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Notes

The Disparate Treatment of Males and Females Within the Juvenile Justice System

Laura A. Barnickol*

I. INTRODUCTION

Although young females account for one in four juvenile arrests in the United States each year, the stereotypical juvenile offender is a violent, young male.¹ Consequently, research and programming within the juvenile justice system focus primarily on the danger that male juvenile crime presents to society.² As a result, delinquency³ theories developed based upon male behavior. Consequently, these theories ignore gender effects on delinquency.⁴ Therefore, the juvenile justice system often overlooks and neglects the young female offender.⁵

The Juvenile Justice and Delinquency Prevention Act (hereinafter JJDPA),⁶ adopted by Congress in 1974, was an effort to address the growing concern over juvenile delinquency in the United States. The

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1. MEDA CHESNEY-LIND, *THE FEMALE OFFENDER* 10 (1997).

2. Anne Bowen Poulin, *Female Delinquents: Defining Their Place in the Justice System*, 1996 WIS. L. REV. 541, 541-42 (1996).

3. Delinquency refers to:

[A]ny act which if committed by an adult would be considered criminal . . . behavior which a given community at a given time is considered in conflict with its best interests, whether or not the offender has been brought into court . . .

[or] any repetitive behavior on the part of an adolescent girl of normal intelligence, behavior which is contrary to law, does exhibit a breakdown of the ego in its management of impulse.

CLYDE B. VEDDER & DORA B. SOMERVILLE, *THE DELINQUENT GIRL* 19 (2d ed. 1975).

4. CHESNEY-LIND, *supra* note 1, at 16.

5. *Id.* at 10.

6. 42 U.S.C. §§ 5601-5785 (1994 & Supp. III 1997).

Act provided for an increase in delinquency prevention programs, attempted to decrease the number of children who become involved in the juvenile justice system, and provided alternative treatment options for juveniles adjudicated to be delinquent.⁷ In addition, it encouraged the states to deinstitutionalize youth charged with non-criminal or status offenses.⁸

Generally the JJDPAs' reforms positively affect young females entering the juvenile justice system; however, many of the system's basic problems pertaining to females remain. While young male offenders are more likely to be incarcerated for committing serious crimes, they are less likely than young female offenders to receive confinement for status offenses,⁹ or conduct that is legal when performed by an adult.¹⁰ In fact, female offenders most often enter the system for committing status offenses, such as truancy or running away.¹¹

This Note examines the female youth offender's status, both past and present, within the juvenile justice system. It considers the effects that gender inequalities have on both the system itself and female offenders. After evaluating the treatment of female offenders within the juvenile justice system, this Note makes several proposals for

7. Section 5602.

8. *Id.*

9. CHESNEY-LIND, *supra* note 1, at 79-81.

Girls are still far more likely than boys to be held for status offenses... [and] are far less likely to be held for violent offenses. As an example, nearly half of the boys in private facilities are being held for delinquent offenses compared to only 12.9% of the girls . . .

The pattern persists in public detention centers and training schools. . .

Id.

10. Tiffany Zwicker Eggers, Comment, *The "Becca Bill" Would not Have Saved Becca: Washington State's Treatment of Young Female Offenders*, 16 LAW & INEQ. J. 219, 227 (1998).

11. CHESNEY-LIND, *supra* note 1, at 11. Status offenses include:

behaviors that violate parental authority: "running away from home"; being "a person in need of supervision," "a minor in need of supervision," "incorrigible," "beyond control," "truant"; or in need of "care and protection." Although not technically crimes, these offenses can result in a youth's arrest and introduction to the criminal justice system.

Id.

restructuring the system. These proposals address some of the inadequacies that currently exist.

II. THE EVOLUTION OF FEMALE YOUTH OFFENDERS' STATUS WITHIN THE JUVENILE JUSTICE SYSTEM

A. *The Development Of The Juvenile Justice System*

Throughout the late eighteenth century, the same criminal court system adjudicated both child and adult offenders.¹² The courts exempted children below the age of seven, or “infants,” from prosecution because society considered them incapable of forming criminal intent.¹³ However, children aged seven and older charged with criminal offenses stood trial in criminal court and upon conviction could receive prison sentences or even the death penalty.¹⁴ Prior to the establishment of the first juvenile court, the system utilized the same trial procedures, sentencing guidelines, and prison facilities for both adult criminal trials and juvenile adjudication.¹⁵ As the United States became a more urbanized society, social problems grew.¹⁶ In response to the growing concern over the safety of children entering the criminal justice system, the Progressive movement began an effort to reform the system’s treatment of children.¹⁷ The juvenile justice system developed in response to this public concern.¹⁸

12. HOWARD N. SNYDER & MELISSA SICKMUND, *JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT*, 70 (Dep’t Justice 1995).

13. *Id.*

14. *Id.*

15. *The Invention of the Juvenile Court*, in ROBERT H. MNOOKIN, *CHILD, FAMILY AND STATE* 759 (3d ed. 1978) (Frederic L. Faust & Paul J. Brantingham eds., 1974).

16. Eggers, *supra* note 10, at 226.

17. “The Progressives saw themselves as child-savers and their courts as benign, non-punitive and therapeutic.” *Id.* at 226-27.

18. See Eggers, *supra* note 10, at 226-27. The Progressive reform movement attempted to save delinquent children through more flexible court procedures. *Id.* at 227. This enabled the court to “address the child’s ‘real’ needs, rather than simply punish the child for his or her misbehavior.” *Id.* See also SNYDER & SICKMUND, *supra* note 12. The reform movement that prompted the creation of the juvenile court system had its roots in the philosophies of the European educational reform movements of the 16th century. These earlier attempts at reform shifted public perception away from the notion that children were merely little adults and instead argued that young children possessed under-developed cognitive capacities and moral reasoning skills. *Id.* at 70.

In 1899 the first juvenile court in the United States was founded in Chicago.¹⁹ Designed to protect the child's best interests, the new juvenile justice system focused on treatment rather than punishment.²⁰ The system developed the principle of *parens patriae*.²¹ This principle enabled the court to act on behalf of those children whose parents the court labeled unwilling or unable to care for and discipline their children.²² The courts now considered juvenile cases in a "non-punitive and therapeutic" manner.²³ The court's structure was more informal than adult criminal court. The new system gave judges broad discretion in determining the appropriate disposition of cases. It also encouraged judges to examine the "underlying mental, physical, familial or moral problems that had caused the child's deviant behavior."²⁴ The court's goal became a rehabilitative one that attempted to meet the child's needs; whereas, the traditional criminal court's purpose was to punish an offender's antisocial behavior.²⁵

Because the juvenile court, by design, attempted to avoid punitive measures and preserve an informal atmosphere, it did not afford youth the same procedural safeguards that are the hallmarks of the

19. Jane C. Ollenburger & Kathy Trihey, *Juvenile Justice: Differential Processing and the Illusion of Equality*, 13 *HAMLIN J. PUB. L. & POL'Y* 229 (1992). See also SNYDER & SICKMUND, *supra* note 12, at 70 (stating that Illinois' Juvenile Court Act, passed in 1899, created the first juvenile court).

20. Eggers, *supra* note 10, at 227.

21. *Parens Patriae* refers to the "role of state as sovereign and guardian of persons under legal disability, such as juveniles or the insane." *BLACK'S LAW DICTIONARY*, 1114 (6th ed. 1990). See also SNYDER & SICKMUND, *supra* note 12, at 70 (stating that the British doctrine of *parens patriae* provided the state with a rationale for intervention into the lives of children).

22. JOHN P. MURRAY, *STATUS OFFENDERS: A SOURCEBOOK* 6 (1983).

[T]he court began with an interest in law violating youth as well as youngsters who, as victims of uncaring parents, were abused, abandoned, or neglected and thereby seemingly at-risk for leading non-productive lives. In this context, it requires virtually no extension of the *parens patriae* concept to bring within the sway of the juvenile court those youngsters who are experiencing disturbed relationships with parental or school authorities—the ungovernable, runaways, or truants.

Id. at 6.

23. Eggers, *supra* note 10, at 227.

24. *Id.* See also *infra* note 27 and accompanying text.

25. Eggers, *supra* note 10, at 227. See also, SNYDER & SICKMUND *supra* note 12, at 70 (stating that, by 1925, juvenile courts and/or probation services existed in all but two states and supported the notion that delinquent children could become productive citizens through treatment rather than punishment).

criminal court system. The juvenile court limited the due process rights afforded juveniles and gave the presiding judges broad discretionary power, both in structuring the court procedures and in determining the case dispositions.²⁶ In addition, the juvenile court system provided very few sentencing guidelines for the disposition of cases.²⁷

The courts adjudicated juveniles for involvement in a broad range of behavior, including both criminal and non-criminal activity.²⁸ Reformers structured the new juvenile court so that it had jurisdiction over three categories of children: the juvenile delinquent, the abused and neglected child, and the status offender.²⁹ The juvenile courts provided juveniles adjudicated as delinquents some due process rights and afforded them the most significant procedural protections.³⁰ However, juvenile courts afforded status offenders

26. See *In re Gault*, 387 U.S. 1 (1967) (holding that juveniles are entitled to notice of charges, counsel, confrontation, cross-examination of witnesses, and protection against self-incrimination); but see also *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (holding that juveniles are not entitled to trial by jury); *In re Winship*, 397 U.S. 358 (1970) (holding that juveniles are entitled to the same standard of proof as adults in criminal court, proof beyond reasonable doubt). See also SNYDER & SICKMUND, *supra* note 12.

Unlike the criminal justice system where district attorneys select cases for trial, the juvenile court controlled its own intake. And unlike criminal prosecutors, juvenile court intake considered extra-legal as well as legal factors in deciding how to handle cases. Juvenile court intake also had discretion to handle cases informally, bypassing judicial action.

Id. at 70.

27. Eggers, *supra* note 10, at 241. See SNYDER & SICKMUND, *supra* note 12, at 71 (stating that judges were given wide latitude in case dispositions, with choices between warnings, probation, and even training school confinement lasting until the court considered the child to be cured or until the child reached adulthood). See also *supra* note 26.

28. Eggers, *supra* note 10, at 227.

29. Eggers notes:

The first and most serious offender, the juvenile delinquent, is a youth who has committed an offense deemed illegal regardless of the offender's age. The second classification includes the neglected or abused child, who is a juvenile needing protection from an unfit guardian. The third category is the status offender, who is a child who has committed an offense that would not be illegal if it were committed by an adult. This category of offenses falls within the juvenile court's jurisdiction because of the offender's "status" as a child.

Id.

30. *Id.*

significantly fewer procedural protections.³¹ Historically, this lack of protection has contributed to the deprivation of the status offender's liberty interests without due process.³²

Despite the system's good intentions, in time people viewed the juvenile courts as unsuccessful.³³ People questioned the effectiveness of the system's treatment techniques and public perception doubted the rehabilitative capacity of the process.³⁴ Beginning in 1966 the Supreme Court responded by formalizing juvenile court procedures through a series of cases that increased the due process rights of juvenile offenders, in effect making juvenile court processes more similar to those used in criminal court.³⁵ Congress also took action, through the passage of the Juvenile Delinquency Prevention and Control Act of 1968, which recommended that states dispose of status offense cases outside the court system.³⁶ Then, in 1974, Congress enacted the JJDPA, which required the deinstitutionalization of status offenders, the separation of juvenile and adult prisoners, and community-based programming to begin addressing the increasing incidences of delinquency and its effects.³⁷

Public dissatisfaction with the juvenile courts' failure to decrease the problems associated with delinquency led to cries for "get tough" laws in the 1980s.³⁸ This caused a systematic shift in the courts' stated purpose—away from its original rehabilitative goals toward a

31. *Id.* "This distinction results from the juvenile court's role of rehabilitating rather than punishing status offenders." *Id.* at 227-28. Removing such due process rights enabled the court to maintain greater flexibility in its disposition of status offense cases.

32. *Id.* at 228. *See also In re Walker*, 191 S.E.2d 702 (1972) (stating that an adolescent brought before the court on a status offense charge, and therefore not entitled to legal representation on that charge, may still be adjudicated delinquent after a violation of probation on the status offense charge, despite the fact she was never afforded legal representation on the initial charge).

33. SNYDER & SICKMUND, *supra* note 12, at 71.

34. *Id.*

35. *Id.* *See Kent v. United States*, 383 U.S. 541 (1966); *In re Gault*, 387 U.S. 1, (1967); *In re Winship*, 397 U.S. 358, (1970); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *Breed v. Jones*, 421 U.S. 519 (1975); *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308 (1977); *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Schall v. Martin*, 467 U.S. 253 (1984); *Thompson v. Oklahoma*, 487 U.S. 815 (1988); *Stanford v. Kentucky*, 492 U.S. 361 (1989).

36. 42 U.S.C.A. §§ 3801-3873 (1972) (omitted in view of lack of appropriations 1975).

37. 42 U.S.C. §§ 5601-5785.

38. SNYDER & SICKMUND, *supra* note 12, at 72.

more punitive model.³⁹ As a result, many states passed laws excluding certain classes of offenses from the jurisdiction of the juvenile courts.⁴⁰ Moreover, some crimes now resulted in an automatic waiver or transfer of the child for adjudication within the adult criminal court.⁴¹ Other states passed laws forcing juvenile offenders to face mandatory sentences upon a juvenile court conviction for certain crimes.⁴²

B. Description of the Population Adjudicated by the Juvenile Courts

Although most juveniles break the law in one manner or another as they are growing up, very few are ever arrested and adjudicated.⁴³ Consequently, the percentage of juveniles who commit most of the offenses that are actually adjudicated is very small.⁴⁴ Not

39. *Id.* New phrases such as: “[a]ccountable for criminal behavior,” “[p]rovide effective deterrents,” “[p]rotection of the public from criminal activity,” and “[p]unishment consistent with the seriousness of the crime” were added to the purpose statements of many states’ juvenile codes. *Id.*

40. *Id.* Fifteen states specifically excluded murder from juvenile court jurisdiction in any circumstance. *Id.* at 89. Two others excluded murder when the juvenile charged fit into a special category, such as a prior felony adjudication or a prior criminal conviction. *Id.* Other offenses often excluded from juvenile court jurisdiction include: person offenses, property offenses, drug offenses, weapon offenses, felony offenses, and capital crimes. *Id.*

41. *Id.* at 72. Every state, except Nebraska and New York, now permit juvenile court judges to transfer jurisdiction over a juvenile case to criminal court through waiver. *Id.* at 85. This is usually done in response to a prosecutor’s request, but it may also be the result of either a parental or juvenile request. *Id.* Usually, judicial waiver is predicated upon certain age requirements and limited to certain categories of offenses. *Id.* In addition to judicial waiver, juveniles may be transferred into the criminal court system by prosecutorial discretion. *Id.* at 87. This alternative method of transfer generally must meet age and offense requirements similar to those laid out for judicial waiver. *Id.* In the few states that allow prosecutorial discretion, both the criminal and juvenile courts share original jurisdiction through concurrent jurisdiction statutes. *Id.* These statutes enable prosecutors to file certain juvenile cases in either the juvenile or criminal court system. *Id.* In these states, prosecutorial transfer is not subject to judicial review as it is seen as an “executive function.” *Id.* State legislatures facilitated the transfer of juvenile offenders into the criminal courts by passing legislation that statutorily excluded certain classes of young offenders from the jurisdiction of the juvenile court. *Id.* at 88. This is generally limited to serious felonies and subject to age limitations. *Id.*

42. *Id.* at 72.

43. *Id.* at 49.

44. *Id.* Based on a study conducted on males and females who turned 18 during the 1960s and 1970s, 90% of males, and 65 to 70% of females reported committing at least one illegal act. *Id.* In addition, although most juveniles who came into contact with the juvenile justice system experienced only one such contact, males were more likely to recidivate than females. *Id.* For example, “71% of the females who came to the attention of the court had only one referral

surprisingly, the adolescents who commit violent crimes usually become repeat offenders.⁴⁵ As these juveniles who recidivate continue committing criminal acts, their delinquent behavior increases and escalates into more serious offenses.⁴⁶ In addition, these adolescents begin to associate with one another and, as a result, adolescent groups actually commit a significant percentage of violent crime.⁴⁷ Not surprisingly, other juveniles are frequently the targets of this adolescent group violence.⁴⁸ However, of those adolescents committing violent crime, specifically homicides, male and female delinquents target different victims.⁴⁹ Males typically kill friends or acquaintances, while females are as likely to kill family members as friends or acquaintances.⁵⁰

Typically, female juvenile offenders are referred to the juvenile justice system for committing offenses that are very different than those committed by male juveniles. As stated earlier, male offenders represent a majority of the total population of juveniles adjudicated delinquent.⁵¹ While juveniles commit a relatively low percentage of the total number of serious violent offenses,⁵² males commit more of

compared with 54% of the males." *Id.*

45. *Id.* at 49.

46. *Id.* at 49. "As the delinquency career continues, more serious behaviors are added, and do not replace, the less serious law-violating behaviors. The earlier the onset of a delinquent career, the greater the number of delinquent offenses juveniles are likely to commit before their 18th birthday." *Id.*

47. Thirty-five percent of all serious violent crime resulting from adolescent activity involved a group of young offenders. *Id.* at 47.

48. "[Fourteen percent] of all juveniles who were victims of a serious violent crime reported that they were victimized by two or more juvenile offenders, compared with 3% of adult victims." *Id.*

49. *Id.* at 57.

50. Fifty-three percent of male juvenile delinquents who commit homicide kill friends or acquaintances and 34% kill strangers, while 41% of female delinquents committing murder kill a family member and 46% kill a friend or an acquaintance. *Id.* at 57. Interestingly, both groups were more likely to murder males than females. *Id.*

51. CHESNEY-LIND, *supra* note 1, at 11. See also Meda Chesney-Lind, *Judicial Paternalism and the Female Status Offender, Training Women to Know Their Place*, 23 CRIME & DELINQ. 121 (April 1977) (stating that girls account for only one quarter of the total juvenile court population nationally). See also, Rosemary C. Sarri, *Gender Issues in Juvenile Justice*, 29 CRIME & DELINQ. 381 (July 1983) (stating that adolescent girls are less often delinquent than adolescent boys, and commit less serious offenses).

52. CHESNEY-LIND, *supra* note 1, at 11. "Of the two million youth arrested in 1994 . . . only 5.8% of these arrests were for such serious violent offenses as murder, rape, robbery, or aggravated assault." *Id.* See also SNYDER & SICKMUND, *supra* note 12, at 47 (stating that

these offenses than females.⁵³ For instance, in 1994, almost half of male juvenile arrests for violent offenses were for serious violent offenses, while only a quarter of female juvenile arrests for violent offenses were for serious violent offenses.⁵⁴ Consequently, female juveniles are primarily brought into the system for lesser offenses.⁵⁵

The activities traditionally resulting in the arrest of adolescent females are non-criminal offenses characterized by rebellious behavior.⁵⁶ Historically, the state indicated a strong desire to protect the security and morality of females by defining a very narrow range of acceptable behavior for them.⁵⁷ Courts classified young females as

juveniles are “responsible for about one in five violent crimes”).

53. CHESNEY-LIND, *supra* note 1, at 11. “[a]lthough less serious offenses dominate both male and female delinquency, trivial offenses, particularly status offenses and larceny theft (shoplifting), are more significant in the case of girls’ arrests.” *Id.* See also Chesney-Lind, *supra* note 51, at 121 (stating that “75[%] of the females in the juvenile justice system were there for status offenses rather than criminal behavior”).

54. CHESNEY-LIND, *supra* note 1, at 13. Male juvenile arrests for serious violent offenses constituted 6.6% of the total number of male juvenile arrests in 1994, while female juvenile arrests for serious violent offenses constituted only 3.4% of the total number of arrests in that same year. *Id.*

55. *Id.* at 12-14. Of the total number of young females adjudicated delinquent, “[s]tatus offenses accounted for about 23% of all girls’ arrests in 1994, but only about 8.6% of boys’ arrests . . .” *Id.* at 12. In fact, “girls are underrepresented in every arrest category with the exception of status offenses, larceny theft, and, significantly, minor assault.” *Id.* at 14. See also Coramae Richey Mann, *The Differential Treatment Between Runaway Boys and Girls in Juvenile Court*, 30 JUV. & FAM. CT. J. 37 (May 1979) (stating that as far back as 1976, over half of those minors arrested for status offenses were young females).

56. Nancy B. Greene & T.C. Esselstyn, *The Beyond Control Girl*, 23 JUV. JUST. 13, 14 (Nov. 1972). Beyond control behavior typically includes ungovernable, unmanageable, incorrigible, or similar displeasing behavior. *Id.* at 13-14. See also VEDDER & SOMERVILLE, *supra* note 3, at 5 (stating that the results of a questionnaire distributed to public training schools for female juvenile delinquents in 1972 showed that “regardless of geographic location, most training schools . . . reported a distribution of offenses similar to the ‘big five,’ with runaway occupying first place, incorrigibility second place and sex delinquency usually third”).

57. Chesney-Lind, *supra* note 51, at 122.

While using rhetoric about protecting children from the horrors of the adult system, the court’s founders were actually interested in a system which would shore up “traditional” American institutions like the family. Imagining these to be threatened by foreign immigration and urbanization, the largely middle-class, Anglo-Saxon conservatives set up a court to reinforce their definition of appropriate adolescent deportment . . . [T]hey were concerned with insuring the normative behavior of youth by instilling proper attitudes toward authority, family relationships, and personal morality. . . . [T]hey created a special court to prevent “premature” independence and to monitor and enforce traditional family authority.

Id.

delinquent more often for behavior violating social gender norms, such as immoral or sexual conduct, rather than for behavior more traditionally classified as criminal.⁵⁸

In contrast, courts historically adjudicated male offenders primarily for criminal offenses and rarely for the status offenses for which they most often adjudicated females.⁵⁹ Although male juveniles commit an equal number of status offenses, female offenders are more likely to be arrested for such offenses.⁶⁰ While the judicial system sees status offenses as normal behavior for males, the system views such behavior as deviant for females.⁶¹ Consequently, adolescent females receive more severe sentences for these offenses than those received by male juvenile status offenders.⁶²

The trend in sentencing for serious offenses, however, differs from the trend in sentencing for status offenses. For serious offenses, female juvenile offenders typically receive less severe treatment than

58. CHESNEY-LIND, *supra* note 1, at 61.

Studies of early family court activity reveal that virtually all the girls who appeared in these courts were charged for "immorality" or "waywardness." More to the point, the sanctions for such misbehavior were extremely severe. For example, in Chicago, (where the first family court was founded), half of the girl delinquents, but only a fifth of the boy delinquents, were sent to reformatories between 1899 and 1909. In Milwaukee, twice as many girls as boys were committed to training schools. . . .

In Honolulu during 1929 to 1930, over half of the girls referred to court were charged with "immorality," which meant evidence of sexual intercourse. . . . Other evidence of "exposure" was provided by the gynecological examinations that were routinely ordered in virtually all girls' cases.

Id. (citations omitted).

59. *Id.* at 12-13.

60. Ollenburger & Trihey, *supra* note 19, at 234. Young girls who commit status offenses are taken into custody "for their own good" which reflects a societal need to "protect girls from themselves or the 'outside world.'" *Id.*

61. See Sarri, *supra* note 51, at 385. Results from a 1981 study revealed that:

About the same percentage of females and males have been involved in minor and status offenses with the exception of sexual behavior where frequency for males is much higher. Moreover, the high levels of involvement by all youth suggest that these behaviors can be considered as normative in this age group. All youth do not participate in all of these behaviors, but the majority report some involvement in one or more.

Id.

62. *Id.* at 384. The response to female status offenses include "longer periods of institutionalization for females than for males." *Id.*

their male counterparts.⁶³ Male offenders are prosecuted more consistently and receive more severe sentences when charged with serious criminal offenses than females.⁶⁴

C. Attempts at Systemic Reform

These gender inequities,⁶⁵ the potential for inconsistent treatment of youth offenders across state lines, and an overall dissatisfaction with the effectiveness of the juvenile court system has led to attempts at systemic reform.⁶⁶ Because serious juvenile crimes receive most of the public attention, many reform efforts focus on deterring violent juvenile crime.⁶⁷ Some reforms, however, have attempted to address the problem of juvenile non-criminal behavior, providing some benefit to young female offenders.⁶⁸

The system's treatment of status offenders was one of the criticisms that prompted Congress' adoption of the JJDPA.⁶⁹ One of

63. Poulin, *supra* note 2, at 548. Additionally, "[s]tudies show that girls are arrested for serious offenses at a lower rate than their self-reported rate of committing the offenses." *Id.* (footnote omitted).

64. *Id.*

65. Poulin notes:

Despite some change in societal attitudes since the early days of the juvenile justice system, it appears that gender bias still operates to bring girls into the system for conduct that would not result in juvenile charges against a boy and to treat girls more harshly for some conduct and more leniently for other behavior.

Id. at 545 (footnote omitted).

66. See Thomas M. Kelley, *Status Offenders Can be Different: A Comparative Study of Delinquent Careers*, 29 CRIME & DELINQ. 365, 367 (July 1983) (stating that the "vagueness of the [state] statutes, which permits flexible interpretation . . . invites arbitrary and capricious enforcement"). "Certainly the evidence shows clearly that the juvenile court has failed miserably in its rehabilitative goals." *Id.*

67. Poulin, *supra* note 2, at 542-43. Because most violent crime is committed by male juvenile offenders, many of the reform efforts focus on male juveniles and, consequently, are of little benefit to female juveniles. *Id.*

68. See Eggers, *supra* note 10, at 256, stating that:

Deinstitutionalized status offenders should still have access to programming. . . . They must be given access to government-funded programs which are developed by and implemented on the community level. Participation in these programs should be voluntary and should include the appropriate combination of emotional and economic guidance.

69. Meda Chesney-Lind, *Girls and Status Offenses: Is Juvenile Justice Still Sexist?*, 20 CJA 144 (1988).

the Act's main targets for reform was juvenile status offenders.⁷⁰ In fact, the JJDPA provided that in order to receive federal delinquency prevention funds, states must begin the deinstitutionalization of status offenders.⁷¹ As of 1980 most states have laws that prohibit the use of secure detention for status offenders, both pre and post adjudication.⁷² The juvenile courts, however, continue to resist this effort to reform the treatment of status offenders.⁷³ For instance, judges utilize techniques such as bootstrapping and relabeling to retain close control over the disposition of juvenile status offenders.⁷⁴ Despite the continuing controversy surrounding the court's control over status offenses, states are split on the question of whether or not to hold status offenders who violate court orders in contempt.⁷⁵ Although most states prohibit commitment of status offenders in secure detention facilities for violating contempt orders, a substantial

70. *Id.* The Act "sought to divert and deinstitutionalize status offenders." *Id.*

71. Eggers, *supra* note 10, at 228. See also, Sarri, *supra* note 51, at 382 (stating that the JJDPA provided additional federal resources to states who avoided the use of secure detention facilities and adult jails for detaining status offenders, and developed community based intervention programs for juvenile delinquents). See also ABA JUVENILE JUSTICE STANDARDS FOR NONCRIMINAL MISBEHAVIOR, §§ 1.1 - 6.3 (1990), which not only calls for the deinstitutionalization of status offenders, but also for a removal of the juvenile court's jurisdiction over these cases. See also SNYDER & SICKMUND, *supra* note 12, at 72.

72. MURRAY, *supra* note 22, at 28-29.

73. Eggers, *supra* note 10, at 242.

74. Once a child is adjudicated as a status offender, the court orders this child to return back to the home or a residential placement facility. If the child runs away from this placement, a scenario that is not atypical, the child may be held in contempt of the court's disposition. As a result of this violation, many states will allow the status offender to be held in a secure detention facility. This effectively defeats the JJDPA's attempts at deinstitutionalization by forcing these juveniles back into the juvenile justice system. *Id.* at 243 n.181. Status offenders may "be 're-labeled' by being charged with a low level criminal-type offense instead of a status-type offense." Eggers, *supra* note 10, at 243-44. See also Alexandra Marks, *Juvenile Justice Not So Equal for Girls*, CHRISTIAN SCI. MONITOR, Feb. 16, 1999, at 1 (stating that girls are frequently incarcerated two to five times longer than boys).

75. See *In re Ronald S.*, 138 Cal. Rptr. 387 (Cal. Ct. App. 1977); *In re Wells*, 1991 WL 42526, at *1 (Ohio Ct. App. 1991); *In re Jones*, 297 S.E.2d 168 (N.C. Ct. App. 1982); *In re Tasseing H.*, 422 A.2d 530 (Pa. Super. Ct. 1980); *State ex rel. L.E.A. v. Hammergren*, 294 N.W.2d 705 (Minn. 1980); *State ex. rel. M.S.*, 374 A.2d 445 (N.J. 1977), all stating that juvenile status offenders can not be held in secure detention facilities for contempt as a result of violating orders of disposition from status offense hearings. *But see* R.M.P. v. Jones, 419 So. 2d 618 (Fla. 1982); *In re Michael G.*, 747 P.2d 1152 (Cal. 1988); *In re L. A. M. v. State*, 547 P.2d 827 (Alaska 1976), all stating that juveniles may be confined in secure detention facilities for the violation of court ordered disposition in status offense cases.

number still permit this type of adjudication.⁷⁶ This leaves juveniles who are facing status offense adjudication at risk of being incarcerated.

III. THE EFFECTS OF GENDER INEQUALITY WITHIN THE JUVENILE JUSTICE SYSTEM

A. *The Sources of the System's Gender Bias*

Because of the system's focus on male offenders, gender bias has been a long-term problem within the juvenile justice system.⁷⁷ Its effects are prevalent throughout the different stages of the juvenile justice process.⁷⁸ First, because male offenders make up the majority of juveniles within the system, states designed facilities to meet their needs and, as a result, such facilities are often ineffective in treating female juvenile offenders.⁷⁹ In addition, programming used to meet

76. See *infra* note 80.

77. Eggers, *supra* note 10, at 220-21.

For most people concerned with juvenile crimes, delinquency is a male activity. As a result . . . thousands of . . . girls . . . are virtually invisible in the juvenile justice system. Contrary to this widespread perception, the juvenile justice system does affect the lives of many young women; approximately one quarter of the young people arrested every year in the United States are girls. Nevertheless, most juvenile justice systems are designed without an awareness of girls' lives and problems.

Id. (footnotes omitted).

78. Eggers also notes:

Current research strongly suggests that the juvenile justice system treats girls differently than boys. While it is difficult to determine specifically which individuals in the system are responsible for this bias, it is clear that laws, police, courts and social services collectively discriminate against delinquent girls.

Id. at 239 (footnotes omitted).

79. *Id.* at 247. Frequently, juvenile facilities were built to house boys and, as a result, are unprepared to address the problems of female offenders.

Sexual abuse, pregnancy, childcare, depression, eating disorders and suicide are the most prevalent problems among girls. Because of juvenile facilities' continued failure to provide services to female juvenile offenders, many girls who have serious problems will not be treated appropriately.

Id. (footnotes omitted). See also Marks, *supra* note 74, at 4. Juvenile facilities need to be tailored to the specific population's needs. For example, "[b]oys develop in relationship to rules and regulations, and are far more likely to follow them. . . . But girls develop in terms of relationships. They're far more important and the girls will probably break any and all of the rules to maintain a relationship." *Id.*

the needs of delinquent females is frequently unsuccessful because it requires both continued access to services and regular follow-up contact, each of which become problematic when working with this challenging population.⁸⁰ Consequently, because of this gender bias, young delinquent females are less likely to receive the effective treatment upon which the juvenile justice system's *parens patriae* principle is based.⁸¹ Instead of assuming a protective role as guardian and ensuring young females have a rehabilitative experience, states have taken a punitive, retributive stance toward delinquent females.⁸²

Although many people view delinquent behavior as typical for adolescents, states do not treat male and female adolescents equally when responding to delinquency.⁸³ The system's gender bias partially results from the many stereotypes associated with females generally, and delinquent female adolescents specifically.⁸⁴ Females have occupied a subordinate role within society for many years and, as a result, society expects a greater conformity to social norms by young females than by their male counterparts.⁸⁵ Consequently, states respond to these stereotypes by punishing females for failing to live

80. Eggers, *supra* note 10, at 248. Surprisingly, “[e]ducational programming actually increases recidivism among girl offenders, because grouping large numbers of trouble youth together creates problems, particularly for girls.” *Id.* (footnotes omitted). In addition, counseling, psychotherapy, and hospitalization are also highly ineffective. *Id.* at 249. *See also* Poulin *supra* note 2, at 565 (stating that not only is it difficult to locate a placement for delinquent girls, but those placements available are often poorly equipped to treat the girls that are placed in their care; in addition, these placements are designed to address the needs of male offenders, not those of females).

81. Eggers, *supra* note 10, at 251.

82. Poulin, *supra* note 2, at 566.

83. Sarri, *supra* note 51, at 384. Delinquent boys and girls are treated similarly when being processed for serious crimes, but when dealing with minor offenses, females are frequently adjudicated more severely. *Id.* at 383-84. *See also* Chesney-Lind, *supra* note 51, at 123 (stating that “the juvenile justice system is concerned that girls allowed to run wild might be tempted to experiment sexually and thus endanger their marriageability”).

84. *Id.* at 123. A legal double standard exists which is more concerned with maintaining the sexual status quo than treating delinquent girls. *Id.* *See also* Mann, *supra* note 55, at 38, stating that:

Our society views the behaviors of females differently than that of males and attempts to socialize boys and girls in accord with these differential role expectations. Girls are supposed to be good, passive, polite, and behave as though they were actually made of “sugar and spice” which of course excludes sexual activity. . . . [B]oy’s sexual curiosity and exploration are excused . . .

85. Mann, *supra* note 55, at 38. *See supra* note 84.

up to the established social norms or appropriately defined roles.⁸⁶

Numerous social problems provide other explanations for much of the female youth offender's involvement in the juvenile justice system. For example, upon entering the system delinquent females have a higher rate of broken, unstable, or unhappy homes than delinquent males.⁸⁷ In fact, many of these girls are the victims of neglect, as well as both physical and sexual abuse, in their own homes.⁸⁸ This is one of the factors that leads many delinquent girls into crimes of sexual misconduct as a means of receiving the love and affection that they feel is lacking at home.⁸⁹

In addition, considerable attention has focused on the effects of teen pregnancy upon the problem of adolescent delinquency. Teen sexual behavior and sexual abuse are other obvious risk factors that contribute to adolescent girls' involvement in the juvenile justice system.⁹⁰ Several policy initiatives aim at decreasing adolescent

86. Mann, *supra* note 55, at 38. "[T]he court sexualizes female offenses and more severely sanctions [girls]. . . . [This] creates a de facto double standard of juvenile justice in America, one for men and another for women." *Id.* See also Chesney-Lind, *supra* note 51, at 122-23 (stating that both police and court personnel treat the improprieties of boys and girls differently by encouraging the system to overlook everything but the most serious misbehavior by males while at the same time closely scrutinizing any female delinquent behavior).

87. VEDDER & SOMERVILLE, *supra* note 3, at 50. Delinquent females frequently have poor personal hygiene, neglect their physical appearance, and often come from unhappy homes that are plagued with fighting and tension, leaving them feeling rejected by their parents. *Id.* See also CHESNEY-LIND *supra* note 1, at 25 (stating that 70% of all victims of sexual abuse are female, that girls are usually the target of sexual abuse at a much younger age than boys, and that it is more likely for a girl than a boy to be abused by a family member); Marks, *supra* note 74, at 4 (stating that 70% of juvenile offenders are from broken homes, and 58% of female offenders witnessed domestic violence within their homes).

88. Eggers, *supra* note 10, at 235. Delinquent girls represent three quarters of sexual abuse victims within the juvenile justice system and are much more likely than delinquent boys to have been victims of abuse from a family member within their home. *Id.* at 235.

[r]ates of sexual and physical abuse range from "a low of 40[%] to a high of 73[%]." Likewise, female delinquents experience sexual abuse at a significantly higher rate than girls not within the juvenile justice system. It is clear that being a victim of sexual abuse is an important risk factor for girls becoming delinquents or status offenders.

Id. at 235-36 (footnotes omitted).

89. CHESNEY-LIND, *supra* note 1, at 27, stating "[M]any young women are running away from profound sexual victimization at home and, once on the streets are forced into crime to survive." For those girls who are less successful at getting out of violent situations, "girls' victimizers (usually men) have the ability to invoke official agencies of social control . . . to keep young women at home and vulnerable." *Id.* at 28.

90. Ollenburger & Trihey, *supra* note 19, at 234.

pregnancy; however, these initiatives generally only target adolescent females and their families, rather than both male and female adolescents.⁹¹ Gender is singled out again as the crucial variable within social policy development.⁹² Similarly, evidence of the juvenile justice system's bias against pregnant female adolescents continues to be prevalent, and juvenile facilities remain unprepared to deal with these females.⁹³ In addition, it is apparent from examining case dispositions that many judges use their broad discretionary power to punish adolescent females for either being promiscuous or expressing their sexuality—yet again emphasizing the system's overt gender bias.⁹⁴

In addition, many actors outside the juvenile court system play a role in how adolescent females are brought into the system and how they are treated once there. The female crime rate continues to increase.⁹⁵ This is due, in part, to the broad discretionary power given to police officers in determining whether or not to refer youth to the court.⁹⁶ Police react to adolescent behavior in a manner consistent with societal concerns surrounding the appropriateness of male and female behavior.⁹⁷ As a result, police generally react more severely to a female adolescent's unruliness than to a male adolescent's similar behavior.⁹⁸ Parents who initiate police action or refer their children to the court also contribute to the large number of female youth charged with non-criminal offenses.⁹⁹ In fact, parents refer female youth to the juvenile justice system at a much higher rate than they refer male

91. Sarri, *supra* note 51, at 383.

92. *Id.* "Young women and men come to the attention of the law in different ways; and once in the criminal justice system, they receive different treatment." *Id.*

93. See Eggers, *supra* note 10, at 247.

94. See Chesney-Lind, *supra* note 51, at 126-27.

95. Chesney-Lind, *supra* note 51, at 123. For example, between the years 1960 and 1974, arrests of adult women rose 76.5% and arrests of adolescent females rose 235.1%. *Id.*

96. *Id.* at 123-24. A study of the juvenile court in Honolulu reveals a "consistent pattern of police paternalism that penalizes women . . . [G]irls charged with noncriminal offenses were far more likely than girls charged with crimes to be referred to juvenile court." *Id.*

97. Chesney-Lind, *supra* note 51, at 122-23.

98. *Id.*

99. *Id.* at 124. See also MURRAY, *supra* note 22, at 25 (stating that in 1981, parents accounted for 52.4% of all referrals for status offender petitions in the Chicago juvenile courts, and family members outside of the immediate family accounted for another 6.6% of those referrals).

youth.¹⁰⁰ This is partially because parents often have different expectations for their male and female children.¹⁰¹ While rebelling against authority and acting out is acceptable for adolescent boys, parents expect more obedience from their daughters and are less willing to tolerate defiant behavior.¹⁰² This prompts parents to quickly reach out to the police, and subsequently to the courts, when they believe their daughter is beyond their control.

B. The Results of the System's Gender Bias

One result of these gender biases is that adolescent females are disproportionately brought into the juvenile justice system for status offenses.¹⁰³ This tendency reflects a societal double standard, which holds status offenses to be less significant when committed by a male offender.¹⁰⁴ The system defines rebellious behavior among male adolescents as less deviant and more acceptable in light of their established social roles. In contrast, the system frequently detains females who commit a status offense in an effort to protect them.¹⁰⁵

100. Chesney-Lind, *supra* note 51, at 124. See also Eggers, *supra* note 10, at 237 (stating that the courts are often used by both parents and schools as a method of controlling difficult adolescent females).

101. Chesney-Lind, *supra* note 51, at 122. See also Eggers, *supra* note 10, at 238, stating that:

[g]irls are expected to conform to traditional standards of passivity, chastity and obedience. Boys, by contrast, are expected to be boisterous, mischievous and sexually aggressive. This vastly different set of gender expectations may explain why studies show that parents are more likely to report their daughters than their sons for status offenses such as promiscuity or uncontrollability.

Id. (footnotes omitted).

102. Chesney-Lind, *supra* note 51, at 122-23.

103. Ollenburger & Trihey, *supra* note 19, at 234. Despite the fact that both male and female delinquents are committing the same number of status offenses, females are more likely to be detained. *Id.*

104. *Id.* at 235.

105. *Id.* The article emphasizes the cultural double standard the system creates by stating:

Juvenile females who commit status offenses are often detained "for their own good." This reflects a chivalrous tendency to protect girls from themselves or the "outside world. . ."

The principle of *parens patriae*, where the court takes on the role of parent and moral guardian, serves to reinforce this double standard.

Id. at 234-35 (footnotes omitted). See also Chesney-Lind, *supra* note 51, at 123 (stating that the

For the adolescent female, the system views violating a societal norm as aberrant behavior—again reflecting the gender bias prevalent within the juvenile justice system.

In addition, these gender biases, as well as gender differences, play a role in how female youth are adjudicated once they enter the juvenile justice system.¹⁰⁶ Although female offenders are generally brought into the system for lesser offenses than most male offenders, their case dispositions are often as severe or more severe than their male counterparts.¹⁰⁷ Research has shown that delinquent adolescent females receive longer sentences than delinquent adolescent males adjudicated for the same offenses.¹⁰⁸ In addition, they receive worse treatment throughout their incarceration.¹⁰⁹ In particular, the system treats adolescent females who exhibit promiscuous behavior more harshly than adolescent males.¹¹⁰

As a result of the juvenile justice system's structure and the

court enforces adolescent morality through the use of status offenses which create a double standard within the juvenile justice system and lead the court to charge adolescent girls more frequently with these offenses).

106. Mann, *supra* note 55, at 38. Delinquent girls adjudicated as minors in need of supervision:

are institutionalized more frequently and for longer periods of time than youth who are adjudicated as criminally delinquent. . . .

An analysis of the dispositions of runaways by [sic] sex indicates that the most serious disposition, commitment to the Department of Children and Family Services . . . was more often assigned to female offenders than to boys who had committed the same offense

Id.

107. *Id.* at 38. A study of the Honolulu juvenile court shows that adolescent females are detained more often than males, held in custody three times longer, and thereafter placed in institutions three times more frequently than males. Other studies cited include one completed in New York, which shows that "promiscuous" females are treated more harshly than adolescent males. *See also* Chesney-Lind, *supra* note 51, at 123 (stating that delinquent girls who are taken into custody are more likely to remain in the system longer than males charged with similar crimes).

108. Mann, *supra* note 55, at 38. In one study of incarcerated youth: "eighteen percent of the boys had committed status offenses as compared to eighty percent of the girls. Further . . . the girls were institutionalized two months longer and had fewer rights than boys while in custody." *Id.* (footnote omitted).

109. *Id.* *See also* Chesney-Lind, *supra* note 51, at 125 (stating that adolescent females, even those charged with non-sexual offenses, routinely receive pelvic exams in juvenile detention centers, effectively degrading and demoralizing them and violating their right to privacy).

110. Mann, *supra* note 55, at 38.

resulting gender inequality, the system's treatment of delinquent females is largely ineffective. This ineffectiveness stems from the system punishing of young females as offenders rather than attempting to provide treatment for young females as victims.

IV. THE IMPACT OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT AND OTHER REFORM ATTEMPTS ON THE JUVENILE JUSTICE SYSTEM

A. The Juvenile Justice and Delinquency Prevention Act

As stated earlier, the JJDPA¹¹¹ and its precursor, the Juvenile Delinquency Prevention and Control Act,¹¹² were legislative responses to the growing problem of juvenile delinquency.¹¹³ Criticisms that the existing system needed reform and dissatisfaction with the manner in which the system treated juvenile offenders prompted these congressional actions.¹¹⁴

One of the JJDPA's primary mandates addresses juvenile delinquent custody issues.¹¹⁵ For instance, the JJDPA requires states receiving federal delinquency prevention money to change the manner in which they deal with status offenders.¹¹⁶ Whereas, in the past courts could hold juveniles adjudicated for status offenses in detention; after the JJDPA, courts can no longer place juveniles not charged with criminal acts in secure detention facilities.¹¹⁷ The federal government must provide resources to the states for the deinstitutionalization of status offenders.¹¹⁸ This portion of the JJDPA effectively decreased the number of status offenders detained in secure facilities by 76% between 1975 and 1991.¹¹⁹ Therefore, because of its attention to the needs of status offenders, some view

111. 42 U.S.C. §§ 5601-5785.

112. 42 U.S.C.A. §§ 3801-3873 (1972) (omitted in view of lack of appropriations 1975).

113. *See supra* note 69.

114. Sarri, *supra* note 51, at 382.

115. SNYDER & SICKMUND, *supra* note 12, at 72.

116. Eggers, *supra* note 10, at 228. *See also supra* note 71.

117. 42 U.S.C. § 5633(a)(12)(A) (1994 & Supp. III 1997).

118. Sarri, *supra* note 51, at 382.

119. Poulin, *supra* note 2, at 567.

the JJDPa as a success.¹²⁰

The JJDPa's vague mandates, however, are not limited to addressing the needs of the status offender. The JJDPa also addresses detention issues associated with juveniles charged with criminal offenses.¹²¹ These juveniles should not be detained in institutions where they will have contact with adult offenders.¹²² Just as the JJDPa requires the federal government to provide resources to the states for the deinstitutionalization of status offenders, the government must also ensure that adult facilities are not used to detain juvenile offenders.¹²³

The JJDPa not only focuses on juvenile delinquency custody issues, it also requires states to develop community-based programming for adolescent offenders.¹²⁴ The Act attempts to localize reform and intervention efforts by bringing them into the communities where the delinquent children live rather than attempting reform at the statewide level.¹²⁵ The Act premised these prevention efforts on the notion that states could treat uncooperative or unruly children more effectively within their own communities and avoid subsequent confinement.¹²⁶ In fact, past statistics demonstrate that confinement of non-criminal offenders has failed to rehabilitate youth.¹²⁷ The JJDPa, therefore, attempted to utilize resources and funding to improve outcomes for society and for adolescents.

B. Non-Legislative Reform Attempts

In addition to the reforms initiated by the JJDPa, efforts at due process reform through case law also attempt to increase the procedural protections offered to young offenders. As previously

120. *Id.*

121. 42 U.S.C. § 5633 (1994 & Supp. III 1997).

122. 42 U.S.C. § 5633(a)(13).

123. 42 U.S.C. § 5633(a)(14).

124. 42 U.S.C. § 5633(a)(10).

125. Sarri, *supra* note 51, at 382.

126. *Id.*

127. *Id.* at 390. "Analysis of population distribution in juvenile justice indicates that in any year, nine out of ten youth processed by residential facilities in the juvenile justice system will be found in detention units of adult jails." *Id.*

stated, a number of Supreme Court cases expanded the rights of juveniles within the criminal justice system.¹²⁸ Cases such as *Kent v. United States*,¹²⁹ *In re Gault*,¹³⁰ and *In re Winship*,¹³¹ expand the due process rights of juvenile offenders. The increase in the formality of juvenile proceedings benefits young offenders by extending to adolescents certain procedural due process rights not guaranteed in the past. In addition to the case law that increases the procedural rights available in juvenile court, the Supreme Court has also made the system more closely resemble adult criminal courts.¹³² This is partially a response to the recent popular “get tough” criminal philosophy.¹³³

C. The Practical Results of Attempts at Reform

Despite the JJDPa’s well-intended efforts, the results have been mixed. For instance, some states were slow to comply with the legislation.¹³⁴ In fact, Congress extended the date for mandatory compliance twice because states failed to meet the Act’s requirements.¹³⁵ In addition, the JJDPa gave states very limited funding to use in achieving compliance with the statutory requirements.¹³⁶ This became problematic in light of the ambitious goals originally envisioned.¹³⁷ These problems prompted additional cries for reform.

128. See *supra* note 35

129. 383 U.S. 541 (1966) (holding that courts must provide the “essentials of due process” in proceedings to transfer a juvenile into the criminal courts).

130. 387 U.S. 1 (1967) (holding that within proceedings that might result in the commitment of a juvenile, due process requires adequate notice, the right to counsel, the right to question witnesses, and the privilege against self-incrimination).

131. 397 U.S. 358 (1970) (holding that proof beyond a reasonable doubt is required when a juvenile is charged with an act that would be criminal if committed by an adult).

132. See *Schall v. Martin*, 467 U.S. 253 (1984) (holding that pretrial detention of juvenile offenders is permitted in certain circumstances); *Stanford v. Kentucky*, 492 U.S. 361 (1989) (holding that courts may sentence minors at least 16 years of age to the death penalty).

133. SNYDER & SICKMUND, *supra* note 12, at 72.

134. Ollenburger & Trihey, *supra* note 19, at 238.

135. The deadline for compliance was initially set at December, 1980, but it had to be extended first to December, 1984 and again to December, 1988. *Id.* at 238-39.

136. *Id.* at 237.

137. Sarri, *supra* note 51, at 382.

V. RECONSIDERING REFORM AND REHABILITATION

As a result of the reform efforts of the JJDP, most states now have laws prohibiting both pre and post adjudication detention of status offenders.¹³⁸ Despite this progress, juvenile court personnel continue to resist these changes. They have now implemented several new approaches to deal with status offenders. These approaches are designed to circumvent the JJDP.¹³⁹

As explained earlier, some courts use a technique called bootstrapping. Bootstrapping enables the system to confine a status offender, effectively forcing non-criminal offenders into positions of delinquency.¹⁴⁰ This technique allows a court to effectively incarcerate a juvenile without ever convicting the juvenile of a crime, and without providing him or her counsel.¹⁴¹ Because there is not a Sixth Amendment right to counsel guarantee in proceedings where the court does not charge a juvenile with a criminal offense, the juvenile is not guaranteed an attorney if the court merely charges the juvenile with being an undisciplined child.¹⁴² If a juvenile violates probation, however, the justice system can incarcerate the adolescent based upon the initial non-criminal charge of being undisciplined.¹⁴³ The court effectively denies the juvenile representation, successfully incarcerates the adolescent and ultimately defeats the intent of the JJDP.¹⁴⁴

Another method that courts often use to circumvent the JJDP is to confine juvenile offenders in other facilities rather than state detention centers.¹⁴⁵ For instance, the court may determine that a juvenile needs programming or services that the system can best provide through private institutions; therefore, the court may order

138. See MURRAY, *supra* note 22, at 28-29.

139. Eggers, *supra* note 10, at 242-43.

140. *Id.* See *supra* notes 77, 79 and accompanying text. See also *In re Walker*, 191 S.E.2d 702.

141. *Id.* at 707-11.

142. *Id.* at 709.

143. *Id.*

144. *Id.* at 709-10.

145. Eggers, *supra* note 10, at 243 (stating that in addition to using public detention facilities, the state may confine juveniles in private placements, institutions, or mental hospitals).

placement in a non-public facility.¹⁴⁶ This may result in the system placing a juvenile, who was adjudicated for a minor offense, in a facility outside his or her home state far away from any family members. Because the system more frequently prosecutes young females for status offenses, they are more likely to be incarcerated for violating court orders, and involuntarily placed in a private institution.¹⁴⁷ Consequently, because many of these young females are placed in private institutions against their will, they are likely to be resistant to treatment and will frequently run away from these programs.¹⁴⁸ Therefore, like bootstrapping, this process enables the state to circumvent the mandates of the JJDPA by using alternative methods of confinement for juvenile status offenders.

As another technique to circumvent the JJDPA, many courts have relabeled the female status offender as a criminal.¹⁴⁹ Relabeling is a process by which the court charges a non-criminal offender with a low-level criminal offense rather than a status offense.¹⁵⁰ This practice, combined with the juvenile court judges' broad discretionary power, allows courts to adjudicate young, non-criminal, female offenders in the system as criminals.¹⁵¹ These methods of circumventing the JJDPA have, in effect, stripped the legislation of its most effective reform tools by enabling the state to re-channel many of its status offenders back into the juvenile justice system.¹⁵²

In contrast to the status offender reforms Congress targeted in the JJDPA, the public perceives the juvenile justice system's approach to handling violent criminals as the area most in need of reform.¹⁵³ Although violent youthful offenders constitute only a small portion of the overall delinquent population, most of the public attention

146. *Id.* at 243 n.182.

147. *Id.* at 245. "Alternative treatment centers play a role in incapacitating girls. Extensive research should be conducted to determine the extent to which girls are placed in treatment centers as an alternative to being detained by the juvenile justice system itself." *Id.*

148. *See id.* (providing an example of an adolescent female who ran away from a treatment center).

149. *Id.* at 245-46. *See supra* note 77 and accompanying text.

150. *Id.* at 244 n.183.

151. *Id.* at 245-46.

152. *Id.* at 242. Consequently, despite the well-intentioned efforts of the JJDPA, "no significant changes have occurred in the juvenile court system in the area of gender bias, except that 'differential treatment is now hidden in one or more ways.'" *Id.*

153. SNYDER & SICKMUND, *supra* note 12, at 72.

surrounding juvenile crime now focuses on the violent adolescent offender.¹⁵⁴ States began to respond to these cries for reform with “get tough” laws.¹⁵⁵ As a result, the consequences of being labeled a juvenile delinquent have increased, signifying a move away from the system’s traditional rehabilitative model toward a more punitive, aggressive model.¹⁵⁶

The lack of case law addressing juvenile delinquency issues also stifles attempts at effective reform. Because the juvenile court system is structured informally, most cases adjudicated within the juvenile system never get beyond the trial level. The system is not designed to facilitate the appeals process. Consequently, the case law available to provide procedural protections and ensure the due process rights of minors is very limited.

It is clear that despite these attempts at change, the system’s overall informality still leaves the juvenile vulnerable to individual biases and over aggressive intervention strategies. The constant tension between the juvenile system’s initial informal, rehabilitative structure and the current formal, adversarial structure has led to wildly inconsistent case dispositions. This problem is compounded by another troubling aspect of the system’s procedure: the broad discretionary power given to juvenile judges.¹⁵⁷ Additionally,

154. In 1994 serious crimes constituted only 5.8% of the total number of arrests. CHESNEY-LIND, *supra* note 1, at 11.

155. SNYDER & SICKMUND, *supra* note 12, at 72. *See supra* note 39.

156. *Id.* *See also*, Poulin, *supra* note 2.

Many states have redefined the purpose of their juvenile justice system to emphasize punishment and containment and to deemphasize rehabilitation. Some prosecutors focus primarily on containment and punishment of juveniles. Probation officers, who often (but not always) proceed from an interest in rehabilitating the juvenile, play a reduced role. In addition, the system confronts ongoing conflicts over resources, as funding for punishment of offenders and protection of society competes with funding for rehabilitating juveniles in need.

Id. at 569 (footnotes omitted).

157. Eggers, *supra* note 10, at 242.

From a legislator’s or judge’s viewpoint . . . the discretion afforded judges “[has] been regarded as necessary, even desirable, devices for identifying and treating children in need of care.” Discretion gives judges increased control over the treatment juvenile offenders receive. However, whenever discretion is available to the courts, there is an increased possibility of unequal treatment.

Id. at 241-42 (footnotes omitted).

sentencing guidelines within the juvenile justice system are rare. As a result, sentencing is left completely to the judge's discretion, often leading to disparate sentences for similar offenses.¹⁵⁸

Post disposition the situation only worsens for the female offender. The resources, programming and facilities that the system refers them to for "treatment" are not designed for their needs.¹⁵⁹ As a result, these adolescents grow frustrated and resist cooperating with the system even more.¹⁶⁰ Now, instead of receiving rehabilitation and encouragement to reintegrate into society, these adolescent females are labeled hopeless and are considered beyond treatment.¹⁶¹ Consequently, the federal government's attempts to reform the system have proven largely unsuccessful for many young female offenders.

VI. PROPOSAL: A PROCEDURAL AND IDEOLOGICAL RESTRUCTURING OF THE JUVENILE JUSTICE SYSTEM

Clearly, attempts at reform have proven insufficient to address the problems associated with female youth offenders in the juvenile justice system. Therefore, the system must take new approaches to effect positive changes. Several alternatives, which the system can implement at different levels of the process, provide possibilities for more effective reform.

First, the juvenile court system must shift the existing ideology on status offenses away from classifying them as delinquent behavior or criminal conduct and instead recognize them as non-criminal behavior. Contrary to the public's perception, the types of activities characterized as status offenses are, for most teenagers, normative behaviors.¹⁶² Although not all teenagers engage in this type of activity, a majority report some participation with this type of

158. *Id.* at 242.

159. *Id.* at 246. Adolescent girls within the juvenile justice system are frequently placed in facilities designed for boys and are ill-equipped to meet the needs of delinquent girls. *Id.* See also CHESNEY-LIND, *supra* note 1, at 3.

160. Eggers, *supra* note 10, at 257. "Ineffective programs drive participants away, discourage potential participants from ever joining and waste money." *Id.*

161. *Id.* at 247. Juvenile facility's insufficient capacity to deal with adolescent girls results in many of them receiving inappropriate treatment. *Id.*

162. Sarri, *supra* note 51, at 385.

behavior.¹⁶³ Therefore, the court must begin to see this behavior in its true context, as typical adolescent activity, which is usually more effectively dealt with by parents and community organizations than by the police or juvenile court system.

The system must reevaluate the new narrowed definition of the status offender; this definition excludes those who violate a court order from the JJDP's protection against institutionalization.¹⁶⁴ Despite the limited due process rights for adolescents, confining an individual without conviction for a criminal offense is contrary to traditional notions of justice. Criminalizing adolescent female behavior such as running away from a placement facility as delinquent because it violates a court order is an ineffective method of dealing with this noncriminal behavior. Running from placements is typical behavior for adolescents that the system adjudicated for status offenses such as running away. This behavior may be a sign of an inappropriate form of treatment for a particular individual, rather than an indicator of delinquency. Therefore, courts must eliminate the judicial process of bootstrapping so that status offenders who continue to act out by violating court orders can receive treatment rather than immediate incarceration.

In addition to decriminalizing status offenses, courts should limit the ability of individuals outside the juvenile justice system to make status offender referrals in order to prevent unnecessary and ineffective intervention.¹⁶⁵ Statistics show a strong bias against status offenders even within their own families.¹⁶⁶ Studies show that relatives turn in as many as 72% of status offenders.¹⁶⁷ Other nonlaw enforcement personnel, such as school officials or social service agencies, also frequently refer adolescent females to the juvenile court system.¹⁶⁸ These trends reflect the biased societal standards for

163. *Id.* Adolescents participate in these behaviors at similar rate, "about the same percentage of females and males have been involved in minor and status offenses." *Id.* See *supra* note 45 and accompanying text.

164. See *supra* notes 146-54 and accompanying text.

165. See *supra* notes 104-09 and accompanying text.

166. Chesney-Lind, *supra* note 69, at 146. "A major source of the bias in juvenile justice is undoubtedly the upholding of parental authority." *Id.*

167. *Id.* "In 1983, nearly a quarter (23%) of all girls but only 16% of boys charged with delinquent offenses were referred to court by non-law enforcement agencies." *Id.*

168. Chesney-Lind, *supra* note 69, at 146.

adolescent behavior, which expect greater obedience and innocence from adolescent females than from adolescent males.¹⁶⁹ As a result, the juvenile justice system should discourage parental reporting. Rather than intervening in these cases through adjudication, the court should refer these parents to community-based organizations where both the adolescent and the family can receive treatment.

Entirely removing status offenses from the juvenile court's purview would be the most effective means of dealing with these problems. The activities that cause most status offenders to end up in the juvenile courts are better dealt with in a dependency hearing than a delinquency hearing. The risk factors that are most commonly associated with status offenders are often the same issues of abuse and neglect that courts regularly deal with in dependency hearings. Legislatures should enact laws to limit the court's discretion within delinquency adjudication to include only behavior that would be criminal if committed by an adult.¹⁷⁰ Therefore, only those offenders actually engaged in criminal activity would enter the system.¹⁷¹

In addition, legislatures must curtail the broad discretionary power of juvenile court judges.¹⁷² Legislatures should enact laws that mandate sentencing guidelines, requiring case dispositions proportionate to the seriousness of the juvenile's behavior.¹⁷³ Increasing the formalization of the juvenile court procedures would help ensure equitable case dispositions.

Appropriate programming and placements that address the educational and emotional needs of female offenders are essential. Only a very small percentage of the facilities used to treat delinquent female adolescents serve only or even mostly females.¹⁷⁴ Furthermore, some statistics show that as many as 91% of the adolescent females introduced into the juvenile justice system failed at least one grade in school two or three different times.¹⁷⁵ This

169. Chesney-Lind, *supra* note 51, at 124.

170. Poulin, *supra* note 2, at 573.

171. *Id.*

172. *See supra* notes 24, 26 and accompanying text.

173. Poulin, *supra* note 2, at 573. *See supra* note 27 and accompanying text.

174. CHESNEY-LIND, *supra* note 1, at 3 (stating that only 8.2% of delinquency programs were directed at strictly female adolescents). *See supra* notes 81-85 and accompanying text.

175. Marks, *supra* note 74, at 4.

suggests that the adolescent females coming into the juvenile justice system already have an educational deficit. Therefore, the programming and facilities that target this population need funding equivalent to that spent on similar treatment for male offenders. A sufficient number of appropriate rehabilitative opportunities and facilities must be available for the juvenile court system to use so that each placement fits each adolescent's individual needs. In addition, program changes should be made to provide delinquent adolescent females with better education, vocational and job training, and placement in a safe environment. These adolescent females should also have access to pregnancy and birth control counseling as well as the opportunity to receive psychological counseling.¹⁷⁶ Tailoring the components of these treatment programs to meet the specific needs of the population they serve will enable a more holistic treatment, consistent with the system's rehabilitative purpose.

As with almost any societal problem, prevention must also become a priority of juvenile justice reform so that society can reach children before they enter the system. The system must initiate changes that move focus away from punishing delinquent behavior and direct it toward preventing this behavior. Under the current model the juvenile justice system often steps in too late to provide effective rehabilitation for most of these adolescents.

VII. CONCLUSION

Gender inequalities continue to pervade the juvenile justice system. As a result, adolescent females exposed to this system are discriminated against on multiple levels. Their families victimize them. The court system, the staff of the correctional facilities, and even government officials fail to protect them. The programming provided to delinquent adolescent females is ineffective, often further damaging these females rather than rehabilitating them. If the current system continues operating in the same manner, the number of adolescent females entering the juvenile justice system will only increase. Most of these adolescent females will leave the system without being treated and will move into society as dysfunctional

176. See Ollenburger & Trihey, *supra* note 19, at 239.

adults.

Education directed at increasing awareness of the inadequacies that still exist within the current system is essential to achieve effective reform. The juvenile justice system should emphasize efforts at prevention and intervention, instead of resorting to retribution and punishment as the only available forms of treatment.