A NEW DAY, OR MORE OF THE SAME?  
GIRLS IN THE JUVENILE JUSTICE SYSTEM

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“We while the girl offenders are smaller in number, the problems they pose are no less complex. The pressure of the 1958 culture has taken its toll, and the expressions of hostility and rebellion of delinquent girls is greater than that ever before experienced. They currently are engaging in a wider variety of delinquent acts and often are associated with boys in gang warfare. For the first time in the history of institutions for females there has been a series of major incidents during the last ten years.”


“We feel that there is not equal punishment for boys and girls in Maryland. It seems like, for the exact same charge, boys go home, but girls are locked up.”


Last year, NAWJ adopted a resolution urging the elimination of gender bias in juvenile justice systems across the country. This article examines gender differences in how girls and boys come to be confined in residential facilities in the juvenile justice system and highlights questions to consider in ongoing efforts to tackle gender and race bias in the justice system more broadly. We frame and illustrate these issues through the lens of one state, Maryland, but the story we tell could take place anywhere.

OVERVIEW

Much has been written about the lack of appropriate programs and services for girls in the juvenile justice system. The focus of this article, however, is process: what are the equal protection implications of differences in how girls and boys come to the attention and custody of the juvenile justice system?

Available data consistently show that girls are committed to the custody of the juvenile justice system for less serious offenses than their male counterparts. Academic and clinical literature describe distinct “pathways” into the juvenile justice system associated with gender – and then proceed to call for different, “gender-responsive” services for girls. But rarely is the question asked: should we accept gender-based differences in why and how young people are taken into the custody of a justice system? Are such differences the product of cumulative bias and inequality? Are attempts to “save” girls, however well-intentioned, reinforcing age-old stereotypes about women and girls as victims and undermining long-term progress? And how does race and poverty connect with these issues?

In 2010, for the first time, the Maryland Department of Juvenile Services released data corroborating what girls and their advocates had long claimed: that girls are punished disproportionately for minor offenses relative to boys. Despite the promise of equal protection under state and federal law, girls who come into contact with the juvenile justice system in Maryland are more likely to be punished for minor offenses and spend longer time in state custody for those offenses, while they are less likely to get the treatment and services they need. The overwhelming majority of girls in the system are girls of color and girls living in poverty.

There is no doubt that more and better programs for girls are needed. But programs alone cannot address the structural and institutional inequities that perpetuate longstanding discrimination based on gender and race. In order to address race and gender inequality, we must understand the historical context and structural factors contributing to modern-day disparate treatment.

KEY TRENDS

Boys’ Numbers Decline, But Not Girls, Especially Girls of Color

Although girls are a numerical minority in juvenile justice systems across the country, the figures for girls are increasing relative to those of boys both nationally and in Maryland. Nationally, juvenile arrest rates have dropped across the board in the last decade, but the declines for girls have been smaller and have increased in some areas. For example, between 1996 and 2005, girls arrested for simple assault increased by 24% nationally. 3

In Maryland, during the last five years there were marked declines for boys at every decision-point from the front door (“intake”) to confinement in residential programs (“commitment” or “placement”), but smaller reductions or increases for girls. Between 2008 and 2012, the number of boys brought to intake declined by 37%, while the number of girls declined by 30%. During that same period, the number of boys in detention declined by 21%, while the number of girls in detention increased by 9%. Moreover, the number of boys committed by courts to the Department of Juvenile Services (DJS) declined by 10%, while the number of girls committed actually increased by 7%.

These statistics are troubling in their own right. But they become even more alarming when we look at race: The difference in the trends for Caucasian girls and girls of color is nothing short of astonishing. In Maryland, between 2001 and 2010, the number of Caucasian girls brought to the front door of the juvenile justice system declined by nearly 40%, while the number for African-American girls increased by 7%. By 2012, African-American girls made up 59% of all girls brought to DJS, 60% of girls in long-term placement, and 72% of all girls in detention, although African-American youth comprise only 31% of Maryland’s youth population.
Thus, the story of girls in the juvenile justice system is an intersectional one that is incomplete unless it squarely confronts racial disparities.7

**Girls are Taken into Custody for Less Serious Offenses**

Despite media reports that suggest that girls who come into contact with the juvenile justice system are violent, data shows that girls who come into contact with the juvenile justice system in Maryland are more likely to be punished for minor offenses than their male counterparts.

In fact, Maryland data mimics national data showing that, regardless of gender, the vast majority of youth come to the attention of the juvenile justice system for low-level offenses.

Nonetheless, girls are brought to the front door of the juvenile justice system with even less serious offenses than boys. In Maryland, for example, in 2012, 79% of boys and 92% of girls came in for misdemeanor or lesser offenses.8 And, although diversion and other court processes help filter out many youth, offense disparities persist and in fact increase somewhat as girls are processed through the courts. By the deepest ends of the system, among youth with the same “punishment” – youth committed to state custody for long-term residential placement – girls still had far fewer serious offenses than their male counterparts. For example, during 2012, in Maryland, only 15% of girls had been adjudicated for a felony or crime of violence, compared to 34% of boys.9 Put another way, data shows that girls are penalized by the juvenile justice system for less serious offenses than boys.

**Increased Attention to Girls – Growing Concern and Advocacy**

Nationally and in many states, the increases in the number of girls processed by the juvenile justice system have led to increased visibility and attention, prompting a surge in interest and projects targeting girls.10 Much of the work at the local and state levels has focused on the lack of parity in juvenile services for girls – particularly, the lack of programs. Underlying this focus is a growing body of work asserting that girls in the juvenile justice system present different needs than boys. Both academic and clinical literature describe distinct “pathways” into the juvenile justice system that differ by gender.11 Sexual victimization of girls as a driver of system involvement has been central to these discussions, and a consensus has emerged that girls at the deepest ends of juvenile justice systems have histories of trauma, and, often, complex trauma.12

Thus, a lot of attention has been paid to asking “what works for girls?” with a particular focus on trauma, sexual abuse and exploitation. A demand for “gender-responsive” services and programs has emerged – programs that acknowledge and reflect gender differences in how youth come to the juvenile justice system, especially the trauma histories of girls.

The demand for gender-responsive programs reflects a remedial purpose – to correct decades of neglect to girls’ specific needs and to ensure that girls have equal access to programming that meets their needs. This work is critical to improving the experiences of girls in the juvenile justice system. But, typically, this is where the equal protection analysis ends – with a focus on programming. It is our view that, to achieve long-term parity and racial equality, the analysis must go deeper to ask: why are there gender-based differences in how youth come to the juvenile justice system and race disparities in who these youth are, and should we tolerate such differences?

**Questioning “Gender-Based” Pathways to Detention: Punishment for Boys, Protection for Girls**

Rather than accepting descriptions of gendered pathways as fixed and unchanging, we should scrutinize as inherently suspect gender-based differences in how youth enter and are processed by the juvenile justice system. Are these differences themselves a reflection of inequality? Are they the modern-day iteration of a longstanding history of policing women and girls’ differently? We think these questions particularly important in light of the history of the juvenile justice system’s orientation towards girls.

It is generally acknowledged that, “[h]istorically, juvenile courts responded to boys primarily for criminal misconduct and to girls mainly for noncriminal status offenses. ... Historians consistently report that judges detained and incarcerated girls primarily for minor and status offenses and at higher rates than they did boys.”13 Indeed, “[f]rom the juvenile courts’ inception, controlling adolescent female sexuality was a central focus of judicial attention and intervention.”14 This “central focus” on girls’ sexuality was not fabricated by courts, but rather the result of “a complex network of struggles and negotiations among working class parents, teenage daughters, and court officials.”15

“Faced with a reduction of social sanctions’ effectiveness in a more mobile and diverse environment, many parents had their daughters arrested for incorrigible behavior or for dating men of whom the family did not approve. Others asked the juvenile court judges to take their daughters away, to place them with other families or in institutions so the girls would learn to respect their parents' wishes.”16

In Baltimore City in 1950, for example, records show that girls were brought to the juvenile court by their own parents at more than four times the rate of boys.17 Nearly one third of all girls came to the attention of the court this way, compared to less than seven percent of all boys. About 72% of the girls were brought to the court for “sex complaints,” “incorrigibility and [being] chronic runaways,” or truancy, in contrast with about 15% of boys.18 It is only fair to assume that, then as now, parents and court officials had the best interests of girls at heart. But that does not mean that their efforts were not infused with the gender biases and assumptions of their time. In fact, looking back, it seems rather obvious that sexism and gender bias were at work in requests for court interventions for girls. As noted, boys were unlikely to be penalized for promiscuity or otherwise deprived of opportunity because of their sexual behavior.

Given this history, we think it critical to ask whether some of those same forces are at work today. When we look back fifty or one hundred years from now, will today’s gender differences in “pathways” into the juvenile justice system be viewed as simply an extension of the juvenile court’s history of policing girls differently?19

**Do Girls Who May Need Protection Belong in the Justice System?**

In response to critiques about gender-based disparities in detention and placement, stakeholders in Maryland have pointed out that juvenile dispositions – juvenile sentencing – are not offense-based and are not intended to be punitive, but rather to serve a legitimate child-saving function: Girls are taken into the custody of the juvenile justice system because of “treatment needs” that reflect some perceived threat girls pose to themselves – often, fears that girls are running away or otherwise putting themselves in risky situations that might result in sexual exploitation or pregnancy. Thus, the argument goes, unlike the past, when girls were policed because their behavior was
regarded morally offensive, now courts intervene because girls are in danger of being victims. Because the intention is not to punish, but rather to protect, and because this is a valid purpose of the juvenile court, gender bias is not a problem.

However laudable the goal of protecting girls may be, we cannot ignore that protecting girls has been invoked as a basis for court intervention in girls' and women's lives for much of modern history in ways that we now view as illegitimate—in ways that have served to “deny women, simply because they are women, full citizenship stature – equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.” United States v. Virginia, 518 U.S. 515, 532 (1996). We think it unlikely, for example, that very many boys are sent to juvenile facilities because they are at risk of getting girls pregnant.

Moreover, youth advocates call attention to the ways in which the juvenile court has shifted away from its primarily child-saving function to more closely resemble criminal court, citing prosecutorial up-charging and the prevalence of plea-bargaining as evidence that court processes are increasingly concerned with “certainty of punishment – rather than the social welfare of the youth.”20 Indeed, in Maryland, subject to certain constraints, prior commitments in the juvenile justice system can increase the “offender score,” and, accordingly, the sentencing guideline range, for individuals being sentenced in the adult criminal justice system.21

And certainly, young women in the juvenile justice system tend to perceive the intervention as punishment, however well-intentioned it may be from the perspective of the adults involved.22 Residential programs, in particular, frequently deprive girls of choice over even the smallest details of their existences, which perpetuates and exacerbates the powerlessness that is already pervasive in their lives – and the self-destructive behavior in which they engage to re-assert control.

Perhaps most significantly, a growing body of rigorous research corroborates what girls and their advocates tend to say – that, contrary to expectations, girls are often worse off after intervention by the juvenile justice system. For example, a recent report by the Annie E. Casey Foundation surveying research from across the country concluded that when low-risk youth with minor delinquency are sent to juvenile facilities, their likelihood of reoffending actually increases compared to similar youth who are supervised in the community.23 In Maryland, a study of group homes in the child welfare system found no improvements at all for girls sent to group homes, and in fact found that girls who lived in group homes showed increased risk to themselves and/or others.24

**CONTEXT MATTERS: WE MUST INTEGRATE OUR THINKING ABOUT GENDER, RACE AND TRAUMA IN ORDER TO FIND LASTING SOLUTIONS**

We do not mean to suggest that some or most girls who end up in the juvenile justice system would not benefit from services or programs. Rather, our point is that, when provided through the juvenile justice system, services tend to be of a wholly different character than when provided by community organizations, schools, or mental health or child welfare systems.

And this is where it becomes especially important to connect the dots to the overwhelming race disparities in which girls – and boys – become involved in the juvenile justice system. As noted earlier, researchers have repeatedly indicated that, particularly for girls, trauma is a driver of juvenile system involvement. This research is compelling and instructive. But, when divorced from socioeconomic and demographic information, the trauma-based narrative tends to mask the structural issues that lead to disproportionate system contact for girls of color.

In our view, “trauma” is often used as shorthand for girls' experiences with poverty, violence, abuse, loss and the like. This approach lends itself to an approach that is hyper-individualized—divorced from patterns of social disorganization and racial and economic inequality that cause certain groups of girls to experience more trauma and to have less access to services and programs than others. It also fails to acknowledge that there may be disparities and inequality in the volume and nature of policing where girls live, and that these disparities will influence which girls come to the attention of the justice system in the first instance.

Our failure to “connect the dots” results in interventions that are solely individual-based, rather than structural, even in response to factors that are plainly out of the young person's control. For example, Maryland’s needs assessment tool for youth in the juvenile justice system, modeled on a tool that is used by systems across the country, asks whether the young person lives in a dangerous neighborhood. But to what end? The juvenile justice system is not going to move her family to a safer neighborhood or take steps to help her feel safe where she lives. At the most, it will extract the girl from everything and everyone she knows and send her to a residential program to be rehabilitated away from “bad influences,” – and then return her to that neighborhood after she completes the program.

The patterns and disparities in who becomes involved in the juvenile justice system are not a new phenomenon. In Baltimore, for example, when youth advocates highlight race disparities, the most common refrain is to point out that the city is majority-black. But even when the city was not majority-black – even when whites were the overwhelming majority – the majority of kids in the juvenile justice system were black. In 1950, for example, African-Americans comprised less than a quarter of the city's population – but the majority of girls in the juvenile court were African-American.25

Although most or all youth in the juvenile justice system require trauma-informed care, it is not enough to merely recognize this fact. We must connect what we see in individual cases to the patterns we see in the aggregate, so that we can find lasting solutions.

**LOOKING AHEAD: WE MUST KEEP ASKING QUESTIONS**

Rather than simply relying on the juvenile justice system to “protect” girls, we must look at the practices and policies that create opportunities for victimization and abuse and press for better and earlier systemic responses to violence, abuse and trauma that bring girls to the attention of the juvenile justice system in the first place. We must question our assumptions about what will help make girls safer, and we must be willing to be creative in identifying what more can be done.

Moreover, in seeking to remedy unequal treatment, we must be vigilant against perpetuating the stereotypes that prevent women and girls from achieving their full potential. We must thoughtfully and deliberately ensure that in protecting girls and responding to current social realities, we are not relying on stereotypes about women and girls as victims who cannot make decisions for themselves, disempowering girls, and reinforcing gender inequality.

These considerations must be addressed not only in the context of juvenile justice, but indeed in any context where the urge to protect women compromises their autonomy and liberty – such as in the context of domestic violence, or human trafficking. For in striving to ensure equal justice, we owe women and girls nothing less.
Latino youth in detention. Thus, Maryland's racial disparities might be far worse if racial and ethnic data were accurately reported. Some jurisdictions, for example, report zero arrests of Latino youth, yet also report over-representation of Latino youth in detention. Researchers who have analyzed the reasons for the increase in the number of girls processed by the juvenile justice system have suggested that the changes are not due to changes in girls' behavior, but rather other factors, such as changes in the legal system.

Maryland Department of Juvenile Services, Data Resource Guide 21-22 (2012). Researchers who have analyzed the reasons for the increase in the number of girls processed by the juvenile justice system have suggested that the changes are not due to changes in girls' behavior, but rather other factors, such as changes in the legal system.


We describe racial disparities for African-American girls and not others because meaningful data regarding other racial minorities, particularly Latinas, are not available due to unreliable reporting. Some jurisdictions, for example, report zero arrests of Latino youth, yet also report over-representation of Latino youth in detention. Thus, Maryland's racial disparities might be far worse if racial and ethnic data were accurately reported.


These numbers reflect the most serious proven (“adjudicated”) offense in the young person's history. The most common offenses for girls who were taken into the custody for long-term residential programs were simple assault (28%), followed by misdemeanor theft (22%), and marijuana possession (10%). Maryland Department of Juvenile Services, Data Resource Guide 125 (2012).

For example, in 2004, the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) convened the “Girls Study Group” to investigate and disseminate information regarding girls' involvement in delinquency. Building on this work, in 2010, OJJDP, in conjunction with the National Center on Crime and Delinquency (NCCD), launched the National Girls Institute, as a clearinghouse for information and technical assistance pertaining to girls' delinquency. These national efforts are, to some degree, a response to the numerous local and state girls' working groups around the country that have raised concerns regarding girls' delinquency and the lack of programs for girls.


Charles E. Moylan, Associate Judge, Supreme Bench of Baltimore City, Report of the Circuit Court of Baltimore City (Division of Juvenile Causes) for the Year 1950 at 12.

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In addition, advocates have found evidence of gender bias seeping into other aspects of juvenile justice programming. For example, an ACLU review of community-based programs for girls in the Maryland juvenile justice system in 2012 found that, overwhelmingly, programs targeting girls emphasized chastity, reproductive health and self-esteem – but virtually no programs addressed job skills, professional development, or sports and overall physical health. Boys, too, were shortchanged – denied meaningful opportunities for classes in parenting and reproductive health.


See, e.g., American Civil Liberties Union of Maryland, Caged Birds Sing: A report by Girls on the A Unit at Waxter at 5 (2010).


Maryland Child and Adolescent Community Innovations Institute, Department of Child and Adolescent Psychiatry, University of Maryland School of Medicine, Functioning of Youth Served in Group Homes in the State of Maryland 4-5 (2009).

Charles E. Moylan, Associate Judge, Supreme Bench of Baltimore City, Report of the Circuit Court of Baltimore City (Division of Juvenile Causes) for the Year 1950 at 12.