

# NATIONAL JUVENILE JUSTICE NETWORK

## SNAPSHOT

### ADDRESSING THE INTERSECTION OF GENDER AND RACIAL DISPARITIES\*

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Researchers have identified long-standing gender bias in the youth justice system, with courts confining girls for less serious offenses and for longer periods of time than boys with similar offenses. This is particularly true for non-criminal behavior -- or “status offenses” -- such as running away and breaking curfew.<sup>1</sup> The proportion of girls involved in the juvenile justice system at every stage has been steadily increasing in the past two decades and the relative rate of formal court processing for girls increased 32 percent from 1985 through 2013.<sup>2</sup>

Likewise, disparities continue to exist for youth of color at every stage of the youth justice system – arrest, referrals and petitions to court, detention, placement in juvenile facilities after adjudication, and waiver to adult court.<sup>3</sup> In 2013, youth of color were more likely than white youth to be incarcerated in every state in the U.S.<sup>4</sup>

Girls of color suffer the effects of both of these existing patterns of gender and racial bias in the youth justice system.<sup>5</sup> Black girls are the fastest-growing group of girls referred to court, and the fastest-growing group that is detained.<sup>6</sup> In 2013, black girls were almost three times as likely to be referred to juvenile court as their white peers, and American Indian and Native Alaskan girls were 40 percent more likely to be referred to juvenile court.<sup>7</sup> Below are some recommendations for addressing this issue.

### Acknowledge that Disparities Exist Where Gender and Race Intersect

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The first step to addressing the intersection of gender and racial disparities is to understand and acknowledge that it exists. This can be done through educating stakeholders in the system, such as police officers, judges, probation officers, and all other major decision-makers who interact with girls in the juvenile justice system.<sup>8</sup> Few jurisdictions have examined the intersection of

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\* This snapshot is drawn from information compiled by the National Juvenile Justice Network for publication on the [Juvenile Justice Resource Hub](#), hosted by the Juvenile Justice Information Exchange and sponsored by a generous donation the John D. and Catherine T. MacArthur Foundation's [Models for Change](#) initiative.

race and gender. Most collect data on all girls and all boys, and break out youth by race and ethnicity. If states were required to collect youth justice data by gender, and cross-reference it by race and ethnicity categories, they would be able to identify disparities and be better able to address them.<sup>9</sup> OJJDP just recently did this for national data by adding tables comparing disparities by both race and gender.<sup>10</sup>

**WASHOE COUNTY, NEVADA** collected data on girls in its juvenile justice system in 2006, and learned that 40 percent of the girls being detained were held for technical violations of probation or status offenses, while only 25 percent of the boys were detained for these types of offenses. County administrators used this information to eliminate probation sentences for those who committed status offenses, and reduce the use of probation for misdemeanors, addressing these cases through voluntary services to the youth and family instead. Between 2006 and 2010, Washoe County reduced the use of secure detention for girls by 50 percent.<sup>11</sup>

## Use Data to Drive Decisions

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Adopt structured decision-making practices and tools, such as risk assessment tools, to facilitate objective and consistent decision-making, instead of subjective determinations vulnerable to bias. Note, however, that a risk/needs assessment that includes specific concerns regarding girls, such as sexual victimization, could end up resulting in more girls being enmeshed in the juvenile justice system.<sup>12</sup>

## Divert Girls Who Commit Status Offenses

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For many girls, experience with abuse, trauma, and violence, result in behaviors that push them into the justice system. Of these, [status offenses](#), which include truancy, running away, curfew violations, and underage drinking, are still the primary pathway for girls into the youth justice system.<sup>13</sup> Unfortunately, the justice system is generally not equipped to address their needs in a developmentally appropriate manner. Rather, they are often pushed further into the system -- to their detriment.<sup>14</sup> A very effective strategy to reduce the number of all girls -- and girls of color -- in the youth justice system is to divert them out of the system, using community-based, gender responsive and culturally and linguistically competent resources. [Click here](#) for more information on diversion for status offenses.

## Girls Who Are Not Diverted Should Never Be Detained for Status Offenses

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Incarceration can exacerbate the trauma and abuse many girls charged with status offenses have already suffered by jeopardizing their safety and well-being, and can increase the likelihood that they will be further involved in the justice system.<sup>15</sup> This should be addressed at the federal and state levels:

### FEDERAL REFORM

A core requirement of the federal [Juvenile Justice Delinquency Prevention Act \(JJDP\)](#)<sup>16</sup>, requires states to avoid putting youth charged with status offenses in secure confinement. However, there is a loophole: the so-called “valid court order” exception gives courts the option of locking these youth up if they violate a direct order from the court, such as to stop running away from home. This exception should be eliminated, so that all girls charged with status offenses are served by community and home-based services that are developmentally appropriate and better suited to their needs.

### STATE-LEVEL REFORM

States can also take action to ban the use of secure confinement for all youth who commit status offenses. A number of states have already taken up legislative initiatives to do so -- even for those youth who violate a valid court order -- and in 2013, a majority of states reported not using the valid court order exception at all.<sup>17</sup> If all states took similar steps, they would significantly reduce the rates at which girls – and girls of color – are incarcerated in the youth justice system.

## For More Information

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- [“Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System”](#) – The author exposes the lack of research into gender/race intersectional disparities in the youth justice system, and the absence of significant system tools to address the circumstances of girls of color in the system.
- [“Fight for Our Girls”](#) – This first brief in a forthcoming series discusses gender and racial disparities in how courts respond to youth charged with status offenses, and the role that trauma plays for how girls of color enter the justice system.
- [“Gender Injustice: System-Level Juvenile Justice Reforms for Girls”](#) – Published in 2015, this comprehensive and up-to-date report on girls in the youth justice system examines ways in which the justice system fails to help girls get the support they need to recover from the abuse and neglect they experience long before they enter the system. Follow the link to download the executive summary, the full report, or the infographic.
- [“Girls and the Juvenile Justice System”](#) – Policy guidance from the Office of Juvenile Justice and Delinquency Prevention (OJJDP).
- [“Justice for Girls: Are We Making Progress?”](#) – The author examines the potential of data-driven decision-making to reduce bias at the intersection of race and gender.
- [“Breaking New Ground on the First Coast: Examining Girls’ Pathways Into the Juvenile Justice System”](#) – In this report we hear from girls who are locked up in juvenile residential commitment programs in Florida. The study examines their pathways into the system, experiences with services, and recommendations for improving responses to girls.

- <sup>1</sup> Francine T. Sherman, “Detention Reform and Girls: Challenges and Solutions,” *Pathways to Juvenile Detention Reform*, vol. 13 (Baltimore, MD: The Annie E. Casey Foundation, 2005): 17, <http://bit.ly/1juU4e0>.
- <sup>2</sup> Francine T. Sherman and Annie Balck, “Gender Injustice: System-Level Justice Reforms for Girls” (The National Crittenton Foundation and National Women’s Law Center, 2015): 5.7, <http://bit.ly/1SeEXpt>.
- <sup>3</sup> C. Puzzanchera and S. Hockenberry, *National Disproportionate Minority Contact Databook* (National Center for Juvenile Justice, for the Office of Juvenile Justice and Delinquency Prevention, 2015); accessed April 22, 2016, <http://1.usa.gov/1NouZlf>.
- <sup>4</sup> The W. Haywood Burns Institute, “In just a few clicks, the BI gives you the ability to see the racial and ethnic disparities in your local youth justice system,” Feb. 8, 2016 blog post, accessed March 31, 2016, <http://bit.ly/1VnZ4E8>.
- <sup>5</sup> Sherman and Balck, “Gender Injustice”, 22 .
- <sup>6</sup> Francine T. Sherman, “Justice for Girls: Are We Making Progress?” *UCLA Law Review* 59 (2012):1584, 1617, <http://bit.ly/23MBcPi>.
- <sup>7</sup> Office of Juvenile justice and Delinquency Prevention (OJJDP) Policy Guidance, “Girls and the Juvenile Justice System,” accessed March 31, 2016, <http://1.usa.gov/1YJtJtv> , citing C. Puzzanchera and S. Hockenberry, *National Disproportionate Minority Contact Databook*.
- <sup>8</sup> Jyoit Nanda, “Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System,” *UCLA Law Review* 59 (2012):1502, 1533-34, <http://bit.ly/1QqNLCZ>.
- <sup>9</sup> Francine T. Sherman, “Justice for Girls,” 1620.
- <sup>10</sup> Puzzanchera & Hockenberry, *National Disproportionate Minority Contact Databook*.
- <sup>11</sup> Francine T. Sherman, “Justice for Girls,” 1620.
- <sup>12</sup> Francine T. Sherman, “Justice for Girls,” 1622.
- <sup>13</sup> Nanda, 1528; *Easy Access to the Census of Juveniles in Residential Placement: 1997-2011*, “Offense Profile of Detained Residents by Sex and Race/Ethnicity for United States (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2013), accessed April 21, 2016, <http://1.usa.gov/1r2JYqQ>.
- <sup>14</sup> Sherman & Balck, “Gender Injustice,” 4; OJJDP Policy Guidance, “Girls and the Juvenile Justice System”.
- <sup>15</sup> Coalition for Juvenile Justice – SOS Project, “Debunking Myths About Status Offenses” (Washington, DC: undated), <http://bit.ly/1Sx4BEF>.
- <sup>16</sup> Pub. L. No. 93-415, 42 U.S.C. § 5601 *et seq.*
- <sup>17</sup> Linda A. Szymanski, “What is the Valid Court Order Exception to Secure Detention for Status Offenders?” *NCJJ Snapshot*, vol. 16, no. 5 (Pittsburgh, PA: National Center for Juvenile Justice, 2011), <http://bit.ly/1qFDIKK>; Coalition for Juvenile Justice – SOS Project, “Use of the Valid Court Order: State-by-State Comparisons” (Washington, DC: undated), <http://bit.ly/1SeGHiu>.