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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 society. 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. Although there has been an overall decline in juvenile involvement in the justice system, girls’ involvement has increased dramatically. 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.

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. 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. The Supreme Court decided a number of cases beginning in 1966 that gave juvenile offenders a number of constitutional rights. 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

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5 Sherman, supra note 3 at 1586.
6 Kim, supra note 1 at 843.
a disproportionate number of girls being affected.\textsuperscript{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.\textsuperscript{9} Despite these efforts, girls are still disproportionately involved in the juvenile justice system.\textsuperscript{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.\textsuperscript{11} The court focused on rehabilitating the juveniles to prevent further delinquent acts rather than punishing them for their behavior.\textsuperscript{12} The juvenile court system that developed relied on its \textit{parens patriae} power to further these rehabilitative efforts.\textsuperscript{13} Under the doctrine of \textit{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.\textsuperscript{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.\textsuperscript{15}

By 1945 all states had established juvenile courts.\textsuperscript{16} This expansion of the juvenile justice system led to an increased awareness for greater protections and policies to safeguard children in the system.\textsuperscript{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

\begin{footnotesize}
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\item \textsuperscript{8} Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C.\S\S 5601-5784 (2014).
\item \textsuperscript{9} \textit{Id.}; Act of Nov. 4, 1992, Pub. L. No. 102-586, 106 Stat. 4982 (amending the JJDPA Act, 42 U.S.C. \S\S 5601-5784).
\item \textsuperscript{10} Sherman, \textit{supra} note 3 at 1586.
\item \textsuperscript{11} Kim, \textit{supra} note 1, at 846.
\item \textsuperscript{12} \textit{Id.}
\item \textsuperscript{13} \textit{Id.}; \textit{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).
\item \textsuperscript{14} \textit{Id.}; Sherman, \textit{supra} note 3, at 1590.; \textit{see} Ex Parte Crouse, 4 Whart.9, 11(Pa..1839) (holding that the court could use its \textit{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 parents patriae power in holding that the protection of inalienable rights guaranteed by the Constitution do not apply to a minor).
\item \textsuperscript{15} Sherman, \textit{supra} note 3, at 1590.
\item \textsuperscript{16} Kim, \textit{supra} note 1, at 847.
\item \textsuperscript{17} \textit{Id} at 852.
\end{itemize}
\end{footnotesize}
rights that are found in adult criminal courts often led to arbitrary and unfair punishments for juveniles.\textsuperscript{18} Beginning in 1966, the Supreme Court decided a series of cases that addressed the constitutional rights of juvenile offenders. In \emph{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.\textsuperscript{19} The Court made clear that the \textit{parens patriae} power of the states was not “an invitation to procedural arbitrariness.”\textsuperscript{20} The following year the Court decided \emph{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.\textsuperscript{21} These rights included the right to notification of the charge\textsuperscript{22}, the right to representation by counsel\textsuperscript{23}, the right to confront and cross-examine witnesses\textsuperscript{24}, and protection against self-incrimination.\textsuperscript{25} In 1980 the Court, in \emph{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.\textsuperscript{26} Additionally, in \emph{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.\textsuperscript{27}

\textsuperscript{18} Eric K. Klein, \textit{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).
\textsuperscript{19} 383 U.S. 541 (1966).
\textsuperscript{20} 383 U.S. 541, 555 (1966); Kim, supra note 1, at 852.
\textsuperscript{21} 387 U.S.1 (1967).
\textsuperscript{22} Id. at 31-34.
\textsuperscript{23} Id. at 34-42.
\textsuperscript{24} Id. at 42-57.
\textsuperscript{25} Id.
\textsuperscript{26} 397 U.S. 358 (1980).
\textsuperscript{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.\textsuperscript{28} Their review of juvenile crime detailed the sharp rise in delinquent arrests during the mid-1900s.\textsuperscript{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”.\textsuperscript{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.\textsuperscript{31} Comparatively, only one fifth of boys were referred for this same conduct.\textsuperscript{32} The commission attributed the problem in part to the lack of dispositional alternatives available.\textsuperscript{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.”\textsuperscript{34} Overall, the Commission envisioned a juvenile court that promoted greater protection for all youths.

\textsuperscript{29} \textit{Id.}
\textsuperscript{30} \textit{Id.}
\textsuperscript{31} \textit{Id.}
\textsuperscript{32} \textit{Id.}
\textsuperscript{33} \textit{Id.}
\textsuperscript{34} \textit{Id.}
and better practices and programs to support the rehabilitative goals of the juvenile justice system.\textsuperscript{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 (JJDPA).\textsuperscript{36} The JJDPA created the Office of Juvenile Justice Delinquency Prevention and provided funding for states to implement alternatives to detention for juvenile offenders.\textsuperscript{37} The JJDPA 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.\textsuperscript{38} At first there was a positive response to the JJDPA.\textsuperscript{39} The number of status offenders that were detained decreased by 75% between 1975 and 1991.\textsuperscript{40} However, states did not provide alternatives to detention and judges became frustrated by their inability to punish repeat status offenders.\textsuperscript{41} Judges employed techniques to bypass the JJDPA mandate such as bootstrapping and relabeling.\textsuperscript{42} Bootstrapping occurs when a status offender who is ordered to return to their home or stay in a residential facility runs away.\textsuperscript{43} The judge can hold the child in contempt of court and place him or her in a secure detention facility.\textsuperscript{44} Relabeling occurs when a judge charges a juvenile

\textsuperscript{35} Id.
\textsuperscript{38} Id.
\textsuperscript{39} Alecia Humphrey, \textit{The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders}, HASTINGS WOMEN’S LAW JOURNAL 165, 169 (2004).
\textsuperscript{40} Anne Bowen Poulin, \textit{Female Delinquents: Defining Their Place in the Justice System}, 1996 WIS.L.REV.541, 567 (1996).
\textsuperscript{41} Kim, supra note 1, at 858.
\textsuperscript{42} Laura A. Barnickol, \textit{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.
\textsuperscript{43} Humphrey, supra note 39 at 170.
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.\textsuperscript{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.\textsuperscript{46} Therefore, juvenile court judges lobbied Congress to create an exception to the JJDPA mandate that prohibited the institutionalization of status offenders.\textsuperscript{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.\textsuperscript{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.\textsuperscript{49} Congress passed the 1992 Reauthorization of the JJDPA, which required states to develop a plan for gender-specific programming.\textsuperscript{50} States could apply for Challenge E Grants to help them achieve this goal.\textsuperscript{51} States were required to analyze the current needs and services for girls and submit a three-year plan that included gender-specific programming.\textsuperscript{52}

\begin{itemize}
\item \textsuperscript{45} \textit{Id} at 243.
\item \textsuperscript{47} Pub.L.No.96-509.
\item \textsuperscript{48} Pub.L.No.96-509.
\item \textsuperscript{51} \textit{Id.}; Meda Chesney-Lind & Katherine Irwin, \textit{Beyond Bad Girls: Gender, Violence and Hype} 158 (2008).
\end{itemize}
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

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 then 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.\(^{64}\)

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\(^{58}\) Snyder, \textit{supra} note 55 at 128.

\(^{59}\) Barnickol, \textit{supra} note 42 at 445.

\(^{60}\) Sherman, \textit{supra} note 70.


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 ad 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

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 Recomendation to the Juvenile Court, in BECOMING DELINQUENT, 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.\textsuperscript{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 offenses\textsuperscript{70}, over the past decade girls’ arrest rates for simple and aggravated assault has increased drastically.\textsuperscript{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.\textsuperscript{72} The Violence Against Women Act (VAWA) of 1994 was enacted to provide comprehensive protection to victims of domestic violence.\textsuperscript{73} VAWA extended the definition of domestic violence beyond just crimes against married spouses. This included cohabitating persons and family members.\textsuperscript{74} VAWA also created mandatory arrest policies that mandated police to make an arrest when a domestic dispute was reported.\textsuperscript{75}

\begin{footnotesize}
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\item \textsuperscript{69} Kim, supra note 1, at 862.
\item \textsuperscript{70} Francine T. Sherman, \textit{Reframing the Response: Girls in the Juvenile Justice System and Domestic Violence}, JUV & FAMILY JUST. TODAY, Winter 2009.
\item \textsuperscript{71} Id.
\item \textsuperscript{72} Id.
\item \textsuperscript{73} Violence Against Women Act, 42 U.S.C. §13925 (2014).
\item \textsuperscript{74} The Act provided the definition of domestic violence:
\begin{quote}
“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.”
\end{quote}
\item \textsuperscript{75} Violence Against Women Act, 42 U.S.C. §13925 (2014).
\end{itemize}
\end{footnotesize}
impacted female juvenile offenders more than males.\textsuperscript{76} Research indicated that females fight with family members or siblings whereas boys are more likely to fight with friends or strangers.\textsuperscript{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.\textsuperscript{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.\textsuperscript{79} This was more convenient than arresting the parent because typically there were other children at home and police would have to get child

\textsuperscript{76} Sherman, \textit{supra} note 70.
\textsuperscript{79} \textit{Id} at 226.
protective services involved to care for the other children.\textsuperscript{80} The 2005 reauthorization of VAWA did change the language from “mandatory arrest” to “proarrest”.\textsuperscript{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.\textsuperscript{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.\textsuperscript{83} Over seventy percent of girls experience some form of physical or sexual abuse.\textsuperscript{84} Comparatively, only three percent of boys report having suffered physical abuse and thirty two percent suffered sexual abuse.\textsuperscript{85} Girls that experience some form of abuse are more likely to be arrested, which is not the case for boys.\textsuperscript{86}

\textsuperscript{80} Id.
\textsuperscript{81} Sherman, supra note 3, at 1604.
\textsuperscript{82} Biden, supra note 52 at 36.
\textsuperscript{84} Id.
\textsuperscript{85} Biden, supra note 52 at 37-38.
\textsuperscript{86} Francine T., Sherman, \textit{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. The most common diagnoses are depression, anxiety and PTSD. These disorders have been linked to childhood trauma, abuse and exposure to violence.

These gender specific problems are not addressed and are often exacerbated by the arrest and sentencing procedures in the juvenile justice system. Many of the offenses that girls commit are a response to abuse they endured. 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.

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. One study showed that girls are four times more likely to be physically or verbally abused in the home. 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

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.\textsuperscript{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.\textsuperscript{96} Girls are often placed in programs that do not address their individual needs and therefore continue with a pattern of delinquency.\textsuperscript{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 JJDPA there has been an increase in the development of gender specific programing based on the different characteristics of male and female offenders.\textsuperscript{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

\textsuperscript{95} Edwards, \textit{supra} note 78, at 232.


\textsuperscript{97} Watson, \textit{supra} note 2.

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 compromised twenty eight percent of all detentions, but forty percent of domestic battery detentions. 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. 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. 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.

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. 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. 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. 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. 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. She struggled with body image issues, engaged in risky behavior and had frequent panic attacks. Through her time at PACE she learned to cope with her past through the help of a counselor and excelled academically. She received a scholarship to attend college and aspires to be a lawyer.

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..
107 Id.
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.\textsuperscript{111} Founded in 2004, Girls Court handles female juveniles who have already been adjudicated delinquent.\textsuperscript{112} Although it is called a court, the program is actually a form of probation.\textsuperscript{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.\textsuperscript{114} The participants are put into a group of about eight girls and they remain in the program for a one-year time period.\textsuperscript{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.”\textsuperscript{116} The participants attend court once a month to review their progress, group discussions, and esteem-building activities.\textsuperscript{117} Parents of the girls are also required to attend

\textsuperscript{111} Tamar Lerer, Hawaii’s Girls Court: Juveniles, Gender, and Justice, 18 Berkley J. Crim. L. 84, 89 (2013).
\textsuperscript{112} Id.
\textsuperscript{113} Id.
\textsuperscript{114} Id.
\textsuperscript{115} Id. at 90.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
group sessions to try to address the problems within their family.\textsuperscript{118} After completing the program the girls are required to return to school or obtain their GED.\textsuperscript{119} If any of the conditions of the program are violated the Girls Court handles them internally.\textsuperscript{120} Notably, of the eighty girls that have gone through the program only one had to return to regular probation.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.

\begin{footnotes}
\item[118] Id.
\item[119] Id.
\item[120] Id.
\item[121] Id.
\item[122] http://www.girlscourt.org/index.html
\item[123] http://www.girlscourt.org/index.html
\end{footnotes}
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.\textsuperscript{124} EBP uses scientific methods to rigorously analyze programs to determine which are the best and most effective in achieving certain outcomes.\textsuperscript{125} EBP has been embraced in the juvenile justice field and federal funding requirements favor evidence-based programs.\textsuperscript{126}

Before EBPs became popular the OJJDP provided funds to assess promising girls’ delinquency programs.\textsuperscript{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.\textsuperscript{128} However, the findings did not provide any indication on the effectiveness of the programs on girls’ delinquency.\textsuperscript{129}

\textsuperscript{124} Sherman, \textit{supra} note 3, at 1615.
\textsuperscript{126} Sherman, \textit{supra} note 3, at 1624.
\textsuperscript{128} \textit{Id.}
\textsuperscript{129} \textit{Id.}
In 2004, the OJJDP convened the Girls Study Group, which was a comprehensive study of girls in the juvenile justice system.\textsuperscript{130} Their study included an evidence-based review of available interventions for girls and whether they effectively intervened.\textsuperscript{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.\textsuperscript{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.\textsuperscript{133} The study found that only 17 of the 61 programs had been the subject of published studies.\textsuperscript{134} Only six of these programs provided sufficient evidence to assess effectiveness.\textsuperscript{135} However, the evidence was inconclusive.\textsuperscript{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.\textsuperscript{137} There is also concern that the criterion to determine effectiveness sets an unrealistically high standard.\textsuperscript{138} A study funded by the OJJDP in 2009 looked at effectiveness of gender-specific programs, but

\begin{itemize}
\item \textsuperscript{130} Sherman, supra note 3, at 1592.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} Id. at 1625.
\item \textsuperscript{133} Larence, supra note 127.
\item \textsuperscript{134} Sherman, supra note 3, at 1625.
\item \textsuperscript{135} Id.
\item \textsuperscript{136} Id.
\item \textsuperscript{137} Id. at 1626.
\item \textsuperscript{138} Larence, supra note 127.
\end{itemize}
only required that the programs had at least one evaluation.\textsuperscript{139} The results identified promising programs and important factors to consider.\textsuperscript{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.\textsuperscript{141} Judges were able to punish girls for their behavior rather than try to aid in their rehabilitation.\textsuperscript{142} Repealing this law would force judges to treat girls the same way they have

\begin{footnotes}
\item[140] Larence, \textit{supra} note 127.
\item[141] Pub.L.No.96-509.
\item[142] Dalby, \textit{supra} note 67, at 451.
\end{footnotes}
treated boys over the years. 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. 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. The Girls Study Group convened a study in 2010 to assess the suitability of these assessment instruments for delinquent girls. They found that instruments that address gender differences were better suited for girls than ones that were gender neutral. One assessment tool that was looked at is the Girls Link assessment used in the Solano County Probation Department in California. 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. The assessment instrument included information about the juvenile’s school attendance, substance use, peer relationships, and parent sibling criminality. 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.
146 Id.
147 Id.
148 Id.
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. Congress has decreased funding through the JJDPA from $500 million to $100 million with additional cuts being proposed. 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. 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. Also, states typically apply only a small portion of their federal funding to girls’ delinquency programs. In a 2009 GAO report, the OJJDP reported that states only use about 1% of their federal funding towards these initiatives.

The Juvenile Justice Delinquency Prevention Reauthorization Act of 2014 was introduced in the Senate on December 11, 2014. The bill not only addresses many of the substantive issues effecting juvenile delinquents, but also proposes increasing and restructuring federal funding. 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

153 Watson, supra note 2.  
154 Gately, supra note 151.  
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.