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GIRLS' COURT: A GENDER RESPONSIVE JUVENILE COURT ALTERNATIVE

Wendy S. Heipt*

The Center for Children & Youth Justice

INTRODUCTION

While girls have historically comprised a small percentage of the juvenile justice population, the number of girls in the system is rising nationwide.¹ Over the last decade, the number of girls that are arrested, on probation, and in secure detention has dramatically risen, to the point where girls now make up almost one-third of the youth involved in the US juvenile justice

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¹ ANNIE E. CASEY FOUNDATION, MAKING DETENTION REFORM WORK FOR GIRLS: A GUIDE TO JUVENILE DETENTION REFORM #5 5 (2013), *available at* <http://www.aecf.org/m/resourcedoc/AECF-MakingDetentionReformWorkforGirls-2013.pdf>.

system.² Washington State mirrors these national trends in many respects. Girls accounted for slightly over 30 percent of the state's juvenile arrests in 2011, an increase over 2009 numbers and more than an 11 percent increase over the prior decade.³ Likewise, the percentage of girls in Washington State's juvenile detention facilities was almost 30 percent in 2012, representing a 70 percent proportional increase since 1990.⁴ These increases are particularly dramatic given that juvenile crime rates have been steadily decreasing since they peaked in the mid-1990s.⁵

These girls enter the juvenile justice system with offense histories dissimilar from their male counterparts. Girls are primarily in the system for low-level offenses, such as probation violations, and are more likely than boys to be detained for probation violations.⁶ Generally speaking, while these girls are low-risk individuals, they typically have high needs. Research indicates that juvenile-justice-involved girls are much more likely than juvenile-justice-involved boys to suffer from diagnosable mental illnesses, including post-traumatic stress syndrome, suicidal ideation, eating

² In 2010, 337,450 girls in the United States were arrested and criminally charged, as compared to 816,646 boys. LIZ WATSON & PETER EDELMAN, GEORGETOWN CTR. ON POVERTY, INEQUALITY & PUB. POLICY, IMPROVING THE JUVENILE JUSTICE SYSTEM FOR GIRLS: LESSONS FROM THE STATES 1 (2012), *available at* http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/upload/jds_v1r4_web_singles.pdf; *see also* EILEEN POE-YAMAGATA & JEFFREY A. BUTTS, U.S. DEP'T OF JUSTICE, FEMALE OFFENDERS IN THE JUVENILE JUSTICE SYSTEM 1 (1996), *available at* <https://www.ncjrs.gov/pdffiles/femof.pdf>.

³ OFFICE OF JUVENILE JUSTICE, WASH. STATE DEP'T OF SOC. & HEALTH SERVS., 2012 JUVENILE JUSTICE ANNUAL REPORT 1, 6 (2013), *available at* <https://www.dshs.wa.gov/jjra/office-juvenile-justice/washington-state-juvenile-justice-annual-report>.

⁴ *Id.* at Graph 39.

⁵ AM. BAR ASS'N & NAT'L BAR ASS'N, JUSTICE BY GENDER: THE LACK OF APPROPRIATE PREVENTION, DIVERSION AND TREATMENT ALTERNATIVES FOR GIRLS IN THE JUSTICE SYSTEM 1 (2001), *available at* <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1182&context=wmjowl>.

⁶ Shelley Zavlek & Rebecca Maniglia, *Developing Correctional Facilities for Female Juvenile Offenders: Design and Programmatic Considerations*, CORRECTIONS TODAY, Aug. 2007, at 58, 59, *available at* http://justicesolutionsgroup.com/uploads/pdfs/zavlek_maniglia-prog_des_consider.pdf.

disorders, and depression.⁷ These girls also have significantly higher rates of sexual victimization and trauma, rates that have been estimated to be as high as 90 percent.⁸ Moreover, girls throughout the juvenile justice continuum have higher rates of pregnancy than girls overall, which not only requires specific services but also increases their chances of becoming involved with the child welfare system as teenage parents.⁹

Educationally, girls in the juvenile justice system also present differently than their male counterparts. They also face gender specific barriers that make their chances for out of system achievement shaky at best.¹⁰ A majority of girls within the juvenile justice system have a history of truancy and have struggled academically.¹¹ Significantly, these girls are predominately youth of color. Further, a large proportion are attempting to attend school even though they are parenting, struggling with mental health issues or substance abuse, or dealing with chaotic personal lives and trauma histories.

⁷ Siobhan Cooney et al., *Girls in the Juvenile Justice System: Toward Effective Gender Responsive Programming*, WHAT WORKS, WISCONSIN-RESEARCH TO PRACTICE SERIES, Jan. 2008, at 1, 2, available at http://fyi.uwex.edu/whatworkswisconsin/files/2014/04/whatworks_07.pdf.

⁸ DANA D. DEHART, POLY-VICTIMIZATION AMONG GIRLS IN THE JUVENILE JUSTICE SYSTEM: MANIFESTATIONS AND ASSOCIATIONS TO DELINQUENCY 3 (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/228620.pdf>; GOVERNOR'S JUVENILE JUSTICE ADVISORY COMMITTEE, AT-RISK AND DELINQUENT GIRLS IN THE JUVENILE JUSTICE SYSTEM 1, 3 (2008), available at <https://www.dshs.wa.gov/sites/.../GirlsPolicyBriefFinalMarch08.doc>.

⁹ Marsha L. Levick & Francine T. Sherman, *When Individual Differences Demand Equal Treatment: An Equal Rights Approach to the Special Needs of Girls in the Juvenile Justice System*, 18 WIS. WOMEN'S L.J. 9, 15 (2003); see generally Leslie Acoca, *Are Those Cookies for Me or My Baby? Understanding Detained and Incarcerated Teen Mothers and Their Children*, 55 JUV. & FAM. CT. J. 65 (2004).

¹⁰ Elizabeth Cauffman, *Understanding the Female Offender*, 18 THE FUTURE OF CHILD 119, 124–25 (2008).

¹¹ Meda Chesney-Lind et al., *Girls' Troubles, Girls' Delinquency, and Gender Responsive Programming: A Review*, 41 THE AUSTL. & N.Z. J. OF CRIMINOLOGY 162, 167 (2008).

Despite these gender-specific burdens, once girls enter the juvenile justice system, they are faced with a structure designed to meet the needs of boys. This remains true even though the emerging research suggests that the most successful approaches for responding to girls in the delinquency system may not be the same approaches that have long been used to target male behavior.¹² This traditional structure does little to address racial disproportionality or the collateral consequences of juvenile justice involvement that further compromise a girl's chances at educational success. Recognizing this problem, there have been increased efforts to modify or create programs within both the juvenile delinquency and dependency systems to more effectively reach girls¹³ and to provide creative solutions that will improve both their educational and life outcomes.

This article examines the increasing incidence of girls along the juvenile justice continuum and, after reviewing a number of jurisdictions using courts as a leverage point to positively redirect young females, proposes establishing a gender driven specialty court within Washington State's juvenile court system. As explained below, the proposed court program would help girls in the delinquency system reconnect with educational

¹² See generally LESLIE LEVE ET AL., RISKS, OUTCOMES, AND EVIDENCED-BASED INTERVENTION FOR GIRLS IN THE U.S. JUVENILE JUSTICE SYSTEM: RECOMMENDATIONS FOR NEXT STEPS IN RESEARCH, INTERVENTION AND IMPLEMENTATION, OREGON SOCIAL LEARNING CENTER (2012), available at http://www.modelsforchange.net/uploads/cms/documents/girls_exec-summary_and_paper-3_27_12.pdf; MARGARET A. ZAHN ET AL., U.S. DEP'T OF JUSTICE, VIOLENCE BY TEENAGE GIRLS: TRENDS AND CONTEXT (2008), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/218905.pdf>; Marty Beyer et. al., *A Better Way to Spend \$500,000: How the Juvenile Justice System Fails Girls*, 18 WIS. WOMEN'S L.J. 51 (2003).

¹³ Briefly, dependency cases involve protecting youth that have been or are at risk of being abused, neglected, or abandoned. Delinquency cases involve acts committed by a minor and designated as a crime, as well as status offenses, which are actions that are prohibited only for a certain class of people, such as minors. See generally Paul E. Tracy et al., *Gender Differences in Delinquency and Juvenile Justice Processing: Evidence from National Data*, 55 CRIME & DELINQ. 171 (2009). There have been a number of efforts within the dependency system to target girls' needs and behaviors. While recognizing these efforts, this article focuses on efforts within the delinquency system.

programs and community supports and build positive relationships. This court would give girls in the delinquency system the option of entering a court designed to meet their gender-specific needs and give them the best chance for out-of-system success.

The first section of this article reviews the current state of girls in the juvenile justice system, including a review of the personal and legal pathways by which girls find themselves system-involved. Within this section is an overview of how changing laws and policies have disproportionately led more girls into contact with the juvenile justice system and an explanation of how these girls differ from their male counterparts. Also included within this first section is a review of how changing educational policies have affected adolescents, particularly young women of color, and the educational issues and barriers unique to girls. The second section is a review of gender-driven practices and programs that seek to improve the lives of girls in the juvenile justice system nationwide, relying on social science literature, scientific publications, interviews, surveys, and site visits. This section also highlights efforts being made to reconnect these girls to educational supports. The third and final substantive section outlines a gender-focused juvenile justice program I planned, being spearheaded by the Center for Children & Youth Justice (CCYJ). This section presents the arguments in favor of establishing Washington State's first Girls' Court, and also includes an outline for educational and other program components calculated to give the pilot the best chance for success. The article ends with a brief conclusory argument in favor of the pilot program.

I. THE CURRENT STATE OF GIRLS IN THE JUVENILE JUSTICE SYSTEM

A. Girls Pathways into the Delinquency System

The US juvenile justice system is dominated by boys—both in the raw numbers of males involved in the system and in the percentages of boys throughout the system—but girls are a fast growing section of this

population.¹⁴ Between 1991 and 2003, girls' detention rates rose by 98 percent nationally, compared to a 29 percent increase in boys' detention rates.¹⁵ By 2004, the number of girls arrested reached 30 percent of all juveniles, a 40 percent increase over the prior 20 years.¹⁶ In Washington State, similar developments are evident. In this state, girls' arrests saw an approximate eight percent increase between 1998 and 2007, while arrests for males decreased, and the percentage of girls in detention has risen even while the number of juveniles in detention as a whole has continued to fall.¹⁷ This trend is particularly disturbing as detention disproportionately retriggers trauma in girls.¹⁸

One of the biggest questions raised by this data is why the number of girls in the system is increasing? The literature confirms what most court personnel report: the growing numbers of girls in the system are not due to increasing criminal behaviors. Instead, the number of system girls are rising due to a harsher system response to their characteristic behaviors and because girls tend to receive tougher sanctions than boys for the same

¹⁴ The greatest increase has occurred for African American girls. Kim Taylor-Thompson, *Girl Talk—Examining Racial and Gender Lines in Juvenile Justice*, 6 NEV. L.J. 1137, 1137–38 (2006).

¹⁵ WATSON & EDELMAN, *supra* note 2, at 1.

¹⁶ Chesney-Lind et al., *supra* note 11, at 162.

¹⁷ GOVERNOR'S JUVENILE JUSTICE ADVISORY COMM., TITLE II FORMULA GRANTS PROGRAM APPLICATION 20, 32–33 (2009), *available at* http://juvjustice.org/sites/default/files/resource-files/resource_308_0.pdf. This is true even though the percentage of girls to boys has remained constant from the 2000 Census to the 2010 Census, with boys representing approximately 51 percent of the 0–17 juvenile population, and girls representing approximately 49 percent. OFFICE OF JUVENILE JUSTICE, *supra* note 3.

¹⁸ Unfortunately, confinement has been shown to exacerbate a host of mental illnesses, particularly among girls who are trauma survivors—leading to an increase in suicide attempts and stress related illnesses. JUSTICE POLICY INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 1, 6 (2010), *available at* http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf.

offenses.¹⁹ As I detail below, there are a number of causes contributing to the trend of imposing harsher penalties on long-standing behaviors. Prominent among these causes is a widespread perception that schools are unsafe, which has led to discipline practices that criminalize behaviors previously handled outside the formal justice system.²⁰ Other causes include a heightened awareness that domestic disputes merit an immediate response; a legislative push to get tough on crime; the criminalization of many low-level offenses; and the “revolving door” of status offenses. It is important to note that these pathways are not only affected by gender, but also by race, class, and sexual identity. These additional factors put girls who also fall into one of the above categories at a further disadvantage compared not only to boys, but also to other girls.²¹ Most notable among the hypotheses listed above, as this paper will argue, is the issue of juvenile justice involvement through school, also known as the “school to prison pipeline.” This increased connection between the justice and educational systems has a number of contributing factors, including rigid discipline policies and the presence of law enforcement in school settings.

Increasingly, schools are relying on in-house police officers, typically known as School Resource Officers (SROs) or Educational Facility Officers (EFOs), to monitor and discipline students.²² Students who attend schools with SROs have a greater chance of eventual involvement in the juvenile justice system.²³ Even more disturbing, children of color are

¹⁹ This is particularly true for African American girls. Meda Chesney-Lind & Francine Sherman, *Gender Matters in Juvenile Justice*, N.Y. L.J. (2010), at 6.

²⁰ Laurie Schaffner, *Research Brief: Violence Against Girls Provokes Girls Violence*, 2 JUST. POL’Y J. 1, 3–4 (2005).

²¹ Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502, 1521, 1529, 1530 (2012).

²² Although the definition of an SRO varies, for purposes of this report, they are law enforcement officers with a long-term assignment in a public school.

²³ In a study using data from over 2,000 schools, researchers compared the rates at which schools report offenses to the police and found that schools using SROs reported offenses at a significantly higher rate than those not using SROs. Mario S. Torres Jr. & Jacqueline

overrepresented in these referrals.²⁴ The reasons for this disparity are both systematic and personal. In many of today's schools, SROs are now making decisions that were previously made by educational administrators.²⁵ As police officers are trained to think in law enforcement terms, not in pedagogical terms, decisions such as whether to arrest a student rely on criteria that does not include the full range of options that would be available if school officials responded.²⁶ Often, student behavior can be

A. Stefkovich, *Demographics and Police Involvement: Implications for Student Civil Liberties and Just Leadership*, 45 EDUC. ADMIN. Q. 450, 466 (2009).

²⁴ Across school districts, African American students are over 3.5 times more likely to be suspended or expelled than their white peers. In districts that reported expulsions under zero-tolerance policies, Hispanic and African American students represent 45 percent of the student body but 56 percent of the students expelled under such policies. OFFICE OF CIVIL RIGHTS, U.S. DEP'T OF EDUC., *THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION: REVEALING NEW TRUTHS ABOUT OUR NATION'S SCHOOLS* 1, 3 (2012), available at <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>; see generally CATHERINE Y. KIM & I. INDIA GERONIMO, AM. CIVIL LIBERTIES UNION, *POLICING IN SCHOOLS: DEVELOPING A GOVERNANCE DOCUMENT FOR SCHOOL RESOURCE OFFICERS IN K-12 SCHOOLS* (2009), available at https://www.aclu.org/files/pdfs/racialjustice/whitepaper_policinginschools.pdf. In Washington State, a review of 177 school districts found that students of color were 1.5 times more likely to be disciplined than whites, and African Americans, among other students of color, were more than twice as likely to be disciplined. KATIE MOSEHAUER ET AL., WASH. APPLESEED & TEAMCHILD, *RECLAIMING STUDENTS EXECUTIVE SUMMARY: THE EDUCATIONAL AND ECONOMIC COSTS OF EXCLUSIONARY DISCIPLINE IN WASHINGTON STATE* i, 7 (2012), available at http://www.teamchild.org/docs/uploads/Reclaiming_Students_-_a_report_by_WA_Appleseed__TeamChild.pdf.

²⁵ THE SENTENCING PROJECT, *THE FACTS ABOUT DANGERS OF ADDED POLICE IN SCHOOLS* 1 (2013), available at http://sentencingproject.org/doc/publications/jj_Police%20in%20Schools%20Fact%20Sheet.pdf.

²⁶ In some cases, school administrators find themselves at odds with SROs over situations in which the school believes an incident can be handled internally and the SRO sees the need for an arrest or a referral. See, e.g., Jennifer Medina, *Police Arrest a Student, Then Her Principal, Too*, N.Y. TIMES, Oct. 10, 2007, http://www.nytimes.com/2007/10/10/nyregion/10school.html?_r=0. In fact, in South Carolina, the most common offense resulting in a juvenile court referral is "disturbing schools," a charge that can span the gamut from weapons possession to text messaging. KIM & GERONIMO, *supra* note 24, at 8. Some SRO programs and juvenile court personnel have begun to acknowledge these challenges and request more training for

viewed both as a discipline problem and as a criminal offense—the label may depend on the viewer as much as on the behavior itself.²⁷

Additionally, overall increases in punitive sanctions used in response to school disciplinary issues also contribute to girls (and boys) entering the juvenile justice system through their schools. So-called “zero-tolerance policies” mandate predetermined and generally harsh responses to student behavior, without regard to individual circumstances or situational context.²⁸ Not only have these zero-tolerance policies failed to curb delinquency, and have often led to absurd results,²⁹ but they have also contributed to higher dropout rates and have disproportionately affected

officers entering schools or ask for corrections officers in place of sworn police officers, because they have experience communicating and do not fall back on force. OFFICE OF CMTY. ORIENTED POLICING, U.S. DEP'T. OF JUSTICE, A GUIDE TO DEVELOPING, MAINTAINING & SUCCEEDING WITH YOUR SCHOOL RESOURCE OFFICER PROGRAM 52, 117 (2005) *available at* http://www.popcenter.org/Responses/school_police/PDFs/Finn_et_al_2005.pdf.

²⁷ As the number of male and female juvenile court referrals from schools continues to grow, administrators in Washington State are beginning efforts to counteract these trends. For example, program supervisors in the Olympia, Washington Police Department, report that, unlike other specialty positions (e.g., traffic), a successful SRO depends on relationships (with school administrators and teachers) that take time to build. OFFICE OF CMTY. ORIENTED POLICING, *supra* note 26, at 109.

²⁸ For example, the Bellevue, Seattle, and Spokane school districts enumerate certain offenses for which the penalties are mandated. Bellevue School Dist. Policy 4071 (revised 2011); Seattle Public Schools, Student Rights and Responsibilities, E-100, E-200, E-300, E-400, E-500, E-600, E-700, E-800, E-900 (2011–2012); Spokane School District Policy and Procedures 3200 (III) (2009).

²⁹ In June 2013, a number of elementary school children from Chase Lake Elementary in Edmonds, Washington were suspended for having Nerf guns in violation of the school's “zero tolerance” policy on toy guns. In this case, according to news stories at the time, the kids were permitted to bring the toys to school for a project but decided to try them out before school opened. The resulting suspensions barred the kids from taking an advanced algebra class or serving on the student council. Tracy Vedder, *Edmonds Students Suspended for Using Nerf Guns at school*, KOMONEWS.COM (June 3, 2013, 4:27 PM), <http://www.komonews.com/news/local/Edmonds-students-suspended-for-using-Nerf-gun-at-school-210013811.html>.

minority youth.³⁰ In Washington State, during the 2009–2010 school year, at least 46,394 students were expelled or suspended from state public schools,³¹ and these suspensions and expulsions disproportionately affect students of color and low-income students.³² While some states have recently begun to recognize the negative consequences that stem from these zero-tolerance policies and have taken action to reverse this trend, the majority of public school attendees in the United States are still subjected to these strict and inflexible rules.³³

As noted above, in addition to the issues associated with the school to prison pipeline that have landed more girls in the juvenile justice system in recent years, other causes contribute to the increasing numbers of females in the system, such as problems related to status offenses and domestic disputes.³⁴ Status offenses are behaviors deemed criminally offensive solely because of the offender's age, including running away from home, alcohol consumption, truancy, curfew violations, and being unmanageable.³⁵ Status offenses are the reason that girls, far more often than boys, become caught

³⁰ AM. BAR ASS'N, COMMISSION ON YOUTH AT RISK, COMMISSION ON HOMELESSNESS AND POVERTY, REPORT TO THE HOUSE OF DELEGATES RECOMMENDATION 12 (2009), available at <http://apps.americanbar.org/yld/annual10/109a.pdf>.

³¹ OFFICE OF SUPERINTENDENT OF PUB. INSTRUCTION, 2009—10 BEHAVIOR REPORT - SUSPENSIONS AND EXPULSIONS 1 (2011), available at <http://www.k12.wa.us/SafetyCenter/Behavior/pubdocs/rptBehavior0910.pdf>.

³² MOSEHAUER ET AL., *supra* note 24, at 5, 25–30.

³³ In September 2014, California became the first state in the country to restrict expulsions for minor misbehavior (also known as “willful defiance,” this category accounts for the most significant racial disparities) for all ages and all suspensions for children in kindergarten through third grade. CAL. EDUC. CODE § 48900.

³⁴ Jamie A. Edwards, *A Lesson In Unintended Consequences: How Juvenile Justice And Domestic Violence Reforms Harm Girls In Violent Family Situations (And How To Help Them)*, 13 U. PA. J.L. & SOC. CHANGE 219, 230–33 (2010), available at <http://scholarship.law.upenn.edu/jlasc/vol13/iss2/4>.

³⁵ For example, in Washington State, in 2010, girls were a minimal percentage of those juveniles arrested for robbery or manslaughter, and a small percentage of those arrested for assault. OFFICE OF JUVENILE JUSTICE, *supra* note 3, at Table 49.

up in the juvenile justice system,³⁶ as opposed to becoming system-involved through violent and/or criminal activity.³⁷ As a result most girls find themselves in the system for behavior that is problematic only because they are minors.³⁸

Among all status offenses, girls most often offend for running away.³⁹ As noted time and again, “Girls run. That’s what they do.”⁴⁰ In Washington,

³⁶ This holds true even for gang-involved girls, who interact differently in regards to gang membership than gang-involved boys. Delinquency rates of female gang members are lower than those of male gang members in general, and female gang members commit fewer violent crimes than male gang members and are more inclined to commit property crimes and status offenses. JOAN MOORE & JOHN HAGEDORN, FEMALE GANGS: A FOCUS ON RESEARCH 4 (2001), available at https://www.ncjrs.gov/html/ojjdp/jjbul2001_3_3/page4.html.

³⁷ AM. BAR ASS’N & NAT’L BAR ASS’N, *supra* note 5 at 7–8; Jennifer Thibodeau, *Sugar and Spice and Everything Nice: Female Juvenile Delinquency and Gender Bias in Punishment and Behavior in the Juvenile Courts*, 8 WM. & MARY J. WOMEN & L. 489, 491–92, 496 (2002).

³⁸ “In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP) prohibiting placement of status offenders in secure confinement.” Unfortunately, a 1980 amendment to the JJDP allows detention of status offenders for violations of a valid court order (VCO). This means that a young woman with a court order not to run away can be placed in detention for running away. Patricia J. Arthur & Regina Waugh, *Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception that Swallowed the Rule*, 7 SEATTLE J. FOR SOC. JUST. 555, 555 (2009).

³⁹ For purposes of this paper, runaway girls are defined as adolescent girls who have left home with no intention to return and who vary between living on the street, in shelters, and in transitory housing. The term includes youth often referred to as “throwaways”—those who have left home because their parents have abandoned them, kicked them out, or subjected them to extreme levels of neglect or abuse. The term also includes situational runaways—youth who leave home for a short amount of time, usually in response to a triggering incident, but intend to return home.

⁴⁰ Additionally, even among researchers concluding that boys run away from home at close to the same rates as girls, there is near universal agreement that girls are more frequently arrested for this behavior than are boys. Telephone interview with Cynthia Salazar, Special Programs Manager, 2nd Judicial Circuit, N.M. Program for the Empowerment of Girls, in Albuquerque, N.M. (Mar. 2013); Telephone interview with Denise Locke, Chief Probation Officer, in Stanislaus County, Cali. (Mar. 2013); Telephone interview with Carolyn Dallas, Youth Court of Washington D.C. (Apr. 2013); Telephone interview with Paula Schaefer, Schaefer & Associates, Girls Juvenile Justice and Child Welfare Issues, in Minn. (Apr. 2013).

counties report significant numbers of runaway girls—for example, Pierce County reported 540 runaway girls and Spokane County reported 1,590 runaway girls in 2011.⁴¹ Girls not only run more often than boys, they also run repeatedly, and these runaways often appear recalcitrant to courts—which become frustrated with their repeated violations.⁴² Girls often run as a survival strategy, as running assists them in escaping abusive situations; unfortunately, this behavior too often lands them in the juvenile justice system.⁴³

Once on the street, these runaway girls have no connection to formal or alternative education programs, are unprotected, and are more likely to experience additional problems.⁴⁴ In fact, running away increases the odds of . . . chronic offending.⁴⁵ In addition to having a high vulnerability to street crime, violence, and drug use, runaway girls are also at risk for sexual exploitation. Interviews with practitioners nationwide highlight the connection between repeat runaways and youth known as commercially sexually exploited children (CSEC).⁴⁶ Although there is a dearth of reliable data available, estimates on the incidence vary from 10 percent to 33 percent of homeless youth.⁴⁷ CSEC is a particular problem for runaway

⁴¹ CTR. FOR CHILDREN & YOUTH JUSTICE, WASHINGTON STATE MODEL PROTOCOL FOR COMMERCIAL SEXUALLY EXPLOITED CHILDREN 69–70 (2013), available at <http://www.k12.wa.us/safetycenter/CSEC/pubdocs/PROTOCOL-CSECMoelProtocolNov2012.pdf>.

⁴² See, e.g., *Meeting the Challenges Faced by Girls in the Juvenile Justice System: Hearing Before the Subcomm. on Healthy Families & Communities of the H. Comm. on Educ. & Labor*, 111th Cong. (2010) (statement of Hon. J. Brian Huff).

⁴³ Alecia Humphrey, *The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN'S L.J. 165, 201–03 (2004).

⁴⁴ C.L. Odgers, *A Latent Variable Modeling Approach to Identifying Subtypes of Serious and Violent Female Juvenile Offenders*, 33 AGGRESSIVE BEHAVIOR 339, 339 (2007);

CTR. FOR CHILDREN & YOUTH JUSTICE, *supra* note 41, at 34.

⁴⁵ *Id.*

⁴⁶ Under current Washington State law, a CSEC crime involves a youth age 17 or younger who is solicited and/or coerced into exchanging sexual acts (including contact, pornography, or other sexualized behaviors) in return for money, basic needs, or any material item.

⁴⁷ CTR. FOR CHILDREN & YOUTH JUSTICE, *supra* note 41, at 66.

girls, as they tend to have higher rates of abuse in the homes from which they are running, and childhood abuse or neglect is a significant predictor of prostitution for females. Washington State faces similar challenges: the average age of youth charged with juvenile prostitution in this state is 16.⁴⁸

In addition to the myriad of issues raised by status offenses, another core reason, noted above, that girls find themselves in the juvenile justice system is because of domestic disputes with family members or with those with whom they are in close social relationships.⁴⁹ Many of these conflicts were once treated as domestic disputes that did not prompt court involvement.⁵⁰ However, mandatory and pro-arrest policies have resulted in these intra-family conflicts now being treated as violent offenses.⁵¹ As girls tend to fight with family members more than with “outsiders,” these policies have resulted in higher arrest rates for girls.⁵² As a result, girls who in years past could avoid formal system involvement in the wake of a domestic altercation now find themselves taken up by the juvenile justice system. Although there have been discussions in several states, including Washington, around ways to remedy this situation, as yet too many girls are still finding themselves in the juvenile justice system as a result of mandatory arrest domestic violence policies, even when the conflict at issue involves both (or multiple) persons.⁵³

⁴⁸ CTR. FOR CHILDREN & YOUTH JUSTICE, *supra* note 41, at 65. There were 33 charges of juvenile prostitution filed against CSEC children in Washington State between 2000 and 2010, and most of those charged were in King and Pierce County.

⁴⁹ ZAHN ET AL., *supra* note 12, at 6–7.

⁵⁰ Edwards, *supra* note 34, at 220.

⁵¹ AM. BAR ASS'N & NAT'L BAR ASS'N, *supra* note 5, at 3.

⁵² ZAHN ET AL., *supra* note 12, at 3.

⁵³ As one example, under current Washington State law, law enforcement is mandated to take any individual over 16 years old into custody if suspected of domestic violence, regardless whether they were the only perpetrator. This particularly impacts girls, especially girls with mental health issues, and results in a high number of these girls being held for assault in the fourth degree (a gross misdemeanor). *See, e.g.*, WASH. REV. CODE § 10.31.100 (2014).

Among the reasons elucidated above that girls find themselves in the delinquency system, we must recognize that certain categories of girls are more severely impacted than others, in both the educational context (discussed further below) and in the juvenile justice context. In the case of delinquency, girls who are also members of ethnic and racial minorities often find themselves in the system faster than their white female counterparts, and their rates of arrest in some categories are also climbing faster than boys. Black girls experience some of the highest rates of residential detention, and in many states black students represent the fastest-growing segment of the juvenile justice population.⁵⁴ Nationwide, black girls were more than three times as likely as white girls to be arrested for a person offense in 2008, and black girls experienced almost twice as high an increase in arrest rates for public disorder than did black boys.⁵⁵ Thus, while recognizing the escalation in the numbers of juvenile justice involved girls overall, it is important to note that within this category, there are certain groups of girls facing particularly dramatic increases.

B. How Girls Present on Arrival into the Juvenile Justice System

As detailed above, it is clear that the increasing number of girls at all points along the juvenile justice continuum stem from a multitude of causes, and these young women are arriving on paths dissimilar from their male counterparts in ever increasing numbers. This section makes clear that on arrival in the juvenile justice system, these girls also present with distinct characteristics, both in terms of their health and education.

⁵⁴ ADVANCEMENT PROJECT TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE, 19, 31 (2010), *available at* http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf.

⁵⁵ Monique W. Morris, *Black Girls Get Arrested, Too*, POLITICS 365 (Apr. 23, 2012), www.politic365.com/2012/04/23/black-girls-get-arrested-too.

1. Mental and Physical Health

Juvenile justice involved girls exhibit significantly more health issues than boys, and the issues they present with tend to be high needs and intensive. Studies continue to show that not only are the physical and mental health needs of girls different, “they are more severe and more complicated than boys[.]”⁵⁶ These include mental health disorders, experiences of prostitution and sexual victimization, physical safety and trauma, significantly higher rates of physical and emotional abuse, high rates of pregnancy and parenting, high rates of eating disorders, a variety of weight issues, and asthma.

Research has established that there are marked sex-based differences that surface during puberty for many psychiatric disorders.⁵⁷ Emerging studies demonstrate the different ways in which male and female brains develop, why girls are more susceptible to certain mental illnesses than boys, and why girls exhibit some conditions more dramatically and more frequently than boys.⁵⁸ This resonates starkly in the juvenile justice system,⁵⁹ where

⁵⁶ Anna Gorman, *Addressing girls' health needs at juvenile detention centers*, L.A. TIMES, Mar. 16, 2013, <http://articles.latimes.com/2013/mar/16/local/la-me-juvenile-girls-health-20130317>.

⁵⁷ Margaret M. McCarthy et al., *Sex Differences in Brain, Behavior, Mental Health and Mental Disorders*, 32 J. NEUROSCIENCE 2241, 2243 (2011).

⁵⁸ Although this article focuses on the pathologies seen more frequently in girls, there are numerous examples available where boys are more affected. This includes neurological disorders such as dyslexia and stuttering, which are at least three times more frequent in boys; attention deficit hyperactivity disorder (ADHD), which is ten times more prevalent in boys; and autism/autism spectrum disorder, which is up to four times more prevalent in boys. These examples further illustrate the sex-based differences that merit differing responses. See generally Jay N. Giedd, *Why Do Many Psychiatric Disorders Emerge During Adolescence?*, 9 NAT. REV. NEUROSCIENCE 947 (2008); McCarthy et al., *supra* note 57. Further, in areas such as ADHD, where research on females is limited, sex-based differences may require adjustments in the types of medication dispensed and their dosage and timing. Susan L. Andersen, *Trajectories of Brain Development: Point of Vulnerability or Window of Opportunity?* 27 NEUROSCIENCE AND BIOBEHAVIORAL REVIEWS 3, 4, 12 (2003).

⁵⁹ As brain science continues to evolve, its impact will be increasingly felt inside courtrooms nationwide. In *Roper v. Simmons*, 543 U.S. 551 (2005) the dissent struggled with why adolescents would be mature enough to make judgments regarding abortion,

more females than males meet the criteria for mental health disorders, and more meet the criteria for multiple disorders.⁶⁰

One mental health area impacting juvenile justice that involves girls more starkly than boys is suicidal ideation and suicide attempts. After declining for a number of years, teenage suicide is on the rise and remains the third leading cause of death for young people nationally and the second leading cause of death for young people in Washington State.⁶¹ Although the suicide rate becomes comparable between the sexes as people age, adolescent suicide continues to show stark, sex-based differences. While males remain more likely to complete a suicide, female adolescents have significantly higher rates of suicidal ideation and attempts, both nationally and in Washington State.⁶² This becomes particularly troublesome when increasing numbers of girls are placed in detention, an environment that has been shown to trigger the feelings of helplessness that can result in suicide or self-mutilation.⁶³

yet simultaneously too immature to receive the death penalty. In *Graham v. Florida*, 560 U.S. 48 (2010), the Court looked at whether *Roper* should also apply to sentences of life without the possibility of parole.

⁶⁰ G.A. Wasserman, *Psychiatric Disorder, Comorbidity and Suicidal Behavior in Juvenile Justice Youth*, 37 CRIM. JUST. & BEHAV. 1361, 1366, 1370 (2010); K.M. Abram, *Comorbid Psychiatric Disorders in Youth in Juvenile Detention*, 60 ARCHIVES OF GEN. PSYCHIATRY 1097, 1101 at Figure 1 (2003).

⁶¹ WASH. STATE DEPT. OF HEALTH, www.doh.wa.gov (last visited Mar. 13, 2015). This translates to two young people between the ages of 10 and 24 committing suicide every week in our state. *You Can Save a Life*, YOUTH SUICIDE PREVENTION PROGRAM, www.yspp.org (last visited Mar. 13, 2015).

⁶² ARIALDI M. MININO, CTR. FOR DISEASE CONTROL & PREVENTION, MORTALITY AMONG TEENAGERS AGED 12-19 YEARS: UNITED STATES, 1999-2006, NCHS DATA BRIEF NO. 37 2 (2010), available at <http://www.cdc.gov/nchs/data/databriefs/db37.pdf>; *You Can Save a Life*, *supra* note 61; P.M. Lewinsohn et al., *Gender Differences in Suicide Attempts from Adolescence to Young Adulthood*, 40 J. AM. ACAD. CHILD. ADOLESCENT PSYCHIATRY 427, 427-28 (2001).

⁶³ NAT'L CHILD TRAUMATIC STRESS NETWORK, TRAUMA AMONG GIRLS IN THE JUVENILE JUSTICE SYSTEM 5 (2004), available at http://www.nctsn.org/nctsn_assets/pdfs/edu_materials/trauma_among_girls_in_jjsys.pdf.

Girls also experience greater incidence of stress disorders, anxiety, and depression than boys. While almost equal numbers of female and male children exhibit signs of depression, puberty brings a dramatic shift in these numbers.⁶⁴ By age 13, there are twice as many girls as boys exhibiting anxiety and depressive disorders, and this proportionality continues into adulthood.⁶⁵ Not only do these rates hold true across ethnic and racial backgrounds in the United States, they also hold true in many other countries across the world.⁶⁶ In fact, rates of depression and anxiety are among the most documented and dramatic of sex-based differences.⁶⁷

In addition to anxiety, depression, and suicide,⁶⁸ girls also experience more post-traumatic stress disorder (PTSD) than boys. PTSD is more

⁶⁴ In Washington State, parents reported slightly higher levels of depression for their children (ages 12 to 17) than the national average (6 percent to 4 percent). WASH. ST. DEPT. OF HEALTH, DOH PUB NO. 160-105, MENTAL HEALTH: CHILD & ADOLESCENT (2012).

⁶⁵ How adolescent brain development interacts with abuse and with sex-specific pathologies such as depression and anxiety is a subject under current debate. Hypotheses include pubertal timing, the interaction between depression and girls' self-esteem, the effects of stress on certain glands, the genetic connection between girls and their depressed mothers, and hormonal fluxes. Katherine F. Nunley, *The Relationship of Self Esteem and Depression in Adolescence*, BRAINS.ORG, <http://www.brains.org/depression.htm> (last visited June 23, 2015); NAT'L INST. OF MENTAL HEALTH, WOMEN AND DEPRESSION: DISCOVERING HOPE 9 (2009), available at http://www.nimh.nih.gov/health/publications/women-and-depression-discovering-hope/depression-what-every-woman-should-know_34628.pdf.

⁶⁶ Anita Gurian, *Depression in Adolescence: Does Gender Matter?*, NYU CHILD STUDY CTR. (2013); Greg Wilkinson, *Gender Differences in Depression: Critical Review*, 177 BRIT. J. PSYCHIATRY 486, 488 (2000).

⁶⁷ Janet Shibley Hyde, *The ABCs of Depression: Integrating Affective, Biological, and Cognitive Models to Explain the Emergence of the Gender Difference in Depression*, 115 PSYCHOL. REV. 291, 291 (2008).

⁶⁸ Another psychiatric illness that becomes increasingly common during adolescence and influences girls and boys differently is schizophrenia. See generally Jay N. Giedd, *Review: Magnetic Resonance Imaging of Male/Female Differences in Human Adolescent Brain Anatomy*, 3 BIOLOGY SEX DIFFERENCES 19 (2012); Jonathan D. Clayden et al., *Normative Development of White Matter Tracts: Similarities and Differences in Relation to Age, Gender, and Intelligence*, 22 CEREBRAL CORTEX 1738 (2011); Heather C. Brenhouse & Susan L. Andersen, *Developmental Trajectories During Adolescence in*

common in the juvenile justice population than in the population at-large and more common among girls in the system than among boys.⁶⁹ Exposure to trauma during childhood is often a precursor for the development of PTSD, and the evidence continues to mount that there are sex based differences in the frequency and severity of negative life events for girls, particularly around sexual abuse and trauma.⁷⁰ And, while there is a dearth of research on the topic in general, initial research indicates the incidence of PTSD is as high for LGBTQ (lesbian, gay, bisexual, transgendered, and questioning/queer) youth, and within this group PTSD rates may be as high or higher for sexual minority females.⁷¹

Another area in which system girls present significantly different than boys is sexual victimization and abuse. Nationwide, up to 90 percent of girls in the juvenile justice system have been victims of sexual abuse.⁷² A history of sexual or physical abuse puts young people at greater risk of continued system involvement and increases the likelihood that they will one day be arrested for violent behavior—effects that last until their 30s.⁷³ Girls with a history of exposure to sexual abuse or violence also tend to have more serious delinquency issues than system-involved girls who do not have this history.⁷⁴ Across the country, system-involved girls are more likely to have suffered sexual and physical abuse than system-involved boys.⁷⁵ This is also true in Washington State, as girls in this state's juvenile

Males and Females: A Cross-Species Understanding of Underlying Brain Changes, 35 NEUROSCIENCE BIOBEHAV. REV. 1687 (2011).

⁶⁹ NAT'L CHILD TRAUMATIC STRESS NETWORK, *supra* note 63, at 3.

⁷⁰ Hyde, *supra* note 67, at 304.

⁷¹ See generally Juliette Noel Graziano & Eric F. Wagner, *Trauma Among Lesbians and Bisexual Girls in the Juvenile Justice System*, 17 TRAUMATOLOGY 45 (2011).

⁷² Gorman, *supra* note 56.

⁷³ Sara Goodkind et al., *The Impact of Sexual Abuse in the Lives of Young Women Involved or at Risk of Involvement with the Juvenile Justice System*, 12 VIOLENCE AGAINST WOMEN 456, 471 (2006).

⁷⁴ *Id.*

⁷⁵ Elizabeth Cauffman et al., *Posttraumatic Stress Disorder Among Female Juvenile Offenders*, 37 J. AM. ACAD. CHILD. ADOLESCENT PSYCHIATRY 1209, 1214 (1998).

justice system are far more likely than their male counterparts to have been the victim of sexual abuse and to have had home conflict.⁷⁶ Further, for LGBTQ youth these numbers are no better, nationally or statewide, and there is a growing opinion that minority sexual orientation is overrepresented among those in the juvenile justice system.⁷⁷

As a corollary, juvenile justice involved girls have high rates of both trauma exposure and trauma related disabilities⁷⁸ with a notable percentage of these girls having suffered sexualized trauma. Estimates of the number of female trauma survivors are as high as 90 percent of the juvenile justice population.⁷⁹ These empirical findings are borne out by the experiences of

⁷⁶ KAREN GOUGH ET AL., WORKING WITH GIRLS IN THE JUVENILE JUSTICE SYSTEM, A GUIDEBOOK FOR PRACTITIONERS 4 (2010), available at https://depts.washington.edu/pbhjp/downloads/newsD/frontpageD/JfG_Booklet_Spreads_D.pdf.

⁷⁷ Angela Irvine, "We've had three of them": Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Nonconforming Youths in the Juvenile Justice System, 19 COLUM. J. GENDER & L. 675, 681 (2010).

⁷⁸ Whether the trauma is acute (a single, limited in time event), chronic (consisting of multiple incidents), or complex, these events overtake an individual's capacity to cope and process them and can leave their victim with a number of ongoing behavioral adaptations that are designed to protect the victim but can also undermine an individual's success. These include hyper-vigilance (over responsiveness to stimuli that consciously or subconsciously remind the victim of the trauma), avoidance (seeking to evade reminders of the trauma), or re-experience (having nightmares or intrusive daytime thoughts). Trauma also often leads to mental health and other types of co-occurring disorders, such as substance abuse, eating disorders, inappropriate sexual acting out, sexual victimization, depression, and other mental health issues and chronic physical health conditions and, at some point, contact with the child welfare and/or juvenile justice systems. KRISTINE BUFFINGTON ET AL., TEN THINGS EVERY JUVENILE COURT JUDGE SHOULD KNOW ABOUT TRAUMA AND DELINQUENCY 3 2010, available at http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf; see generally *Defining Trauma and Child Traumatic Stress*, THE NAT'L CHILD TRAUMATIC STRESS NETWORK, www.nctsnet.org/content/defining-trauma-and-childhood-traumatic-stress (last visited June 23, 2015).

⁷⁹ Telephone interview with Paula Schaefer, *supra* note 40; Telephone Interview with Professor Francine Sherman, Associate Clinical Professor, Director, Juvenile Rights Advocacy Project, Boston College School of Law (Apr. 2013); JUSTICE POLICY INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 1 (2010), available at

on-the-ground personnel, who report that the vast majority of the system girls they encounter are trauma survivors.⁸⁰ The experience of enduring trauma resonates differently in an adolescent brain (what some practitioners call a “soft” or developing brain) than in an adult brain, and girls are prone to react more emotionally than logically in trigger situations. Not only does early childhood trauma have a negative impact on brain development, individuals who have suffered adverse childhood experiences (ACEs), such as abuse or neglect, have a higher prevalence of risk factors for both their social and physical well-being.⁸¹

Interconnecting with these experiences of trauma are the intimate relationships these girls are forging. A large number of adolescent girls in the juvenile system have sexual relationships with significantly older men, and these relationships often have coercive or abusive elements to them.⁸²

http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf; NAT'L CHILD TRAUMATIC STRESS NETWORK, *supra* note 63, at 3.

⁸⁰ Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Denise Locke, *supra* note 40; Telephone interview with Paula Schaefer, *supra* note 40; Interview with the Honorable Justice John Romero, Presiding Judge, Children's Court Division, Program for the Empowerment of Girls, in Albuquerque, N.M., by telephone (Mar. 2013), in person (June 2014); Telephone Interview with Adrienne Abe, Program Specialist, Hawai'i Girls Court (Apr. 2013); Telephone Interview with Dr. Lawanda Ravoira, President and CEO, Delores Barr Weaver Policy Center, in Fla. (Aug. 2014); Telephone Interview with Professor Francine Sherman, *supra* note 79.

⁸¹ The original ACEs study was conducted at Kaiser Permanente in California from 1995 to 1997. More than 17,000 participants were given an ACEs Score, which attributes one point for each category of exposure to child abuse or neglect. The higher the score, the greater the exposure, and therefore the greater the risk of negative consequences in later years, including early pregnancy, alcoholism, and depression. There is continued ongoing research worldwide regarding ACEs. *See generally*, *The Adverse Childhood Experiences Study*, ACESTUDY, www.acestudy.org (last visited May 22, 2013); *Injury Prevention & Control*, CTR. FOR DISEASE AND PREVENTION, www.cdc.gov/ace/index.htm (last visited May 22, 2013); JUSTICE POL'Y INST., *supra* note 79.

⁸² Interestingly, girls in the juvenile justice system are also more likely to have males as their closest friends—seven times as many as non-system involved girls. Brett Johnson Solomon, *Other-Sex Friendship Involvement Among Delinquent Adolescent Females*, 4 YOUTH VIOLENCE & JUV. JUST. 75, 96 (2006).

This phenomenon, reported both empirically and anecdotally,⁸³ is particularly true for girls who have experienced early onset puberty. A number of studies now support the hypothesis that early onset puberty is a risk factor for girls and not for boys. There are multiple hypotheses as to why this is, including increased societal expectations, more attention from older individuals (which in turn leads to riskier sexual behavior and early parenting), lower self-esteem, and skewed self-perception, among others.⁸⁴ For girls suffering abuse in their home, early onset puberty exacerbates the problems they are already facing.⁸⁵ This ill-fated attempt to forge a stable and positive relationship dovetails with the idea that girls need positive and reliable relationships in order to build a healthy life. This hypothesis is also borne out by research showing that while there are a number of factors that have been shown to correlate with a high probability of system involvement for both genders,⁸⁶ those factors relating to healthy relationship building resound more for females.⁸⁷

⁸³ BARBARA E BLOOM & STEPHANIE S. COVINGTON, EFFECTIVE GENDER-RESPONSIVE INTERVENTIONS IN JUVENILE JUSTICE: ADDRESSING THE LIVES OF DELINQUENT GIRLS 3 (2001), available at www.centerforgenderandjustice.org; Telephone interview with Paula Schaefer, *supra* note 40; Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Adrienne Abe, *supra* note 80.

⁸⁴ Another theory, reported anecdotally through numerous interviews I conducted, is that girls from unstable homes seek relationships with older men in an ill-fated attempt to find stability.

⁸⁵ X GE ET AL., A CONTEXTUAL AMPLIFICATION HYPOTHESIS: PUBERTAL TIMING AND GIRLS' EMOTIONAL AND BEHAVIORAL PROBLEMS IN UNDERSTANDING GIRLS' PROBLEM BEHAVIOR: HOW DELINQUENCY DEVELOPS IN THE CONTEXT OF MATURITY AND HEALTH, CO-OCCURRING PROBLEMS AND RELATIONSHIPS, 11 (Margaret Kerr et al. eds., 2011); A. Graber et al., *Is Pubertal Timing Associated with Psychopathology in Young Adulthood?*, 43 J. OF THE AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 718, 724 (2004).

⁸⁶ Factors that seem to resonate roughly equally for both genders include growing up in poverty and/or in a high crime neighborhood and maltreatment. Girls and boys also show similarities and variances in protective factors, a topic noted but not further explored due to space constraints. ZAHN ET AL., *supra* note 12, at 2; U.S. DEP'T OF JUSTICE: OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, PREDICTORS OF YOUTH VIOLENCE 4 (2000), available at <http://files.eric.ed.gov/fulltext/ED440196.pdf>.

⁸⁷ As another example, while multiple home placements is a predictor for both genders, studies have shown that using placement stability as a predictor holds truer for girls,

Further, trauma seems to impact girls in a more long-lasting way than boys. Studies consistently report that “among those who are exposed to trauma, females are more likely than males to develop mental health problems as a result.”⁸⁸ A history of trauma not only causes girls to present differently, it also colors their experiences with mental illness, alcohol, and other substances, in a distinctly gender-specific fashion.⁸⁹ While both males and females in the system have significantly higher rates of mental illness than in the general population, the correlation between substance abuse and mental illness is clearer for females than for males, with many girls seeking chemical relief as a response to their traumatic circumstances.⁹⁰ Moreover,

lending more credence to the theory that because girls place such importance on the relationships they form from having multiple home placements does not allow the formation of any lasting bonds. *See generally* Hyoun K. Kim, *Intervention Effects on Health-Risking Sexual Behavior Among Foster Care Girls: The Role of Placement Disruption and Substance Abuse*, 22 J. OF CHILD & ADOLESCENT SUBSTANCE ABUSE 370, 399 (2007). Further, one study found that the likelihood of drug use increased for females (and not males) as the number of placements increased. T.E. Keller et al., *Parent Figure Transitions and Delinquency and Drug Use Among Early Adolescent Children of Substance Abusers*, 28 AM. J. OF DRUG & ALCOHOL ABUSE 399, 449 (2002). Similarly, while studies show that having a parent involved with the criminal justice system increases the chances that a young person will themselves have involvement with the juvenile justice system, this cause and effect may be stronger for girls than boys. Leslie D. Leve & Patricia Chamberlain, *Female Juvenile Offenders: Defining an Early-Onset Pathway for Delinquency*, 13 J. OF CHILD & FAM. STUD. 439, 449 (2004).

⁸⁸ NAT’L CHILD TRAUMATIC STRESS NETWORK, *supra* note 63, at 4.

⁸⁹ Note that while the teenage brain may be less susceptible than an adult brain to the short-term effects of alcohol, it appears more vulnerable to long-term damage. Anita Slomski, *Crazy Kids*, PROTOMAG (2010), <http://protomag.com>. Experiments have shown that this may be true for not just alcohol, but for marijuana as well. *See generally* Deborah Bradley Ruder, *The Teen Brain*, HARVARD MAGAZINE Sep.–Oct. 2008, available at <http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf>.

⁹⁰ In one 1997 survey, the Commonwealth Fund found that girls who had been the victims of sexual or physical abuse were more than twice as likely as non-abused girls to report drinking and illegal drug use. THE COMMONWEALTH FUND, FACTS ON RISKY BEHAVIORS, THE COMMONWEALTH FUND SURVEY OF THE HEALTH OF ADOLESCENT GIRLS 2 (1997), available at http://www.commonwealthfund.org/~media/files/publications/data-brief/1997/sep/facts-on-risky-behaviors-from-the-commonwealth-fund-survey-of-the-health-of-adolescent-girls/schoen_adolescentgirls_factsheet_risky-pdf.pdf; BONITA M. VEYSEY, NAT’L CTR. FOR MENTAL HEALTH & JUVENILE JUSTICE, ADOLESCENT GIRLS WITH MENTAL HEALTH DISORDERS INVOLVED WITH THE JUVENILE JUSTICE SYSTEM 4 (2003),

girls show different reactions to alcohol and substance intake than boys.⁹¹ While adolescents have less sensitivity to the consequences of ethanol in general (although they show an increased sensitivity to a few specific effects),⁹² female adolescents with alcohol use disorders demonstrate limited responses in certain aspects of their frontal brain activity, among other effects. These responses may mean that females are more affected by high alcohol use.⁹³

In addition to having greater incidences of abuse and more severe histories of trauma than boys, and presenting with gender-specific issues around mental health and substance abuse, girls also have other health issues that particularly affect their gender. Among these are eating disorders; girls present with eating disorders on both ends of the spectrum at far higher rates than do boys. Bulimia (binging and purging) is three times as prevalent in girls as compared to boys, and anorexia nervosa (dangerous levels of weight loss) is 13 times more frequent.⁹⁴ Further, over half of juvenile-justice-involved girls are obese or overweight and a third are asthmatic.⁹⁵ Additionally, numerous studies have found that significantly more juvenile-justice-involved girls than boys test positive for STDs, have

available at http://www.njjn.org/uploads/digital-library/Adolescent-Girls-with-Mental-Health-Disorders-Involved-with-the-Juvenile-Justice-System_Bonita-Veysey-NCMHJJ_7.03.pdf.

⁹¹ *Drugs Affect Men's and Women's Brains Differently*, 20 NAT'L INST. ON DRUG ABUSE 6 (2006), available at

http://archives.drugabuse.gov/NIDA_Notes/NNVol20N6/Drugs.html; Kathleen T. Brady & Carrie L. Randall, *Gender Differences in Substance Use Disorders*, 22 THE PSYCHIATRIC CLINICS OF N. AM. 241, 246 (1999).

⁹² Michael Windle et al., *Transitions into Underage and Problem Drinking: Developmental Processes and Mechanisms Between 10 and 15 Years of Age*, 121 PEDIATRICS S273, S280 (2008).

⁹³ Lindsay Squeglia, *Adolescent Binge Drinking Linked to Abnormal Spatial Working Memory Brain Activation*, 35 ALCOHOL CLIN. EXP. RES. 1831, n. 10 (2011); Sunita Bava & Susan F. Tapert, *Adolescent Brain Development and the Risk for Alcohol and Other Drug Problems*, 20 NEUROPSYCHOL. REV. 398, 400, 408 (2010).

⁹⁴ McCarthy et al., *supra* note 57, at 2241.

⁹⁵ C.L. Odgers et al., *Morbidity and Mortality Risk Among the Forgotten Few: Why are Girls in the Justice System in Such Poor Health?*, 34 L. HUMAN BEHAV. 429, 437 (2010).

unprotected sex, and engage in sex with high-risk partners.⁹⁶ These statistics tie back to the fact that girls arrive in the juvenile justice system with experiences of sexual abuse, prostitution, and engagement in survival sex at far higher levels than boys.⁹⁷

And, obviously, pregnancy is an absolute sexual dimorphism occurring only in females. A California study by the National Council on Crime and Delinquency found that 29 percent of the girls surveyed had been pregnant at least once, and 16 percent had been pregnant while in custody.⁹⁸ While males play an obvious role in reproduction, the resulting pregnancy and parenthood affect girls very differently than boys. The physical tolls of pregnancy only impacts girls, and their health care needs during pregnancy are markedly different than those of the fathers. Additionally, girls often remain the primary caretakers of their children, and therefore, their physical, emotional, and practical needs as parents are unique. Even when both males and females assume parental responsibility, the consequences are distinctive. While assuming more family responsibility can serve to move young men away from crime and system contact, females often have

⁹⁶ CELESTE MOSER, THE SEXUAL HEALTH OF ADOLESCENTS INVOLVED IN CORRECTIONS 5–6 (2011), *available at* <https://public.health.oregon.gov/HealthPeopleFamilies/Youth/YouthSexualHealth/Documents/SexualHealthDisparities-Corrections.pdf>.

⁹⁷ CCYJ has recently unveiled a Domestic Minor Sex Trafficking Protocol for responding to cases involving “commercially sexually exploited children” (CSEC). This protocol is designed to better deal with adolescents in the system where there has been CSEC involvement and was developed by CCYJ and YouthCare under a two year grant from the Children’s Justice Interdisciplinary Task Force. Over 150 stakeholders across Washington State were part of the process. CTR. FOR CHILDREN & YOUTH JUSTICE, *supra* note 41, at 22.

⁹⁸ LESLIE ACOCA & KELLY DEDEL, NO PLACE TO HIDE: UNDERSTANDING AND MEETING THE NEEDS OF GIRLS IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM 10 (1998), *available at* http://www.nccdglobal.org/sites/default/files/publication_pdf/no-place-to-hide.pdf.

the opposite experience—with parenting and partnering fueling more system contact, both in the criminal and child welfare arenas.⁹⁹

2. Educational Profile

Both boys and girls arrive at the juvenile justice system's doors with educational deficiencies exceeding those of their peers outside the system. Although school disengagement has negative effects on both genders, the price for disconnection from school is particularly elevated for girls; disconnection is a high predictor for future delinquency,¹⁰⁰ and also has long-lasting economic and health consequences.¹⁰¹ As the number of system girls continues to rise, the raw number of girls needing educational redirection has also continued to climb,¹⁰² and these girls present with a particular racial and trauma history that merits a gender-informed response.

Overall, too many girls are arriving in the juvenile justice system completely disengaged from school. Almost 25 percent of all female high school students do not graduate high school in four years. Additionally, available evidence shows us that juvenile-justice-involved girls are not receiving adequate support in order to stay engaged in their education.¹⁰³

⁹⁹ Cauffman, *supra* note 10, at 119; Marilyn Brown, *Gender, Ethnicity, and Offending Over the Life Course: Women's Pathways to Prison in the Aloha State*, 14 CRITICAL CRIMINOLOGY 137, 137 (2006).

¹⁰⁰ ZAHN ET AL., *supra* note 12, at 10 (noting that school attachment is a stronger influence for girls and that bonding with teachers helped protect against delinquency—in contrast, rule fairness and enforcement were noted to be more significant factors for boys).

¹⁰¹ Although leaving school has economic consequences for both genders, females have lower employment rates overall and earn less than their male counterparts. NAT'L WOMEN'S LAW CTR., WHEN GIRLS DON'T GRADUATE WE ALL FAIL 7 (2007), *available at* http://www.nwlc.org/sites/default/files/pdfs/when_girls_dont_graduate.pdf.

¹⁰² Sang Min Lee & Sondra Smith-Adock, *The Model of Girls' School Delinquency: School Bonding and Reputation*, 9 PROF. SCHOOL COUNSELING 78, 78 (2005).

¹⁰³ DIGNITY IN SCHOOLS CAMPAIGN, THE RIGHT TO EDUCATION IN THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS IN THE UNITED STATES, SUBMISSION TO VERNOR MUÑOZ SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION HUMAN RIGHTS COUNCIL, UNITED NATIONS 8–9 (2008), *available at* https://www.aclu.org/files/images/asset_upload_file164_38663.pdf (noting studies in two

The percentage of females dropping out—including expulsions—is even higher for girls of color¹⁰⁴ and for students with educational disabilities.¹⁰⁵ Approximately 40 percent of Hispanic females and 50 percent of Native American/Alaskan Native females fail to graduate.¹⁰⁶ Nationwide, African American girls have a 40 percent dropout rate and suffer some of the highest school expulsion rates.¹⁰⁷

Many of the girls involved in the juvenile justice system that arrive with educational issues also come with learning disabilities and a history of pregnancy or parenting. In the educational context, pregnancy and parenting have been shown to be significant contributors to high school dropout rates for girls. Only about 50 percent of teen mothers receive a high school diploma by the time they reach the age of 22.¹⁰⁸ A Gates Foundation survey found that teenage parenting was a more significant contributor to school

states finding substandard educational provisions for juvenile justice involved girls and overall issues with the criminal and juvenile justice educational systems).

¹⁰⁴ The US Department of Education says that while African American girls represent less than 17 percent of all female students they make up 31 percent of girls referred to law enforcement by schools and about 43 percent of girls who experience school-related arrests. Marian Wright Edelman, *What About the Girls?*, THE HUFFINGTON POST (Dec. 10, 2014, 5:59 AM), http://www.huffingtonpost.com/marian-wright-edelman/what-about-the-girls_b_5967770.html.

¹⁰⁵ U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION: DATA SNAPSHOT SCHOOL DISCIPLINE ISSUE BRIEF 3 (2014), *available at* <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf> (noting that children with educational disabilities are more likely to become teenage mothers than other students, and are more likely to enter the juvenile justice system while still in school).

¹⁰⁶ *Id.* at 6.

¹⁰⁷ ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE (2010), *available at* http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf.

¹⁰⁸ KATE PERPER ET AL., CHILD TRENDS, DIPLOMA ATTAINMENT AMONG TEEN MOTHERS 2 (2010), *available at* http://www.childtrends.org/wp-content/uploads/2010/01/child_trends-2010_01_22_FS_diplomaattainment.pdf. Also note that there is a dispute whether pregnancy alone significantly increases high school dropout rates.

dropout rates for females than for survey respondents overall.¹⁰⁹ Not only does a lack of educational attainment impact these young girls themselves, it also has a ripple effect on their children. The children of teenage mothers are more likely to drop out of high school themselves, have more health problems, have their own juvenile justice involvement, become teenage parents themselves, and face unemployment as a young adult.¹¹⁰ Additionally, estimates of the number of detention youth that qualify for special education services are as high as one-third.¹¹¹ In Washington State, students qualifying for special education services are suspended at nearly three times the rate of their non-disabled peers¹¹² and require individualized services that account for not just their educational challenges but their legal difficulties as well.

In addition to having a high number of dropouts, the juvenile justice system also holds a high number of girls who have disengaged from their education in less complete ways, such as having been suspended or been excessively truant. Again, minority girls and girls with disabilities tend to

¹⁰⁹ See generally JOHN M. BRIDGELAND ET AL., BILL & MELINDA GATES FOUND., THE SILENT EPIDEMIC: PERSPECTIVES OF HIGH SCHOOL DROPOUTS (2005), available at <https://docs.gatesfoundation.org/Documents/thesilentepidemic3-06final.pdf> (finding that 33 percent of young women surveyed, but 26 percent of all respondents surveyed, said that becoming a parent was a major factor in their decision to leave school).

¹¹⁰ See generally KIDS HAVING KIDS: ECONOMIC COSTS AND SOCIAL CONSEQUENCES OF TEEN PREGNANCY (Saul D. Hoffman & Rebecca A. Maynard eds., 2d ed. 2008). Sadly, these effects remain for both the teenage mother and her child even after adjusting for factors that originally increased the teen's pregnancy risk, such as poverty, school failure, poor parental educational levels, and growing up in a single-parent family. DOUGLAS KIRBY ET AL., FAM. HEALTH INT'L, IMPACT OF SEX AND HIV EDUCATION PROGRAMS ON SEXUAL BEHAVIORS AND YOUTH IN DEVELOPING AND DEVELOPED COUNTRIES, (2005), available at https://www.iywg.org/sites/iywg/files/youth_research_wp_2.pdf.

¹¹¹ SPECIAL EDUCATION LAW QUARTERLY, JUVENILE JUSTICE AND SPECIAL EDUCATION STUDENTS IN WASHINGTON STATE, BULLETIN #9 (2006), available at <http://wea.uwctds.washington.edu/HTML%20Bulletins/Bulletin9.html>. Note that there is no statewide tracking of the number of learning disabled students in Washington State detention facilities.

¹¹² U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION: DATA SNAPSHOT SCHOOL DISCIPLINE 17 (2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

be disproportionally represented among this group. American Indian and Native Alaskan girls receive seven percent of all suspensions, a higher rate than white boys or white girls, and nearly one in five girls of color with disabilities receive an out-of-school suspension at some point.¹¹³

School disengagement numbers are particularly dramatic when specifically comparing the experience of African American girls to females across the board as well as to males; African American girls have experienced the most dramatic rise in middle school suspension rates and educational breakdowns in recent years.¹¹⁴ In fact, while boys receive more than two out of three suspensions, black girls receive 12 percent of all suspensions, a higher rate than girls of any other race or ethnicity and a rate higher than the rates of many groups of boys.¹¹⁵ In a study looking at suspension rates for urban middle schools, the authors found that disaggregating out-of-school suspension data by race and gender revealed large disparities and showed that certain subgroups were consistently at higher risk for out-of-school suspension, including a finding that in some school districts black girls were suspended at four times the rate of white girls.¹¹⁶ As another example, a recent California study found that African American girls had a higher suspension rate than all other girls, and in some districts had a higher suspension risk than most boys.¹¹⁷ Further, some

¹¹³ *Id.* at 15.

¹¹⁴ NAACP, LEGAL DEF. & EDUC. OFFICE FOR CIVIL RIGHTS, UNLOCKING OPPORTUNITY FOR AFRICAN AMERICAN GIRLS: A CALL TO ACTION FOR EDUCATIONAL EQUITY (2014), *available at* http://www.nwlc.org/sites/default/files/pdfs/unlocking_opportunity_for_african_american_girls_report.pdf.

¹¹⁵ U.S. DEPT. OF EDUC. OFFICE FOR CIVIL RIGHTS, *supra* note 112, at 1.

¹¹⁶ DANIEL LOSEN & RUSSELL SKIBA, S. POVERTY LAW CTR., SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS 5 (2010), *available at* http://www.splcenter.org/sites/default/files/downloads/publication/Suspended_Education.pdf.

¹¹⁷ DANIEL LOSEN ET AL., CIVIL RIGHTS PROJECT, SUSPENDED EDUCATION IN CALIFORNIA 1 (2012), *available at* <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights->

studies indicate that school push-out begins as early as elementary school for many of these girls.¹¹⁸ A number of recent commentators have posited that the high increase in suspensions for African American girls has a basis in rigid and ill-conceived notions about femininity and race that results in girls being punished for what amounts to a failure to conform to prevailing ideals.¹¹⁹

Through the evidence presented in this section, it is clear that increasing numbers of young women are finding themselves in the juvenile justice system; that their pathways into the system are generally through low-level or status offenses; and that upon arrival in the system, they present with a high level of physical, emotional, social, and educational needs. It is also clear that among young women, the situation is predominantly dire for girls of color and girls with disabilities, and especially urgent for those of African American descent. What, then, does the system do to meet the needs of this growing population and ensure that these girls are given the tools to lead productive lives and reduce future system contact for themselves and their own children?

II. GENDER-DRIVEN JUVENILE JUSTICE COURT PROGRAMS

The federal government began the process of juvenile justice reform with the passage of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) of 1974,¹²⁰ but the real impact on juvenile-justice-involved girls began with the 1992 reauthorization of the JJDP Act.¹²¹ This reauthorization required the states to assess their juvenile delinquency problems, including “gender-specific services for the prevention and treatment of juvenile

remedies/school-to-prison-folder/summary-reports/suspended-education-in-california/SuspendedEd-final3.pdf.

¹¹⁸ WATSON & EDELMAN *supra* note 2, at 33.

¹¹⁹ Morris, *supra* note 55 (arguing that the rationales underlying the increasing incarceration of Black girls are couched in misogynist and racist rhetoric).

¹²⁰ See Juvenile Justice and Delinquency Protection Act, 42 U.S.C. § 5601 (1974).

¹²¹ 42 U.S.C. §§ 5601-5681 (2006).

delinquency, including the types of such services available and the need for such services; [and] a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency.”¹²² Although not a core requirement of the JJDP Act, it has inspired numerous reform efforts, and it was the catalyst for a number of efforts at the state level that began to work on gender-responsive programming.¹²³ While these efforts span the gamut, the focus of this article is on the court system and efforts to use the courtroom to reconnect system girls with educational and community supports that will guide them in redirecting their lives. Therefore, while I acknowledge that there are other approaches that have been utilized—with varying degrees of success—this section focuses only on programs that seek to target girls in the juvenile justice system through Girls’ Court programs.

While the majority of court-centered juvenile justice programs remain focused around males, more states are incorporating gender-responsive programming into their systems. Although motivated by a genuine desire to help system girls, these programs are working in large part without the benefit of data, as research on many aspects of the female experience in the juvenile justice system is limited or non-existent. What research there is shows that without intervention, these girls face a bleak future.¹²⁴ This means that most girls who have system contact will continue that pattern into adulthood. Likewise, available evidence suggests that substance abuse, parenting problems, victimization, negative health consequences, and poor

¹²² See 42 U.S.C. § 5633(a)(7)(B)(i-ii) (2006).

¹²³ The JJDP Act was the impetus behind significant state-level reform, and the federal government has continued to monitor compliance with the JJDP Act. *E.g.*, a 1998 report on the JJDP Act provided reform recommendations, including an assessment of gender specific services and training in female development. See generally OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE FEMALE OFFENDERS: A STATUS OF THE STATES REPORT (1998), available at <http://www.ojjdp.gov/pubs/gender/contents.html>.

¹²⁴ Leve & Chamberlain, *supra* note 87, at 440.

academic and employment outcomes are the norm.¹²⁵ Faced with these dire predictions, states have tried a wide variety of gender-focused juvenile justice programs with varying degrees of success. These approaches have included passing laws,¹²⁶ tweaking established programs to account for girls concerns,¹²⁷ and training on “girls’ issues,” amongst others.

Most interesting are the programs that use the courts as a leverage point through what I term “Girls’ Courts.” These programs are an alternative to the traditional juvenile justice system process and act as a focal point connecting girls to their families, communities, and schools. In a nutshell, Girls’ Courts are an alternative track for female offenders within the juvenile justice court that recognize that young women enter the system with unique and gender-specific traits. The program I outline incorporates many of the components described below, and aims to hold girls accountable for their actions while building on their strengths and reconnecting them to healthy relationships and positive activities. As I will explain, instead of exacerbating trauma and disconnection, these courts focus on building relationships and resiliency.

Because there is no agreed upon blueprint for setting up a gender-driven court, and no generally accepted checklist for making the juvenile justice system more responsive to the needs of girls the programming and organization of the Girls’ Courts currently operating varies. What instigated these efforts also spans the gamut from lawsuits and their subsequent settlements to a single individual within the system motivated to make a

¹²⁵ *Id.*; Colman et al., *Delinquent Girls Grown Up: Young Adult Offending Patterns and Their Relation to Early Legal, Individual and Family Risk*, 39 J. OF YOUTH AND ADOLESCENCE 355, 358 (2009).

¹²⁶ These are also four of the states with laws requiring gender specific juvenile justice programming. *See* Conn. Pub. Acts 01-181 (2001); FLA. STAT. § 985.02 (2014); MINN. STAT § 241.70 (2009); OR. REV. STAT. § 417.270 (2013).

¹²⁷ Colloquially referred to as just “painting it pink,” this method generally involves putting girls in a separate room with no changes in programming, adding a module on a single specific girls issue, or other surface changes that do not impact the experience or outcome of involved females.

difference on behalf of girls. Some of these courts have chosen to focus on a particular subset of girls within the delinquency or dependency arenas, and some have encountered more success than others. In crafting the proposal for a Washington State Girls' Court pilot program that would link girls with educational support and help them build positive lives, I have examined each of the currently operating courts.

A. New Mexico's PEG Program

New Mexico's Program for the Empowerment of Girls (PEG) is the longest operating Girls' Court in the country. It was established in Bernalillo County, New Mexico, in July 2004, by a coalition of judicial representatives, all of whom recognized that girls were being ill-served by the current system and needed gender specific outreach in order to be successful. Founding members of the program included a judge, a program manager, and representatives from the prosecutor's office, the public defender's office, probation, and counseling.¹²⁸ It took a year of weekly meetings to develop the PEG program, which serves girls who have been adjudicated and are between the ages of 14 and 18.¹²⁹ 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.

Importantly, the court requires that each participant attend an educational program or be occupied in a judge-approved productive activity.¹³⁰ Through multiple weekly contacts, the court keeps in contact with each participant's school and ensures that school attendance and academic requirements are being met. There are between 15 and 20 girls in the program at any one time and participation lasts a minimum of 20 weeks. The program is

¹²⁸ Interview with the Honorable Justice John Romero, *supra* note 80; Interview with Cynthia Salazar, *supra* note 40.

¹²⁹ Interview with the Honorable Justice John Romero, *supra* note 80.

¹³⁰ *Id.*

structured to provide maximum individual differentiation for the girls as well as a great deal of supervision and structure, including curfews, drug tests, experiential therapy, and a community support officer who visits the girls at home. As of February 2013, approximately 200 girls have completed the PEG program, which represents over a 90 percent completion rate.¹³¹

B. Hawai'i's Girls' Court

Approximately two months after the New Mexico court began, and unbeknownst to personnel in either jurisdiction, Hawai'i began its own Girls' Court program.¹³² Started by two judges, this court serves girls who have been adjudicated and are between the ages of 14 and 17. Participants in this program attend monthly court sessions and have compulsory educational requirements, as well as community service and therapy sessions. Between 20 and 40 girls participate in the program at any one time and their participation lasts one year. Hawai'i's Girls' Court has four dedicated probation officers, a program coordinator, and a social services supervisor.¹³³ Although the program is currently funded by the Hawai'i legislature as a line item in the state budget that has to be re-funded annually, the court is seeking more permanent funding. As of February 2013, approximately two hundred girls have completed the program.¹³⁴

¹³¹ While the PEG program has not previously had the resources to engage in a formal evaluation, they are embarking on their first assessment now and preliminary data indicates that the program is positively impacting the girls it serves. Telephone Interview with Cynthia Salazar, *supra* note 40.

¹³² Telephone Interview with Adrienne Abe, *supra* note 80.

¹³³ *Id.*

¹³⁴ *Id.* Note that the Hawai'i court has been the subject of formal assessments, and those evaluations are incorporated into the Washington State recommendations below. See generally ALYSSA RAPISARDA & TODD O'LEARY, GENDER RESPONSIVE PROGRAMMING FOR GIRLS (2007), available at <http://demoiselle2femme.org/wp-content/uploads/Gender-Responsive-Programming-for-Girls.pdf>.

C. Other Girls' Court Programs

While the above programs provide the clearest examples of a comprehensive Girls' Court program, other states have made noteworthy progress in setting up a Girls' Court in both juvenile justice and child welfare programming. These include the Harris County Girls' Court in Texas, Orange County's Girls' Court, and Stanislaus County's Gender Responsive Alternatives to Detention Program.

The Harris County Girls' Court in Texas began in 2009 as a Houston specialty court for child victims of human trafficking. This court uses a single gender team employing a "strength based" approach.¹³⁵ The court, which is currently developing protocols, has approximately a dozen graduates and takes girls both pre and post adjudication.

California also has two courts of note: Orange County's Girls' Court and Stanislaus County's GRAD Program. Orange County has a Girls' Court program for girls from 12 to 17 years of age, who are in the dependency system, many of whom are living in foster care group homes. The goal of the program is to help participants facing mental health issues, substance abuse, and academic failure receive treatment and counseling, as well as gain the skills and resources they need to achieve stable, productive lives. The program currently has a capacity for 30 girls and has a dedicated judicial officer.

¹³⁵ A strength-based approach has its roots in positive and feminist psychology. While a number of interventions can be strength-based, the guiding principle of this approach consciously rejects the notion that it helps to identify an individual's weaknesses or "deficits" and often reframes behaviors deemed negative as "survival behaviors," thereby recasting them in a positive framework. Additionally, this approach emphasizes the strengths in a girl's relationships within her own life and within the program, and encourages girls to make amends in repairing broken relationships. For a general discussion of the strength based approach see ALYSSA RAPISARDA & TONY O'LEARY, GENDER RESPONSIVE PROGRAMMING FOR GIRLS 5 (2007), *available at* <http://demoiselle2femme.org/wp-content/uploads/Gender-Responsive-Programming-for-Girls.pdf>.

Stanislaus County has the GRAD (Gender Responsive Alternatives to Detention) program, a girl's probation program that tries to reduce probation violations, failures to appear, and bench warrants for girls between the ages of 14 and 18 without resorting to detention. Begun in 2011, the GRAD program serves 9 to 30 girls at a time and uses increased court and home visits, reduced probation caseloads, and mentoring. The program is currently being formally evaluated.

Programs in other states, including Connecticut, Florida, Minnesota, New York, Ohio, and Oregon, all incorporate gender-informed curricula into their programming,¹³⁶ and more states are seeking to employ Girls' Court programs.¹³⁷ Overall, these courts have employed enough programming, and have enough data available, to show that a Girls' Court pilot program in Washington State is a promising way to interrupt the cycle of system involvement and reconnect these young women with educational and community support.

III. A WASHINGTON STATE GIRLS' COURT PROGRAM PILOT PROPOSAL

Having reviewed the problem of overrepresentation and mistreatment of girls within the juvenile justice system—including how they arrived there, how they present, and how some states have chosen to deal with the increasing numbers of girls and their unique profile through a Girls' Court—I will now look at the possibility of piloting such a court in Washington State. In this section, I outline the work spearheaded by the Center for Children & Youth Justice (CCYJ) in preparation for Washington

¹³⁶ KRISTIN FINKLEA, CONG. RES. SERV., JUVENILE VICTIMS OF DOMESTIC SEX TRAFFICKING: JUVENILE JUSTICE ISSUES 10 (2014), *available at* <http://fas.org/sgp/crs/misc/R43677.pdf>; ELANOR LYON & ROBIN SPATH, COURT INVOLVED GIRLS IN CONNECTICUT 1 (2002), *available at* <http://www.ctjja.org/resources/pdf/gender-courtinvolved.pdf>.

¹³⁷ The most recent Girls' Court is in Jacksonville, Florida, and it held its inaugural session in September 2014. Telephone Interview with Dr. Lawanda Ravoira, *supra* note 80.

State's first Girls' Court. In laying the groundwork for embarking on this pilot, I have conducted a literature review, authored an options study, completed numerous interviews, and carried out a site visit.¹³⁸

As with the Girls' Courts in other states discussed above, this court would be, technically, a program within an already operating juvenile court. Practically, this eliminates the need for a separate system and allows the program to build on existing expertise and connections. The goal of the court would be to give girls in the delinquency system the option of entering a court designed to meet their gender-specific needs and give them the best chance for out-of-system success. As the experience of other states has exemplified, this is no easy task.

Juvenile courts have complex missions. They are primarily tasked with rehabilitating the young people that come before them, while also protecting those same youth from themselves and from one another. Additionally, these courts must serve society and hold offenders accountable. To do this, the court must not only follow the rules applicable to all juveniles, but also address the unique needs of the individuals before it.

In Washington State, the issues and challenges are no less complex than those faced by other states across the country. As detailed above, girls involved in the juvenile justice system in our state are a growing population of high-need and low-violence youth with particular societal experiences and gender specific requirements. The evidence continues to mount that the girls in our state are being ill-served by programs that do not provide competent gender specific services¹³⁹ and do not re-engage girls with school.

¹³⁸ Much of the initial work was carried out with the generous support of the Bill & Melinda Gates Foundation.

¹³⁹ Many definitions exist for gender specific services. For our purposes it means a program intentionally designed to recognize the societal and familial forces that affect girls, meet the unique needs of females, and foster positive gender identity. For a discussion of gender specific services, *see* BARBARA E. BLOOM & STEPHANIE COVINGTON, THE CTR. FOR GENDER & JUSTICE, GENDER-SPECIFIC PROGRAMMING FOR

Based on the data and on the experiences of other Girls' Courts, our state would benefit from the establishment of a Girls' Court. Led by a committed and passionate juvenile court judge,¹⁴⁰ court personnel would be trained on issues related to female development and Gender Responsiveness Theory. Girls that meet court criteria would enter the Girls' Court program voluntarily, which would not only help ensure participant buy-in, but would also work to protect the program against any legal challenges.¹⁴¹ Girls would be involved in both the formation of the court and in-court proceedings,¹⁴² which would lead to higher rates of success as measured by

FEMALE OFFENDERS: WHAT IS IT AND WHY IS IT IMPORTANT? 7 (1998), *available at* <http://www.stephaniecovington.com/assets/files/13.pdf>.

¹⁴⁰ Successful implementation of a gender-responsive program requires the commitment, leadership, and passion of a committed judge. A juvenile court judge is responsible for the function and administration of the court, and her leadership value in establishing a Girls' Court cannot be overstated. Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Adrienne Abe, *supra* note 80; *see generally* PAULA SCHAEFER, ABA, GIRLS IN THE JUVENILE JUSTICE SYSTEM (2008), *available at* http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/juvenilejusticesystem.html.

¹⁴¹ Such lawsuits could include challenges under the federal Equal Protection Clause and the Washington State Equal Rights Amendment. The Equal Protection Clause of the Fourteenth Amendment says: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1. Washington is one of 22 states with an Equal Rights Amendment. Ours reads "Equality of rights and responsibility under the law shall not be denied or abridged on account of sex." Wash. Const., art. XXXI, § 1 (1972). *See generally* Katherine Harrison, *A New Approach to Juvenile Justice: An Analysis of the Constitutional and Statutory Issues Raised by Gender-Segregated Juvenile Courts*, 2 U.C. IRVINE L. REV. 773 (2012).

¹⁴² We envision having youth voices included in the formation of the court via a youth advisory panel. Many gender-sensitive programs also incorporate graduates into their courses, having them return to participate in education or therapy seminars. Telephone Interview with Dr. Lawanda Ravoira, *supra* note at 80; Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Adrienne Abe, *supra* note 80.

specific outcomes—such as educational reengagement and attainment, and lower rates of recidivism.¹⁴³

In addition to issues related to the judge and the inclusion of the girls noted above, I also advocate for a number of specific program components, which would help secure the success of the court.¹⁴⁴ Section A below gives

¹⁴³ I note that diversion outside this formal system is also an important consideration. While the focus here is to ensure that the juvenile justice system best serves the girls within it, any system processing appears to have a negative effect that, overall, results in increased subsequent delinquency. This is why many researchers opine that it would be better to keep all kids away from the system in the first place than pick the best option once in it. ANTHONY PETROSINO ET AL., *THE CAMPBELL COLLABORATION, FORMAL SYSTEM PROCESSING OF JUVENILES: EFFECTS ON DELINQUENCY* (2010), *available at* <http://www.campbellcollaboration.org/lib/project/81/>.

¹⁴⁴ In the same way that the positive experiences in other jurisdictions can inform our work, so can the obstacles others have faced. Through research and conversations, a number of programmatic hurdles were identified. Although some were unique to their locale, those that came up repeatedly have been studied in order to ensure that known issues are addressed at the earliest possible opportunity. I will discuss five of these issues. First, issues related to financial sustainability: while most programs exist on severely limited funding—using personnel time already salaried, using existing court space, and engaging donated community resources—it is paramount to ensure sustained financial backing. It is primarily for lack of resources that so few programmatic evaluations have been done, as without financial stability the programs do not have the time or the means to engage in assessments. For this reason, the process of securing funding has already begun. Second, issues related to imbedded ideas: opponents of girls programming generally stem from embedded ideas regarding girls in the system or a lack of recognition about the current profile of juvenile justice involved girls. Therefore, an initial education component is part of the pilot program. Third, issues related to boys: a number of practitioners report that after implementing a successful girls program they have been asked about providing more gender specific services for boys. While the system as a whole is designed around boys, having more gender sensitive programs for both sexes is a desirable goal. Fourth, issues around ghettoizing girls' competency: a number of practitioners fear that having a Girls' Court will limit the expertise around girls to the few judges and court personnel involved and would prefer that all court personnel become gender-informed. The assumption here is that this will not happen with the creation of a Girls' Court; however, experiences nationwide show that having girls programming serves to further educate the entire system about the issue and legitimize it. Additionally, the goal of the juvenile justice system is unique in that it seeks to reach each child where they are at, further supporting the ideal of having every system kid's needs addressed individually. Fifth, issues around legal challenges: there are possible federal Equal Protection and state Equal Rights Amendment challenges to a Girls' Court. While this court could survive such challenges, there are several factors that can be controlled from

an overview of the importance and specifics of using the court as a leverage point for educational re-engagement for girls. Section B provides an overview of other critical aspects of the court program, such as a strong foundation in school and educational re-engagement. While educational re-engagement is critical, school success also requires a strong foundation and this section provides a framework for that foundation.¹⁴⁵

A. Using Girls' Court as a Leverage Point for Educational Reengagement

Although we might wish to keep most, if not all, young women out of the juvenile justice system entirely, once a girl enters the system, there is an opportunity to use the courtroom as leverage for school re-engagement, which is currently not being utilized. Reconnecting a girl with her education is one of the most important things a court can do for a young woman, as one of the more statistically significant predictors of an adolescent girl's propensity to offend or reoffend is educational failure,¹⁴⁶ particularly in the middle and high school years.¹⁴⁷ It is critically important to the success of

the outset to protect this program, the most important of which is making the program a non-compulsory one. Telephone Interview with Professor Francine Sherman, *supra* note 79; Telephone Interview with Paula Schaefer, *supra* note 40; Telephone Interview with Dr. Lawanda Ravoira, *supra* note 80; Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Adrienne Abe, *supra* note 80.

¹⁴⁵ While space constraints limit the details provided for both sections this synopsis of program components should provide the reader with a sense of the pilot we are proposing.

¹⁴⁶ Studies conducted in California and Hawai'i reveal that a majority of the girls in their respective juvenile justice systems had been suspended or expelled from school, had failed at least one semester of school, or were in need of a special education program. *See generally* Chesney-Lind et al., *supra* note 11, at 162; Sara Goodkind, *Gender Specific Services in the Juvenile Justice System: A Critical Examination*, 20 AFFILIA 52 (2005).

¹⁴⁷ CATERINA GOUVIS ROMAN ET AL., U.S. DEP'T OF JUSTICE, AT-RISK AND DELINQUENT GIRLS PROGRAMS IN THE SAFE FUTURES DEMONSTRATION PROGRAM MODELS, IMPLEMENTATION CHALLENGES, AND RECOMMENDATIONS FOR RESEARCH, POLICY, AND PRACTICE 5 (2006), available at http://www.urban.org/research/publication/risk-and-delinquent-girls-programs-safefutures-demonstration/view/full_report; LESLIE ACOCA, NAT'L COUNCIL ON CRIME AND DELINQUENCY, EDUCATE OR INCARCERATE: GIRLS IN THE FLORIDA AND DUVAL

any Girls' Court program that educational engagement be a requirement for continued participation.

In recognition of the importance of educational success, both the New Mexico and Hawai'i programs discussed above have a mandatory educational component—girls must be working towards attainment of their GED or their diploma. In New Mexico's PEG program, girls who have completed their GED while still in the program begin community college.¹⁴⁸ Similarly, other girls programs highlight their educational components, recognizing that "truancy, suspension, poor grades or expulsion are frequently the most significant risk factors for girls who are repeat offenders."¹⁴⁹

In order to ensure that the girls participating in our program have a chance at economic improvement in their lives (and with that, increased social opportunities and independence), they must acquire the skills necessary to succeed in the labor market. This means that girls in the program must be enrolled in a traditional or alternative high school, or in a GED program (either in person or online). The goal is to have girls attain their high school diplomas and obtain the tools to be able to engage in either continued education or find success in the job market.

When working to connect these girls to educational programs that work for them, it is important to make sure that there is a good match between the girl and the educational setting. In many instances, the average age of females in the juvenile system does not comport with the school grade

COUNTY JUVENILE JUSTICE SYSTEMS 7 (2000), *available at* http://www.issue4lab.org/resource/educate_or_incarcerate_girls_in_the_florida_and_duval_county_juvenile_justice_systems.

¹⁴⁸ Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40.

¹⁴⁹ *Girls in the Juvenile Justice System: Strategies to Help Girls Achieve Their Full Potential: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 111th Cong. 2 (2009) (statement of Honorable Robert C. Scott, Chairman of the Subcommittee).

levels they have completed.¹⁵⁰ Further, while the number of system girls with disabilities effecting their education is in dispute, it is estimated that the majority of girls in the system would benefit from special education services.¹⁵¹

B. Restorative Justice through Educational Programs

Additionally, as discussed above, because schools have too often become the catalyst for juvenile justice involvement, where system girls go for educational attainment can help ensure participant success. While schools might be sending more girls through the juvenile justice system doors, the majority of educators do not have experience with juvenile justice-involved girls. One idea taking hold in some educational environments is incorporating the ideals of restorative justice into the educational program.

Restorative justice emphasizes repairing any harm caused by the participant's behavior; practically, this means being willing to change traditional relationships around crime and involving stakeholders in helping girls in the juvenile justice system identify the harms they have caused and taking steps to repair those harms.¹⁵² Recognizing the value of restorative justice in the educational and juvenile justice contexts, some schools are employing restorative justice in a variety of ways,¹⁵³ and our pilot program seeks to incorporate these principles.

It is clear that educational reconnection is a vital part of this proposed Girls' Court pilot program – as well as a legal right for youth in Washington

¹⁵⁰ *Id.* at 67; Statement of Mr. Thomas Stickrath, Director of the Ohio Department of Youth Services (noting the average age of girls in the Ohio Youth Correctional system was 16, but average school achievement level was seventh grade).

¹⁵¹ See generally SPECIAL EDUCATION LAW QUARTERLY, *supra* note 111.

¹⁵² See generally SHAY BILCHIK, U.S. DEP'T OF JUSTICE: OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, GUIDE FOR IMPLEMENTING THE BALANCED AND RESTORATIVE JUSTICE MODEL (1998).

¹⁵³ Patricia Leigh Brown, *Opening Up, Students Transform a Vicious Circle*, N.Y. TIMES, Apr. 3, 2013, available at <http://www.nytimes.com/2013/04/04/education/restorative-justice-programs-take-root-in-schools.html>.

State detention facilities.¹⁵⁴ And just as we cannot view these girls only through the single incident that brought them into the system, we cannot rely solely on educational reengagement to turn the tide. Therefore, the pilot proposal must also incorporate a number of other critical components necessary for success.

C. Other Girls' Court Critical Components

This section briefly outlines critical components of our Girls' Court pilot program aside from education. These include making sure that the program is staffed by well-trained professionals, providing trauma-informed care, and using relational theory in a female-populated environment. It also means involving a supportive adult for each participant, employing incentives and consequences for program compliance, including health care and parenting classes, and having the girls engage in culturally competent intensive programming and community service. Each of these components is succinctly outlined below.

First, in its initial stages, the court should consider being staffed exclusively by females, with males joining the curriculum mid-way.¹⁵⁵ Having males lead a support group or a community service aspect of the program would not interfere with a girl's ability to receive mentoring and support from strong females, but would assist them in learning how to construct relationships with men who do not want anything from them. This will best prepare these girls for a future where they have the ability to develop relationships with both genders.

¹⁵⁴ Under Washington State law, youth in detention facilities have the right to receive educational services. *See* WASH. REV. CODE § 28A.190.010 (1996).

¹⁵⁵ Telephone Interview with Paula Schaefer, *supra* note 40; Telephone Interview with Dr. Lawanda Ravoira, *supra* note 80; Telephone Interview with Joseph E. Doherty, PhD, MSW, LCSW (Mar. 2013); STACY WERBER, OR. COMMISSION ON CHILDREN & FAMILIES, CULTURAL COMPETENCY AND GENDER SPECIFIC SERVICES RESOURCE GUIDE 111–12, 114, 128, 131, 134 (2001) (providing examples of programs gender specific staffing).

We also advocate that participants in the program be required to have the involvement of a supporting adult.¹⁵⁶ In order to recognize the importance of relationships in a girl's life (even negative ones), those relationships must be acknowledged and incorporated into the program.¹⁵⁷ Without working on improving and strengthening relationships, girls exiting the program will be without a necessary component for continued success.¹⁵⁸ Not only does this mandatory "family" involvement help ensure a girl's continued success, it also invests an adult in the process.¹⁵⁹

In fact, because our pilot recognizes that relationships are necessary for program success, it is important that the girls are given the tools and the opportunities to forge positive relationships. While there are a number of underlying theories to the approaches used in constructing gender-sensitive programming, most successful programs employ some form of relational theory (RT) as the basis for their program. RT assumes that we all have a natural drive toward relationships and towards being accepted in those relationships.¹⁶⁰ The theory and subsequent research posit that relationships are a necessity for psychological well-being, and holds that a girl's mental (and often physical) health are to some extent determined by the health, or

¹⁵⁶ Ideally, this adult will also be living in the same household as the girl. Unfortunately, there are instances in which a girl has no such person in her life and an exception has to be made.

¹⁵⁷ Recognizing this, both the Hawai'i and New Mexico programs require the participation of a committed caretaking adult. In the Hawai'i program these adults must agree to be present at monthly court hearings, attend six parenting group activities, and participate in family strengthening activities. In New Mexico, the participating adult is a party to the petition and can be held accountable for their actions. Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Adrienne Abe, *supra* note 80.

¹⁵⁸ Although additional research is called for, there are programs to engage the adults in the girl's life about the court process. Sara Cusworth Walker et al., *Juvenile Justice 101: Addressing Family Support Needs in Juvenile Court*, 2 J. OF JUV. JUST. 54, 56 (2012).

¹⁵⁹ The Hawai'i court recognizes the importance of adult participation as it encourages more cohesive positive family functioning. Interview with Adrienne Abe, *supra* note 80.

¹⁶⁰ Stephanie Covington, *The Relational Theory of Women's Psychological Development: Implications for the Criminal Justice System*, in FEMALE OFFENDER: CRITICAL PERSPECTIVES AND EFFECTIVE INTERVENTIONS 3-5 (Ruth Zaplin ed., 2d ed. 2007).

lack thereof, of her relationships. Based on this, a central goal of the theory is to have participants create, repair, and maintain mutually beneficial relationships that embrace and foster a number of positive attributes.¹⁶¹ This theory resounds particularly for girls, as much of the trauma girls undergo is familial or relational in nature,¹⁶² and most gender aware programs consciously work towards the creation and maintenance of healthy relationships in a girl's life. This heavy reliance on relationships can be problematic when relationships are destructive but can be a source of strength for girls when given the tools to create and maintain supportive relationships. Every practitioner working with girls affirms the vital role of relationships, with caregivers and other adults, in the lives of this population.¹⁶³

Using RT can also inform the relationships between participants, and with their probation officers, and the court. Most researchers agree that probation officers in girls programming should have female-only clients and small enough caseloads to interact more personally with each girl.¹⁶⁴ Although there are disparities across the state, in Washington, the average daily caseload per probation officer¹⁶⁵ is 43 cases.¹⁶⁶ In the programs

¹⁶¹ This theory also embraces a number of social justice aspects of the feminist and cultural competence movements.

¹⁶² Positive relationships along with school success are two of the resiliency factors identified as having a moderating effect on the risk factors that lead to juvenile delinquency. STEPHANIE HAWKINS ET AL., RESILIENT GIRLS—FACTORS THAT PROTECT AGAINST DELINQUENCY 2–3 (2009), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220124.pdf>.

¹⁶³ Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Joseph E. Doherty, *supra* note 155.

¹⁶⁴ WATSON & EDELMAN, *supra* note 2, at 11, 33; Telephone Interview with Denise Locke, *supra* note 40.

¹⁶⁵ In Washington State, the standard qualification for juvenile probation officers is a bachelor's degree in a behavioral sciences field and training requirements that include an 80-hour academy within six months of employment. *State Juvenile Justice Profiles*, NAT'L CTR. FOR JUVENILE JUST. (Apr. 7, 2008), <http://dev.ncjj.org/stateprofiles/profiles/WA06.asp>.

¹⁶⁶ WASH. STATE INST. FOR PUB. POLICY, WASHINGTON STATE JUVENILE COURTS: WORKLOADS AND COSTS 1 (1997), available at

assessed nationwide, the goal is to have caseloads of between 10 and 15 girls per probation officer.¹⁶⁷ It is also important for participants to build a relationship with the court and program as a whole. While scheduling court sessions is subject to practical factors, it is recommended for this model that court dates be frequent throughout the tenure of the program, with girls meeting with the judge on a weekly or biweekly basis. As with other specific court programs, such as drug court and mental health court, the goal of having frequent hearings is to allow participants to be self-reflective and heard. This is achieved by having girls give reports on the good and bad events that occurred since the last court session, and by having adults report on positive behaviors, consequences, and communication.¹⁶⁸ The court must also keep the girls engaged and assist them in building positive female relationships with one another and with themselves through a girls' group therapy programming¹⁶⁹ that involves a structured support group.¹⁷⁰

http://www.wsipp.wa.gov/ReportFile/1254/Wsipp_Washington-State-Juvenile-Courts-Workloads-and-Costs_Full-Report.pdf.

¹⁶⁷ As examples, the programs in Connecticut, Hawai'i, New Mexico, and Stanislaus County follow this practice, and all cite these reduced caseloads, along with gender-sensitive training, as integral to program success. WATSON & EDELMAN, *supra* note 2, at 11; Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Adrienne Abe, *supra* note 80.

¹⁶⁸ Having each girl speak to the judge and the other girls of her experiences builds the group dynamic. Adult reporting further invests the family in the process and also encourages positive time (interacting vs. television) with the girls. Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40.

¹⁶⁹ One instructive example is the Girls Circle program, although there are numerous other Washington State programs, such as the If Project. See THE IF PROJECT, www.theifproject.com (last visited Mar. 2015); see also *Frequently Asked Questions on Creating a Girls Circle*, GIRLS CIRCLE, www.girlscircle.com/faqs.aspx (last visited Mar. 2015).

¹⁷⁰ Girls Circle is one such structured support group. For an evaluation of Girls Circle, among other gender focused groups, for Washington State girls on probation. See SARAH CUSWORTH WALKER & ANN MUNO, UW MED. DIV. OF PUB. BEHAVIORAL HEALTH & JUSTICE POLICY, WASHINGTON STATE GIRLS GROUP EVALUATION 12–13 (2011), *available at*

Meeting on a regular basis, group sessions can impart listening skills, relationship development, and self-expression through directed conversations.

In addition to RT, the court should ensure that all care provided is trauma-informed and culturally competent, and should employ Evidence Based Programming (EBP). EBPs are practices that have been evaluated and objectively shown to produce positive outcomes,¹⁷¹ and should always be the preferred intervention option.¹⁷² Although the value of using EBPs is becoming increasingly accepted, not all youth in the juvenile justice system currently receive the benefit of such practices.¹⁷³ Equally important is the provision of culturally competent services. In assessing programs through this lens, culture is viewed as a particular pattern of behaviors, thoughts, roles, beliefs, and practices, and can be identified by geographic region, economic status, ethnicity, gender, or a host of other sub-cultural identifiers. Being culturally competent means an ability to interact effectively with a variety of people,¹⁷⁴ although at its most basic, cultural competence seeks to

http://www.courts.wa.gov/programs_orgs/gjc/documents/WashingtonStateGirlsGroupEvaluation.pdf

¹⁷¹ Peter Greenwood, *Prevention and Intervention Programs for Juvenile Offenders*, 18 THE FUTURE OF CHILD. 185, 188–89 (2008).

¹⁷² After years of discussion, in 2012, the Washington State legislature passed House Bill 2536, which states that the legislature’s intent is for “increased use of evidence-based and research-based practices.” HB 2536 Sec. 1(3), reg. sess. (2012). Currently the University of Washington’s Evidence Based Practice Institute (UWEBPI) and the Washington State Institute for Public Policy (WSIPP) are creating a list of EBPs to be integrated into state programs.

¹⁷³ House Bill 2536 acknowledges that “baseline information is presently not available regarding the extent to which evidence-based and research-based practices are presently available and in use.” HB 2536 Sec. 1 (2). The same lack of data regarding EBPs has been recognized nationally. Greenwood, *supra* note 171, at 185 (estimating that about 5 percent of eligible youth are in EBPs).

¹⁷⁴ This is generally thought of as comprising four separate areas: an awareness of one’s own position and cultural affiliation, an awareness of one’s attitude and relationship with other cultures, a (growing) knowledge of other cultures, and the skills to respond effectively across cultures while acknowledging the qualities of the other’s culture. For a brief discussion on defining cultural competence, see *Definitions of Cultural*

nullify cultural destructiveness and cultural incapacity, both of which lead to negative outcomes.¹⁷⁵ Having a culturally competent program¹⁷⁶ leads to better participant engagement and improved outcomes that will better reflect the participants being served and provide the most effective services possible.¹⁷⁷

In our model, it is also critical that all care is trauma informed. Sadly, few of the literally millions of youth who come into contact with the juvenile justice system will be screened for trauma-related symptoms or provided with trauma-informed care. Both family and juvenile court judges acknowledge the prevalence of trauma in the courtroom, especially around females, and have expressed concern over where to place trauma-affected youth. Courts have also affirmed a lack of knowledge regarding trauma and secondary trauma, and their requests for training in this area continue to increase.¹⁷⁸ Our model seeks to remedy this. While trauma-informed care can take many forms, its underlying motivation seeks to address the consequences of trauma and to facilitate healing. Based on an understanding of the vulnerabilities and triggers of trauma survivors, this approach allows programs to avoid re-traumatizing girls, and instead, focus on supporting recovery and interrupting the trauma cycle. Trauma-informed care encompasses not just the programming provided, but also the physical space

Competence, GEO. U. CENTER FOR CHILD & HUM. DEV., www.ncccurricula.org (last visited Mar. 2015).

¹⁷⁵ Cultural destructiveness, at its most extreme, seeks to undercut or dismiss other cultures. Cultural incapacity, while not malicious, disenfranchises other cultures out of ignorance or lack of capacity. *See id.*

¹⁷⁶ Although there are many definitions of cultural competence, for our purposes it means a program or individual's ability to work respectfully and effectively with others representing a range of group characteristics, including ethnicity, income, and religion. *Id.*

¹⁷⁷ Werber, *supra* note 155, at 7–8.

¹⁷⁸ Shawn C. Marsh & the Honorable Joan Byer, *Toward a Conceptual Framework for Trauma-Responsive Practice in Courts*, *Criminal Law Practitioner Editorials*, 1 AM. U. WASH. C. OF L. 101, 19 (2013); *see also* KRISTINE BUFFINGTON ET. AL., *supra* note 78, at 12.

and the practicalities of the court.¹⁷⁹ This is particularly poignant for girls who, unlike boys, more often experience trauma consistent with victimization. Unfortunately, many characteristics of the traditional juvenile justice system—from intake to court appearances—can serve as triggers for girls who have undergone traumatic events. Having a trauma-informed system is essential to ensure that the girls served have a chance at a successful future.

Recognizing the context that surrounds girls when they arrive at court is not just important from a trauma perspective, but also from a systems perspective. This means that the court recognizes that the girls in the juvenile justice system and the girls in the child welfare system are often the same kids. In order to address a girl's entire situation, the court must recognize these "cross-over" youth and coordinate wrap-around services that do more than only focus on the particular charge that led the girl into court. A significant portion of girls have multiple involvements in a number of systems outside of juvenile justice, including special education, child welfare, mental health, drug treatment, dependency, and immigration.¹⁸⁰ In order to address a girl's entire situation, the court must recognize these "cross-over" youth and coordinate wrap-around services that do more than focus only on the particular charge that led the girl into court.

¹⁷⁹ One aspect of avoiding re-traumatizing girls is ensuring that court is a welcoming place. Across the country, judges and advocates are increasingly recognizing that the physical space matters, and that the wrong space can actually worsen the situation. David B. Mitchell, *The Juvenile Court: A View from the Bench*, 6 THE FUTURE OF CHILD. 126, 128 (1996). This means that while under Washington State law WASH. REV. CODE § 13.40.140 (1981) proceedings must generally be open to the public, judges should ensure that check-in court sessions are as private as possible to maximize feelings of safety and maintain an atmosphere of community. It also means having and maintaining a consistent court and program schedule, ensuring that activities are on public transportation routes, choosing a court with childcare facilities, and ensuring that food is provided. Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40.

¹⁸⁰ AM. BAR ASS'N & NAT'L BAR ASS'N, *supra* note 5, at 23–24.

Along similar lines, our program model also seeks to connect girls with the positive aspects of their communities. In numerous youth-centered programs across the country, this connection most often takes the form of a community service requirement—a feature our model incorporates. In fact, two of the courts discussed above have recognized the value of a community service requirement in the rehabilitation of juvenile justice-involved girls,¹⁸¹ and many “on-the-ground” professionals have posited that a correlation exists between well-run community service programs and reduced recidivism rates.¹⁸² In Washington, the value of community service has long been recognized.¹⁸³ Not only does the experience of service help teach empathy, it can also give participants a chance to see others whose struggles can put their own into much needed perspective. In a break from traditional service programs, some Girls’ Courts not only mandate participation in service programs, but also have all program staff, including judges, at these events. This mandate not only highlights the importance of the events, but also illustrates to the girls that community service is as much a part of life as of the program.

¹⁸¹ Both the New Mexico and Hawai‘i court programs highlighted herein employ a mandatory community aspect component. In Hawai‘i, the requirement is a quarterly one, and in New Mexico, it occurs every few months, depending on programming logistics. Community service events include working at a food bank, preparing dinner at a Ronald McDonald house, painting rooms at a local youth shelter, volunteering at foster care events, weeding in community parks, etc. Telephone Interview with Cynthia Salazar, *supra* note 40; Telephone Interview with Adrienne Abe, *supra* note 80.

¹⁸² Telephone Interview with Cynthia Salazar, *supra* note 40; DOUGLAS THOMAS & MARY HUNNINEN, MAKING THINGS RIGHT: MEANINGFUL COMMUNITY SERVICE FOR JUVENILE OFFENDERS 3 (2008), *available at* https://www.victimsofcrime.org/docs/restitution-toolkit/e2_ncjj-juvenile-community-service-2008.pdf?sfvrsn=2; CHARLES DEGELMAN ET AL., CONSTITUTIONAL RIGHTS FOUND., GIVING BACK, INTRODUCING COMMUNITY SERVICE LEARNING, IMPROVING MANDATED COMMUNITY SERVICE FOR JUVENILE OFFENDERS 1 (2006), *available at* http://www.crf-usa.org/images/pdf/Giving_Back_2006.pdf

¹⁸³ See generally KING CNTY. DEP’T OF CMTY. & HUMAN SERV., PROGRAM ASSESSMENT AND IMPROVEMENT PLAN USING THE GUIDEBOOK TO ELEMENTS OF SUCCESSFUL PROGRAMS (2005).

While this proposed program relies on a trauma-informed and strength building model, it also provides tangible rewards for successes and accounts for missteps and failures in the girls' educational and other pursuits. Incentives play a role in motivating girls and provide acknowledgement of hard work and of obstacles overcome. These incentives vary, from early probation release for an entire program's worth of success to "incentive jars" for a week's worth of achievement.¹⁸⁴ Likewise, our program is designed to deliver graduated sanctions when consequences are required to assist a girl in staying on track. While the goal is to have detention remain a rarely used option, the court does retain the authority to detain a program participant if circumstances so warrant. Short of detention, the court will also have a number of lesser sanctions available, with the goal being to individually tailor sanctions for non-compliance in order to make the penalties relational in nature to the offense committed.¹⁸⁵

As this model is designed as a focal point for these girls, the program must also address the "high need" traits these girls present with, which include mental and physical health needs. As it stands, girls in the traditional juvenile justice system often exit the system with their needs as unmet as they were when they entered. One study of girls in the juvenile justice system found that access to medical care reduced the likelihood of recidivism and violent offending among girls at risk by 72 percent.¹⁸⁶

¹⁸⁴ For example, in the New Mexico PEG program, the incentive jar contains graduated rewards, from candy up to Target gift certificates of varying denominations. Interview with the Honorable Justice John Romero, *supra* note 80; Telephone Interview with Cynthia Salazar, *supra* note 40.

¹⁸⁵ The idea of having sanctions, and sometimes rewards, as relational in nature when working with girls is an idea just emerging. As one example of a girls program incorporating this model, a participant in Hawai'i's girls court had to interview three nurses and report back to the court on them (this girl had expressed an interest in nursing) as a sanction for non-compliance. Telephone Interview with Adrienne Abe, *supra* note 80.

¹⁸⁶ Am. Acad. of Pediatrics, *Health Care for Youth in the Juvenile Justice System*, 128 PEDIATRICS 1219, 1228, 1230, 1232 (2011), available at <http://pediatrics.aappublications.org/content/128/6/1219.full.pdf>.

Currently, there are limited tools used to assess the health needs of girls as they enter the system, and most of those tools were originally designed to assess the needs of boys. This is not only problematic for the more obvious gender-based health differences such as pregnancy, high rates of commercial sexual exploitation, and eating disorders, but also for the mentally and physically unique needs of girls, such as depression, early-onset puberty, and anxiety. If girls beginning Girls' Court were subject to a mental and physical health screening designed for them, staff would be better equipped to identify and work with the needs they present. Fairly recently, a Girls' Health Screen has been developed. The screening is a 30-minute questionnaire containing 120 yes/no questions that can be read or listened to (via voice-enhanced function)¹⁸⁷ and it is incorporated into our model. This pilot program also includes self-care, such as yoga and art, found to complement the more formal services provided.¹⁸⁸

Without going into excessive detail, I note that there are additional components of the court pilot program. These include classes in successful parenting techniques and family engagement, and classes such as Washington State's Aggression Replacement Training (ART) to improve moral reasoning and increase conflict resolution skills.¹⁸⁹ The goal behind these therapies is to engage girls in their communities and to avoid

¹⁸⁷ *The National Girls Health Screen Survey*, STONELEIGH FOUND. (Mar. 2013), <http://www.girlshealthandjustice.org/programs/girls-health-screen/>.

¹⁸⁸ As one example of many, "The Art of Yoga" provides instruction at three California juvenile justice facilities, serving approximately 500 girls annually. While there is ample anecdotal evidence on the value of this, both in California and elsewhere, the agency is now embarking on a formal assessment process in collaboration with Stanford University and San Jose State University. *See generally*, THE ART OF YOGA PROJECT, www.theartofyogaproject.org (last visited Mar. 4, 2015).

¹⁸⁹ When ART is administered with fidelity to the model, the program has been found to reduce felony recidivism and be cost effective. WASH. STATE INST. FOR PUB. POLICY, OUTCOME EVALUATION OF WASHINGTON STATE'S RESEARCH-BASED PROGRAMS FOR JUVENILE OFFENDERS 9-11 (2004), *available at* http://www.wsipp.wa.gov/ReportFile/852/Wsipp_Outcome-Evaluation-of-Washington-States-Research-Based-Programs-for-Juvenile-Offenders_Full-Report.pdf.

detention and future system contact. Finally, our pilot builds in a critical evaluation component. In order to measure the effectiveness of the court, our pilot begins with a commitment to assessment, program suitability, and impact.¹⁹⁰ Our goal is to measure the program's outcomes and achievements and test assumptions with an eye towards accountability. This will aid in replicating the aspects of the program that are delivering outcomes and change or modify those that are not. Additionally, assessing the program is a contribution to the community that allows others to benefit from our work. Finally, assessments ensure that each dollar wields the greatest possible results.

IV. CONCLUSION

While research is continuing to show that girls respond positively to gender specific programming, the girls in today's juvenile justice system still find themselves in an environment built for boys. So while there is, on the one hand, more research telling us how to reach these girls to give them the best chance for future achievement, the reality is that the research is not being applied in the courtrooms where these girls are regularly received. This means that young women who find themselves in the juvenile justice system—often funneled there through their school—have little chance of reconnecting with educational and community support that could assist them in meeting educational milestones and achieving future success. While the courts have played many roles, a Girls' Court is an opportunity to use the juvenile justice system as a leverage point to connect girls back with their educational communities and provide them with a gender-sensitive response to their needs. Girls' Court can help us ensure that the girls in our state's juvenile justice system have the best chance to re-engage in their

¹⁹⁰ SUSAN BRUMBAUGH ET AL., SUITABILITY OF ASSESSMENT INSTRUMENTS FOR DELINQUENT GIRLS 4 (2010), *available at* <https://www.ncjrs.gov/pdffiles1/ojdp/226531.pdf>.

schools and communities and have a happy and productive life outside the juvenile justice system.