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Gender Bias in the Juvenile Justice System

By: Nicole Neiman

I. Introduction

The juvenile justice system has provided juveniles with greater protections and rights and concerted efforts have been made to focus on rehabilitating these juveniles to be productive members of society¹. However, the policies, procedures and programs in place were developed to address the needs of males who comprised an overwhelming majority of juveniles in the system.² Although there has been an overall decline in juvenile involvement in the justice system,³ girls' involvement has increased dramatically.⁴ This paper asserts that this increase is attributable in part to the criminal justice system's failure to meet the gender-specific needs of girls. Gender differences influence not only whether girls are arrested in the first place, but also affect their success in rehabilitation. The juvenile justice system must change in order for female juveniles to obtain the help they need.

¹ Julie J. Kim, *Left Behind: The Paternalistic Treatment of Status Offenders Within the Juvenile Justice System*, 87 WASH.U.L.REV. 842, 846 (2010).

² Liz Watson & Peter Edelman, *Improving the Juvenile Justice System for Girls: Lessons from the States*. Georgetown Center on Poverty, Inequality and Public Policy (October 2012).

³ Francine T. Sherman, *Justice for Girls: Are We Making Progress?* 59 UCLA L. REV. 1584, 1586 (2012).

⁴ Sherman, *supra* note 3, at 1586.

This paper proceeds as follows. Part II traces the historical development of the juvenile justice system and shows that although there have been major advances in the system and in juvenile rights, female juveniles are still at a disadvantage. Part III addresses the disparate treatment of female juveniles for status offenses and assault due to gender stereotypes and mandatory arrest laws for domestic violence, respectively. There are gender differences that are ignored when arresting and sentencing females and leads to this gender disparity. Part IV examines programs that have successfully addressed these gender differences. Part V argues that federal funding must increase to support the necessary changes to the juvenile justice system. Also, the critical time that gender-specific policies need to be implemented is during arrest and sentencing. Determining why the girls become involved in the system is key to developing the right plan of action to rehabilitate them, otherwise they will be pushed further into the system.

II. The Juvenile Justice System: Then and Now

The juvenile justice system developed to provide juvenile offenders with the rehabilitative means necessary to become productive members of society.⁵ Judges had a lot of discretion to determine the appropriate course of treatment for juvenile offenders and juveniles did not have many of the same rights available in adult courts.⁶ The Supreme Court decided a number of cases beginning in 1966 that gave juvenile offenders a number of constitutional rights.⁷ Concurrently, the federal government realized that there was a rise in the number of juveniles being detained for status offenses, which are non-violent crimes, with

⁵ Sherman, *supra* note 3 at 1586.

⁶ Kim, *supra* note 1 at 843.

⁷ Kent v. United States, 383 U.S. 541 (1966); In re Gault, 387 U.S. 1 (1967); In re Winship, 397 U.S. 358 (1980); Breed v. Jones, 421 U.S. 519 (1975).

a disproportionate number of girls being affected.⁸ The government addressed these issues with several pieces of legislation starting in 1974 that focused on protecting status offenders in general and later addressed the needs of female juvenile offenders specifically.⁹ Despite these efforts, girls are still disproportionately involved in the juvenile justice system.¹⁰

A. The expansion of the juvenile justice system and due process rights

The first juvenile court in the United States was established in 1899 in Illinois.¹¹ The court focused on rehabilitating the juveniles to prevent further delinquent acts rather than punishing them for their behavior.¹² The juvenile court system that developed relied on its *parens patriae* power to further these rehabilitative efforts.¹³ Under the doctrine of *parens patriae*, judges addressed issues on a case by case basis and had broad discretion to determine the appropriate course of treatment for each juvenile.¹⁴ For girls, judges were most concerned about sexual promiscuity and perceived futures in prostitution and wanted to instill in them the appropriate morality that focused on family life, marriage, and motherhood.¹⁵

By 1945 all states had established juvenile courts.¹⁶ This expansion of the juvenile justice system led to an increased awareness for greater protections and policies to safeguard children in the system.¹⁷ Although the intentions of judges was to act in the best interest of the juvenile offender, the informal nature of the court proceedings and the lack of due process

⁸ Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §§ 5601-5784 (2014).

⁹ *Id.*; Act of Nov. 4, 1992, Pub. L. No. 102-586, 106 Stat. 4982 (amending the JJDP Act, 42 U.S.C. §§ 5601-5784).

¹⁰ Sherman, *supra* note 3 at 1586.

¹¹ Kim, *supra* note 1, at 846.

¹² *Id.*

¹³ *Id.*; *Parens patriae* is defined as “[t]he state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves.” BLACK’S LAW DICTIONARY 1144 (8th ed.2004).

¹⁴ ..Sherman, *supra* note 3, at 1590.; *see* Ex Parte Crouse, 4 Whart.9, 11(Pa..1839) (holding that the court could use its *parens patriae* power to control the behavior of a difficult girl by placing her in secure detention); Ex Parte Sharp, 15 Idaho 120,96 (1908) (relying on their *parens patriae* power in holding that the protection of inalienable rights guaranteed by the Constitution do not apply to a minor).

¹⁵ Sherman, *supra* note 3, at 1590.

¹⁶ Kim, *supra* note 1, at 847.

¹⁷ *Id.* at 852.

rights that are found in adult criminal courts often led to arbitrary and unfair punishments for juveniles.¹⁸ Beginning in 1966, the Supreme Court decided a series of cases that addressed the constitutional rights of juvenile offenders. In *Kent v. United States* (1966), the Court held that a juvenile's due process rights were violated when the trial judge did not hold a hearing prior to transferring him to adult court.¹⁹ The Court made clear that the *parens patriae* power of the states was not "an invitation to procedural arbitrariness."²⁰ The following year the Court decided *In re Gault* (1967), which extended many of the due process rights that adult criminal defendants receive under the Due Process Clause of the Fourteenth Amendment to juvenile offenders.²¹ These rights included the right to notification of the charge²², the right to representation by counsel²³, the right to confront and cross-examine witnesses²⁴, and protection against self-incrimination.²⁵ In 1980 the Court, in *In re Winship*, held that in order to adjudicate a minor as delinquent the state must meet the stricter standard of proof beyond a reasonable doubt rather than preponderance of the evidence standard.²⁶ Additionally, in *Breed v. Jones*, the Court held that the Double Jeopardy Clause of the Fourteenth Amendment prohibits prosecution in adult court of a youth who had already been tried in juvenile court.²⁷

¹⁸ Eric K. Klein, *NOTE: Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice*, 35 Am.Crim.L.Rev.371, 377; see *In re Gault* 387 U.S. 1 (1967) (overturning a lower court holding Where a judge places a boy in detention for six days for making a prank phone call); *In re Winship* 397 U.S. 358 (1980) (overturning a ruling that held a juvenile guilty for stealing without providing sufficient proof of his guilt).

¹⁹ 383 U.S. 541 (1966).

²⁰ 383 U.S. 541, 555 (1966); Kim, *supra* note 1, at 852.

²¹ 387 U.S.1 (1967).

²² *Id.*at 31-34.

²³ *Id.*at 34-42.

²⁴ *Id.*at 42-57.

²⁵ *Id.*

²⁶ 397 U.S. 358 (1980).

²⁷ 421 U.S. 519 (1975).

B. Federal involvement in juvenile justice

The federal government also addressed the rising concerns for juvenile offenders. In 1967, the Commission on Law Enforcement and Administration of Justice published the most comprehensive report on crime in America at that time.²⁸ Their review of juvenile crime detailed the sharp rise in delinquent arrests during the mid-1900s.²⁹ Juvenile offenders were most often arrested or sent to court for “petty larceny, fighting, disorderly conduct, liquor-related offenses, and conduct not in violation of the criminal law such as curfew violation, truancy, incorrigibility, or running away from home”.³⁰ More than half of the girls referred to the juvenile court in 1965 were sent for committing status offenses, which are non-violent crimes that are illegal only due to the child’s age.³¹ Comparatively, only one fifth of boys were referred for this same conduct.³² The commission attributed the problem in part to the lack of dispositional alternatives available.³³ This left judges with few options, which included release, probation or institutionalization. The Commission was also concerned that the almost unlimited jurisdiction of juvenile courts, including the non-violent status offenders, facilitated “gratuitous, coercive intrusions into the lives of children and families.”³⁴ Overall, the Commission envisioned a juvenile court that promoted greater protection for all youths

²⁸ United States..President’s Commission on Law Enforcement and Administration of Justice..*The Challenge of Crime in a Free Society*..Washington: The Commission, 1967.Print.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

and better practices and programs to support the rehabilitative goals of the juvenile justice system.³⁵

The Commission's report, along with three years of Congressional hearings concerning the over criminalization of non-violent juvenile offenders, led Congress to enact the Juvenile Justice Delinquency Prevention Act in 1974 (JJDP A).³⁶ The JJDP A created the Office of Juvenile Justice Delinquency Prevention and provided funding for states to implement alternatives to detention for juvenile offenders.³⁷ The JJDP A mandated that in order to receive funding states were prohibited from (1) detaining status offenders and (2) housing detained juveniles within the adult prison population.³⁸ At first there was a positive response to the JJDP A.³⁹ The number of status offenders that were detained decreased by 75% between 1975 and 1991.⁴⁰ However, states did not provide alternatives to detention and judges became frustrated by their inability to punish repeat status offenders.⁴¹ Judges employed techniques to bypass the JJDP A mandate such as bootstrapping and relabeling.⁴² Bootstrapping occurs when a status offender who is ordered to return to their home or stay in a residential facility runs away.⁴³ The judge can hold the child in contempt of court and place him or her in a secure detention facility.⁴⁴ Relabeling occurs when a judge charges a juvenile

³⁵ *Id.*

³⁶ Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §§ 5601-5784 (2014).

³⁷ Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §§ 5601-5784 (2014).

³⁸ *Id.*

³⁹ Alecia Humphrey, *The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders*, HASTINGS WOMEN'S LAW JOURNAL 165, 169 (2004).

⁴⁰ Anne Bowen Poulin, *Female Delinquents: Defining Their Place in the Justice System*, 1996 WISL.REV.541, 567 (1996).

⁴¹ Kim, *supra* note 1, at 858.

⁴² Laura A. Barnickol, *The Disparate Treatment of Males and Females Within the Juvenile Justice System*, 2 WASH. U.J.L. & POL'Y 429, 440 (2000); *see* R.M.P.v.Jones, 419 So.2d 618 (Fla..1982); *In re Michael G.*, 747 P..2d 1152 (Cal..1988); *In re L.A.M.v.State*, 547 P..2d 827 (Alaska 1976), all held that juveniles can be held in detention facilities for violating a court order in a status offense case.

⁴³ Humphrey, *supra* note 39 at 170.

⁴⁴ Tiffany Zwicker Eggers, Comment, *The "Becca Bill" Would not Have Saved Becca: Washington State's Treatment of Young Female Offenders*, 16 LAW & INEQ. J. 219, 243 (1998).

with a low-level crime rather than the status offense they committed and therefore can order them to be detained in a secure detention facility.⁴⁵

The frustration of these judges stemmed from their concern with the safety and protection of these juveniles as well as their efforts to deter juvenile offenders through the use of punishment.⁴⁶ Therefore, juvenile court judges lobbied Congress to create an exception to the JJDPa mandate that prohibited the institutionalization of status offenders.⁴⁷ In 1980 Congress enacted the Valid Court Order Amendment that allowed judges to place status offenders in secure detention if they violated a valid court order.⁴⁸

In 1992, federal law began to focus on girls in the juvenile justice system. Congressional hearings were held for a reauthorization of the JJDPa and activists, scholars, and practitioners voiced their concerns for the lack of appropriate treatment options for female juvenile offenders.⁴⁹ Congress passed the 1992 Reauthorization of the JJDPa, which required states to develop a plan for gender-specific programming.⁵⁰ States could apply for Challenge E Grants to help them achieve this goal.⁵¹ States were required to analyze the current needs and services for girls and submit a three-year plan that included gender-specific programming.⁵²

⁴⁵ *Id.* at 243.

⁴⁶ Juvenile Justice Amendments of 1980: Hearings on H.R. 6704 Before the Subcomm. On Human Resources of the House Comm. On Labor and Education, 96th Cong. 125 (1998).

⁴⁷ Pub.L.No.93-415.

⁴⁸ Pub.L.No.96-509.

⁴⁹ United States. Cong. Senate. Subcommittee on Human Resources Committee on Education and Labor. *Hearing on the Reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974: Provision of Services to Girls and the Juvenile Justice System*. 16 Mar. 1992.

⁵⁰ Act of Nov. 4, 1992, Pub. L. No. 102-586, 106 Stat. 4982 (amending the JJDPa Act, 42 U.S.C. § § 5601-5784).

⁵¹ *Id.* ; Meda Chesney-Lind & Katherine Irwin, *Beyond Bad Girls: Gender, Violence and Hype* 158 (2008).

⁵² Joseph R. Biden, Jr., *Children, Crime, And Consequences: Juvenile Justice In America: What About the Girls? The Role of the Federal Government in Addressing the Rise in Female Juvenile Offenders*, 14 STAN.L.& POL'Y REV 29, 42(2003).

Initially there was positive response and over 25 states applied for funding to help develop these programs.⁵³ However, the Children's Defense Fund and Girls, Inc. completed a review of state plans in 2002 and concluded that "many states had not taken significant steps towards implementing this framework. An overview of current state approaches finds that (1) a significant percentage of states acknowledge the need for gender-specific services; and (2) the majority of current state plans are lacking and inappropriate pertaining to gender issues."⁵⁴

Despite efforts to provide juvenile offenders with the same rights and protections as adults and to address the gender issues in the system, girls continue to be treated differently than boys.⁵⁵ In recent years there has been a significant increase in the number of girls involved in the juvenile justice system.⁵⁶ Girls continue to be disproportionately detained for status offenses and are increasingly arrested for assault charges.⁵⁷ This is due to paternalism towards female status offenders, changes in mandatory arrest laws for domestic violence disputes and inherent gender differences that are inappropriately addressed by the practices and procedures of the system.

III. Causes of the Gender Disparity

⁵³ Belknap, Joanne, Kristi Holsinger, and Melissa Dunn..(1997)."Understanding Incarcerated Girls: The Results of a Focus Group Study." PRISON JOURNAL, 77(4):381-404.

⁵⁴ Children's Defense Fund and Girls Inc. Overview of Gender Provisions in State Juvenile Justice Plans 7 (Aug.2002).

⁵⁵ Biden, *supra* note 52 at 41; HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT, at 128 (2006), available at <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/nr2006.pdf>. (Evidence shows that boys are less likely to be held in custody for status offenses than girls, four percent vs. ten percent, girls are more likely to be held in custody for status offenses than in delinquent offenses, forty percent vs. fourteen percent, and females were more likely than males to be held for simple assault and technical violations).

⁵⁶ Sherman, *supra* note 3, at 1586.

⁵⁷ Barnickol, *supra* note 42 at 445.

Research continues to show that girls are treated differently than boys in the juvenile justice system. Girls are disproportionately detained for status offenses.⁵⁸ This is due to the paternalistic attitude of juvenile court judges.⁵⁹ Also, girls are increasingly arrested for assault charges, which is attributable to changes in mandatory arrest laws for domestic violence disputes.⁶⁰ Additionally, there are inherent gender differences that are inappropriately addressed by the practices and procedures of the juvenile justice system.⁶¹

A. Status Offenders and Paternalism

Female juvenile offenders are disproportionately charged with status offenses. These offenses include truancy, running away, and incorrigibility. The treatment of female status offenders stems from the historical perspective on gender roles as perceived by the juvenile courts.⁶² The rehabilitative efforts of juvenile court judges focused on controlling the criminal behavior of boys and preventing the sexual immorality of girls.⁶³ Females were classified as delinquent more often than not for activities such as immorality or sexual misconduct.⁶⁴

⁵⁸ Snyder, *supra* note 55 at 128.

⁵⁹ Barnickol, *supra* note 42 at 445.

⁶⁰ Sherman, *supra* note 70.

⁶¹ Stephanie Hoyt & David G. Scherer, *Female Juvenile Delinquency: Misunderstood by the Juvenile Justice System, Neglected by Social Science*, 22 LAW AND HUMAN BEHAVIOR 1, 81 (1998).

⁶² Andrew L. Spivak, Brooke M. Wagner, Jennifer M. Whitmer & Courtney L. Charish, *Gender and Status Offending: Judicial Paternalism in Juvenile Justice Processing*, 9 FEMINIST CRIMINOLOGY 224, 226 (2014).

⁶³ Meda Chesney-Lind, *Judicial Paternalism and the Female Status Offender*, 23 CRIME & DELINQUENCY, 121, 124 (1977); D.S. Tanenhaus, *Juvenile Justice in the Making* (2004).

⁶⁴ Meda Chesney-Lind, *The Female Offender*, 61 (1997).

For example, in Chicago, (where the first family court was founded), half of the girl delinquents, but only a fifth of the boy delinquents, were sent to reformatories between 1899 and 1909. In Milwaukee, twice as many girls as boys were committed to training schools...

In Honolulu during 1929 to 1930, over half of the girls referred to court were charged with "immorality" which meant evidence of sexual intercourse... Other evidence of "exposure" was provided by the gynecological examinations that were routinely ordered in virtually all girls' cases.

This continued through the twentieth century. A study on the Los Angeles juvenile court in 1920 and 1950 for example showed that girls were overwhelmingly charged with status offenses. In the 1950 data, thirty one percent were charged with running away from home, truancy, curfew violations or “general unruliness at home” and nearly half of the status offenders were charged with sexual misconduct.⁶⁵ There were also numerous studies done between the 1950s and the 1970s that found that girls charged with status offenses were more harshly treated than both boys and girls charged with criminal offenses.⁶⁶

The history of status offenders illustrates how judicial paternalism has shaped the treatment of female youth offenders. Judges continue to treat girls who commit non-criminal offenses differently than boys. Importantly, the lack of due process rights for status offenders perpetuates the problem because judges can use their unbounded discretion in their decision-making. Due process rights do not apply because status offenses are non-criminal acts.⁶⁷ For example, the court in *In Re Spalding* denied the female delinquent’s request to assert her privilege against self-incrimination because she was not charged with an act that would constitute a crime if committed by an adult.⁶⁸

Although the 1974 JJDPA mandated the deinstitutionalization of status offenders, which resulted in a significant decrease in the number of female status offenders being detained, the judicial techniques such as bootstrapping, relabeling, and the passage of the

⁶⁵ M.E. Odem & S. Schlossman, *Gaurdians of Virtue: The Juvenile Court and Female Delinquency in Early 20th Century Los Angeles*, 37 CRIME & DELINQUENCY 186, 203 (1991).

⁶⁶ Meda Chesney-Lind, *Judicial Enforcement of the Female Sex Role*, 8 Issues in Criminology 51, 51-71 (1973); Y Cohn, *Criteria for the Probation Officer’s Recommendation to the Juvenile Court*, in BECOMING DEINQUENT, 190-206 (P.G. Garbedian et al. eds., 1970); S. Datesman & F. Scarpitti, *Unequal Protection for Males and Females in the Juvenile Court*, in WOMEN, CRIME AND JUSTICE, 303-318 (S.K. Datesman et al. eds., 1980).

⁶⁷ Cheryl Dalby, *Gender Bias Toward Status Offenders: A Paternalistic Agenda Carried Out Through the JJDPA*, 12 LAW & INEQ. 429, 439 (1994).

⁶⁸ 332 A.2d 246 (Md. 1975).

VCO allow judges to continue disproportionality detaining status offenders.⁶⁹ The prevalence of a high rate of female status offenders in the juvenile justice system has been consistent throughout its history. Recently though there has been an increase in the number of arrests for assault by female juveniles and is a result of mandatory arrest laws for domestic violence.

B.Mandatory arrest laws for domestic violence

Although girls typically account for only a small portion of violent offenses⁷⁰, over the past decade girls' arrest rates for simple and aggravated assault has increased drastically.⁷¹ Some scholars attribute this to an increase in violence in the female population, however the parallel to changes in domestic violence laws and police enforcement in domestic violence cases provides a better explanation.⁷² The Violence Against Women Act (VAWA) of 1994 was enacted to provide comprehensive protection to victims of domestic violence.⁷³ VAWA extended the definition of domestic violence beyond just crimes against married spouses. This included cohabitating persons and family members.⁷⁴ VAWA also created mandatory arrest policies that mandated police to make an arrest when a domestic dispute was reported.⁷⁵ This

⁶⁹ Kim, *supra* note 1, at 862.

⁷⁰ Francine T.Sherman, *Reframing the Response: Girls in the Juvenile Justice System and Domestic Violence*, JUV & FAMILY JUST. TODAY, Winter 2009.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Violence Against Women Act, 42 U.S.C. §13925 (2014)..

⁷⁴ The Act provided the definition of domestic violence :

“committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic violence or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.”

Violence Against Women Act, 42 U.S.C. §13925 (2014)..

⁷⁵ Violence Against Women Act, 42 U.S.C. §13925 (2014).

impacted female juvenile offenders more than males⁷⁶ Research indicated that females fight with family members or siblings whereas boys are more likely to fight with friends or strangers.⁷⁷ Therefore, many of the disputes girls get into are going to be subjected to these mandatory arrest policies. Whereas, previously, an officer who responded to a dispute in the home could charge a girl with incorrigibility and she would most likely not be detained, now under these new laws the officer would have to charge the girl with assault and it would be probable she would be sentenced to detention.⁷⁸

A report commissioned by the OJJDP in 2008 also supports the argument that girls' arrest rates are affected by mandatory arrest policies. The report looked at trends in juvenile assault data over the past few decades. They found that the arrest ratio for simple assault to aggravated assault was much higher for girls than for boys, which indicates that girls' violence is of a less serious nature than boys. Also, although the rate of arrest for simple assault for girls has risen over the decades, the rate of arrest for aggravated assault for girls has not. Also, self-reporting data and victim-reported data show no change in assault rates during this time period. Based on these findings the OJJDP concluded that female offenders are not becoming increasingly violent and that the mandatory arrest policies are to blame.

Another unfortunate outcome of the mandatory arrest laws was that when police are faced with a familial domestic dispute between a parent and child and had to make an arrest they were more likely to arrest the child.⁷⁹ This was more convenient than arresting the parent because typically there were other children at home and police would have to get child

⁷⁶ Sherman, *supra* note 70.

⁷⁷ B. Bloom, B. Owne, E. Deschenes, & J. Rosenbaum, *Improving Juvenile Justice for Females: A state-wide assessment in California*, 4 CRIME & DELINQUENCY 526, 527 (2002).

⁷⁸ Jamie Edwards, *A Lesson in Unintended Consequences: How Juvenile Justice and Domestic Violence Reforms Harm Girls in Violent Family Situations (And How to Help Them)*, 13 U.Pa..J.L. & Soc..Change 219,235 (2010).

⁷⁹ *Id* at 226.

protective services involved to care for the other children.⁸⁰ The 2005 reauthorization of VAWA did change the language from “mandatory arrest” to “proarrest”.⁸¹ This gave police discretion to decide whether an arrest was necessary. However, states’ arrest policies varied widely and many still followed the mandatory arrest policy.

C. Gender-specific differences

Recent research suggests that differences in girls’ experiences, emotional well-being, and mental health contribute to their involvement in the juvenile justice system.⁸² These differences account for some of the reasons why girls become offenders, why they reoffend and help explain why the current system is not appropriately addressing female offenders.

Female youth offenders experience high rates of physical and sexual abuse.⁸³ Over seventy percent of girls experience some form of physical or sexual abuse.⁸⁴ Comparatively, only three percent of boys report having suffered physical abuse and thirty two percent suffered sexual abuse.⁸⁵ Girls that experience some form of abuse are more likely to be arrested, which is not the case for boys.⁸⁶

⁸⁰ *Id.*

⁸¹ Sherman, *supra* note 3, at 1604.....

⁸² Biden, *supra* note 52 at 36.

⁸³ The American Bar Association & the National Bar Association, A Report, *Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System*, 2001..

⁸⁴ *Id.* .

⁸⁵ Biden, *supra* note 52 at 37-38.

⁸⁶ Francine T..Sherman, *Detention Reform and Girls: Challenges and Solutions* 37 (Pathways to Juvenile Detention Reform Series 2005)..

Also, girls in the juvenile justice system are more likely than boys to have mental health problems.⁸⁷ The most common diagnoses are depression, anxiety and PTSD.⁸⁸ These disorders have been linked to childhood trauma, abuse and exposure to violence.⁸⁹

These gender specific problems are not addressed and are often exacerbated by the arrest and sentencing procedures in the juvenile justice system.⁹⁰ Many of the offenses that girls commit are a response to abuse they endured.⁹¹ Running away is one of the most common status offenses girls are arrested or detained for. Although judges' intentions to protect runaway girls is warranted due to the high correlation between running away and commercial sexual exploitation, placing these girls in detention and incarceration does not address the underlying reasons why girls run away, like abuse and violence in the home. Also, the possible sanctions by the court prevent runaway girls from returning home even if they wanted to because they did not want to be locked up.⁹²

Similarly, girls who are arrested for assault under mandatory arrest laws are more often than not responding to abuse and trauma within their home environment.⁹³ One study showed that girls are four times more likely to be physically or verbally abused in the home.⁹⁴ Rather than address the underlying abuse present in the home, the mandatory arrest policies bypass any intervention techniques and lead right to arrest of these girls. This revictimizes

⁸⁷ Office of Juvenile Justice and Delinquency Prevention, Girls Study Group Series, Causes and Correlates of Girls' Delinquency, April 2010..

⁸⁸ *Id.*

⁸⁹ Edwards, *supra* note 78, at 234.

⁹⁰ *Id.*

⁹¹ *Id.* at 233.

⁹² Sherman, *supra* note 3, at 1600.

⁹³ Jamie Edwards, *supra* note 78, at 234.

⁹⁴ Laurie Schaffner, *Violence and Female Delinquency: Gender Transgressions and Gender Invisibility*, 14 BERKLEY WOMEN'S L.J..10,55 (1999).

them and pushes them further into the juvenile justice system that is not equipped to help them.⁹⁵

The juvenile justice system has been a predominately male-centered establishment. There have always been, and still are, more males involved in the system than females. Therefore, many of the programs for delinquents are structured around the needs of males. Many of the programs do not have the facilities necessary to deal with female mental and emotional issues because boys are at a considerably lower risk for that. Also, boys programs often are characterized as secluded, having insensitive staff, and loss of privacy.⁹⁶ Girls are often placed in programs that do not address their individual needs and therefore continue with a pattern of delinquency.⁹⁷ There have been some efforts to address the gender disparity in the juvenile justice system and the results show promise for the future.

IV Reform efforts

Since the 1992 Reauthorization of the JJDP Act there has been an increase in the development of gender specific programming based on the different characteristics of male and female offenders.⁹⁸ With the help of federal grants and guidance from the OJJDP and other advocacy groups some states have implemented programs to address the gender disparity.

A.Nevada

⁹⁵ Edwards, *supra* note 78, at 232.

⁹⁶ http://www.nccdglobal.org/sites/default/files/publication_pdf/whgspb.pdf; Bloom, B., Owen B., Deschenes, E., & Rosenbaum, J.(2002) Improving Juvenile Justice for Females: A Statewide Assessment in California..*Crime & Delinquency* 48 (4): 526–551, 529.

⁹⁷ Watson, *supra* note 2.

⁹⁸ Margaret A.Zahn et al., *Determining What Works* for Girls in the Juvenile Justice System: A Summary of Evaluation Evidence, 55 *Crime & Delinquency* 2, 4 (2009).

One reform effort by two counties in Nevada successfully addressed the disproportionate number of girls being detained for domestic battery. At the time, a Nevada statute required a 12-hour mandatory hold on a juvenile charged with domestic battery. In response to the greater awareness of gender disparities in the juvenile justice system the counties analyzed the detention data for girls. They found that in 2006 in Clark County girls comprised twenty two percent of all detentions, but forty three percent of domestic battery detentions; in Washoe County girls comprised twenty eight percent of all detentions, but forty percent of domestic battery detentions.⁹⁹ Additional inquiry brought to light that law enforcement routinely charged the child rather than the parent when responding to a domestic dispute because there were other children home. Also, girls ended up being detained for an average of 8 days due to processing delays, much longer than the 12-hour mandatory hold. As a result, the legislature in Nevada amended the law, effective in 2007, to require the release of youths arrested for domestic battery in most situations and provided for other services to address the violence in the home.¹⁰⁰ The year after the law was amended, Washoe County did a follow study to determine the effects on detention rates. They found that only thirteen percent of girls who were charged with domestic battery were actually detained, compared to one hundred percent in the previous year.¹⁰¹ Washoe County continues to use data to track detention of girls to help combat the effects of probation violations on status offenders, which disproportionately affects girls.¹⁰²

⁹⁹ Sherman, *supra* note 70.

¹⁰⁰ Francine T. Sherman, *supra* note 64.

¹⁰¹ *Id.*.

¹⁰² Sherman, *supra* note 3, at 1619-1620.

B.PACE Center for Girls

A gender specific treatment based initiative that has been successful is the PACE Center for Girls, Inc. located in Florida. PACE started in 1985 and has grown to encompass over seven centers in the state of Florida.¹⁰³ It is a detention alternative program as well as an early intervention program for at risk girls that strives to keep girls out of the juvenile justice system.¹⁰⁴ The program focuses on the specific needs of females and provides the participants with an academic education, life management skills, community service opportunities, career preparation, case management services, counseling, assistance with parental involvement and transitional services for after care.¹⁰⁵ A 2005 study showed that girls that completed the PACE program performed better in the academic setting, secured employment and had lower incidences of alcohol and drug use.¹⁰⁶ A personal account by a PACE attendee shows the impact it can have on these females. Shelby went to PACE in 2013 when she was a junior in high school.¹⁰⁷ She struggled with body image issues, engaged in risky behavior and had frequent panic attacks.¹⁰⁸ Through her time at PACE she learned to cope with her past through the help of a counselor and excelled academically.¹⁰⁹ She received a scholarship to attend college and aspires to be a lawyer.¹¹⁰

These two examples show that with appropriate resources to address the gender disparity it is possible to improve the outlook for female juvenile offenders. Focusing on data

¹⁰³ Biden, *supra* note 52 at 43; Watson, *supra* note 2.

¹⁰⁴ ..Watson, *supra* note 2..

¹⁰⁵ PACE Center for Girls, Inc., <http://www.pacecenter.org>..

¹⁰⁶ Margaret A..Zahn et al., *Determining What Works for Girls in the Juvenile Justice System: A Summary of Evaluation Evidence*, 55 *Crime & Delinquency* 2, 283-284(2009)..

¹⁰⁷ <http://www.news-press.com/story/life/2015/03/08/pace-center-girls-changed/24457823/>

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

driven research to identify the problems and implementing programs that focus on the female offenders specific needs are effective measures to combat the rising female delinquent population. Additionally, providing assistance to judges to aid in their decision making and increasing federal funding for these different programs is equally as important to address the problem.

C.Hawaii Girls Court

Hawaii Girls Court is a very unique program that is an alternative to formal adjudication.¹¹¹ Founded in 2004, Girls Court handles female juveniles who have already been adjudicated delinquent.¹¹² Although it is called a court, the program is actually a form of probation.¹¹³ Girls are referred to Girls Court at the onset of probation and if the staff believes they will be a good fit the girl has the option to enroll in the program.¹¹⁴ The participants are put into a group of about eight girls and they remain in the program for a one-year time period.¹¹⁵ During the program the participants receive “life-skills training, alternative education and vocational training, mental health treatment, domestic violence prevention, medical services, health education, teen pregnancy prevention, substance abuse treatment, mentoring, and family strengthening through a number of programs and community partners.”¹¹⁶ The participants attend court once a month to review their progress, group discussions, and esteem-building activities.¹¹⁷ Parents of the girls are also required to attend

¹¹¹ Tamar Lerer, *Hawai’I Girls Court: Juveniles, Gender, and Justice*, 18 Berkley J. Crim. L. 84, 89 (2013).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 90.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

group sessions to try to address the problems within their family.¹¹⁸ After completing the program the girls are required to return to school or obtain their GED.¹¹⁹ If any of the conditions of the program are violated the Girls Court handles them internally.¹²⁰ Notably, of the eighty girls that have gone through the program only one had to return to regular probation.¹²¹ The Girls Court has reduced recidivism by forty seven percent, which included a sixty percent reduction in the number of runaways and a sixty two percent reduction in arrests.¹²² Another important finding from Girls Court is that decrease in the use of secure detention for these girls; participants were admitted to the secure detention facility sixteen percent less and spent twenty seven percent fewer days in secure confinement.¹²³

V. Where do we go from here?

The policies and practices of the juvenile justice system have not evolved to adequately address the female juvenile offender. Female delinquents become involved in the system for very different reasons than males do and require unique methods of care and intervention to properly rehabilitate them. One way to address this issue is to focus on developing gender-specific intervention programs. Although some of these programs do exist there is not enough research and evidence to determine which programs are effective and what criteria should be used to create an effective program. Second, there needs to be greater control over judges' decision making. Providing judges with gender-specific tools to direct and control their decisions is one way to limit their broad discretion over juvenile offenders,

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² <http://www.girlscourt.org/index.html>

¹²³ <http://www.girlscourt.org/index.html>

which ultimately leads to the disproportionate number of female status offenders. Third, increased federal funding is necessary to improve and develop the juvenile justice system for girls.

A.Evidence-based practice

The recent introduction of evidence based practice (EBP) in the juvenile justice system shows that there needs to be a greater focus on developing gender-specific intervention programs.¹²⁴ EBP uses scientific methods to rigorously analyze programs to determine which are the best and most effective in achieving certain outcomes.¹²⁵ EBP has been embraced in the juvenile justice field and federal funding requirements favor evidence-based programs.¹²⁶

Before EBPs became popular the OJJDP provided funds to assess promising girls' delinquency programs.¹²⁷ This research based its findings on programmatic criteria, such as use of appropriate assessment tools, the skill and vocational training provided to the girls and the extent of gender-specific training the staff received.¹²⁸ However, the findings did not provide any indication on the effectiveness of the programs on girls' delinquency.¹²⁹

¹²⁴ Sherman, *supra* note 3, at 1615.....

¹²⁵ Margaret A.Zahn et al., *Determining What Works for Girls in the Juvenile Justice System: A Summary of Evaluation Evidence*, 55 *Crime & Delinquency* 2, 278(2009).

¹²⁶ Sherman, *supra* note 3, at 1624.....

¹²⁷ EILEEN REGEN LARENCE, U.S.GOV'T ACCOUNTABILITY OFFICE, GAO-09-721R, *JUVENILE JUSTICE: TECHNICAL ASSISTANCE AND BETTER DEFINED EVALUATION PLANS WILL HELP TO IMPROVE GIRLS' DELINQUENCY PROGRAMS* 4 (2009).

¹²⁸ *Id.*

¹²⁹ *Id.*

In 2004, the OJJDP convened the Girls Study Group, which was a comprehensive study of girls in the juvenile justice system.¹³⁰ Their study included an evidence-based review of available interventions for girls and whether they effectively intervened.¹³¹ The Girls Study Group identified 61 programs that specifically targeted girls' delinquency and compiled information to determine whether and how these programs had been studied for effectiveness.¹³² The Girls Study Group used the What Works criteria, which are evaluation measures consistent with acceptable social science standards for research, to assess the effectiveness of programs to ensure that they met the highly rigorous evaluation standards.¹³³ The study found that only 17 of the 61 programs had been the subject of published studies.¹³⁴ Only six of these programs provided sufficient evidence to assess effectiveness.¹³⁵ However, the evidence was inconclusive.¹³⁶

This study shows the lack of information out there about girls' delinquency programs. Many of the programs do not have the funds necessary to implement the type of research initiatives necessary to meet the rigorous standards of an evidence-based program. In 2011, OJJDP awarded grants to girls' programs that were considered promising in their 2004 study to help them gather evidence about the effectiveness of their program.¹³⁷ There is also concern that the criterion to determine effectiveness sets an unrealistically high standard.¹³⁸ A study funded by the OJJDP in 2009 looked at effectiveness of gender-specific programs, but

¹³⁰ Sherman, *supra* note 3, at 1592.

¹³¹ *Id.*

¹³² *Id.* at 1625..

¹³³ Larence, *supra* note 127.

¹³⁴ Sherman, *supra* note 3, at 1625.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 1626.

¹³⁸ Larence, *supra* note 127.

only required that the programs had at least one evaluation.¹³⁹ The results identified promising programs and important factors to consider.¹⁴⁰ Therefore, it might be appropriate to investigate the criterion that is used in evidence-based programs. Without appropriate funding and guidance on how to develop and measure successful programs, programs that show potential might be overlooked.

B.Control over the judiciary

The gender bias in the juvenile justice system has been a longstanding problem and only in recent years has it received the attention it deserves. The root of the problem stems from society's definition of the role of men and women and therefore has created an unconscious paternalistic attitude towards female juvenile offenders. The broad discretion by the judiciary in the juvenile justice system allows the paternalism to perpetuate. Removing some of the control the judiciary has in decision-making through changes in laws, policies, and decision making tools will help address the gender bias.

The 1980 Valid Court Order exception to the JDDPA gave judges the ability to incarcerate girls for non-violent status offenses because they disapproved of their behavior.¹⁴¹ Judges were able to punish girls for their behavior rather than try to aid in their rehabilitation.¹⁴² Repealing this law would force judges to treat girls the same way they have

¹³⁹ Margaret A.Zahn et al., *Determining What Works for Girls in the Juvenile Justice System: A Summary of Evaluation Evidence*, 55 *Crime & Delinquency* 2, 277(2009).

¹⁴⁰ Larence, *supra* note 127.

¹⁴¹ Pub..L.No..96-509.

¹⁴² Dalby, *supra* note 67, at 451.

treated boys over the years.¹⁴³ Girls may then be afforded other treatment opportunities that target their gender-specific needs.

Another way to control judges' discretion is by implementing tools that aid in decision-making. Standardized assessment instruments are used at various times in the justice system.¹⁴⁴ In particular they are used prior to sentencing to assess the risk the individual poses and to assist in screening and diagnosing conditions, such as mental health problems.¹⁴⁵ The Girls Study Group convened a study in 2010 to assess the suitability of these assessment instruments for delinquent girls.¹⁴⁶ They found that instruments that address gender differences were better suited for girls than ones that were gender neutral.¹⁴⁷ One assessment tool that was looked at is the Girls Link assessment used in the Solano County Probation Department in California.¹⁴⁸ This gender specific-assessment tool had a two-step screening process where juveniles who were initially screened and scored at low risk were placed on informal probation and juveniles who scored at a moderate to high risk were given a full screening.¹⁴⁹ The assessment instrument included information about the juvenile's school attendance, substance use, peer relationships, and parent sibling criminality.¹⁵⁰ More research is needed to determine the gender-specific factors important for determining risk and need.

C. Increase funding

¹⁴³ Dalby, *supra* note 67, at 451.

¹⁴⁴ Sherman, *supra* note 3, at 1621.

¹⁴⁵ Office of Juvenile Justice Delinquency Prevention, Girls Study Group Series, *Girls' Delinquency Programs- An Evidence-Based Review*, 2010.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Chris Baird et al. OFFICE OF JUVENILE JUSTICE DELINQUENCY PREVENTION, A COMPARISON OF RISK ASSESSMENT INSTRUMENTS IN JUVENILE JUSTICE, at 34 (2013), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/nccd_fire_report.pdf.

¹⁵⁰ *Id.*

A major source of support to develop and implement these gender-specific programs and policies came from both federal and state funding. However, federal funding has decreased significantly over the past decade.¹⁵¹ Congress has decreased funding through the JJDPA from \$500 million to \$100 million with additional cuts being proposed.¹⁵² The Challenge E Grants, which were established under the 1992 reauthorization of the JJDPA to give additional funding to state programs, have not been refunded since 2003.¹⁵³ The decline in federal funding could lead states to forgo development of gender-specific programs because it is not worth their efforts to try to comply with the JJDPA.¹⁵⁴ Also, states typically apply only a small portion of their federal funding to girls' delinquency programs.¹⁵⁵ In a 2009 GAO report, the OJJDP reported that states only use about 1% of their federal funding towards these initiatives.¹⁵⁶

The Juvenile Justice Delinquency Prevention Reauthorization Act of 2014 was introduced in the Senate on December 11, 2014.¹⁵⁷ The bill not only addresses many of the substantive issues effecting juvenile delinquents, but also proposes increasing and restructuring federal funding.¹⁵⁸ Considering the major developments that have been made in understanding gender differences in delinquents and cultivating appropriate responses to address these differences, funding is necessary to continue on this upward path. Although

¹⁵¹ Cary Gately, *Federal Juvenile Justice Funding Declines Precipitously* (2015), available at <http://jje.org/federal-juvenile-justice-funding-declines-precipitously/108343/>.

¹⁵² H.R.5326, 112th Cong., 2d Sess.(2012).1,38.

¹⁵³ Watson, *supra* note 2.

¹⁵⁴ Gately, *supra* note 151.

¹⁵⁵ U.S.GOV'T ACCOUNTABILITY OFFICE, GAO-09-721R, JUVENILE JUSTICE: TECHNICAL ASSISTANCE AND BETTER DEFINED EVALUATION PLANS WILL HELP TO IMPROVE GIRLS' DELINQUENCY PROGRAMS 9 (2009).

¹⁵⁶ *Id.*

¹⁵⁷ Gately, *supra* note 151.

¹⁵⁸ Gately, *supra* note 151.

resources to provide funding have declined, it is critical to get this bill passed because the JJDPa is the only federal law that provides protection to youth in the juvenile justice system. Through passing the bill the federal government will have to work at providing funding to states.

VI. Conclusion

The gender bias in the juvenile justice system had been a pervasive problem since the first juvenile court was created. Although there have been efforts on the state and federal levels to address the issue, the recent increase in delinquent girls shows that the problem is not being appropriately addressed. Judges' paternalistic approach towards girls is a result of the gender stereotypes in society. These stereotypes have rooted themselves in almost all aspects of life and it will take more than just the efforts of juvenile justice reformers to change those. However, putting in place practices and procedures that limit the control judges have over their decision making and developing the proper research tools to improve the juvenile justice system are the most productive way to combat the gender difference.