

No Girl Left Behind: Girls Courts as a Restorative Justice Approach to Healing

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This Article examines the need for a gendered restorative justice approach to healing girls from the trauma, abuse, abandonment, addiction, violence, and misdirection that many of them have encountered because of the juvenile justice system's abandonment of its restorative justice roots and its failure to adequately account for gender distinctions between boys and girls. This Article focuses on the vulnerabilities of girls of color who are at particular risk of spiraling from the juvenile courts into the adult criminal justice system, which remains ill-equipped to meet the needs of incarcerated females. This Article will also examine the burgeoning movement of restorative court interventions for delinquent girls reflected in the creation of specialized Girls Courts. This Article will culminate in a proposed reformed template for Girls Courts to expand girls' opportunities, particularly Black girls and other girls of color, to heal from trauma, addiction, and broken family structures, and to restore girls' ability to thrive in a meaningful life.

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I. INTRODUCTION

How do we provide healing and restoration to girls, ensuring that they are not left behind by their encounters with personal brokenness and the brokenness of the criminal justice system?¹ As a society, we lose the contributions of girls who become enmeshed in the system and those same girls lose the hallmark of the American dream--the autonomy to fulfill their purpose and realize their individual potentials.² As a contemporary society that prioritizes the empowerment of women and girls across the globe,³ the United States must engage in a call to action to redeem the girls that it currently leaves behind. The time is ripe for a return to restorative justice reform of the juvenile justice system that has failed to redirect girls' lives before they fall into the abyss of the adult criminal justice system.⁴

This Article examines the need for a gendered restorative justice approach to healing girls from the trauma, abuse, abandonment, addiction, violence, and misdirection that many of them encountered as a result of the juvenile justice system's abandonment of its restorative justice roots and its failure to adequately account for gender distinctions between boys and girls. This Article focuses on the vulnerabilities of girls of color who are at particular risk of spiraling from the juvenile courts into the adult criminal justice system, which remains ill-equipped to meet the needs of incarcerated females. This Article will also examine the burgeoning movement of restorative court interventions for delinquent girls reflected in the creation of specialized Girls Courts. This Article will culminate in a proposed reformed template for Girls Courts to expand girls' opportunities, particularly for Black girls and other girls of color, to heal from trauma, addiction, and broken family structures, and to restore girls' ability to thrive in a meaningful life.

¹ See generally Julianne Hill, *Saving the Girls*, 103 A.B.A. J. 46, 48 (2017) ("A girl endures trauma at home only to face more trauma in the justice system.").

² See Laura S. Abrams, *Juvenile Justice at a Crossroads: Science, Evidence, and Twenty-First Century Reform*, 87 SOC. SERV. REV. 725, 736-37 (2013) (calling for juvenile justice reform).

³ See *Goal 5: Achieve Gender Equality and Empower All Women and Girls*, UNITED NATIONS, <https://sdgs.un.org/goals/goal5> (last visited Dec. 13, 2021). Goal 5 of the United Nations Sustainable Development Goals is to "achieve gender equality and empower all women and girls." *Id.* This is especially poignant in a pandemic reality, which increases the risk of violence against girls and against women. See *id.*

⁴ See generally Brenda J van den Bergh et al., *Women's Health in Prison: Urgent Need for Improvement in Gender Equity and Social Justice*, 87 BULL. WORLD HEALTH ORG. 406, 406 (2009); *Gender Justice*, THE SENT'G PROJECT, <https://www.sentencingproject.org/issues/women/> (last visited Dec. 13, 2021).

II. A BROKEN CRIMINAL JUSTICE SYSTEM: WHY HEALING AND RESTORATION OF GIRLS IS A NOBLE GOAL

A. *The American Dilemma of Mass Incarceration*

This Article will first provide context by briefly setting forth the broken state of America's juvenile and criminal justice system that fails to divert girls from descending into the adult system.⁵ The American criminal justice system is indeed broken.⁶ It is broken in the over-incarceration of our citizens. The United States constitutes only 4% of the world's population, while the incarcerated population in the United States constitutes nearly 25% of the world's incarcerated persons.⁷ It is broken in its discriminatory incarceration of people of color: Black Americans comprise approximately 33% of the incarcerated population while comprising only 12% of the U.S. population, and Hispanics constitute approximately 23% of the incarcerated population while comprising only 16% of the U.S. population.⁸ It is broken in America's

⁵ Hill, *supra* note 1, at 48 ("The way to do it is to catch the girls before entering the system.").

⁶ See *infra* notes 7–15 and accompanying text.

⁷ *Mass Incarceration*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/issues/smart-justice/mass-incarceration> (last visited Dec. 13, 2021). Although the United States comprises nearly 5% of the population worldwide, the United States has almost 25% of the global prison population, with "2.3 million people in jail and prison . . ." *Id.* The United States incarcerates more people than any other nation on the planet. James Cullen, *The History of Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>. The U.S. incarceration rate is approximately seven times the rate of nations in Western Europe. *Id.* Since 1970, the population of incarcerated people in the United States has increased by 700%. NAZGOL GHANDNOOSH, THE SENT'G PROJECT, U.S. PRISON POPULATION TRENDS: MASSIVE BUILDUP AND MODEST DECLINE 1 (2019), <https://www.sentencingproject.org/wp-content/uploads/2019/09/U.S.-Prison-Population-Trends.pdf>. Many factors, including societal shifts and major policy changes, have played significant roles in the surge in mass incarceration since the 1970s. Anne R. Traum, *Mass Incarceration at Sentencing*, 64 HASTINGS L.J. 423, 428–30 (2013). Beginning in the 1970s, there was an uptick in the sentencing of "marginal felons" to prison and jail for "low-level felonies," including drug possession and parole violations. *Id.* at 428–29. During the 1980s, the number of individuals imprisoned or jailed for drug offenses in the United States rose "from 40,900 in 1980 to 430,926 in 2019." *Criminal Justice Facts*, THE SENT'G PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> (last visited Dec. 13, 2021).

⁸ John Gramlich, *The Gap Between the Number of Blacks and Whites in Prison is Shrinking*, PEW RSCH. CTR. (Apr. 30, 2019), <https://www.pewresearch.org/fact-tank/2019/04/30/shrinking-gap-between-number-of-blacks-and-whites-in-prison/>. The Bureau of Justice Statistics reported that 39% of state prisoners are Black, 41% are White, and 17% are Latinx. ASHLEY NELLIS, SENT'G PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 22 n.10 (2021), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>. In 2014, African Americans made up 34% of the

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recidivism rate: approximately 68% of state prisoners released are “arrested within 3 years, 79% within 6 years, and 83% within 9 years.”⁹ The system is broken in its treatment of the psychologically impaired: 54% of state prisoners and 45% of federal prisoners report mental health concerns.¹⁰ Anywhere from 10% to 25% of incarcerated persons are simply locked away without receiving necessary treatment.¹¹ The system is broken in the wealth disparity between those who can and cannot afford legal representation or to post bail: over 100 million Americans cannot afford basic legal services,¹² and the poor cannot afford bail.¹³ It is also broken in its treatment of women and girls, as evidenced by the major increase in female incarceration: from 1980 to 2019, the number of women incarcerated rose by more than 700%, from a total of 26,378 women incarcerated in 1980 to 222,455 in 2019.¹⁴ The

correctional population, which totaled 6.8 million. *Criminal Justice Fact Sheet*, NAACP, <https://www.naacp.org/criminal-justice-fact-sheet/> (last visited Dec. 13, 2021).

⁹ MARIEL ALPER & MATTHEW R. DUROSE, U.S. DEP’T OF JUST., 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005–2014) 1 (2018), <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>. Eighty-three percent of “state prisoners released in 2005 across 30 states were arrested at least once during the 9 years following their release.” *Id.*

¹⁰ *Incarceration Nation*, AM. PSYCH. ASS’N (Oct. 2014), <https://www.apa.org/monitor/2014/10/incarceration>. With at least half of prisoners reporting mental health concerns, approximately 10% to 25% of prisoners in the United States are afflicted with serious mental illnesses, like schizophrenia. *Id.* This is further exacerbated by the lack of proper treatment available in prison facilities. *Id.* The Los Angeles County Jail, New York’s Riker’s Island, and Chicago’s Cook County Jail each house more mentally ill individuals “than any remaining psychiatric hospital in the United States.” *Serious Mental Illness (SMI) Prevalence in Jails and Prisons*, TREATMENT ADVOC. CTR. 1 (Sept. 2016), <https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/smi-in-jails-and-prisons.pdf>.

¹¹ *See Incarceration Nation*, *supra* note 10.

¹² Eric M. Eckert, *Baylor Law School: ‘100 Million Americans Can’t Afford Legal Services. What Can We Do About It?’*, BAYLOR UNIV. (Sept. 15, 2016), <https://www.baylor.edu/mediacommunications/news.php?action=story&story=172819>.

These legal services are for basic human needs: shelter, sustenance, health, and child custody. A.B.A., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 12 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

¹³ *See* Press Release, Prison Policy Initiative, Mass Incarceration: The Whole Pie 2020 (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>. The median felony bail amount is \$10,000, which equates to eight months of income for the standard detained defendant. *See id.*; *see also* Press Release, Prison Policy Initiative, Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time (May 10, 2016), <https://www.prisonpolicy.org/reports/incomejails.html>.

¹⁴ THE SENT’G PROJECT, INCARCERATED WOMEN AND GIRLS 1 (2020), <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>. From 1980 to 2019, the number of women incarcerated has risen by more than 700%, from a total of 26,378 women incarcerated in 1980 to 222,455 in 2019. *Id.*

intersectionality of factors such as race, poverty, gender, and mental illness overwhelm and cripple America's justice system.¹⁵

B. *The Juvenile Justice System that Strayed from Its Roots*

Even the embattled juvenile justice system displays a profound brokenness, deviating from its founding purpose to rehabilitate juveniles.¹⁶ The guiding principle of juvenile courts is clear: the original juvenile justice courts were created to reflect a deeper understanding of developmental differences between children and adults, rooted in the belief that children "are not criminally responsible for their actions."¹⁷ Juvenile courts were meant to provide at-risk boys and girls with individualized care focusing on rehabilitation to prevent future criminal activity.¹⁸ Historically, juvenile courts had full discretion in the proceedings of each case, with judges acting "in the best interests of the child."¹⁹

Historically, shifts in focus of juvenile courts' rehabilitative services unraveled with public policy and political shifts that favored "tough on crime" policies and responded to the "superpredator" myth,²⁰ replete with racial connotations and disparate implications for Black and Hispanic youth. As a result, children of color are more likely to face arrest than their White counterparts for the same offenses and thus languish in the juvenile system far longer.²¹ Additionally, Black youths are five times more likely than White youths to be confined in a juvenile

¹⁵ MALIKA SAADA SAAR ET AL., GEO. L. CTR. ON POVERTY & INEQ., THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY 7, 12, 22, 33 (2015), <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf>.

¹⁶ JOAN MCCORD ET AL., JUVENILE CRIME JUVENILE JUSTICE 154 (Joan McCord et al. eds., 2001). The first juvenile court was established in Cook County, Illinois, in 1899 in response to a push for rehabilitative institutions for juveniles. *Id.* at 157. The Illinois Juvenile Court Act of 1899 codified this separate system dedicated to juvenile justice, granting the courts full jurisdiction to preside over all matters related to youth delinquents. *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 154.

²⁰ The narrative that juveniles could no longer be rehabilitated led to the notorious label, "superpredators." "Superpredators" were "'radically impulsive, brutally remorseless' elementary school youngsters who pack guns instead of lunches' and 'have absolutely no respect for human life.'" *The Superpredator Myth, 25 Years Later*, EQUAL JUST. INITIATIVE (Apr. 7, 2014), <https://eji.org/news/superpredator-myth-20-years-later/>.

²¹ Michael J. Leiber & Jennifer H. Peck, *Race in Juvenile Justice and Sentencing Policy: An Overview of Research and Policy Recommendations*, 31 LAW & INEQ. 331, 337 (2013).

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facility.²² Furthermore, Black youths are transferred to adult courts at a significantly higher rate than their White peers; presently at the highest rate in thirty years.²³ While Black youth comprise 14% of the total youth population, they represent 47.3% of youth transferred to adult court.²⁴

Disparities also exist at the intersection of race and gender. Black girls comprise 35% of the population of incarcerated girls, while Latinas and White girls comprise 19% and 38%, respectively.²⁵ Black girls are 2.7 times more likely than White girls to be referred to the juvenile justice system and 1.2 times more likely to be detained.²⁶ Even prosecutors are 20% more likely to initiate formal charges in cases involving Black girls than in cases involving White girls.²⁷ Judges tend to give harsher sentences to Black girls than White girls notwithstanding the severity of the offense, age, and prior record of the offender.²⁸

The impact of the juvenile justice system's departure from its healing roots has resulted in increasing challenges in survival for youth—as evidenced by struggles with substance abuse and recidivism. According to the Centers for Disease Control and Prevention, juveniles who are prosecuted in the adult system are 34% more likely to recidivate with more violent offenses.²⁹ Juveniles in the system have a higher rate of substance abuse and mental health problems.³⁰ For instance, the National Center on Addiction and Substance Abuse at

²² JOSHUA ROVNER, THE SENT'G PROJECT, BLACK DISPARITIES IN YOUTH INCARCERATION 1 (2021), <https://www.sentencingproject.org/wp-content/uploads/2017/09/Black-Disparities-in-Youth-Incarceration.pdf>.

²³ Jeree Michele Thomas & Mel Wilson, *The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations 2* (2017), <https://justice.roundtable.org/wp-content/uploads/2018/09/Social-Justice-Brief-Youth-Transfers.Final-2.pdf>.

²⁴ *Id.*

²⁵ Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2020*, *supra* note 13.

²⁶ Rebecca Epstein, Jamilia J. Blake & Thalia Gonzalez, *Girlhood Interrupted: The Erasure of Black Girls' Childhood*, GEO. L. CTR. ON POVERTY & INEQ. 12 (2017).

²⁷ *Id.*

²⁸ *Id.*; see also Jyoti Nanda, *Blind Discretion: Girls of Color and Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502, 1522 (2012) (quoting Lori D. Moore & Irene Padavic, *Racial and Ethnic Disparities in Girls' Sentencing in the Juvenile Justice System*, 5 FEMINIST CRIMINOLOGY 263, 279–80 (2010)).

²⁹ Robert Hahn et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 30, 2007), <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

³⁰ See generally Denise C. Herz, Joseph P. Ryan & Shay Bilchik, *Challenges Facing Crossover Youth: An Examination of Juvenile-Justice Decision Making and Recidivism*, 48 FAM. CT. REV. 305 (2010) (studying the correlation between an unpleasant childhood and recidivism rates in Los Angeles County).

Columbia University reported that 1.9 million of 2.4 million juvenile arrests involved substance abuse and addiction, and only 68,600 juveniles received substance abuse treatment.³¹

C. *Girls Are Not OK: The State of Girls in the Broken Juvenile Justice System*

The high-profile case of Cyntoia Brown, granted clemency and released from prison in Tennessee after serving a fifteen-year sentence for murder, serves as an example of how both the juvenile and adult systems failed a sixteen-year-old who had been sex-trafficked.³² Her primary defense in shooting the decedent, who paid her for sex while she was a minor, was that she feared for her life based on her past experiences of abuse.³³ Brown was not tried in a juvenile court but was instead waived to stand trial as an adult, where she was convicted and sentenced to life in prison.³⁴ After serving fifteen years in a state prison, she was granted clemency and released.³⁵ Tennessee's Governor Haslam granted clemency in large part due to public outcry, with lawmakers and activists pointing to the years of forced prostitution and ongoing abuse leading up to the murder.³⁶ Examining the effects of cases like Brown's demonstrates that restorative justice reform approaches to the existing juvenile justice system are needed to emphasize individualized treatment and counseling that will divert girls from the harsh realities of becoming enmeshed within the adult system.³⁷

³¹ See NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUM. UNIV., CRIMINAL NEGLECT: SUBSTANCE ABUSE, JUVENILE JUSTICE AND THE CHILDREN LEFT BEHIND, at i (2004) (accompanying statement of Joseph A. Califano).

³² Mahita Gajanan, *The History Behind the Netflix Documentary Murder to Mercy: The Cyntoia Brown Story*, TIME (Apr. 29, 2020), <https://time.com/5828724/cyntoia-brown-netflix-documentary/>. Cyntoia Brown was released from prison in 2019, after serving fifteen years for killing Johnny Allen, a forty-three-year-old real estate agent. *Id.*

³³ *Id.* Allen agreed to pay Brown \$150 for sex, and Brown alleges that she killed Allen out of self-defense. *Id.* In 2006, Brown was convicted of first-degree murder and aggravated robbery, and she was sentenced to life in prison. *Id.* She was also tried as an adult, although she was sixteen-years-old when the murder occurred. *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Christine Hauser, *Cyntoia Brown Is Granted Clemency After 15 Years in Prison*, N.Y. TIMES (Jan. 7, 2019), <https://www.nytimes.com/2019/01/07/us/cyntoia-brown-clemency-granted.html>.

³⁷ Meda Chesney-Lind, *Challenging Girls' Invisibility in Juvenile Court*, 564 ANNALS AM. ACAD. POL. & SOC. SCI. 185, 198 (1999) ("[I]f the juvenile justice system represents the worst excesses of a system that policed and reinforced gender difference, the contemporary adult system epitomizes a system that embraces, often with a troubling zest, a form of equality that penalizes women by failing to recognize real differences (both biological and social) between men and women.").

1. Trauma and the Sexual Abuse to Prison Pipeline

The current system is inadequate at providing access to professional treatment providers and educational support, and fails to take into account the impact of sexual violence and abuse that many girls have survived.³⁸ Sexual abuse is one of the primary predictors of girls' entry into the juvenile justice system, creating a dangerous trend referred to as the "sexual abuse to prison pipeline."³⁹ Girls often carry their trauma from physical and sexual abuse with them and are more likely to show aggression, deviant social behaviors, and increased sexualization.⁴⁰ For those who have been victims of human trafficking or were otherwise forced into sex work, many have been arrested on prostitution charges and were punished as criminals instead of rescued and supported as victims.⁴¹ In the United States, 55% of human trafficking victims are children.⁴²

2. Toxic Home Environments

Toxic home environments are also often to blame when analyzing girls' arrest data.⁴³ Girls are more likely than boys to report a tumultuous and violent environment at home and are arrested more often than their male counterparts "over incidents involving family members."⁴⁴ Moreover, when girls have an abusive home life, some

³⁸ Lisa Pasko, *Damaged Daughters: The History of Girls' Sexuality and the Juvenile Justice System*, 100 J. CRIM. L. & CRIMINOLOGY 1099, 1107; SAAR ET AL., *supra* note 15, at 7. Approximately 31% of girls in the juvenile justice system have been sexually abused, compared to approximately 7% of boys. *Id.* at 8.

³⁹ SAAR ET AL., *supra* note 15, at 9. Girls often carry experiences of trauma, such as physical and sexual abuse, with them and are more likely to show aggression, deviant social behaviors, and increased sexualization. Jalise Burt, Note, *From Zero-Tolerance to Compassion: Addressing the Needs of Girls Caught in the School-to-Prison Pipeline Through School-Based Mental Health Services*, 6 GEO. J.L. & MOD. CRITICAL RACE PERSP. 97, 97 (2014).

⁴⁰ Burt, *supra* note 39.

⁴¹ SAAR ET AL., *supra* note 15, at 19 (noting that many courts "still view victims of child sex trafficking as perpetrators"). 80% of the prostitutes globally are women. *How Many Prostitutes Are in the United States and the Rest of the World?*, PROCON.ORG (last updated Jan. 11, 2018), <https://prostitution.procon.org/questions/how-many-prostitutes-are-in-the-united-states-and-the-rest-of-the-world/>.

⁴² *Human Trafficking Awareness*, DELIVERFUND, https://deliverfund.org/the-human-trafficking-problem-in-america/?gclid=CjwKCAiA57D_BRAZEiwAZcfCxeGOLR8S5QkMqOURrE-WzD1wxHofxOWWn0gegQHT6d_v9sv8Zng2uhoCHTwQAvD_BwE#.

⁴³ See, e.g., Hill, *supra* note 1, at 48 (recounting the story of a woman who turned to alcohol at age eleven and drugs at age fifteen to alleviate the pain she experienced during her childhood).

⁴⁴ FRANCINE T. SHERMAN ET AL., *MAKING DETENTION REFORM WORK FOR GIRLS: A GUIDE TO JUVENILE DETENTION REFORM, JUVENILE DETENTION ALTERNATIVES INITIATIVE 7-8* (2013),

choose to run away, which lands them in even more violent settings, like adolescent prostitution.⁴⁵ For these girls, they either become a prisoner in their own home or a prisoner in the juvenile justice system. Additionally, girls in the juvenile justice system experience both a higher rate of mental health disorders,⁴⁶ and exposure to trauma, including higher rates of victimization than their male peers.⁴⁷

3. Educational Disruptions

*When girls who are dealing with violence and trauma go to school, they inevitably bring their experiences and coping mechanisms with them. Girls who are maltreated or exposed to violence are more likely to demonstrate “[a]ggression, increased sexualization, and other deviant social behaviors.”*⁴⁸

School discipline incidents are a significant factor leading girls into the juvenile justice system. Instead of providing support and resources, the system of school discipline “involves pushing children out of traditional schools and into the juvenile and criminal justice systems.”⁴⁹ The “school-to-prison-pipeline” phenomenon subjects girls of color—primarily Black girls—to increased interactions with law enforcement personnel and the criminal justice system.⁵⁰ “Zero-tolerance policies” result in disproportionate suspension rates for Black girls,⁵¹ labeling them as criminals or juvenile delinquents and limiting their educational

<https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1499&context=lsfp>. A report published in 2007 found that conflict with parents or other guardians was a factor in over half of the adjudicated girls’ cases. Carla P. Davis, *At-Risk Girls and Delinquency: Career Pathways*, 53 CRIME & DELINQ. 408, 414 (2007).

⁴⁵ Bernardine Dohrn, *All Ellas: Girls Locked Up*, 30 FEMINIST STUD. 302, 307 (2004). Many girls also run away due to typically untreated mental health conditions that stem from a history of abuse. SHERMAN ET AL., *supra* note 44, at 11–12; *see also* SAAR ET AL., *supra* note 15, at 22.

⁴⁶ SHERMAN ET AL., *supra* note 44, at 8.

⁴⁷ Patricia K. Kerig & Julian D. Ford, *Trauma Among Girls in the Juvenile Justice System*, NAT’L CHILD TRAUMATIC STRESS NETWORK, JUV. JUST. COMM’N 5 (2014).

⁴⁸ Burt, *supra* note 39, at 97. Additionally, Black girls are over-policed, and are suspended six times more than White female students. Bianca A. White, Note, *The Invisible Victims of the School-to-Prison Pipeline: Understanding Black Girls, School Push-Out, and the Impact of the Every Student Succeeds Act*, 24 WM. & MARY J. WOMEN & L. 641, 648 (2018).

⁴⁹ Burt, *supra* note 39, at 97. Pushing girls out of schools often leads them to the juvenile justice system.

⁵⁰ White, *supra* note 48, at 641–49.

⁵¹ *Id.* at 644. With zero tolerance policies in public schools, Black girls are also more likely to be referred to law enforcement agencies and arrested. This likely accounts for the greater number of Black girls in the juvenile justice system, as well as the fact that Black women comprise the quickest-growing prison population. *Id.* at 647–48. For example, if a school has a zero-tolerance policy for fighting and one girl hits the instigator solely to defend herself, both students would face suspension. *Id.* at 648.

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opportunities.⁵² According to New York City public school data, Black girls constituted 90% of all girls expelled during the 2011–2012 school year, while no White girls were expelled during this time.⁵³ The over-policing of Black girls in schools and the use of common disciplinary monikers, like disobedient and disruptive, is well documented.⁵⁴ Moreover, in the resulting referral to the juvenile justice system, schools are ill-equipped to provide healing and restoration for “unaddressed health, emotional, economic and educational needs of girls” who tend to be disciplined.⁵⁵

4. Failure to Address the Disparities in Treatment of Black Girls

The current juvenile justice system manages approximately 641,000 girls from ages eleven through seventeen that enter the juvenile justice system each year.⁵⁶ Girls of color are referred to detention facilities more frequently, with Black girls representing an overwhelming presence in the juvenile justice system.⁵⁷ Native American girls are placed in juvenile detention facilities at a rate of 179 per 100,000; Latinas at a rate of 47 per 100,000; while Black girls are placed in detention at a rate of 123 per 100,000.⁵⁸ By comparison, non-Hispanic White girls are confined at a rate of 37 per 100,000, representing the lowest rates of placement into detention facilities, other than Asian girls who are confined at a rate of only 11 per 100,000.⁵⁹

Black girls are 20% more likely to be charged with a crime and 2.7 times more likely to be referred to the juvenile justice system than White girls.⁶⁰ Moreover, Black girls are typically involved in the system

⁵² White, *supra* note 48, at 648.

⁵³ Leah A. Hill, *Disturbing Disparities: Black Girls and the School-to-Prison Pipeline*, 87 *FORDHAM L. REV.* 58, 59–60 (2018).

⁵⁴ White, *supra* note 48, at 645.

⁵⁵ *Id.*

⁵⁶ Jenny Gold, *Women's Health in Juvenile Detention: How a System Designed for Boys Is Failing Girls*, *ATLANTIC* (Nov. 28, 2012), <https://www.theatlantic.com/health/archive/2012/11/womens-health-in-juvenile-detention-how-a-system-designed-for-boys-is-failing-girls/265668/>. Nearly 90% of this population has suffered from “physical, sexual, or emotional abuse” in the past. *Id.*

⁵⁷ Chesney-Lind, *supra* note 37, at 193. See generally Fanna Gamal, *Good Girls: Gender-Specific Interventions in Juvenile Court*, 35 *COLUM. J. GENDER & L.* 228, 236 (2018).

⁵⁸ SAAR ET AL., *supra* note 15, at 7.

⁵⁹ *Id.*

⁶⁰ Georgetown Law, *End Adulthood Bias*, *YOUTUBE* (May 17, 2019), <https://www.youtube.com/watch?v=L3Xc08anZAE>.

longer than their White peers.⁶¹ According to a U.S. Department of Justice National Report, over one-third of the female delinquency cases in 2015 involved Black girls.⁶² Black girls comprised 15% of the female youth population in 2015, but they accounted for 35% of the female delinquency population.⁶³ The same report states that a case involving a Black girl was three times more likely than that of a White girl to be referred to juvenile court.⁶⁴ Once referred to juvenile court, over 50% of Black girls' delinquency cases were adjudicated within the juvenile courts, compared to 44% of White or Hispanic girls' cases.⁶⁵

Many of these disparities found in the realm of education and criminal justice can be attributed to the adultification of Black girls, gender and race stereotypes, and an exclusive measuring stick for femininity.⁶⁶ The adultification of Black girls has led to the perception of Black girls being less innocent than White girls.⁶⁷ Adultification happens in two basic forms: socialization and stereotyping.⁶⁸ The former occurs when a child acts more mature due to situational context and/or necessity, occurring most commonly in community environments with fewer resources.⁶⁹ Adultification can also manifest as a cultural or social stereotype rooted in how adults perceive girls without actually knowing how that girl behaves or communicates.⁷⁰ As a result, Black girls are incorrectly seen as more mature than non-Black girls, robbing them of the opportunity to make mistakes.⁷¹

⁶¹ Gamal, *supra* note 57, at 234.

⁶² SAMANTHA EHRMANN, NINA HYLAND & CHARLES PUZZANCHERA, U.S. DEP'T OF JUST., GIRLS IN THE JUVENILE JUSTICE SYSTEM 8 (2019), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/251486.pdf>.

⁶³ *Id.* White, Hispanic, and Asian female youth made up a lesser share of the female delinquency caseload than their share of the general population. *Id.* at 13; FRANK SCHMALLEGER & CATHERINE D. MARCUM, JUVENILE JUSTICE: AN ACTIVE LEARNING APPROACH 193 (2019).

⁶⁴ EHRMANN, *supra* note 62, at 13.

⁶⁵ *Id.*; see also Maisha T. Winn & Stephanie S. Franklin, *Emerging from Our Silos: Coalition Building for Black Girls*, in FROM EDUCATION TO INCARCERATION: DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 113, 120 (2014) (finding that Black girls are criminalized because they are viewed as "inherently criminal and hyper-sexual").

⁶⁶ Winn & Franklin, *supra* note 65, at 115 ("We understand the fragility of Black girls in spite of the ways in which their identities have been constructed through media as loud, bossy, sassy, hypersexualized, and in some cases the antithesis of feminine.").

⁶⁷ Epstein et al., *supra* note 26, at 2.

⁶⁸ *Id.* at 4.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 6. Because of this misperception, Black girls' mistakes are often misconstrued as malicious and intentional. *Id.* ("Black girls are likened more to adults than to children and are treated as if they are willfully engaging in behaviors typically

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Black girls disproportionately experience gender stereotypes. Research suggests that “adultification may contribute to increasingly disproportionate rates of school discipline for Black girls.”⁷² Labels like “promiscuous,” “angry,” or “aggressive” are assigned to Black girls whether or not their behavior aligns.⁷³ A 2017 survey found that Black girls are considered more independent and generally know more about sex and adult topics than White girls.⁷⁴ A pervasive view exists that asserts that Black girls are less in need of nurturing, support, and protection than their White counterparts.⁷⁵ Thus, adultification blurs the line between childhood and adulthood.⁷⁶

Another hurdle Black girls face is the concept of hegemonic femininity, which represents the idea that one form of femininity is “ideal” and all others are inferior.⁷⁷ “[M]iddle-class, heterosexual, white femininity is normalized, and all other femininities are judged against this standard.”⁷⁸ This dynamic unfairly places Black girls in a position to measure up to an ideal that they did not create, nor was it created with them in mind.⁷⁹

D. *The Necessity of a Gendered Approach*

1. The Imperative to Divert Girls from the Adult System

Continuous and systemic failures in recognizing the gendered needs of women and girls contribute to girls’ downward spiral into the broken criminal justice system. The needs of women remain unmet, despite the increasing numbers over the past twenty years rendering women as the largest rising prison population. Inflexible prison policies and protocols fail to reflect unique aspects of women’s lives in prison, creating a disparity in their experience as compared to their male counterparts.⁸⁰ Prisons remain challenged to meet the unique needs posed by biological differences that the male-dominated system does

expected of Black women.”). This phenomenon unjustly makes Black girlhood synonymous with Black womanhood. *Id.* at 4.

⁷² Epstein et al., *supra* note 26, at 6.

⁷³ *Id.* at 5.

⁷⁴ *Id.* at 8.

⁷⁵ *Id.*

⁷⁶ Georgetown Law, *supra* note 60.

⁷⁷ Gamal, *supra* note 57, at 240.

⁷⁸ *Id.*; see Winn & Franklin, *supra* note 65, at 119 (noting a “narrow, white middle-class definition of femininity”).

⁷⁹ Winn & Franklin, *supra* note 65, at 119 (“A black girl . . . understands, on an intuitive level, that the expression of who she is, as a young woman, is controversial to the *accepted* norms of femininity in this culture.”).

⁸⁰ See INCARCERATED WOMEN AND GIRLS, *supra* note 14.

not account for and has been sluggish to address.⁸¹ Current prison policies reflect an antiquated approach to women's unique reproductive health needs.⁸² Approximately 4% to 9% of women arrive in prison pregnant, yet institutions struggle to accommodate women's unique health, safety, and comfort needs prenatal, postnatal, and during childbirth.⁸³

Women's health concerns in prison remain significantly unmet because of the lack of substance abuse treatment, trauma-based individualized treatment, and gender-specific approaches to treatment and aftercare.⁸⁴ Additionally, women in prison remain at a higher risk for infectious diseases.⁸⁵ Furthermore, a lack of educational and vocational trainings renders women ill-equipped to transition back into society, which compounds the risk of recidivism.⁸⁶ Those extensive and pervasive failings compound the imperative to divert girls from the adult criminal justice system.

⁸¹ *Problems and Unmet Needs in the Contemporary Women's Prison*, PRISONS: PRISONS FOR WOMEN, <https://law.jrank.org/pages/1805/Prisons-Prisons-Women-Problems-unmet-needs-in-contemporary-women-s-prison.html#ixzz6RY2z9Gva> (last visited Dec. 13, 2021) [hereinafter PRISONS FOR WOMEN].

⁸² *Reproductive (In)justice: Women and Mothers in Prison*, NAT'L WOMEN'S HEALTH NETWORK (May 1, 2014), <https://nwhn.org/reproductive-injustice-women-and-mothers-in-prison/>. Most incarcerated women are between the ages of eighteen and forty-four and are in their reproductive years. Samantha Laufer, Note, *Reproductive Healthcare for Incarcerated Women: From "Rights" to "Dignity,"* 56 AM. CRIM. L. REV., 1785, 1785-86 (2019). Further, "it is estimated that 6% to 10% of female inmates are pregnant upon entering prison," with 1,400 babies born to incarcerated mothers annually. *Id.* at 1786. With pasts filled with abuse, substance abuse, and trauma, these women face higher rates of other medical issues and conditions, such as cervical cancer, diabetes, hepatitis, and HIV. *Id.*

⁸³ PRISONS FOR WOMEN, *supra* note 81.

⁸⁴ See, e.g., Erin Polka, *The Monthly Shaming of Women in State Prisons*, PUB. HEALTH POST (Sept. 4, 2018), <https://www.publichealthpost.org/news/sanitary-products-women-state-prisons/>; see also *Operations Memorandum on Provision of Feminine Hygiene Products*, U.S. DEP'T OF JUST., FED. BUREAU OF PRISONS (Aug. 1, 2017), https://www.bop.gov/policy/om/001_2017.pdf.

⁸⁵ James Hamblin, *Mass Incarceration Is Making Infectious Diseases Worse*, ATLANTIC (July 18, 2016), <https://www.theatlantic.com/health/archive/2016/07/incarceration-and-infection/491321/>. "Of more than 10 million incarcerated people in the U.S. alone, 4 percent have HIV, 15 percent have hepatitis C, and 3 percent have active tuberculosis." *Id.*

⁸⁶ Adam Harris, *Women in Prison Take Home Economics, While Men Take Carpentry*, ATLANTIC (Apr. 30, 2018), <https://www.theatlantic.com/education/archive/2018/04/the-continuing-disparity-in-womens-prison-education/559274/>.

III. GIRLS COURTS: A GENDERED COURT INTERVENTION FOR GIRLS

Within the framework of recent trends in restorative justice, Girls Courts have emerged as alternative courts to serve the underrepresented needs of girls. Specifically, these courts seek to address the impact of gender bias and to “create trauma-informed care environments [specific to girls] that focus on providing rehabilitative services in addition to appropriate legal sanctions.”⁸⁷ Girls Courts models primarily work within the existing juvenile justice system as a trauma-informed alternative court program that provides treatment and encourages girls to take ownership over their future decisions while taking responsibility for the underlying conduct that initiated the referral to Girls Courts.⁸⁸

Girls Courts models typically embody judicial intervention post-adjudication, as well as counseling, mentoring, and monitoring by court or probation personnel.⁸⁹ Girls Courts vary from narrowly tailored programming for girls who have been victims of sex trafficking⁹⁰ to broader-based models aimed at reducing the potential recidivism of juvenile girl offenders.⁹¹ Girls Courts are unique in that since referrals can originate from a variety of paths, including from parents, school officials, or law enforcement, these courts actually “lie at the intersection of prisons and schools.”⁹² Factors that determine eligibility to participate in Girls Courts include evaluation of the likelihood of

⁸⁷ Sarah Klein, *Girls in the Juvenile Justice System: The Case for Girls' Courts*, A.B.A. (Jan. 5, 2012), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2012/girls-juvenile-justice-system-case-for-girls-courts/>. This Article asserts that the current juvenile justice system is ill-equipped to meet the unique needs of girls and poses the Girls Court model as a solution to a cycle of female delinquency.

⁸⁸ See generally Wendy S. Heipt, *Girls' Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. SOC. JUST. 803 (2015) (analyzing Girls Courts).

⁸⁹ *Id.* at 833–37.

⁹⁰ For example, Houston's GIRL Court (Growing Independence Restoring Lives) was created specifically to help girls sold into human trafficking. Kevin Seat et al., *Criminal Justice Reform in Harris County: A Review by the Harris County Budget Management Department*, HARRIS CNTY. BUDGET MGMT. DEP'T, [https://static1.squarespace.com/static/5390d7a1e4b0f5b00cae341b/t/596fc47ccd0f689ccf8b71f9/1500497025754/BMDC\]reformanalysis.pdf](https://static1.squarespace.com/static/5390d7a1e4b0f5b00cae341b/t/596fc47ccd0f689ccf8b71f9/1500497025754/BMDC]reformanalysis.pdf) (last visited Dec. 13, 2021).

⁹¹ *Hawai'i Girls Court*, FAM. CT. OF THE FIRST CIR.—HAW. ST. JUDICIARY, <https://www.girlscourthawaii.org/> (last updated Oct. 18, 2021) [hereinafter *Hawai'i Girls Court*].

⁹² Tamar Lerer, *Hawai'i Girls Court: Juveniles, Gender, and Justice*, 18 BERKELEY J. CRIM. L. 84, 89, 139 (2013). *Hawai'i Girls Court*, *supra* note 91 (noting Hawai'i Girls Court seeks to recognize different paths to delinquency).

reoffending, presence of substance abuse, or exposure to sexual exploitation.⁹³

In 2004, New Mexico instituted the longest running Girls Courts—New Mexico’s Program for the Empowerment of Girls (“PEG”).⁹⁴ PEG serves adjudicated girls between the ages of fourteen and eighteen.⁹⁵ The program included weekly mandatory court appearances, required weekly programming, and monitored school attendance over the course of twenty weeks.⁹⁶ Hawaii’s Girls Courts followed several months later and is one of the most well-documented models available.⁹⁷ In both models, girls were already adjudicated in juvenile court prior to their admissions into the Girls Courts.⁹⁸

Hawaii’s model has proven to be one of the most established and well-documented Girls Courts.⁹⁹ It has been particularly successful, as

⁹³ Though each state’s Girls Court operates differently, a holistic approach and reducing recidivism is at the core. The Kitsap County Model in Washington state lists “a moderate to high risk to reoffend” as a factor in selecting Girls Court participants. *Kitsap County Girls Court*, CTR. FOR CHILD. & YOUTH JUST., <https://ccyj.org/our-work/girls-court/girls-court-kitsap-county/>. San Mateo lists sexual exploitation, drug abuse, and alcohol abuse as qualifying factors in their Gaining Independence and Reclaiming Lives Successfully (GIRLS) program. Thomas Carroll, *Gender and Juvenile Justice: New Courts, Programs Address Needs of Girls*, NAT’L CTR. YOUTH L. (Oct. 1, 2009), <https://youthlaw.org/publication/gender-and-juvenile-justice-new-courts-programs-address-needs-of-girls/>. Houston’s GIRL Court is specifically for human trafficking victims. Seat et al., *supra* note 90.

⁹⁴ Heipt, *supra* note 88, at 834.

⁹⁵ *Id.*

⁹⁶ *Id.* (“Girls in the PEG program have weekly mandatory court sessions and compulsory programming, which occurs several times a week and includes parenting classes, yoga, community service, and therapy.”).

⁹⁷ *Id.* at 835. Neither court knew of the other’s efforts in creating a Girls Court.

⁹⁸ *Id.* at 834–85. For other variations of Girls Courts, see Seat et al., *supra* note 90 (noting that Harris County specifically created a Girls Court to help girls sold into human trafficking), and Carroll, *supra* note 93 (noting several California Girls Courts: the San Mateo model offers the Gaining Independence and Reclaiming Lives Successfully Program, which initiates the dispositional hearing and pre-trial stages; the Santa Clara model offers treatment as an alternative to incarceration; the Alameda County model operates as a “safety net” for underaged girls arrested for prostitution; and the Orange County model caters to runaways and truant girls).

⁹⁹ Judge Karen Radius, founding judge of the Hawaii Girls Court, recognized the need for gender-based programming in Hawaii. *Long Story Short with Leslie Wilcox: Karen Radius*, PUB. BROAD. SERV. HAW., (Mar. 29, 2016), <https://www.pbshawaii.org/long-story-short-with-leslie-wilcox-karen-radius/>. While working in the First Circuit Family Court on Oahu, she saw the number of detained girls skyrocketing, and realized the current system was designed for boys and men. *Id.* She suggested the idea of a Girls Court, and when asked what exactly that meant, she said, “I don’t know!” *Id.* In Hawaii, the Girls Court is a subpart of the Family Court. Lerer, *supra* note 92, at 89. Girls who are participating in the Hawaii Girls Court are on probation or under protective supervision. *Id.* They have already been found guilty in the juvenile court and are recommended to the Girls Court staff by probation officers. *Id.* The staff then offers spots to girls whom

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evidenced by a reduction in recidivism, a reduction in runaways, and improved behaviors at home.¹⁰⁰ Given the experience of Hawaii's model in envisioning an ideal Girls Courts, it should prove fruitful to examine the strengths and analyze any shortcomings that have surfaced.

The goal of the Hawaii Girls Courts is to empower girls already in the juvenile justice system and to provide treatment and services to prevent troubled girls from reentering the system as adults.¹⁰¹ The Hawaii Girls Courts model is rooted in a gendered approach that fosters trust between staff and participants.¹⁰² This model considers the participants' emotional, physical, and mental health, along with their cultural backgrounds and educational experiences.¹⁰³ Recognizing the victimization that often brings girls to the juvenile justice system, the program also incorporates opportunities for healing.¹⁰⁴

The Hawaii model exists not only to support these girls involved in the juvenile justice system, but also to encourage and equip strong familial relationships.¹⁰⁵ Families are integrated with the team of

they think would be a good fit for the Girls Court, however the girls are not required to participate. *Id.*

¹⁰⁰ LEILA CURTIS & MELANIE NADON, CTR. FOR CHILD. & YOUTH JUST., GENDER RESPONSIVE JUVENILE JUSTICE: A GIRLS COURT LITERATURE REVIEW UPDATE 32 (2018) (citing Janet T. Davidson, Lisa Pasko & Meda Chesney-Lind, "She's Way Too Good to Lose": An Evaluation of Honolulu's Girls Court, 21 WOMEN & CRIM. JUST. 308 (2011)) ("Quantitative and qualitative findings demonstrate that the program does seem to be effective in terms of reducing both recidivism and risky behavior as well as increasing the development of prosocial and healthy relationships. In the follow-up period (1 to 4½ years), Girls Court participants committed substantially fewer criminal offenses, had fewer status offenses, runaways, days on the run, detention admissions, and days in detention compared to the matched comparison group. Correspondingly, Girls Court participants and parents reported improved behaviors and relationships at home, healthier lifestyles and enhanced systems of support, and reengagement in education and higher life aspirations – all attributable to the court environment and staff.").

¹⁰¹ *Hawai'i Girls Court*, *supra* note 91. Gender also plays a key role in incarceration rates, with women being the most rapidly growing imprisoned population in America. *Mass Incarceration*, *supra* note 7. As of 2017, 219,000 women were incarcerated in the United States. ALEKS KAJSTURA, AM. CIV. LIBERTIES UNION, WOMEN'S MASS INCARCERATION: THE WHOLE PIE 2017 2 (2017), https://www.aclu.org/sites/default/files/field_document/womenprisonreport_final.pdf. Incarcerated women are almost evenly divided between local jails and state prisons. *Id.* at 3. Additionally, "60% of women in jail have not yet been convicted of a crime and are awaiting trial." *Id.* Nonviolent crimes, such as drug and property offenses, comprise over half of the crimes for which women are incarcerated. *Id.* at 4. Incarcerated females are categorized as 53% White, 28.6% Black, 14.2% Hispanic, 2.5% American Indian and Alaskan Native, 0.9% Asian, and 0.4% Native Hawaiian and Pacific Islander. *Id.* at 9.

¹⁰² *Hawai'i Girls Court*, *supra* note 91.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*; see also McCORD ET AL., *supra* note 16, at 67 (noting that families can contribute to a girl's delinquency).

collaborative professionals in evaluating educational and therapeutic services.¹⁰⁶ The court mandates active parental participation in group meetings, parenting skill forums, and conflict resolution training.¹⁰⁷

The Hawaii program also emphasizes the influence of positive female role models, participation in service activities that establish a mutually beneficial relationship with their community, and the cultivation of real-world skills through vocational and educational training.¹⁰⁸ This holistic approach aims not only to reduce female delinquency, but also to heal families and encourage healthy autonomy and independence.¹⁰⁹

One final key characteristic of the Hawaii Girls Courts model is the collaboration and partnership with local organizations,¹¹⁰ which allows the Girls Courts to create “a powerful context for girls to build relationship skills and maintain healthy relationships.”¹¹¹

IV. SEVEN LESSONS FROM ALTERNATIVES TO THE CRIMINAL JUSTICE SYSTEM

Good ideas seldom spring forth from a vacuum. In fact, they are built most often on the foundation of previous good ideas. In carefully examining the experiences of existing specialty courts, such as Drug Courts, Veterans Courts, Community Courts, and Youth Courts, we

¹⁰⁶ See *Hawai'i Girls Court*, *supra* note 91.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Hawai'i Girls Court: Gender-Specific Programming for Girls*, FAM. CT. OF THE FIRST CIR. (July 2014), <http://ittakesanohana.org/wp-content/uploads/2014/08/Girls.Court-Brochure.pdf>.

¹¹⁰ See *Hawai'i Girls Court*, *supra* note 91; see also *Mission and Story*, SURFRIDER SPIRIT SESSIONS, <https://www.surferspirit.org/mission-and-story> (last visited Dec. 13, 2021). One example of a Girls Court partnership is with a local surf organization, Surfrider Spirit Sessions. *Id.* The organization was formed directly in response to the Girls Court program. *Id.* This organization's mission is “to serve at-risk and adjudicated youth by teaching ocean awareness, environmental sensitivity and Hawaiian culture via holistic, ocean-based experiential education, mentoring programs, and activities that connect, enhance, and fill in the gaps within existing nonprofit programs.” *Id.* The organization consists of a core staff and coaches who teach the surfing lessons. *Id.* The coaches also work with participants to encourage success in schools, work, and in their communities. *Id.* The organization refuses to simply see the youth as “at-risk” but sees them as potential for leaders and community influencers. *Id.* The sessions provide the girls with “healthy and fun physical activity, exposure to positive role models, [help] adapting new life skills and mode[s] of thinking, cultural and environmental awareness, [and] improved self-esteem.” *Id.* The organization is culturally responsive, community focused, and works with other local organizations to ensure the health, safety, and success of the participants. *Id.* Surfrider Spirit Sessions allows Girls Court participants to engage in physical activity while forming healthy relationships. *Id.*

¹¹¹ *Hawai'i Girls Court*, *supra* note 91.

discovered several key components that offer us lessons in the development of our model of an ideal Girls Courts. These include:

- Targeted approaches focusing on trauma-informed, individualized, treatment-oriented care in a specialized court with a clearly defined target audience that allows for “one-stop-shops” for participants.¹¹²
- Empowering school officials to make referrals and provide training in mediation, de-escalation, trauma recognition, and adolescent psychology.¹¹³
- Participation in treatment-oriented care resulting in individualized treatment plans implemented by a team of trained professionals with specialized knowledge of the target participants.¹¹⁴

¹¹² See, e.g., *What Are Drug Courts?*, NAT'L DRUG CT. INST., <https://ndcrc.org/what-are-drug-courts/> (last visited Nov. 2, 2020). For example, Drug Courts, which were created in acknowledgment that imprisonment benefits neither society nor the substance-abuser, cater specifically to those with substance abuse issues. Caitlinrose Fisher, Note, *Treating the Disease or Punishing the Criminal?: Effectively Using Drug Court Sanctions to Treat Substance Use Disorder and Decrease Criminal Conduct*, 99 MINN. L. REV. 747, 747–48 (2014). But see Edward J. Latessa & Angela K. Reitler, *What Works in Reducing Recidivism and How Does It Relate to Drug Courts?*, 41 OHIO N.U. L. REV. 757, 774 (2015) (“By placing youths in drug courts, especially lower risk youths, we are giving them more opportunities to fail due to the increase in reporting and drug testing.”). See generally Josh Rovner, *How Tough on Crime Became Tough on Kids: Prosecuting Teenage Drug Charges in Adult Courts*, THE SENT'G PROJECT (Dec. 7, 2016), <https://www.sentencingproject.org/publications/tough-crime-became-tough-kids-prosecuting-teenage-drug-charges-adult-courts/>. Veterans Treatment Courts (“VTCs”) treat only U.S. service members who have experienced traumas as a result of their service, and who have become entangled in the criminal justice system. See, e.g., *Veterans' Court*, CHESTER CNTY., PA., <https://www.chesco.org/3893/Veterans-Court> (last visited Dec. 13, 2021). Finally, Community Courts focus on homeless and lower-income populations who commit quality-of-life offenses. See, e.g., *Community Court*, ST. VINCENT DE PAUL Soc'Y MARIN CNTY., <https://www.vinnies.org/need-help/community-court/> (last visited Dec. 13, 2021); *Midtown Community Court*, CTR. FOR CT. INNOVATION, <https://www.courtinnovation.org/programs/midtown-community-court> (last visited Dec. 13, 2021).

¹¹³ See Lisa H. Thurau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 1016 (2009). Youth Courts show that children can avoid criminalization if school officials refer them to Youth Courts instead of law enforcement. See Julian Vasquez Heilig, *Justice in Action: How We Can Address the School-to-Prison Pipeline*, CLOAKING INEQUITY (Apr. 30, 2015), <https://cloakinginequity.com/2015/04/30/justice-in-action-how-we-can-address-the-school-to-prison-pipeline/>; see also Mark Shenefelt, *Officials Hope New Youth Offender Center Helps Dismantle the 'School to Prison Pipeline'*, STANDARD-EXAM'R (Oct. 23, 2020), <https://www.standard.net/police-fire/officials-hope-new-youth-offender-center-helps-dismantle-the-school-to-prison-pipeline/>. By understanding why a student engages in troublesome behavior, school officials can look to Youth Courts, rather than the juvenile justice system, to address behavioral concerns.

¹¹⁴ Drug Courts employ teams of professionals that create individualized treatment plans, including teams of judges, case managers, prosecutors, defense attorneys, representatives from local law enforcement, and substance abuse treatment providers.

- Judicial involvement in specialized dockets with participant accountability directly to the judge on a consistent basis.¹¹⁵
- Mentoring programs aimed at assisting participants with developing the life skills necessary to move forward with their life goals.¹¹⁶

WEST HUDDLESTON & DOUGLAS B. MARLOWE, NAT'L DRUG CT. INST., *PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURT PROGRAMS IN THE UNITED STATES* 7 (2011), <https://www.ndci.org/sites/default/files/nadcp/PCP%20Report%20FINAL.PDF>. VTCs also use individualized treatment plans created by a group of people who are trained to understand the unique demands of veterans. *Veterans Treatment Courts*, CAL. CTS., <https://www.courts.ca.gov/11181.htm> (last visited Dec. 13, 2021). Lacking adequate help and treatment for their mental health disorders and substance abuse problems, veterans struggle to transition back to civilian life, and thus find themselves face-to-face with the criminal justice system. *Id.*; see also *Midtown Community Court*, *supra* note 112 (Community courts offer alternatives to incarceration while offering assistance to deal with underlying behaviors, including substance abuse and mental health challenges.)

¹¹⁵ See, e.g., Jan R. Jurden et al., *Veterans Treatment Court Probation and Diversion Program Manual*, SUPERIOR CT. OF DEL. (Feb. 26, 2014), https://courts.delaware.gov/superior/pdf/veterans_court_manual_2014.pdf. VTCs have veterans-only dockets, which ensure that judges have more face-to-face contact with the veterans that come before them, thus creating a stronger relationship between the veterans and the judge. *Id.* at 8. Set aside judges are more familiar with veteran services, like the Veterans Health Administration, than general judges because they work solely in Veterans Courts, and therefore, preside over more veterans' cases than others. Veterans enjoy increased camaraderie amongst each other because they are allowed to sit in on each others' court sessions. Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563, 565–66 (2010). Youth Courts also use open courts to build camaraderie amongst participants. See *The Significance of Youth Courts: The Mission of the National Association of Youth Courts*, NAT'L ASS'N YOUTH CTS., <https://youthcourt.net/the-significance-of-youth-courts/> (last visited Dec. 13, 2021) [hereinafter *The Significance of Youth Courts*]. Rather than stand trial with a jury of twelve adult strangers, Youth Court participants make up the juries that administer each participant's consequences. *Id.* They also act as bailiffs, law enforcement, prosecutors, defense attorneys, judicial clerks, and sometimes judges, which allows participants to learn about and understand the juvenile justice system. *Id.*; see also *Midtown Community Court*, *supra* note 112 (noting that Community Courts created camaraderie between the individual and the community by administering community projects, like street-sweeping, instead of prison time).

¹¹⁶ See generally Preston A. Britner et al., *Mentoring Special Youth Populations*, 34 J. CMTY. PSYCH. 747, 747–48 (2006). Juvenile Drug Courts have a few different approaches to mentoring, but studies show that mentors play an instrumental role in the success of a participant when the mentor can bridge the gap between the participant and communal institutions, like schools. *Id.* at 747–49. VTCs' mentorship programs connect veterans with mentors, also veterans, who coach them in "anger management, impulse control, conflict resolution skills and other areas that create difficult reentry into civilian life." See, e.g., *Volunteer Veteran Mentor Training Program*, UNIFIED JUD. SYS. PA., <http://www.pacourts.us/judicial-administration/court-programs/veterans-courts/volunteer-veteran-mentor-training-program> (last visited Dec. 13, 2021). For a more in-depth look at how VTCs can vary across jurisdictions, see Julie Marie Baldwin, *Investigating the Programmatic Attack: A National Survey of Veterans Treatment Courts*,

- Integration of family participation and support to encourage rehabilitation, responsibility, and empowered choices that enable the participant to be successful after the program.¹¹⁷
- Options for expungement of records to reduce obstacles for future housing and employment and to reinforce the opportunity for a second chance, similar to Veterans,¹¹⁸ Youth,¹¹⁹ Drug,¹²⁰ and Community Courts.

105 J. CRIM. L. & CRIMINOLOGY 705, 736 (focusing on Vietnam-era veterans) and U.S. DEP'T VETERANS AFFS., FACT SHEET: VETERANS COURT INVENTORY 2016 UPDATE (2017), <https://www.va.gov/HOMELESS/nchav/resources/docs/justice-involved/incarcerated/2016-Veterans-Court-Inventory-Update-VJO-Fact-Sheet-508.pdf>. Youth Courts implement mentorship programs for youth with minimal access to resources and “high-status social networks,” which empowers those youth to access those resources by their own means. Mike Tapia, Leanne Fital Alarid & Arturo Enriquez Jr., *Court-Ordered Mentoring Programs for Adjudicated Juveniles: When Should Youth be Referred?*, 10 JUST. POL'Y J. 1, 3 (2013).

¹¹⁷ For example, VTCs encourage family participation and attempt to build understanding between the veterans and their families. Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 369 (2009). Youth Courts urge families to take a greater role in youth court programs, consistent with studies that recommend “mov[ing] away from a deficit-based approach of blaming families to a more holistic investigation” into allowing families to “self-determine their own well being.” Bitu Amani et al., *Families and the Juvenile Justice System: Considerations for Family-Based Interventions*, FAM. CMTY. HEALTH (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5726419/>.

¹¹⁸ See, e.g., *Veterans Treatment Court (“VTC”)*, CNTY. SAN MATEO, https://www.sanmateocourt.org/court_divisions/criminal/veterans_treatment_court.php (San Mateo County, CA); *Treatment Courts*, LAW OFFS. L.A. CNTY. PUB. DEFENDER, <https://pubdef.lacounty.gov/treatment-courts/> (Los Angeles County, CA) (last visited Dec. 13, 2021); *Veterans Treatment Courts: 2015 Survey Results*, AM. UNIV., SCH. PUB. AFFS., JUST. PROGRAMS OFF. (Nov. 2016), <https://www.american.edu/spa/jpo/initiatives/drug-court/upload/veterans-treatment-courts-2015-survey-results.pdf> (Alabama); *Second Chances for Veterans from Veterans Treatment Court*, U.S. DEP'T VETERANS AFFS. (June 30, 2020), <https://www.blogs.va.gov/VAntage/76378/second-chances-veterans-veterans-treatment-court/> (Reno, NV).

¹¹⁹ Anne Teigen, *Automatically Sealing or Expunging Juvenile Records*, NAT'L CONF. ST. LEGISLATURES (July 2016), <https://www.ncsl.org/research/civil-and-criminal-justice/automatically-sealing-or-expunging-juvenile-records.aspx> (Montana); *Youth Court Overview*, TIGARD MUN. CT., https://www.tigard-or.gov/city_hall/youth_court.php (Tigard, OR) (last visited Dec. 13, 2021); see also Wendy Povitsky Stickle et al., *An Experimental Evaluation of Teen Courts*, J. EXPERIMENTAL CRIMINOLOGY 137, 139 (2008); TRACY M. GODWIN, NAT'L YOUTH CT. CTR., NATIONAL YOUTH COURT GUIDELINES 49 (2000), <https://www.govinfo.gov/content/pkg/ERIC-ED464862/pdf/ERIC-ED464862.pdf> (listing expungement as a benefit of completing the program).

¹²⁰ See, e.g., ACA § 16-98-303(g) (Arkansas); Memorandum, Protocol for “Drug Court Expungements” (N.J.S.A. 2C:35-14(m)) and Expungements of Arrests Not Resulting in Conviction (N.J.S.A. 2C:52-6), N.J. CTS., ADMIN. OFF. CTS. (May 23, 2016), https://www.njcourts.gov/attorneys/assets/directives/dir_02_16.pdf (New Jersey).

V. OUR PROPOSAL FOR HEALING AND RESTORATION: A RESTORATIVE JUSTICE
GIRLS COURTS MODEL

Our model Girls Courts aim to treat the root causes of many girls' problematic behaviors (substance abuse, troubled home lives, or sexual assault) rather than their symptoms--the acts that land them in juvenile detention centers. Our proposal consists of two tracks: 1) an early-intervention diversionary program that avoids formal contact with the juvenile justice system entirely, and 2) an alternative sentencing diversionary program that serves as a support to the current juvenile justice system.

The first track for less serious behaviors serves as an intervention and encompasses misdemeanors, like theft or vandalism, and status offenses, like truancy, underage drinking, violating curfew, or running away from home.¹²¹ There is no formal adjudication or involvement with the court system. The focus of this model is the development of an individualized plan for each participant that responds to the needs identified by the screening and nature of the behaviors that led to the referral. One major component of this track would be to facilitate an opportunity for the girl to take responsibility for and confront the consequences of her choices through a non-adjudicative hearing.¹²²

For more serious behaviors that may necessitate adjudication in the juvenile justice system, the second track functions similar to the successful models of the Drug Courts, Veterans Courts, and Community Courts: qualifying participants receive probation for a specified time period and are given a treatment and accountability plan.

In setting forth an ideal Girls Court, we have identified and considered attributes as well as gaps from existing Girls Courts and the specialized courts discussed in the prior section. Our efforts are guided by the principles of restorative justice in providing girls with treatment, individualized care, and redirection rather than punishment.

¹²¹ *Status Offenders*, OFF. JUV. JUST. & DELINQ. PREVENTION 1, https://www.ojjdp.gov/mpg/litreviews/Status_Offenders.pdf (last updated Sept. 2015).

¹²² Second chances play a significant role in this Girls Court. By allowing girls to make mistakes without fearing removal from the program, girls can have open dialogues with their mentors and peers about their actions and behaviors, and the causes of them. The presence of all-female staff and volunteers would also empower girls and minimize triggers of sexual violence and/or male domination.

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A. Initial Referral and Intake

Our proposed initial referral process arises out of concern for girls' mental and physical well-being, rather than mere punishment. Our proposals would ensure that initial referrals are screened for suitability, with a guiding list of qualifying behaviors that corresponds to the appropriate track. Utilizing this aspect of intake furthers the goals of meeting girls' unique needs and diverting them from the juvenile justice system by providing treatment and care for girls without referring them to the juvenile courts. As a result, girls could avoid the stigma and potentially harsh consequences of the juvenile court system. School and law enforcement officials can serve as "gatekeepers" to screen behaviors of girls that come within their purview and determine when a Girls Court is more appropriate, rather than referring girls to the juvenile system immediately upon misconduct.¹²³

Regardless of the track by which a girl entered, our model Girls Courts would then conduct intake using professionally trained staff to detect trauma and behavioral problems, and therefore, suitability for Girls Courts. For example, a school administrator can refer a student who is involved in a fight directly to the Girls Courts without involving law enforcement. Even if the school administrator involved law enforcement, however, the law enforcement agency would still have the opportunity to directly refer the student to a Girls Court. If the law enforcement agency went as far as to refer the student for prosecution in juvenile court, the prosecutor and court administrator would have the opportunity to refer the student to Girls Court.

Similar to youth court models, this proposal would allow school officials to exercise discretion when dealing with school infractions and refer girls to a Girls Court, rather than the juvenile system. For those girls outside the school setting who were initially contacted by law enforcement, we propose the establishment of an "intervention" individual within the police agency vested with the discretion to refer girls to a Girls Court rather than the juvenile system. Such an individual should be trained to recognize that a child's behavior might best be served by referring her to a Girls Court rather than to a juvenile court.

Our proposal would not, however, abandon those girls who are presently within the juvenile court system, but would provide court

¹²³ See also Scott Bernard Peterson, *Teen/Youth Court Programs and Mentoring: The Referral Stage*, GLOB. YOUTH JUST. 1, 3 (2013) (listing some sources of referrals, such as delinquency courts; law enforcement; community and nonprofit organizations; schools; and individuals such as public defenders, social workers and case managers, probation officers, and youth services specialists).

officials, at their discretion, the opportunity to divert a girl to a Girls Court when appropriate.

B. Individualized Programs and Treatment

In light of the varying traumas that underlie girls' experiences, they would also benefit from receiving individualized trauma treatment, specifically from those who understand the adolescent brain or specialize in trauma. Substance abuse or sexual violence counselors would join the team to ensure that the girl has an all-encompassing treatment plan.¹²⁴

C. Parental Involvement

Ideally, girls' parents and family members would be involved and support the girls' involvement in the program. Screening processes by trained professionals would determine the appropriateness of parental or family involvement to ensure whether minimal or frequent family involvement would be most beneficial to a girl's healing. While some current models of Girls Courts mandate parental involvement, our proposal would defer that decision first to trained professionals to determine if parents are the source of the girls' underlying trauma.¹²⁵ Our approach also takes into account the socio-economic realities of the constraints of parental involvement of working and single parents. Our proposal would avoid imposing negative consequences of non-compliance on girls in situations where parental participation may be impacted due to the demands of economic survival. Nonetheless, our model would allow healthy and constructive parents to be actively involved in the redirection of their daughters' lives.

D. Specialized Dockets and Female Courts

Like in Youth Court, our model Girls Courts would use peer influence to push girls towards a more accountable and happier lifestyle. Our Girls Courts model would use participants as jurors, attorneys, bailiffs, and all other key players in the court system, rather than real-life judges, bailiffs, and attorneys.¹²⁶ Allowing girls to role play in the judicial system would give them insight as to how the legal justice

¹²⁴ A trauma-informed system would require each participant to have an understanding of the effect of trauma on behavior. Erin M. Espinosa & Jon R. Sorensen, *The Influence of Gender and Traumatic Experiences on Length of Time Served in Juvenile Settings*, 43 CRIM. JUST. & BEHAV. 187, 200 (2016).

¹²⁵ The current Hawaii model mandates family participation. *Hawai'i Girls Court*, *supra* note 91.

¹²⁶ *The Significance of Youth Courts*, *supra* note 115.

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system works, while also surrounding them with girls of similar backgrounds and experiences. Like in Veterans Courts, our model Girls Courts will also include specialized girls-only dockets to help create camaraderie amongst the girls.

E. *Mentorship Programs*

Like Veterans Courts, this proposed model Girls Courts would have a mentorship program, in which girls look to strong local leaders for guidance and are matched to women with whom they can build relationships.¹²⁷ Volunteers sign up to be matched with girls referred to Girls Courts, with preference for women who have endured the same or similar traumatic experiences as those in Girls Courts.¹²⁸ The idea is that girls would feel more comfortable opening up to women who have had similar experiences and who can show young girls that they can “successfully overcome what may seem insurmountable.”¹²⁹

F. *Practical Skills: Coping Skills and Vocational Training*

Girls can succeed with the implementation of programs that teach them the necessary skills to cope with exposure to trauma. When girls understand their triggers (as well as the meaning and involuntary nature of a “trigger”), they can better equip themselves to thrive and to not be debilitated by trauma.¹³⁰ Similarly, girls can thrive when they have exposure to vocational training that allows them to not only look at the future, but also to be excited about it.¹³¹ Vocational training can

¹²⁷ See Eileen C. Moore, *Mentors in Veterans Treatment Courts*, DAILY J. (July 8, 2020), <https://www.dailyjournal.com/articles/358433-mentors-in-veterans-treatment-courts>. The mentorship program would be available to all girls in Girls Courts, not just those with problematic or absent parents or guardians.

¹²⁸ See *id.* (“The veteran mentor . . . has experienced some of what the veteran defendant has. At some point, the mentor was in the military and later transitioned back into the civilian world. Thus, the mentor serves as an example of how the veteran defendant can successfully overcome what may seem insurmountable. The mere fact the mentor succeeded in that transition subtly provides guidance and encouragement for the veteran defendant to do the same thing Quite simply, the mentor is a source of constant support and encouragement, an important step toward getting the veteran back on the good citizen track.”).

¹²⁹ *Id.* It is important to note that the mentors themselves must have *their* emotional and trauma issues resolved so as not to influence the young girl with their problematic behaviors.

¹³⁰ A 2016 study indicated that girls who had experienced trauma “served longer periods in confinement than boys for violating their court-ordered conditions of probation.” Espinosa & Sorensen, *supra* note 124, at 187.

¹³¹ The current Hawaii Girls Court model incorporates vocational training to provide participants with real world skills. *Hawai'i Girls Court*, *supra* note 91.

instill vision and expose girls to different career paths to unlock their vocational potential.

G. Educational Monitoring

Our proposal also seeks to minimize the disruption that delinquency tends to have on girls' educational advancement. By incorporating an educational monitoring plan into the Girls Courts model, girls can be assured to avoid further legal jeopardy of truancy. For girls who may come to Girls Courts and have already dropped out of school, we want to cycle them back into high school or, alternatively, help them obtain a GED. Moreover, the educational monitoring components of our proposal would also monitor the imposition of school discipline, with particular focus on their impact on academic progress concerns. Despite the deep concern to ensure educational continuity, our proposal does not contemplate setting requirements for participants that other non-participants girls may not have to fulfill in school.

VI. CONCLUSION

The proposal for a modified Girls Court seeks to address the underserved needs of the most vulnerable girls in society and seeks to divert them from entering the juvenile justice or adult systems. By fixing vulnerabilities in the current system, we empower all girls, the juvenile justice system, and society as a whole. Creating a path to divert girls from juvenile delinquency strengthens the likelihood that girls can lead the passionate and purposeful lives for which they were intended.