster care, and girls who engage in substance use being especially vulnerable.<sup>127</sup>

Researchers have found that teenage mothers suffer more distress than their non-parenting peers before they become pregnant and may suffer additional distress from their experiences as parents.<sup>128</sup> Teens who become pregnant or who are parents are at increased risk of disconnection from school: 30 percent of girls who drop out of high school cite pregnancy or parenting as a key reason for doing so and girls who become mothers before age 18 are far less likely to earn a diploma by age 22 than their non-mothering peers (51 percent versus 89 percent).<sup>129</sup> Teen mothers are more likely to receive public assistance, earn less as adults than women who were not teen mothers, and are at greater risk of having children with health problems.<sup>130</sup>

Despite their obvious high need, remarkably little is known about the incidence and treatment of pregnant and parenting young women in the juvenile justice system.<sup>131</sup> According to the Survey of Youth in Residential Placement (SYRP) conducted in 2003, 9 percent of girls in custody had children (compared with 6 percent of female youth in the general population),<sup>132</sup> and 5 percent of girls were pregnant.<sup>133</sup> Adverse Childhood Experience (ACE) research conducted by the National Crittenton Foundation found that young mothers in the juvenile justice system had experienced more cumulative adverse childhood experiences than their non-parenting peers.<sup>134</sup> While it is clear that this population of girls faces particular challenges, there are few juvenile justice programs that accommodate young mothers with their children, and timelines for permanency planning contained within the Adoption and Safe Families Act can force girls to give up rights to their children rather than support them as parents.

Girls who are pregnant and parenting have especially high needs upon leaving the justice system, but little is known about their actual experiences and needs upon release, including:

- Vulnerability to struggles with housing, education, employment, and health care;
- Difficulty securing public assistance, for which they and their children are eligible; and
- Reunification with children. For girls who have lost custody of their children, reunification can present significant difficulties requiring representation and assistance securing parenting support. Adjudications for drug-related offenses can create additional obstacles to reunifying girls with their children.<sup>135</sup>

Although many states have well-established, evidence-based or promising teen home visiting programs (e.g., Nurse-Family Partnership, Healthy Families), those programs may struggle to establish connections with justice-involved girls who experience residential instability upon reentry from the justice system. These programs have not been evaluated and modified for this very high-risk population.

Despite their relatively low numbers in the juvenile justice population, the heightened vulnerability of pregnant and parenting girls and the consequences for the next generation make further research essential. A full understanding of these girls' needs and the ways current policies impact them is essential for jurisdictions to craft programs and policies that will help pregnant and parenting girls transition successfully back to their communities, avoid future justice-involvement, and parent their children successfully.

## The Cumulative Effect

The overall portrait of childhood deprivation and violence among girls in the juvenile justice system is broadly captured by recent ACE (Adverse Childhood Experience) studies of justice-involved girls. The first ACE study in 1998 (examining adults) identified 10 forms of childhood adversity that correlate with chronic disease in adulthood.<sup>136</sup> The study scored the number of ACEs each participant experienced, grouping ACEs into three general categories—abuse, neglect, and household dysfunction—and providing a final score of one to 10. Researchers found that as ACE scores increased, so did future risk.<sup>137</sup>

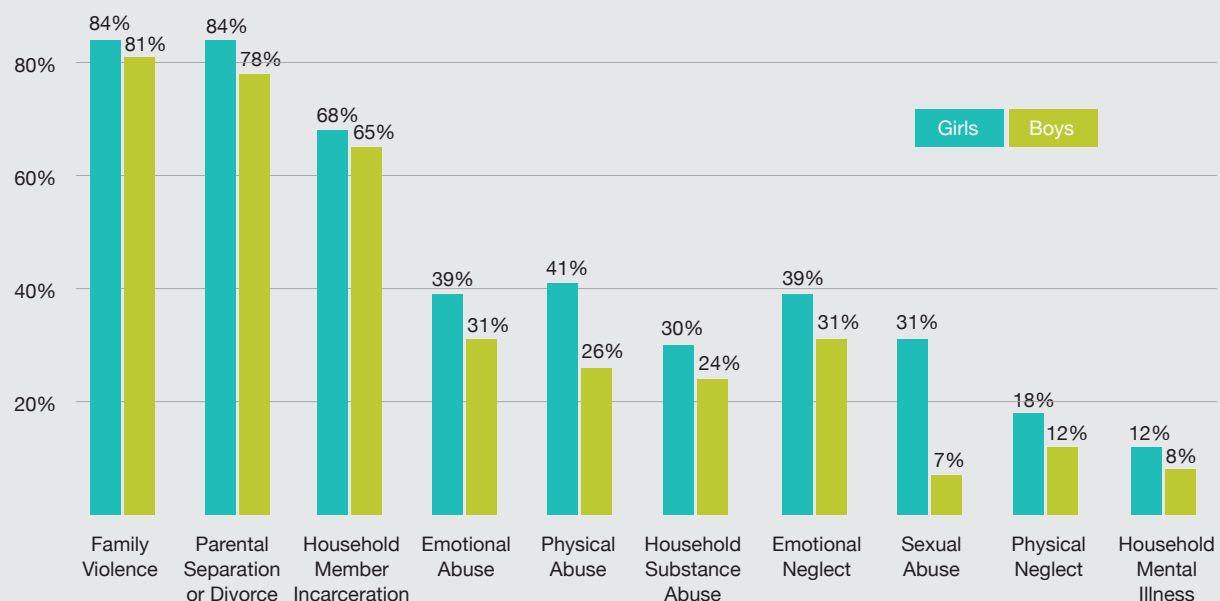
Subsequent ACE research specifically examining girls in the juvenile justice system broadly describes a profile of childhood abuse among girls, which is comparably greater than that of boys, and is particularly more pronounced for sexual abuse, interpersonal victimization, and cumulative experiences of abuse and adversity.<sup>138</sup> In 2014, a Florida ACE study evaluated 64,300 youth involved in the Florida juvenile justice system, 14,000 of whom were girls.<sup>139</sup> The study shows the clear differences between the deprivation and

violence experienced by girls compared to boys. The prevalence of ACE indicators was higher for girls than boys in all 10 categories.<sup>140</sup> Sexual abuse was reported 4.4 times more frequently for girls than for boys, which is consistent with other research.<sup>141</sup>

Forty-five percent of the girls scored 5 or more, versus 28 percent of the boys.<sup>142</sup> Another ACE study, conducted by National Crittenton Foundation in 2012, similarly found concentrations of adverse childhood experiences among girls in trouble with the law, with 62 percent scoring 4 or more, 44 percent scoring 5 or more, and 4 percent scoring 10, the highest score possible.<sup>143</sup> Among young mothers in the juvenile justice system, 74 percent scored 4 or more, 69 percent scored 5 or more, and 7 percent scored 10.<sup>144</sup>

Clearly, the social contexts of girls in the juvenile justice system are rife with adversity and trauma, putting many girls at great future risk. These contexts also profoundly influence girls' behavior, especially those behaviors most likely to lead to juvenile justice system involvement.

## Prevalence of ACE Indicators by Gender



Source: Michael T. Baglivio, et al., "The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders," *OJJDP Journal of Juvenile Justice* 3, no. 2 (2014): 1-23, 8, <http://www.journalofjuvjustice.org/JOJJ0302/JOJJ0302.pdf>.

## Social Context as a Driver of Girls' Behavior

Feminist sociologists and criminologists have argued that even when girls and boys experience similar unhealthy, dangerous, or damaging social contexts, they are affected differently and react differently as a result of different socialization and girls' increased focus on relationships.<sup>145</sup> The ways in which girls experience, cope with, and react to trauma from family conflict and abuse and community violence become direct, gendered pathways into the juvenile justice system.

Adolescent girls' vulnerability and responses to trauma are also influenced by their neurological development as teens. Recent research shows that the combination of heightened reward sensitivity and reduced self-control during adolescence makes teens particularly vulnerable to unhealthy social environments. For girls, there is evidence that this heightened vulnerability begins at an even younger age, due to the earlier onset of puberty in girls versus boys.<sup>146</sup>

The behaviors that lead girls to become involved in the juvenile justice system are variously characterized in the literature as problem behaviors, antisocial behaviors, help-seeking behaviors, or maladaptive coping mechanisms. Running away, for example, may be both a problem behavior (placing the girl at possible risk of victimization) and a help-seeking behavior (a way she protects herself from abuse in the home). The choice of how to characterize these behaviors—as rebellious or resilient—often dictates the policy response. For example, recent reports have documented the harmful long-term impact on Black girls when schools characterize their behaviors negatively—as disruptive and rebellious—rather than as those of young women who are outspoken about injustice and displaying qualities of leadership.<sup>147</sup>

While more research on girls' behavior is needed, particularly over the course of teenage girls' development, common behaviors that lead girls into the juvenile justice system include:

- Fighting with parents
- Running away
- Older/antisocial romantic partners
- Sex at a young age
- Poor relationships with peers
- Substance use
- Truancy/underperforming in school
- Poor relationships with teachers

Common threads run through these behaviors, and they are all related to the trauma girls experience in dangerous and unhealthy social contexts.

## Unhealthy Relationships

Girls' behaviors are most significantly affected by their relationships with parents, peers, and intimate partners. Research consistently shows that relationships are particularly influential on girls' development and behavior, and girls whose social contexts offer few healthy relationships suffer pervasive negative effects. Girls experience more emotional strain from problem relationships because they have been socialized to focus on relationships;<sup>148</sup> this gendered sensitivity to relationships is particularly true in adolescence when relationship conflict can result in feelings of rejection and depression.<sup>149</sup> Insecurity in relationships can lead girls to associate with antisocial peers and romantic partners, increasing their vulnerability to delinquent behaviors.<sup>150</sup>

For girls in particular there is a connection between social contexts involving child maltreatment and poor peer and romantic relationships.<sup>151</sup>

For girls, fighting with parents and running away from home are also connected to experiences of in-home conflict and abuse, and have been tied to girls' heightened sensitivity to relationships and fear of anticipated rejection.<sup>152</sup> Family chaos in general has been consistently noted by researchers as a common driver of justice system involvement for girls.<sup>153</sup>

## Loss of Agency and Control

Loss of control and power are well-researched consequences of traumatic social contexts and can cause long-term harm for girls and young women. Although the connection between agency—the loss of control over one’s experiences and efforts to re-assert that control—and abuse are more fully researched and described in literature on women who have experienced intimate partner violence, the same dynamic may apply to adolescent girls. Many of the behaviors that lead girls into the juvenile justice system—running away, fighting with parents or peers, or having sex at a young age—can be seen as efforts to re-assert control over chaotic homes and interpersonal environments.

The literature on gender-responsive programming emphasizes the importance of agency and control for girls in its recommendation that programs and systems share power with girls, rather than dictating all activities, conditions, and consequences.<sup>154</sup> Similar empowerment techniques are part of trauma-informed treatment and family engagement strategies. Sharing power helps adolescent girls feel that they are being treated fairly, a particularly salient issue for girls caught up in the juvenile justice process.

## Failed Social Supports

Community and social supports are critical protective factors for girls, but are absent for many, resulting in behaviors that drive girls into the juvenile justice system.

For example, school failure is common among boys and girls in the juvenile justice system. Low-performing schools and policies that rely heavily on school exclusion can lead to school disengagement, poor relationships with teachers and peers, and truancy.<sup>155</sup> School disengagement is also associated with trauma for girls.<sup>156</sup> Schools may actively punish behaviors stemming from trauma, directly pushing girls out rather than becoming places of support and safety. Girls’ school-based behavior is connected to other aspects of their lives—girls who have poor peer relationships may fight and underachieve in school, leading to truancy and school-based offenses, and girls with inadequate support at home are more likely to underachieve in school.<sup>157</sup>

Girls who live in dangerous and unhealthy environments often have high physical and mental health care needs. Environments that do not provide adequate access to quality health care and mental health support set the stage for behaviors that drive girls into the juvenile justice system. While many more high-risk girls are now eligible for Medicaid as a result of the Affordable Care Act, system-involved girls are often from communities with limited access to health care, and many of their behaviors carry health risks. Sex at a young age can have adverse health consequences—rates of STDs among girls in the juvenile justice system are higher than for their non-system-involved peers<sup>158</sup>—and lead to health challenges associated with pregnancy and parenting.<sup>159</sup> Additionally, girls’ experiences of trauma lead directly to many adverse health and mental health consequences. Substance use is a coping mechanism for girls who have experienced trauma and can become a direct path into the juvenile justice system. Residential instability associated with child welfare or juvenile justice system involvement can further challenge continuity of health care and exacerbate the attendant negative effects.

Unhealthy relationships, loss of agency and control, and failed social supports all play important, interconnected roles in driving girls’ behavior—and they often lead to behavior that is undesirable or troublesome to their families, communities, and society. However, in the trajectory from traumatic social contexts, to girls’ behavior, to juvenile justice involvement, how society and systems choose to respond is both pivotal and within our control. Crafting developmentally appropriate, supportive responses is key to changing the paths girls take, and to improving their future outcomes.

## GIRLS AND RUNNING AWAY: A PORTRAIT OF THE IMPACT OF SOCIAL CONTEXTS ON BEHAVIOR

Running away is a status offense often associated with girls and is especially illustrative of how dangerous and unhealthy social contexts can influence girls' behavior and lead in turn to juvenile justice system involvement. According to the National Runaway Safeline, in 2014, 70 percent of over 15,000 calls they received from runaway and homeless youth were from girls.<sup>160</sup> Three-year trends showed a 48 percent increase in calls from transgender youth.<sup>161</sup> Girls accounted for 53 percent of runaway cases in 2011, the only status offense category for which girls represent a greater proportion of cases than boys.<sup>162</sup>

Girls are particularly vulnerable to family conflict and abuse, which are key risk factors for running away.<sup>163</sup> Running away can become a coping mechanism for girls, a way they attempt to escape difficult family or social situations. Girls who run away are at risk of many negative consequences, including disconnection from school/poor educational outcomes, substance use, and especially sexual victimization.<sup>164</sup> Because of these risks, girls who run away may actually be more likely to be picked up by police and detained by judges who are trying to prevent them from being victimized. Likewise, in an effort to protect girls, legislatures may be reluctant to remove judges' power to detain youth charged with status offenses for violating a valid court order (referred to as the "VCO exception"). Indeed, some states prohibit use of the VCO exception for all status offenses except running away (e.g., Kansas, North Carolina).<sup>165</sup>

However, some states are moving toward a more developmentally appropriate response to girls who run away. Recognizing that detention for running away criminalizes status offenses and violates the intent of the JJDPa, these responses focus instead on implementing solutions targeted at the specific factors driving girls to run.

- **Assessment** is the first step toward crafting a more developmentally appropriate response to running away—understanding the social contexts causing girls to run and the specific characteristics of girls who run away in a given jurisdiction. Detention is almost never the answer and use of warrants should be narrowly applied when girls violate the law by failing to appear in court. Some states, such as Massachusetts, have explicitly extended legislative protections against arrest and detention to all status offenses, including running away.<sup>166</sup>
- **Outreach and family engagement**, rather than juvenile justice interventions, are generally more effective responses to girls who run away. For girls who run away in order to escape family conflict, social services in their communities can help; girls may leave home, but they often remain in their communities. In these cases, community outreach (through use of street workers, for example) and identification of kin or another family with whom the girl can stay while family disputes are resolved can be an effective response.
- **Brief respite care** has also been found to be effective to diffuse family conflict and prevent running away. Respite care programs in Boston, San Francisco, and Spokane, Washington have been cited as models that offer a cooling-off period, a thorough assessment of youth and families, a plan for family reunification, and aftercare.<sup>167</sup> Short-term, non-secure runaway shelters or reception centers that triage cases and connect girls and their families to services can help girls in crisis and provide counseling, diagnostic services, job training, parent education, and referrals for additional services.<sup>168</sup>



## B. The Equity Argument: Structural Inequality Sweeps Girls into Justice Systems that Fail to Support Them

Girls' social contexts, trauma, and the ways in which their responses are criminalized and drive them into the justice system present compelling reasons to focus on girls specifically. Another primary argument for focusing on girls lies in principles of equity—the same principles behind the JJDP's mandate that states address racial and ethnic disparities in their juvenile justice systems. Equity for girls in the juvenile justice system means a system designed to fairly and meaningfully address the circumstances of individual girls as well as the collective concerns of girls as a group. It does not mean replicating the same system that exists for boys, particularly when that system is all too often overly punitive and ineffective. It does mean creating systems structured with an understanding of and respect for gender and individual differences.

A focus on equity for girls in the juvenile justice system began in the 1980s, when Meda Chesney-Lind described as “gender-bias” the structures and practices that allowed girls accused of status offenses to be “boot-strapped” into the delinquency system disproportionately to boys.<sup>169</sup> By detaining girls for violations of status offense conditions, she noted, systems were punishing girls for understandable responses to sexism and violence against girls and women—reframing these longstanding social problems as the fault of the victim. Her critique was structural and feminist and focused on law and system decision-making.

Beginning in the 1990s, this structural focus shifted when Congress, the federal Office of Juvenile Justice and Delinquency Prevention, and states re-framed “gender-bias” as a lack of appropriate “gender-specific” services. While there was and continues to be a lack of services tailored to girls, this narrower focus on program equity moved the conversation away from broad reforms needed in order to remedy structural inequality—such as those highlighted in this report and those that are central to the national conversation about racial and ethnic disparities—to girl-focused program design and resources. In 1993, through its Equal Access Law, Oregon was the first state to grant girls equal access to services, treatment, and facilities operated by state agencies. This law became a model for other states: as of early 2015, 18 other states had similar laws requiring programming to be gender-responsive and/or resources to be allocated equitably to girls in the juvenile justice system. However, the breadth of these laws varies: some are focused on discrete parts of the system, such as community programming, but don't cover all programming for girls at all stages of the system.

Gender parity laws, while a step in the right direction, have not been a panacea for girls in the justice system; girls still face deep gender bias in system programming, decision-making, and processing. However, the focus on gender equity in programming has led to a set of guiding principles for systems and programs seeking to design services in a way that is responsive to girls' development. These “gender-responsive” principles are also consistent with more recent literature on trauma-informed treatment. Although principles of gender-responsive and trauma-informed treatment and programming vary somewhat, they can be broadly classified as having three key elements:

1. Safety, both physical and psychological;
2. Focus on relationships; and
3. Shared power with girls and across systems.

Unfortunately, despite these principles serving as guidelines for programs and systems, research on evidence-based practices and programming for girls remains lacking, and girl-focused adaptation of large-scale juvenile justice system reforms is rarely even considered.

Most significantly for girls, the structural inequality embedded in the juvenile justice process remains remarkably durable. Moreover, the equity argument becomes more compelling as our understanding of the complexity of girls' layers of identity grows and research about the ways system decisions and processes affect different populations of girls improves (see sidebar, pp. 22-23). Advocates continue to push for broad, system-level reform for girls that is slow in the making, in some cases using legal challenges based on equal protection and other equity-based theories. Some cases have led to settlement agreements in favor of girls, and evolving judicial recognition of adolescent development as a legal factor suggests new arguments. However, to date many cases have been unsuccessful in court due to the high bar for proof and difficulties showing intent to discriminate (see sidebar, pp. 32-34).<sup>170</sup>

Given the deeper understanding today of the ways in which cumulative disadvantage, layers of identity, and historical trauma—all particularly pertinent to girls—can influence individuals' behaviors and decision-making, Chesney-Lind's gender bias critique is even more relevant. Moreover, given systems' lack of progress in achieving positive outcomes for girls, the equity argument for system-level reform remains persuasive.

## USING LITIGATION TO ACHIEVE EQUITY FOR GIRLS

Attorneys have used legal arguments to pursue equitable treatment and improved conditions for girls in the juvenile justice system. Arguments have been based on the Americans with Disabilities Act (ADA), Title IX, equal protection clauses of both federal and state constitutions, the Due Process Clause of the Fifth and Fourteenth amendments, and the Eighth Amendment. Additionally, the U.S. Department of Justice (DOJ) has used the Civil Rights of Institutionalized Persons Act (CRIPA) and Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 as a basis to investigate facility conditions, negotiate change, and litigate if negotiations are unsuccessful. Some of these challenges have successfully led to improved treatment and conditions for girls, while others continue to face legal hurdles in court.



## LITIGATION STRATEGIES:

**ADA** – Title II of the ADA and the Department of Justice’s ADA regulations require that public schools provide students with disabilities with educational opportunities that are equal to those provided to other students, and educate students with disabilities in the most integrated setting appropriate to their needs, making reasonable modifications to programming rather than simply segregating them from students without disabilities.

### *Results for Girls:*

- Girls with mental health disabilities have used these mandates to argue against school policies and practices that subject them to high rates of suspension, expulsion, and arrest, as well as placement in alternative schools where expectations and academic achievement are low and discipline—including physical restraints and arrest—is high. However, before initiating an ADA case, students with disabilities must exhaust administrative remedies under the IDEA (Individuals with Disabilities Education Act), which can be challenging and time consuming.<sup>171</sup>
- Arguments based on the ADA may also be effective against schools within juvenile justice systems that do not provide equal and effective education to youth with disabilities. Challenges have been pursued in Alabama, Massachusetts, Michigan, Mississippi, and Texas, and federal agency investigations have resulted in consent agreements in several cases.<sup>172</sup>

**Title IX** – Title IX prohibits discrimination on the basis of sex in any federally-funded educational program or activity.

### *Results for Girls:*

- Girls have used Title IX as a basis for challenges to situations where they do not receive substantially the same programming as similarly situated boys. However, courts to date have defined “program or activity” broadly—as an entire juvenile justice system—allowing different “subparts” of systems to serve girls and boys in significantly different ways.<sup>173</sup>

- LBQ/GNCT girls are clearly protected by Title IX. Guidance from the Department of Education’s Office of Civil Rights (OCR) states that “Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation.”<sup>174</sup>

**Equal Protection** – The federal equal protection clause prohibits states from denying any person equal protection of the laws.

### *Results for Girls:*

- Girls have used equal protection arguments to challenge dispositions that are more restrictive than those of similarly situated boys, alleging that the state does not have more appropriate, less restrictive options for girls as it does for boys. Equal protection arguments have also been used when a girl does not receive substantially the same programming as a similarly situated boy would.
- To date, courts have not ruled in favor of girls. Some courts state that the government has a substantial interest in having different options for boys because of the greater number of boys in the juvenile justice system.<sup>175</sup> A high bar for proof is also a barrier for girls: courts require a demonstration of intent to discriminate against girls, not just discriminatory impact.<sup>176</sup> Furthermore, individual girls may be defined out of the protected class if courts find the differing placement options for girls and boys had no actual bearing on the placement or services decision challenged in the specific case at hand.<sup>177</sup>
- While courts may not have ruled in girls’ favor yet, equal protection arguments have nonetheless led to significant settlement agreements benefiting girls in some states.<sup>178</sup>

**Due Process Clause** – The Fifth and Fourteenth amendments to the U.S. Constitution prohibit depriving a person of life, liberty, or property without due process of law. Due process protections govern the standards for conditions of confinement for youth in juvenile facilities.<sup>179</sup>

***Results for Girls:***

- In 2009, a federal investigation of two girls' facilities in New York (Lansing Residential Center and Tryon Girls Residential Center) found due process violations related to use of excessive force, inappropriate restraints, and failure to provide adequate mental health care and treatment. The investigation resulted in a settlement agreement.<sup>180</sup>
- A 2003-04 federal investigation of three youth facilities in Arizona—including the Black Canyon School for girls—found major violations of girls' due process rights related to facility conditions. The investigation led to a consent decree with DOJ.<sup>181</sup>
- At the Baltimore City Detention Center, a DOJ investigation in 2000-2001 found violations of girls' due process rights related to mental health and medical care, sanitation, exercise, fire safety, and separation from adults. The State of Maryland consequently entered into a memorandum of agreement with DOJ to resolve the violations.<sup>182</sup>
- Due process arguments have been used successfully to protect LBQ/GNCT girls. A Hawaii court ruled in favor of a lesbian girl and a transgender girl who were subject to verbal and physical abuse based on their sexuality and gender identity, and long-term isolation to allegedly protect them from other youth. The court found that the facility had a culture of abuse and no policies or procedures in place to protect lesbian, gay, bisexual, or transgender youth.<sup>183</sup>

**Eighth Amendment** – The Eighth Amendment to the U.S. Constitution prohibits cruel and unusual punishment. Some courts have held that the Eighth Amendment applies to adjudicated youth in juvenile facilities. Other courts have held that although the Eighth Amendment does not apply, the Fourteenth Amendment provides protections similar to or even more extensive than those under the Eighth Amendment.

***Results for Girls:***

- In 2007, a DOJ investigation led to a consent decree with the Columbia Training School in Mississippi, a girls' facility where girls were shackled for twelve hours a day for eight days to one month, hog-tied with chains, physically and sexually assaulted, isolated in windowless rooms, and denied adequate mental health treatment. Ultimately, the legislature closed the facility after the filing of a class action lawsuit alleging violations of the rights of girls with mental illness under the Eighth and Fourteenth amendments.<sup>184</sup>

**CRIPA AND SECTION 14141:**

**CRIPA and Section 14141** – These federal laws give the U.S. Attorney General authority to investigate cases involving possible violations of the federal rights of confined individuals.

***Results for Girls:***

- CRIPA and Section 14141 were used to investigate conditions at the Columbia Training School in Mississippi, the Black Canyon School in Arizona, the Lansing Residential Center for girls and Tryon Girls Residential Center in New York, and the Women's Detention Center at the Baltimore City Detention Center in Maryland. All investigations found violations of girls' constitutional and/or federal statutory rights and led to settlements and/or closure of the facilities.



## v. Using a Developmental Approach to Meet Girls' Needs and Reduce Justice System Involvement: System Reform Recommendations

### A. Why a Developmental Approach Works for Girls

As discussed above, the juvenile justice system is currently structured in such a way that girls are criminalized for environmentally-driven behaviors: traumatic social contexts influence girls to behave in ways that become paths into an overly-punitive and deficit-focused juvenile justice system. The process by which behaviors stemming from traumatic social contexts lead girls into the juvenile justice system has three main components:

1. Girls exhibit challenging behavior connected to their experiences of trauma—exposure to abuse, violence, and deprivation.
2. Blunt system responses result in criminalization and juvenile justice referrals for girls' behaviors—such as possession of drugs, domestic battery in their homes, or running away from placement—or girls become involved in other social services systems that fail them and then refer them to the juvenile justice system.
3. Once girls enter the justice system, misguided processes pull girls deeper into a system that is not built to help, heal, or respond to girls' developmental needs, but is focused on deficits and often actually worsens girls' situations.

However, an increasing number of jurisdictions are beginning to recognize the errors in this process and are making changes to adopt a developmental approach to juvenile justice system reforms. A developmental approach is the natural outgrowth of an increasing understanding that both developmentally and neurologically, adolescence is a time of change in ways that directly impact youth behavior associated with crime. The U.S. Supreme Court has been a leader in acknowledging the appropriateness of a developmental approach; four cases over the past ten years have prohibited certain harsh punishments and processing of youth under 18 in recognition of their more limited culpability given their age and stage of development, and their capacity for change.<sup>185</sup> Because adolescence is a profound time of change and growth, an emphasis on supporting healthy social contexts in order to promote healthy development makes complete sense. Additionally, because girls' paths into the juvenile justice system are so closely linked to their social contexts, the developmental approach's emphasis on supporting healthy social contexts fits girls especially well.

In 2013, the National Research Council (NRC) described a developmental approach to juvenile justice reform that provides a clear path for systems.<sup>186</sup> The NRC identified seven hallmarks of a developmental approach to juvenile justice:

- Accountability without criminalization;
- Alternatives to justice system involvement;
- Individualized response based on assessment of needs and risks;
- Confinement only when necessary for public safety;
- A genuine commitment to fairness;
- Sensitivity to disparate treatment; and
- Family engagement.<sup>187</sup>

In the last decade there have been a number of widely replicated system reform efforts that feature many of these developmental hallmarks—the Crossover Youth Practice Model, the Juvenile Detention Alternatives Initiative, Models for Change, wraparound services with behavioral health systems, and probation case management using positive youth development are a few. These initiatives, and others like them, help prevent youth from entering the juvenile justice system unnecessarily and improve their family and community environments for the future. However, in order to be effective and sustainable for girls on a systemic level, these broad reforms must be approached with an intentional gender focus. Girl-focused reforms must be woven into current developmentally-focused system-level juvenile justice reform, rather than treated as discrete, isolated efforts; girls reforms that are isolated from larger juvenile justice reforms have tended to be underfunded and short-lived.<sup>188</sup>





## B. System Reform Recommendations, Examples, and Opportunities

Only through an intentional gender focus, an informed understanding of the problems facing girls in each jurisdiction, data-driven analysis of the impact of each reform on girls, and intentional and ongoing gender-responsive modifications will girls move off the sidelines of reform and benefit from real change. Toward this end, all developmental reforms at each point in the system must involve the following general steps:

**1. Assess the Impact of Decisions on Girls:** Gather and analyze data to understand both how girls are affected by system decisions and the dynamics of the behavior that is the source of system involvement; determine whether the girl should be in the juvenile justice system at all or whether there are “off-ramps” to divert her into community-based programs, child welfare, health systems, or other solutions.

**2. Map the Process:** Examine how each decision point affects girls and map their movement through the system; scrutinize statutes and policies behind system decisions to determine their intent and fit for girls.

**3. Imagine Change:** Conceptualize an equitable system tailored to the needs of girls—with community-based, gender- and culturally-responsive, and trauma-informed programming that promotes healthy relationships, gives girls agency over their lives, and shores up their social supports—rather than defaulting to traditional systems.

Within this general frame, the following specific recommendations include developmentally-focused, system-level reforms with the most potential to produce better outcomes for girls. Some recommended reforms have already been implemented with success for girls in certain jurisdictions, and examples of these successes are included (note that the lists of examples for reforms are not comprehensive). Other reform recommendations have not been applied systemically to benefit girls, but present particularly promising opportunities to target reforms at girls, given their particular social contexts and the behaviors that drive them into the justice system.

## Recommendation 1

### Stop Criminalizing Behavior Caused by Damaging Environments that Are Out of Girls' Control

#### Decriminalize Offenses Common to Girls Living in Traumatic Social Contexts

To have greatest impact on girls, states should decriminalize behaviors that are particularly common to girls and most linked to trauma—reducing the number of offenses that can lead to arrest and detention of girls, and encouraging police to handle girl misbehavior through alternative means.

#### *Examples and Opportunities:*

- **Decriminalize “prostitution” for minors.** Eleven states have decriminalized “prostitution” for minors, recognizing that minors charged with the offense have been exploited and victimized, that it is an indication of social service needs, and that youth should not be held responsible due to their age and development. Decriminalization of “prostitution” also resolves paradoxes in laws that allow girls below the age of consent to be charged with intentional crimes related to “prostitution.”
- **Decriminalize minor school-based offenses commonly charged to girls, such as verbally disruptive behavior.** In 2011, Connecticut’s Judicial Branch adopted a policy to screen all arrests of youth coming to court for minor school-based offenses, rejecting those involving typical adolescent behavior, and making it clear that schools should handle non-criminal behavior.<sup>189</sup> A bill to decriminalize verbally disruptive behavior in schools is currently pending in Massachusetts. The bill would require schools to issue two written warnings during the current school year before a student’s misconduct could meet the legal threshold of being “willful” and to provide behavioral interventions for disruptive students.<sup>190</sup> Furthermore, Delaware recently gave schools discretion to handle minor offenses; prior to the change, schools were required to report all offenses, no matter how minor, to law enforcement.<sup>191</sup>
- **Reduce system involvement for misdemeanors.** As part of a sweeping reform bill passed in Georgia in 2013, the state now prohibits detention of youth who commit misdemeanors unless they have been adjudicated for three other delinquency offenses, one of which was a felony.<sup>192</sup> In Maryland, out-of-home placement is prohibited for youth adjudicated for certain minor offenses, including prostitution, theft, possession of marijuana, and disturbing the peace (the law includes an exception for youth who have been previously adjudicated for three or more offenses).<sup>193</sup> South Dakota recently enacted broad juvenile justice legislation creating a presumption for a probation disposition in all non-person juvenile cases.<sup>194</sup>
- **Prohibit juvenile justice involvement for curfew and other ordinance violations.** Massachusetts’ Supreme Judicial Court struck down a curfew ordinance that carried the possibility of commitment to the juvenile justice system, finding it violated the youth’s freedom of movement and essentially criminalized status offenses, contrary to federal and Massachusetts law.<sup>195</sup> Nevada youth who violate curfews or loitering ordinances may no longer be adjudicated as delinquent, but must instead be treated as children in need of supervision.<sup>196</sup>
- **Offer police alternatives to arrest.** Some states have created alternative “reception centers” to help police handle minor offenses, such as two girls fighting, without taking youth to the police department or detaining them. Multnomah County, Oregon established a reception center in 1998, which serves youth aged 11 to 17 who have been arrested for a status offense, non-person misdemeanor, or city ordinance, screening them for health, education, or family needs and providing family counseling if warranted. In 2007, Pima County, Arizona opened the Domestic Violence Alternative Center (DVAC), a reception center focused on diverting cases of home-based assault and battery upon first police contact by offering 24/7 crisis intervention and 23-hour respite care, resulting in fewer children being charged with and detained for domestic violence.<sup>197</sup>

## Train Law Enforcement to Respond Supportively to Girls in Need and Avoid Arrest

Changing the way law enforcement police girl behavior and training officers on the specific needs of girls can instill support for girls at the front door of the system and ultimately reduce arrest and detention of girls.

*Examples and Opportunities:*

- **Shift policing practices to treat trafficked girls as victims, not criminals.** Dallas' High Risk Victims and Trafficking Team takes a victim-centered approach to girls at high risk, using trauma-informed interviewing, employing a targeted investigative model because of the rarity of self-reporting, and making an effort to place girls in a staff-secure shelter rather than detention. The unit explicitly recognizes running away as a behavior that can often lead to girls being trafficked.<sup>198</sup>
- **Increase girl-specific training for police officers.** Effective training on girls would address their social contexts, how certain behaviors are natural reactions to those contexts, and why the juvenile justice response is rarely best.<sup>199</sup> Texas now requires all correctional officers, juvenile probation officers, supervision officers, and parole officers to receive specialized training in trauma-informed care of youth.<sup>200</sup> However, while many police departments and patrol officers recognize the need for girl-specific training, police departments in general have been slow to integrate training on girls into their overall curricula, partly due to a lack of girl-specific curricula.

## Use a Child Welfare—not Juvenile Justice—Approach

Although for many justice system-involved girls the child welfare system feels indistinguishable from the juvenile justice system, child welfare approaches and resources are often a better fit for girls whose “delinquency” is connected to trauma, and offer some protection against the many collateral consequences of delinquency findings and system involvement.

*Examples and Opportunities:*

- **Retain “crossover” girls in the child welfare system whenever possible.** The Crossover Youth Practice Model—first implemented in 2013 in 13 jurisdictions and now in almost 90—provides one template for retaining youth in the child welfare system and intentionally reducing juvenile justice involvement for youth with histories in the child welfare system and whose offenses are minor or related to their child welfare histories. The model also aims to reduce the number of youth entering and reentering care and the length of out-of-home placement.<sup>201</sup> However, to maximize impact for girls, practice models for crossover and dually-involved youth should target reforms to child welfare issues predominant among girls, including behavioral health, running away, sexual exploitation, and intra-family chaos.
- **Use front-end screening to promptly identify crossover girls.** In San Diego, California, juvenile probation officers have access to the child welfare case management system in order to facilitate early identification of crossover youth and immediate communication between agencies. Law enforcement officers responding to complaints are also trained to identify crossover youth.<sup>202</sup>
- **Collaborate with systems that can address girls' needs.** The Child Welfare and Systems Integration Initiative is one example of a model that addresses structural barriers to success by focusing on improved integration and coordination of services for youth.<sup>203</sup> Behavioral health systems are critical collaborators in the Crossover Youth Practice Model, helping to ensure that wraparound services, a promising practice for girls, can be provided to crossover youth and behavioral health issues can be properly addressed.<sup>204</sup> In Lehigh County, Pennsylvania, a longstanding collaboration between probation and child welfare helps ensure thorough planning and implementation, cross-systems training, and continuous data collection and evaluation.<sup>205</sup>

- **Make use of Title IV-E funding to expand resources for justice-involved girls.** Federal funding to states through Title IV-E of the Social Security Act provides a mechanism to promote family engagement, permanency and other strategies which may originate in child welfare, but which apply to, and show promise for, justice-involved girls. States are eligible for Title IV-E reimbursement for non-secure out-of-home care for justice-involved youth, which is an additional incentive to utilize effective foster care as a juvenile justice disposition. The 2014 Preventing Sex Trafficking and Strengthening Families Act (see sidebar, pp. 43-44) gives child welfare systems the lead in responses to trafficking, making child welfare funding available for services for trafficked girls.
- **Use Multi-Disciplinary Teams (MDTs) to plan holistically for justice-involved girls.** MDTs, in which human and behavioral health services and judicial representatives relevant to the issue presented by the girl meet to develop a cross-system case plan, are an important tool to plan comprehensively for justice-involved youth and reduce justice system involvement by accessing child welfare and behavioral health resources for girls. However, MDTs have the potential to net-widen, pushing girls into the system to receive services when the underlying delinquency case has little merit, and can put girls' privacy at risk or put girls in further legal jeopardy by sharing sensitive information.
- **Ensure aftercare/reentry planning to encourage successful transitions for girls.** Aftercare planning can help provide girls with stable housing, education, vocational training, employment assistance, and behavioral/mental health services. Arkansas created a juvenile ombudsman office by statute to advocate for youth and facilitate transitions, and additional laws in the state provide guidance on reentry and aftercare planning for crossover youth by clarifying agency responsibilities and procedures.<sup>206</sup>

## Stop Punishing Girls for Living in Chaotic and Violent Homes by Reforming Mandatory and Pro-Arrest Domestic Violence Laws

An unintended consequence of mandatory and pro-arrest laws designed for adult intimate partner violence is the arrest of girls caught up in intra-family violence. Given the differing dynamics of domestic violence cases involving adults versus youth, and males versus females, a developmental and not a criminal justice response is most appropriate.

### *Examples and Opportunities:*

- **Assess the juvenile justice impact of domestic violence laws and responses on girls.** There are significant differences between adults and adolescents involved in domestic violence (see sidebar, p. 20), and current policies should be assessed to determine how they affect girls differently than men and women. The impact on various groups of girls, such as LBQ/GNCT girls, should be given special attention.
- **Amend mandatory and pro-arrest laws to include exceptions for youth involved in intra-family violence.** A handful of state domestic violence statutes contain minimum age requirements for arrest or require law enforcement to offer families services before arrest or detention (e.g., Arizona, Idaho, Nevada, South Dakota, Washington, and Wisconsin). In Alabama, an attorney general's opinion narrowed the scope of the mandatory arrest law, allowing discretion in the case of minors and explicitly stating that the law was not intended for minors in intra-family disputes.<sup>207</sup>
- **Divert cases of adolescent girls involved in domestic violence.** Existing examples of diversion include crisis intervention, family engagement, temporary respite care, and mental health screening when needed.<sup>208</sup> These responses must be evaluated—with data analysis by gender, cross-referenced with race and ethnicity—to allow systems to differentiate diversion models to fit the particular needs of girls and patterns of girl offending.

### Treat Sexually Exploited Girls as Victims by Decriminalizing “Prostitution” for Minors and Diverting Sexually Exploited Girls from the Juvenile Justice System

While the total number of girls who are victims of domestic sexual exploitation and sex trafficking is unknown, it is clear that the vast majority—76 percent—of arrests of youth for prostitution involve girls.<sup>209</sup> The federal government offers some protections for youth who are trafficked (see sidebar, pp. 43-44); these protections are a start but states must take additional measures to extend protections for girls in a meaningful and intentional way.

#### *Examples and Opportunities:*

- **Treat girls involved with “prostitution” as victims, not criminals.** Some states have enacted measures to protect youth involved in “prostitution”: between 2010 and 2014, 20 states passed “safe harbor” laws designed to give girls a safe exit from trafficking. However, these laws do not provide blanket protections for girls due to age limits or failure to decriminalize “prostitution” (see sidebar, pp. 43-44).
- **Use screening tools to determine whether girls are victims of sex trafficking.** Recently a number of screening tools have been developed for use by child welfare professionals, police, or detention personnel. If the tool indicates a girl is a victim, she can be diverted out of the juvenile justice system and offered services to fit her needs. Examples of the tools include the Trafficking Victim Identification Tool, Portland State University CSEC Screening Interview, and the CANS-SCE.
- **Ensure safe harbor laws do not net-widen.** Jurisdictions must first define minor sex trafficking or commercial sexual exploitation for the purpose of data collection and in order to develop a targeted response. The problem definition should be clear and not net-widen—labeling “survival sex”<sup>¶</sup> as trafficking, for example, can lead to over-intervention and dilute the response so it is ineffective for those girls with the greatest need.
- **Shift primary responsibility for responding to trafficking to the child welfare system and community supports, building on new federal law.**<sup>210</sup> Jurisdictions have approached the issue of trafficking through multidisciplinary collaborations with agreements not to arrest exploited girls, but instead to concentrate services through the child welfare system (e.g., Suffolk County, Massachusetts’ SEEN Coalition). While the research is too new to identify evidence-based practices, this multi-disciplinary, survivor-led, community-based approach has been most promising (e.g., My Life My Choice).<sup>211</sup>
- **Adjust local responses to trafficking as needed.** Determining what is needed and effective in every jurisdiction is a process and states must evaluate their efforts and make changes as needed. Minnesota passed a narrower safe harbor law in 2011, but a legislatively-mandated working group found the legislation didn’t go far enough to protect trafficked youth.<sup>212</sup> Minnesota expanded the legislation in 2013 and 2014, raising the age for decriminalization of prostitution to 17, making services available for all youth under age 18, and allocating funding for housing and trauma-informed services.<sup>213</sup> Additionally, in 2010, Washington State strengthened its safe harbor law: prior to the change, diversion of minors charged with prostitution was discretionary; now, prosecutors are required to divert cases involving minors for the first offense (diversion remains discretionary for subsequent offenses).<sup>214</sup>

¶ There is a range of terminology currently used to describe minors trading sex; often the terminology used reflects a decision about how the author is conceptualizing the issue and response. Some of the phrases used are: survival sex, commercial sexual exploitation of minors (CSEC), domestic minor sex trafficking, and sex work.

## FEDERAL AND STATE RESPONSES TO DOMESTIC SEX TRAFFICKING OF MINORS

The federal Trafficking Victims Protection Act of 2000 (TVPA) and subsequent reauthorizations make human trafficking a federal crime and provide protections for girls under 18. The recent 2014 Preventing Sex Trafficking and Strengthening Families Act details ways state child welfare systems should document the incidence of sex trafficking of minors and take the lead in developing a collaborative response. State child welfare agencies are required to develop policies and procedures to identify and document youth who are victims or at risk of becoming victims of trafficking, and to develop appropriate responses. These mandates are in line with a developmental approach to girls who are trafficked, examining the contexts leading girls to become trafficked and crafting child welfare-focused responses that address girls' needs rather than relying on juvenile justice interventions that criminalize these girls.

States are beginning to heed this approach. For example, California passed legislation in 2014 that amended state law to clarify that “commercially sexually exploited children” can be served by child welfare agencies, giving counties an option other than the juvenile justice system.<sup>215</sup> California’s Department of Social Services recently issued guidance for taking an interagency approach to commercially sexually exploited children and instructions for accessing funding for that approach.<sup>216</sup> Other state legislatures are also beginning to suggest taking a child welfare approach to trafficking of minors, but not requiring it. While these efforts fall short of the “safe harbor” approach discussed below, they do begin to shape a policy favoring a child welfare response.

Likewise, through safe harbor laws, states can and are shifting their approaches to youth “prostitution” and trafficking away from criminalization and toward interventions that divert girls from justice system involvement. However, current laws vary in their detail and breadth. Of the 20 states with safe harbor laws, only 11 have effectively decriminalized prostitution-related offenses for minors, and in many of those cases the decriminalization is narrowly applied—Texas’ law applies only to youth under age 13, and in Connecticut and Michigan the law applies only to youth under age 15. The remaining nine states allow youth to be charged with prostitution, but include an option or requirement to divert youth to the child welfare or status offense systems.

In the majority of states, there is still neither decriminalization nor diversion of these cases, and girls who are old enough to be charged in juvenile court generally can be charged with prostitution. States considering safe harbor laws—and states that have already enacted them—must ensure that measures are based on accurate and gender-sensitive assessments of the real scope of the issue and how to best to address it. An analysis based on early, limited data cautions that safe harbor laws may not be reducing arrests as expected, given the unique difficulties of intervening with trafficked girls and the policing practice changes necessary to fully comply with the laws.<sup>217</sup>

## Survey of State Safe Harbor Laws

Year Effective	State	Law/Case	Decriminalized/ Immunity/ Defense	Diversion	Maximum Age
2003, 2015	Michigan	Mich. Comp. Laws Ann. § 750.448 (2003) (decriminalization), H.B. 5012, H.B. 5026, 2014 (diversion)	X	X	15
2010	Connecticut	S.B. 153, 2010	X		15
2010	Illinois	H.B. 6462, 2010	X	X	17
2010	New York	S. 3175C, 2008		X	15
2010	Texas	<i>In re B.W.</i> , 313 S.W.3d 818, 821 (Tex. 2010) (decriminalization), S.B. 92, 2013 (diversion)	X	X	13
2010	Washington	S.B. 6476, 2010		X	17
2011	Massachusetts	H. 3483, H. 3808, 2011		X	17
2011	Tennessee	S.B. 0064, 2011	X		17
2011	Vermont	S.B. 272, 2010		X	17
2012	Louisiana	H.B. 49, 2012	X	X	17
2012	Ohio	H.B. 262, 2012		X	17
2013	Arkansas	S.B. 869, S.B. 242, H.B. 1203, 2013		X	15
2013	Florida	H.B. 99, 2012		X	17
2013	Kansas	Senate Substitute for H.B. 2034, 2013	X	X	17
2013	Kentucky	H.B. 3, 2013	X		17
2013	Nebraska	L.B. 255, 2013		X	17
2013	New Jersey	A. 3352, 2013	X		17
2013	North Carolina	S.B. 683, 2013	X		17
2014	Minnesota	S.F. 1, 2011	X	X	17
2014	Utah	H.B. 254 Substitute		X	17

### Prohibit Detention of Girls for Status Offenses and Eliminate the Valid Court Order (VCO) Exception

The JJDPa clearly prohibits detention of youth for status offenses, but the VCO exception has essentially swallowed that rule. Detaining girls whose behavior doesn't even rise to the level of being classified as delinquent is starkly out of line with a developmental approach, a denial of the social contexts that drive girls to commit status offenses, and contrary to the increasing understanding that such girls frequently experience great harm in justice-based interventions, especially detention.

#### *Examples and Opportunities:*

- **Eliminate the VCO exception through reauthorization of the JJDPa.** Advocates have been pushing to amend the JJDPa since it came up for reauthorization in 2007, and are strongly urging removal of the VCO exception. On April 30, 2015 the bi-partisan Juvenile Justice and Delinquency Prevention Reauthorization Act of 2015 was introduced in the Senate, proposing a phase-out of the VCO exception over three years.
- **Prohibit use of the VCO exception at the state level.** In 2014, 23 states did not make use of the VCO exception.<sup>218</sup> Moreover, according to a recent survey conducted by the Coalition for Juvenile Justice, 17 states actively prohibit use of the VCO exception to place youth who commit status offenses in secure detention.<sup>219</sup>
- **Handle status offenses informally.** Some states provide incentives in their status offense laws for informal resolution of cases, requiring schools to intervene and assess truant youth for learning disabilities before filing in court, for example, or prohibiting the arrest, handcuffing, police transport, or secure confinement of runaway youth (e.g., Massachusetts).<sup>220</sup>
- **Serve girls who commit status offenses through a family-focused approach.** States using this approach divert youth from the justice system, link them and their families to community-based services, and prohibit the use of detention as a sanction (e.g., Connecticut, Florida, Iowa, Massachusetts, New Hampshire, New Mexico, and Vermont).<sup>221</sup> However, some of these states still allow youth to be placed out of the home in a non-secure facility, group home, or foster home.



## Revise School Policies to Support Girls in Need, Limiting School-Based Arrests and Court Referrals

To stem the flow of girls from schools into the justice system, schools must change the way they approach girl misbehavior in school, limiting the number of issues that are treated as crimes or that lead to court referral, and examining the developmental and social needs of girls.

### *Examples and Opportunities:*

- **Eliminate zero-tolerance policies.** Many states now recognize that zero-tolerance policies lead to poor outcomes for youth and do not improve school safety.<sup>222</sup> Examples of changes to policy include allowing more discretion for school officials handling discipline, graduated responses to infractions and consideration of mitigating factors, requiring schools to handle misbehavior through educational interventions prior to the filing of a delinquency petition, eliminating expulsions for willful defiance, eliminating out-of-school suspensions for truancy, and an increased focus on use of positive behavioral supports instead of punishment.<sup>223</sup>
- **Push back on school referrals through the court system.** Courts can and should take a role in reducing the flow of youth from schools into the juvenile justice system by rejecting referrals from schools that involve minor offenses.<sup>224</sup>
- **Change policies with regard to truancy, a common offense for girls.** Maryland now prohibits suspension or expulsion solely for attendance-related issues<sup>225</sup> and Virginia prohibits suspension for truancy.<sup>226</sup> Colorado allows court involvement in truancy only as a last resort, after schools have exhausted options involving best practices and research-based strategies for intervention.<sup>227</sup> Similarly, Washington State, Connecticut, and Massachusetts have added additional protective procedures for truancy cases—such as required written notification of parents or guardians, examination of special education issues, and use of community- or school-based diversion or truancy prevention programs—to reduce the number of youth who are referred to court.<sup>228</sup>

- **Identify and address policies and practices that fall most heavily on Black girls.** Better collection and reporting of data by race and gender is needed to improve jurisdictions' understanding of the effects of school discipline policies and practices on Black girls, and the contexts driving Black girls' behavior.<sup>229</sup> Because Black girls are targeted for certain behaviors—such as speaking out of turn in school—in a way that white girls and boys are not, schools should increase training of school personnel to better understand their biases and decision-making and more appropriately and positively respond to these behaviors with educational and enrichment programming, counseling, and protective measures.
- **Differentiate responses for girls.** Differentiated responses address the particular issues that lead girls to fail in school, which often leads to justice-involvement. The Middle School Success Project, for example, targeted girls who were in foster care due to child maltreatment as they transitioned into middle school in an effort to prevent future justice-involvement among this high-risk group of girls. The research found that girls who were in foster care performed better academically through middle school and had less aggressive behavior when they had supportive caregivers (particularly mothers) and when they had greater self-regulation; hence those elements were included in the intervention to positive effect.<sup>230</sup>

## Recommendation 2

### Engage Girls' Families throughout the Juvenile Justice Process

Girls' family relationships are central to their healthy development and engaging families in solutions throughout the juvenile justice process is critical. The fact that many girls' families are a source of trauma and many girl offenses are home-based actually underscores the centrality of families to girls' development and success. Ultimately, girls in the justice system return home and their long-term success will hinge in large part on the quality of their family relationships. Viewed through this lens, family engagement for girls is both critical prevention and intervention.

- **Use family engagement strategies to resolve family issues and prevent status and delinquency offenses.** Because the root cause of status offending by girls is often family conflict, successful interventions engage families immediately, focusing on strengths, empowerment, and non-judicial interventions.<sup>231</sup> Family group decision-making, family group conferencing, and family team meetings allow youth and families to take the lead in problem-solving and decision-making. The Girl Family Team Meeting tailors this approach for girls, engaging facilitators with particular expertise in girls' development, helping girls articulate their needs during meetings, and ensuring that families and professionals do not focus only on girls' problem behaviors.<sup>232</sup> Families and facilitators listen to girls in order to learn why they behave as they do, such as running away to escape family chaos, then help girls find alternative ways of meeting their needs.<sup>233</sup>

- **Engage families in diversion programming.**

Effective family engagement can be a key component of diversion. Family team meetings (FTMs) engage youth and families in problem solving and case planning and fit girls well—incorporating gender- and developmentally-responsive elements by building girls' relationships and their sense of agency. FTMs have been used in child welfare and juvenile justice collaborations in many jurisdictions to divert youth out of the formal juvenile justice process.<sup>234</sup> For example, the Crossover Youth Practice Model diverts cases to a FTM model that has been successful for girls—addressing the family context that results in girls' delinquency by both strengthening girls' family relationships and their control over those relationships.

- **Support young mothers in the juvenile justice system by engaging their families.** Motherhood can motivate justice-involved young women to make positive life changes and in many practical ways, those changes are made easier with family support. Housing, childcare, financial, and emotional support essential to young motherhood can all be made easier when families are engaged. At the most basic level, timeframes for permanency under the Adoption and Safe Families Act (ASFA) may result in termination of parental rights for young mothers in the juvenile justice system whose families are not engaged to care for their children while they are incarcerated (see sidebar, p. 25).

## Recommendation 3

### Use Pre-Petition Diversion to Provide “Off-Ramps” from the Formal Justice System for Girls Living in Traumatic Social Contexts

Diversion—long identified as a promising juvenile justice system practice—refers to opportunities to move youth out of the formal juvenile justice process at the front-end: instead of getting mired in the full court process, youth are referred to short-term programs or community services that are targeted to their offense and behavior. Diversion focused on girls’ social contexts and behaviors, like all effective diversion, should be pre-petition, short-term, and offer a realistic opportunity to address the immediate issue raised by the offense—preventing a juvenile record and deeper juvenile justice involvement, and supporting girls’ ongoing development. In most jurisdictions there are opportunities for pre-petition informal and formal diversion of girls that are underutilized.

#### *Examples and Opportunities:*

- **Target diversion at offense categories common to girls.** Targeted diversion for girls should be based on data from system assessment and mapping and focus on behaviors that drive girls into the justice system. For example, some jurisdictions have focused specifically on diverting youth charged with low-level or misdemeanor domestic violence, common charges for girls. Pima County, Arizona, DuPage County, Illinois, and King County, Washington have all implemented systems for diverting such youth, giving priority to keeping youth out of detention, helping youth in crisis, and linking youth and their families to services in a timely way.<sup>235</sup>
- **Expand diversion opportunities for girls through legislation.** Some states use broad juvenile justice statutory reforms to intentionally expand diversion opportunities. Hawaii and Kentucky, for example, both passed sweeping reform bills in 2014 that include provisions to divert youth who commit low-level and status offenses and allow them to avoid formal court processing.<sup>236</sup>
- **Divert girls pre-petition and offer multiple opportunities for diversion.** Statutes or procedural rules often include two to four opportunities for pre-adjudication diversion, including opportunities for diversion pre-petition. Typical statutes give probation or court clerks authority over “informal” diversion at referral before the formal court process begins, or after the initial hearing, but pre-adjudication. These opportunities are often underutilized.
- **Use the civil system to divert girls from formal juvenile justice processing.** Florida’s Miami-Dade County has served 6,000 girls through its model civil citation diversion program since it began in 2007. Instead of being arrested, girls who commit first-time, non-violent misdemeanors are referred to the civil citation program, where they are assessed and provided with a range of interventions. Low-need girls may simply be required to complete community service, while girls with higher needs are referred to community-based programs to address deeper social issues driving their behavior.<sup>237</sup> Because of the program’s success in Miami-Dade County, in 2011 the Florida Legislature voted to establish similar programs across the state, although Miami-Dade’s program remains the most successful at diverting youth from arrest.<sup>238</sup>
- **Ensure that diversion efforts do not net-widen.** As with all juvenile justice programs, diversion programs must be designed and monitored to ensure that they do not net-widen, pulling in girls who would normally just be left alone, thereby actually increasing the number of girls moving into the system. To prevent net-widening from its civil citation program, Miami-Dade County simultaneously runs a prevention program for youth at risk. Officers are trained to use prevention services when appropriate, and girls are not required to enter the system in order to receive needed services.<sup>239</sup>

## Recommendation 4

### Don't Securely Detain Girls for Offenses and Technical Violations that Pose No Public Safety Threat and Are Environmentally-Driven

Because the practices that drive girls into secure detention are some of the most difficult to change—detentions for warrants and technical violations of probation, for example—a consistent and targeted focus on girls is needed to achieve ongoing reductions in their secure detention. These practices impact girls disproportionately because they are triggered by typical behaviors among girls who have experienced trauma, such as running away and rules violations. Additionally, decision-makers widely perceive girls as vulnerable or as having high needs, which influences their decisions to detain in the absence of any perceived alternative.<sup>240</sup>

#### *Examples and Opportunities:*

- **Assess detention utilization for girls.** Data describing girls' entry and movement through detention systems is critical to reforming detention use for girls. Jurisdictions must collect and analyze system data by gender, cross-referenced with race and ethnicity, to identify the triggers (school, family, failed program, child welfare system) or system processes or policies (technical violations of probation, warrants, awaiting post-disposition placement) that result in girls detentions. Data-driven assessments of girls detention utilization should include maps that track the movement of girls through the juvenile justice process to determine, for example, what policies result in detention, and which girls return to detention. Based on this process of assessment and mapping, jurisdictions can target developmental reforms appropriately.
- **Triage girls' cases and avoid detention through short-term respite care or reception centers.** Short-term shelter beds or reception centers can be used to triage girls' cases rather than resorting to detention in a family or interpersonal crisis. In such situations, youth with low-level offenses are brought by law enforcement directly to reception centers for screening and then referred to services that engage them and their families in solutions. When respite is needed, short-term shelters can provide a brief break for families while they receive assistance to resolve the immediate crisis that gave rise to law enforcement involvement (e.g., Multnomah County, Oregon; Pima County, Arizona).
- **Coordinate and collaborate across systems.** Girls, whose behaviors create concerns for their safety, may be detained by judges who feel they have no alternative. However, often alternatives do exist in the community or in other family-serving systems such as child welfare, mental health, or public health. In these complex multi-need cases, interagency planning meetings can expand resources for girls and reduce reliance on detention. Moreover, community-based mental health systems or juvenile court clinics can be used to obtain mental health evaluations and provide mental health services to the many girls whose trauma and mental health needs are driving their behavior.
- **Reduce the length of stay for girls who must be detained.** Girls can linger in detention—both pre- and post-disposition—due to a perceived or actual lack of community-based alternatives and programming. Detailed release and disposition planning conducted by social service advocates with expertise in girls services who are employed by public defenders or probation offices can identify resources and describe a plan for release that will significantly reduce lengths of stay for girls in detention (e.g., Massachusetts; Dallas, Texas; and San Francisco, California).<sup>241</sup>

## THE JUVENILE DETENTION ALTERNATIVES INITIATIVE AND GIRLS

Over 200 jurisdictions in more than 39 states and the District of Columbia have reduced their use of secure detention as a result of participation in The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). This data-driven initiative works collaboratively with system stakeholders to implement site-specific, objective decision-making tools that limit the use of secure detention only to youth who pose a risk of flight or risk to public safety. JDAI also works to shore up community and non-justice-system resources to meet the needs of youth. JDAI relies on eight core strategies, which include collaboration, objective decision-making, developing alternatives to detention, and reducing racial and ethnic disparities. The initiative has consistently resulted in reductions in the use of secure detention without any increase in juvenile crime.<sup>242</sup>

Jurisdictions using the eight core strategies achieve reductions in secure detention utilization for all youth and, consequently, secure detention of girls is also generally reduced. Two JDAI publications have described the ways in which girls move into detention and illustrate how the JDAI model can be implemented to respond to the particular challenges of detention reform for girls.<sup>243</sup> JDAI jurisdictions have found that an intentional focus on the particular system pathways through which girls enter detention combined with ongoing monitoring and adjustments to detention reform efforts for girls are critical to make the most of system-wide detention reform efforts so that reductions in girls detentions are sustained at a rate equal to or better than that for boys.

For those girls who are detained, JDAI jurisdictions are trained to use a JDAI facility self-assessment and conduct regular detention facility assessments to ensure that detention facilities (for all youth) conform to standards set out by law, regulation, and professional associations. In all categories of facility assessment—Classification, Health and Mental Health, Access, Programming, Training, Environment, Restraints, and Safety—the JDAI framework is attentive to particular conditions of confinement for girls.<sup>244</sup>

## Recommendation 5

### Attorneys, Judges, and Probation Should Use Trauma-Informed Approaches to Improve Court Culture for Girls

Overwhelmingly, girls who enter juvenile courts have experienced trauma, the consequences of which may be partially addressed by increasing awareness among court actors of the impact of trauma and incorporating trauma-informed approaches into court culture. The National Child Traumatic Stress Network (NCTSN) notes youth behaviors that may be perceived as disrespectful, defiant, or antisocial are often reactions to trauma, which can be triggered by the court process with all its uncertainty.<sup>245</sup> The NCTSN Trauma-Informed Juvenile Justice Resource site contains briefs and tools to assist judges, attorneys, system administrators, and probation with creating a more trauma-informed court culture.<sup>246</sup>

#### *Examples and Opportunities:*

- **Provide girls with broad legal representation.**

Attorneys for girls should identify and advocate for holistic solutions. The National Council of Juvenile and Family Court Judges (NCJFCJ) recommends “one family-one judge” case assignments for delinquency and dependency cases, ensuring that all such matters for all members of the same family fall to the same judge who can assess their needs holistically.<sup>247</sup> Similarly, attorneys who conceptualize cases holistically and are well-versed in the range of legal issues affecting girls, will identify and access resources that may not be obvious to attorneys who are more narrowly focused. For example, consistent with the client's wishes, holistic representation for girls would include pursuit of educational programming or disability-related services for girls in the juvenile justice system, or would seek to move dually-involved girls out of the juvenile justice system and into the child welfare system, where they may have greater access to needed services.



- **Ensure that girls have post-disposition representation.** The National Juvenile Defense Standards recommend a comprehensive model of representation—youth should have counsel at all stages of the delinquency process, including post-disposition.<sup>248</sup> The NCJFCJ also states that judges should ensure post-disposition representation for all youth.<sup>249</sup> Post-disposition representation—a rarity for most girls—can help girls entering the juvenile justice system get the services they need to come out in a better place and can reduce their lengths of stay in secure facilities.<sup>250</sup> Such representation can also help reveal, prevent, and remedy individual and institutional abuse in facilities. There is an argument that post-disposition representation is constitutionally required when a youth is at risk of losing her liberty due to a revocation of post-disposition release<sup>251</sup> and post-disposition units of public defender's offices have been established in response to litigation in some jurisdictions (e.g., Washington, D.C., Kentucky, and Massachusetts).
- **Train juvenile defenders and judges on the social contexts and needs of girls.** Proper training of juvenile defenders and judges educates them about the contexts of girl offending and the range of legal issues facing high need-girls (e.g., health access, education, child welfare). Training on the needs of and law related to specific populations of girls is also critical, such as a recent NCJFCJ training for judges on the profiles of trafficked girls, their pathways to victimization, the ways in which system involvement can actually put girls at greater risk for trafficking, and how judges can help improve outcomes for these girls.<sup>252</sup>
- **Provide girls with trauma-informed representation.** While trauma-informed client counseling is becoming the norm in the field of domestic violence, it is much less common with juvenile defense. The American Bar Association issued a policy in 2014 recommending trauma-informed advocacy for youth in the juvenile justice system. The policy emphasizes the importance of cross-systems collaboration and continuity of care, and encourages legal representation that reflects an awareness and understanding of the adverse impacts of trauma on the behavior of youth.<sup>253</sup> Other leaders in the field of juvenile defense recognize the benefits of trauma-informed advocacy, but also caution that a focus on trauma can lead to net-widening, more restrictive interventions, and exacerbated racial biases.<sup>254</sup>
- **Eliminate automatic shackling of girls in the courtroom.** The national Campaign Against Indiscriminate Juvenile Shackling has developed a model statute and court rule to limit shackling; the rule establishes a presumption against shackling, allowing it only upon a court finding that restraints are necessary to prevent physical harm or flight.<sup>255</sup> Some states acknowledge the harms of indiscriminate shackling and have taken steps to end the practice through legislation or changes in court procedure. The practice has been banned or limited in other states by court ruling. However, even legal bans can prove to be ineffective without a change in court culture and vigilance on the part of defense attorneys.<sup>256</sup>

## Recommendation 6

### Adopt a Strengths-Based, Objective Approach to Girls Probation Services

A developmental approach to probation requires a shift from the current deficit-based model to one that focuses on girls' strengths, targets conditions to girls' offenses, and limits the duration of probation terms. Such an approach uses probation as an opportunity to shore up positive social environments for girls, encouraging them to be involved in pro-social activities rather than punishing them for minor violations, such as failure to attend meetings in a timely manner.<sup>257</sup>

#### *Examples and Opportunities:*

- Reduce terms and duration of probation.** The most targeted way to address girls rates of technical violations of probation and resulting detention and system escalation is to reduce the terms and lengths of probation so they are carefully tailored to the offense. Data on the numbers of girls detained for technical probation violations suggests that numerous conditions and extended terms of probation are likely to net-widen and push girls deeper into more restrictive settings, rather than support positive community connections and social contexts.
- Implement a positive youth development (PYD) approach to girls probation.** PYD approaches are strengths-based and resilience-focused, and allow girls to demonstrate competencies, develop healthy relationships, and see their value within their communities.<sup>258</sup> The Washington County and Clackamas County juvenile departments in Oregon and Tomkins County Department of Social Services and Probation in Ithaca, New York have all embraced a strengths-based approach to probation, shifting to a culture with a positive focus.<sup>259</sup> A PYD approach to probation is likely to be effective at reducing detention for girls from traumatic environments—girls who struggle and fail with accountability-based probation models that expect them to comply with rules without providing them the tools to do so and who are then detained due to technical violations of probation.
- Offer girls on probation incentives and positive reinforcement.** Hawaii and Kentucky are examples of states that specifically require incentives and positive reinforcements for youth who comply with the terms of their probation.<sup>260</sup> Hawaii also allows youth to earn early discharge from probation through good behavior.<sup>261</sup> These positive approaches are particularly important for girls, for whom self-esteem, agency, and relationships are so important.
- Develop probation officers' expertise on girls' social contexts, needs, and community resources.** Girls should be connected to probation officers who are trained in recognizing their specialized needs and who are connected to community resources specific to girls. Most girls courts assign specialized probation officers to girls; these probation officers carry smaller caseloads and work extensively with the girl and her caregivers. A 2010 evaluation of Hawaii's Girls Court revealed that girls in the program had better relationships with their probation officers than they had outside of Girls Court, and felt they were better able to talk to Girls Court probation officers and build trusting relationships, leading to more positive feelings about Girls Court than traditional juvenile court (see sidebar, p. 10).<sup>262</sup>
- Use probation risk/needs assessments that are validated for girls.** Research on effective risk assessment instruments is ongoing, and few risk assessments have been studied by gender and validated for girls, especially girls of color (see sidebar, p. 53).<sup>263</sup> However, probation departments that use risk assessment instruments without regard to gender may end up with an inaccurate picture of girls' risk factors and needs, leading to poor matches with services and poor outcomes.
- Use objective, graduated response grids to respond to girls' behavior.** Some states, such as Georgia, Kentucky, and Hawaii, have shifted to a graduated response approach to probation violations, requiring probation officers to use a detailed matrix to ensure objective responses that are tailored appropriately to the violation and the youth's risk level.<sup>264</sup> These grids detail responses to violations based on the girl's risk level (from the underlying offense) and the seriousness of the violation—so in most girls' cases, in which the underlying offenses are likely to be minor, detention is not an option in response to a technical violation (see sidebar, p. 53).

## DATA-DRIVEN TOOLS AND OBJECTIVE DECISION-MAKING FOR GIRLS

In the last decade, juvenile justice systems are increasingly using data-driven, objective decision-making tools to guide a range of system decisions—detention, probation services, level of supervision, and length of disposition and post-adjudication placement. Objective decision-making adds consistency and some measure of science while reducing the impact of individual bias on many discretionary juvenile justice decisions. As a result, objective decision-making tools are helpful in reducing racial and ethnic disparities<sup>265</sup> and seem to make sense as a way to reduce the bias that often results in the over-confinement of girls for minor offenses and misbehavior. However, as with so many reforms, few objective decision-making tools have been examined for their gender fit.

Detention Risk Assessment Instruments: Detention risk assessment instruments (RAIs) are brief screens that measure a youth's risk of re-offense or flight in order to inform the court's detention decision. Because many girls are charged with minor offenses, their RAI scores are often low. RAIs are written to be gender neutral but, as with other system practices, they may end up disadvantaging girls by giving disproportionate weight to social contexts—such as a chaotic family—that are common among girls in the justice system. Girls from chaotic homes may accumulate points toward detention for histories of running away, warrants, or parents refusing to take them home. Cumulatively, these may result in a score leading to detention, despite stemming from a traumatic home environment where the girl is essentially a victim. As with all objective decision-making tools, to ensure fairness to girls, detention RAIs must be specifically analyzed for gender impact.

Probation Risk/Needs Assessments and Response Grids: Many probation departments now use risk/needs assessment instruments and structured decision-making to help probation officers make more objective and appropriate decisions. As of May 2015, 34 states had adopted the use of risk assessment instruments at the state level.<sup>266</sup> The Structured Assessment of Violence Risk in Youth (SAVRY), Washington State Juvenile Court Assessment (WSJCA), and Risk and Resiliency Checkup (RRC) are three tools that have been found to be effective with girls; but they don't all work as well or the same for girls as they do for boys.<sup>267</sup> One study of the SAVRY, for example, found that matching of needs to services in certain areas was correlated to reoffending in a different way for girls than for boys.<sup>268</sup> Moreover, probation response grids—which suggest the response to a youth's probation violation based on the youth's risk level (as determined largely by the offense) and the seriousness of the alleged violation of probation—are a promising reform for girls whose underlying offenses and probation violations are often minor and who are disproportionately detained for technical violations.

Post-Adjudication Placement: One example of a gender-specific approach to post-adjudication services is the Oregon Youth Authority's (OYA) "Oregon Typology Assessment," developed to inform disposition and post-disposition placement and treatment decisions.<sup>269</sup> OYA developed separate male and female youth typologies (six typologies for boys and four typologies for girls). The typologies are research-based and consist primarily of criminogenic factors coupled with risk and age to help identify the best placement for each youth. OYA acknowledges that the male typologies are more fully understood than the female typologies. Accordingly, OYA may incorporate a trauma assessment into the female typologies to make sure they are accurate and predictive for girls, given the concentration of trauma in their profiles.<sup>270</sup>

## Recommendation 7

### Use Health Dollars to Fund Evidence-Based Practices and Programs for Girls and Address Health Needs Related to Their Trauma

Because much of the causes of girl offending are related to or rooted in health concerns—mental health struggles due to traumatic experiences and physical health challenges due to poverty, neglect or abuse, motherhood or pregnancy, sexually transmitted diseases, or substance abuse—solutions can and should come from health systems. Medicaid and the Children’s Health Insurance Program (CHIP) offer health coverage to low-income children, making them critically important resources for many youth in the juvenile justice system. Currently, however, Medicaid and CHIP are largely overlooked as a means to fund the services that are most likely to benefit many girls caught up in the justice system. Providing these services in girls’ communities is critical to continuity of care and relationships.

#### *Examples and Opportunities:*

- **Use Medicaid and CHIP as outreach mechanisms to connect girls to health providers.** All girls who touch the juvenile justice system should be immediately screened for Medicaid/CHIP eligibility, and eligible girls should be provided with enrollment assistance.<sup>271</sup>
- **Use health dollars to fund trauma-focused screenings and interventions.** The federal Department of Health and Human Services has specifically advised states to use trauma-focused screenings and evidence-based programs in “child-serving settings,” including juvenile justice, and to use Medicaid as a source of funding.<sup>272</sup> Several evidence-based programs have proved effective with girls in the justice system with histories of trauma and are covered, in whole or in part, by Medicaid, including Multidimensional Treatment Foster Care, Multisystemic Therapy, and Functional Family Therapy.<sup>273</sup>
- **Don’t allow Medicaid’s “inmate of a public institution exclusion” to be a barrier to treatment for girls.** Girls’ mental and physical health needs are best addressed in settings to which the “inmate of a public institution exclusion” does not apply—evidence-based and trauma-informed programs in non-institutional community settings. These interventions are more likely to be Medicaid-reimbursable and the concurrent avoidance of detention or secure placement will prevent girls from having Medicaid suspended or terminated while they are in the justice system.
- **Suspend, rather than terminate, Medicaid coverage when girls enter facilities.** Suspension enables Medicaid payment of expenses that are allowable while girls are incarcerated and allows for immediate restoration of health coverage upon release, ensuring that girls have no gaps in critically important treatment or counseling (see sidebar, p. 55).<sup>274</sup> Unfortunately, the CHIP program doesn’t allow suspension for incarcerated youth.

## SIMPLIFYING THE MEDICAID MAZE FOR GIRLS

Medicaid and CHIP can help girls at all stages of the juvenile justice system, providing funding for programs that identify and support girls at risk of system involvement, community-based programs that support girls who are diverted from formal processing, services in the community for girls who have been adjudicated, and aftercare services that support girls' reentry into their communities. However, the complexity of Medicaid and CHIP present obstacles to both systems and girls, leading to their underuse by juvenile justice systems.

Through federal EPSDT (Early and Periodic, Screening, Diagnosis and Treatment) requirements, all girls, including justice-involved girls, are entitled to regular screening for health issues, as well as the services they need to help them deal with physical or mental health trauma.<sup>275</sup> Such screenings can help identify health issues facing girls and connect them to treatment focused on traumatic social contexts that may be at the root of health concerns. Medicaid can then fund community-based diversion programs that have proved effective with girls. Some courts have held states to their legal obligations to provide these services to children under the EPSDT mandate.<sup>276</sup>

For girls who do enter juvenile justice facilities, a crucial step to streamlining Medicaid is to suspend and not terminate Medicaid coverage upon admission. Yet, despite the clear benefits of suspending rather than terminating Medicaid, as of late 2013, only 12 states had provisions for suspension rather than termination for youth and adults who are incarcerated.<sup>277</sup> California, Colorado, Florida, Iowa, New York, North Carolina, and Oregon are examples of states with policies actively requiring suspension of Medicaid, although some states limit suspension to one year and not all have successfully implemented the policies.<sup>278</sup>

Planning ahead is another way to facilitate prompt health care coverage for girls when they leave the system. Colorado, New Mexico, Oregon, Texas, and Washington have all taken steps to plan well ahead—even starting at intake—to ensure Medicaid coverage for youth immediately upon their release back into the community.<sup>279</sup> The Affordable Care Act expands eligibility for children and simplifies enrollment, making it easier for states to ensure coverage for girls upon release.<sup>280</sup>

Other states are making concerted efforts to ensure that Medicaid-eligible services provided to youth in the justice system—such as Multisystemic Therapy—are indeed paid for by Medicaid, despite youth being referred to the services through the justice system. Pennsylvania's Integrated Children's Service Initiative, for example, helps clarify what Medicaid covers and what must be paid for by the juvenile justice system.<sup>281</sup> If states shift their expectations of what Medicaid and CHIP can cover for girls in the justice system, they can tap into new sources of funding and ensure seamless delivery of mental and physical health care for girls, all helping to facilitate a developmental approach to justice-involved girls.

## Recommendation 8

### Limit Secure Confinement of Girls, Which Is Costly, Leads to Poor Outcomes, and Re-Traumatizes Vulnerable Girls

Continuing the national trend to downsize and close youth prisons makes particular sense when taking a developmental approach to justice-involved girls. Secure facilities harm girls by re-traumatizing them and are not effective at addressing the issues underlying girls' behavior or providing positive supports to girls in need—and they are extremely expensive (see sidebar, p. 13).

#### *Examples and Opportunities:*

- **Close secure “training schools” and institutions for girls.** In the last decade at least 17 such state institutions for girls have been closed and other states have significantly reduced deep-end beds for girls through attrition and system reform. Between 2003 and 2013, the number of girls committed to deep-end, locked facilities across the country declined by 47 percent.<sup>282</sup>
- **Impose legislative limits on the number of girls placed in secure facilities, especially those who have committed non-violent offenses.** California, Florida, Mississippi, Rhode Island, and Texas are examples of states that have used legislative restrictions to reduce the population of youth in secure confinement (see sidebar, p. 57).
- **Limit incarceration of girls by reducing lengths of stay.** States are reducing lengths of stay for all youth by prohibiting time extensions for inappropriate reasons, such as failing to adjust when incarcerated; expanding representation to include disposition and post-disposition hearings; using structured decision-making to determine lengths of stay and match length of stay to treatment needs; and improving case-planning, reentry services, and step-down programming—including innovative use of funding.<sup>283</sup>
- **Comply with the Prison Rape Elimination Act (PREA).** Passed in 2003, PREA and its subsequently promulgated regulations continue to push states to minimize the number of youth who are incarcerated and ensure the safety of youth who remain in prison. States that fail to meet PREA's standards for adult and juvenile facilities—which became effective in August 2012—risk losing a portion of their federal funding. PREA's Youthful Inmate Standard applies to youth held in adult facilities and prohibits housing youth under age 18 with adults; U.S. Department of Justice guidance through the National PREA Resource Center recommends removal of youth from adult jails and prisons as the best means to comply with the Youthful Inmate Standard. The PREA regulations emphasize that isolation should not be used to achieve separation between youth and adults and require regular audits for facilities that house youth. Juvenile facilities in Alabama, Florida, Idaho, Kansas, Massachusetts, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, and Texas were found to be substantially compliant with PREA in 2014.
- **Close secure facilities to reduce costs.** Facility closures can lead to significant financial savings, which can then be reinvested in more cost-effective community-based programs. For example, the Ohio Department of Youth Services has closed four facilities since 2009, including one girls facility. The closures freed up \$57 million in operational expenses, a portion of which has been reinvested in community-based programs.<sup>284</sup> Kansas closed a 66-bed girls facility in 2009, resulting in a projected savings of \$1.4 million in FY 2009.<sup>285</sup>
- **Use more effective, less expensive community-based alternatives to serve girls.** Developmentally-appropriate alternatives that are rooted in the community and approach youth holistically are far less expensive than incarceration, costing an average of \$75 per day, or \$27,375 per year (compared to an average institutional cost of \$407.58 per day or over \$148,000 per year).<sup>286</sup> They are also more effective—yielding far lower recidivism rates than secure placement—and more likely to help girls overcome negative social contexts and trauma. National research conducted by the Washington State Institute for Public Policy reveals clear benefits to community-based interventions such as Multidimensional Treatment Foster Care, Functional Family Therapy, and Multisystemic Therapy.<sup>287</sup>

- **Provide girls with community-based programming that capitalizes on their relationship focus.** Girls' relationship focus and sensitivity can be a factor in their resilience and an opportunity for effective intervention. Multidimensional Treatment Foster Care (MDTFC) and other effective community-based program models have been modified for girls to emphasize relationship skills so that girls learn to more effectively resolve conflicts with peers and family.<sup>288</sup> With MDTFC, for example, a focus on improving girls' peer relationships has reduced their delinquency involvement.<sup>289</sup>
- **Provide girls who would normally be incarcerated with wraparound services.** Youth, even the most high-need, are most successful when they receive intensive community-based wraparound services through a strengths-based approach—services that treat each youth individually, engage youth's families, and give youth a choice about what happens to them.<sup>290</sup> Programs such as these are being used throughout the country with great success, as is demonstrated by the model Youth Advocacy Programs (YAP): one study of over 3,500 high-need youth involved in YAP found that 86 percent remained arrest-free while in the program, and 96 percent were still living in their communities upon discharge from the program.<sup>291</sup>

## STATE APPROACHES LIMITING SECURE CONFINEMENT OF GIRLS

Legislation is being used more and more by states to reduce the number of youth who are sent to juvenile justice institutions. While all these measures impact girls, legislation limiting confinement for non-violent offenses is particularly effective at reducing the number of girls who are locked up. Examples include:

- Limitations on incarceration for lower-level offenses: California passed a law in 2007 banning commitments to state-run facilities of youth adjudicated for non-violent offenses.<sup>292</sup> Instead, youth are to be served in their home counties, supported by a percentage of state funding. Since the law passed, the number of girls confined in state facilities has declined nearly 81 percent, from 109 girls in 2007 to 21 girls in 2014, outpacing the decline for boys by six percent.<sup>293</sup> Florida and Texas have passed similar laws limiting incarceration for youth who commit low-level offenses.<sup>294</sup>
- Limitations on incarceration for first-time offenders: In 2009, Mississippi passed legislation prohibiting courts from sending youth who commit first-time non-violent offenses or youth under the age of 10 to the state training school without first making a specific finding of fact by a preponderance of the evidence that there is no reasonable alternative to a non-secure setting.<sup>295</sup> The state went a step further in 2010, prohibiting sending youth who have committed non-violent felonies or fewer than three misdemeanors to a state training school.<sup>296</sup> The number of girls in Mississippi committed to residential placements fell from 93 in 2007 to 36 in 2011, with significant reductions in the number of girls locked up for simple assault, public order offenses, and technical violations.<sup>297</sup>
- Caps on the number of youth incarcerated: Rhode Island's legislature implemented a cap on the number of youth who can be held at the Rhode Island Training School at any given time.<sup>298</sup> When the population reaches 95 percent of capacity—or 12 girls—youth who do not pose a risk of harm to themselves or the community must be referred for release. In 2007, prior to the implementation of the bed cap, 222 girls (unduplicated) were placed in secure confinement. In 2014, 74 girls were placed in secure confinement, with an average daily population of 10.3.<sup>299</sup> Colorado also uses a bed cap to reduce the number of youth in detention, and recently reduced its cap.<sup>300</sup>

## Recommendation 9

### Support Emerging Adulthood for Young Women with Justice System Histories

Juvenile justice system jurisdiction typically ends at age 18, meaning interventions are discontinued and girls are sent off to live on their own or transferred to adult facilities. Girls receiving developmentally-appropriate services in the community may suddenly be left without support and forced to navigate housing, health care, education, employment, and child care by themselves. Juvenile justice systems do little to address these needs but child welfare and health care resources increasingly available to young adults can help these young women—and their children—obtain stable housing, education, and employment.

#### *Examples and Opportunities:*

- **Understand the population of girls aging out of juvenile justice systems.** Regular assessment of girl populations by juvenile justice systems can provide a better understanding of the number of girls who age out, and what their outcomes and needs are.<sup>301</sup>
- **Provide programming and reentry planning that facilitate independent living.** For young women who leave the juvenile justice system to be successful adults, systems must provide a developmentally-appropriate context that facilitates development of “psychosocial capacities”: the knowledge and skills needed to navigate society, educational and vocational training that allows them to be productive members of society, and the social skills necessary to create and maintain relationships and function in groups.<sup>302</sup> Systems that focus on social control (e.g., detention and incarceration) rather than social welfare do not provide girls with these capacities and make it difficult for them to transition to life on their own.<sup>303</sup>
- **Change federal policy to support emerging adults and girls in transition from juvenile justice systems.** Both the Chafee and Fostering Connections acts focus on youth in the child welfare system and exclude youth in juvenile justice placements, even though it is clear that many youth—and girls in particular—straddle the two systems and that youth in both systems experience the same traumatic social contexts and environments.<sup>304</sup> Legislation and policies supporting emerging adults and youth in transition should be amended to apply to youth in juvenile justice placements at age 18 and encourage integration among systems, rather than differing treatment of youth facing similar challenges and from similar backgrounds.<sup>305</sup>
- **Support pregnant and parenting young women leaving the system.** There is a significant gap in information about pregnant and parenting girls in the juvenile justice system, which must be filled by research on their needs (see sidebar, p. 25). Provided with such research, evidence-based adolescent mother programs that exist in many jurisdictions—such as Nurse-Family Partnership and Healthy Families—can then modify their interventions to be effective with this very high-risk sub-population of mothers. Solutions should be holistic, focusing on housing, employment, education, health care, and parenting support for both young mothers and their children.





## vi. Conclusion

For girls and young women, “gender justice” means a system that is both fair and effective, meeting girls’ needs in a balanced and thoughtful way.

Happily, we are in the midst of a surge of juvenile justice reform in the U.S. System-level reforms are occurring across the country, approaching youth behavior through a developmental lens and reducing the number of youth who enter and move through the justice system. We need to make the most of this time of reform by intentionally focusing our efforts on girls, whose behaviors are very often the direct result of traumatic and unhealthy social contexts. The current system over-intervenes in girls’ lives and does not provide gender-responsive, culturally-informed supports. However, existing and emerging reforms present opportunities to ensure that the needs of girls are addressed in a developmentally appropriate manner with particular attention to girls’ experiences of trauma. As this report details, by assessing the impact of system decisions on girls throughout the juvenile justice process and modifying many existing juvenile justice reforms to fit the needs of girls, juvenile justice systems can be redesigned to promote healthy relationships, shore up girls’ social supports, and give girls agency over their lives.

In this developmental era of juvenile justice, it’s time to end decades of unfairness to girls and young women and treat them with the respect and care they deserve.

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