8-2012

Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System

Jyoti Nanda
Golden Gate University School of Law, jnanda@ggu.edu

UCLA LAW REVIEW

Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System

Jyoti Nanda

ABSTRACT

The juvenile justice system was designed to empower its decisionmakers with a wide grant of discretion in hopes of better addressing youth in a more individualistic and holistic, and therefore more effective, manner. Unfortunately for girls of color in the system, this discretionary charter given to police, probation officers, and especially judges has operated without sufficiently acknowledging and addressing their unique position. Indeed, the dearth of adequate gender/race intersectional analysis in the research and the stark absence of significant system tools directed at the specific characteristics of and circumstances faced by girls of color have tracked alarming trends such as the rising number of girls in the system and the relatively harsher punishment they receive compared to boys for similar offenses. This willful blindness must stop. This Article discusses the history and modern status of the juvenile justice system as it relates to girls of color, showing how it does not, in fact, relate to girls of color. There is hope, however. This Article concludes with policy recommendations, focusing on practical solutions and tools that will help decisionmakers exercise their considerable discretion to serve, rather than disserve, girls of color. The message to system actors is simple: Open your eyes! We owe that to our girls.

AUTHOR

Jyoti Nanda is Lecturer in Law, Core Faculty in both the Critical Race Studies Program and the David J. Epstein Program in Public Interest Law & Policy at UCLA School of Law.

The first incarnation of this Article was presented at the *UCLA Law Review* symposium, *Overpoliced and Underprotected: Women, Race, and Criminalization*. I am indebted to my fellow symposium co-chairs, Kimberlé Crenshaw and Priscilla Ocen, for their vision and support in the framing of this project. For helpful conversations and comments, I am also deeply grateful to Devon Carbado, Cheryl Harris, Kavitha Sreeharsha, Harit Trivedi, and the symposium participants. Special thanks to the *UCLA Law Review* for the symposium platform, particularly Brittany Goodnight and Alisha Burgin and the Critical Race Studies Program for their support. This Article would not have been possible without the dedication of the *UCLA Law Review* editors, Kristen Johnson, Hunter Hayes, and Stan Molever, and of my faculty assistant, Randi Kusumi. In addition, I benefited from remarkable research assistance from Jackie Moon and Maya Uffenheimer and from Linda Karr O'Connor's support at the UCLA Law Library.

This Article is dedicated to my parents for their unconditional support, and to girls and their advocates, who keep hoping for a better tomorrow.

TABLE OF CONTENTS

INTRODUCTION

Sara is a fifteen-year-old, female student of color, who is several years behind her peers in school and does not like school much. She has a learning, social, or emotional issue that has never been diagnosed. These issues arise at home and at school—with her family and sometimes among her peers. She has some abuse or violence in her home, and she was involved in an abusive dating relationship. Sara lives in a poor neighborhood with schools that are overcrowded and underresourced. When she is repeatedly late to school, she is expelled. Hanging out on the street one night past curfew, she is arrested and enters the juvenile justice system. Sara is a typical girl who enters the juvenile justice system.[1] And once she's in, she's never really out.[2]

1. This anecdote is drawn from statistics of a typical girl within the U.S. juvenile justice system. *See, e.g.*, LESLIE ACOCA & KELLY DEDEL, NO PLACE TO HIDE: UNDERSTANDING AND MEETING THE NEEDS OF GIRLS IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM (1998) (reporting data from the largest and most detailed study ever conducted on girl offenders, including the official profiles of one thousand girls and the structured interviews of two hundred girls in detention facilities); BERKELEY CTR. FOR CRIMINAL JUSTICE, JUVENILE JUSTICE POLICY BRIEF SERIES: GENDER RESPONSIVENESS AND EQUITY IN CALIFORNIA'S JUVENILE JUSTICE SYSTEM (2010); CHRISTY SHARP & JESSICA SIMON, CHILD WELFARE LEAGUE OF AM., GIRLS IN THE JUVENILE JUSTICE SYSTEM: THE NEED FOR MORE GENDER-RESPONSIVE SERVICES (2004); 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 Juvenile Justice System*, 9 WM. & MARY J. WOMEN & L. 73 (2001); Joanne Belknap & Kristi Holsinger, *The Gendered Nature of Risk Factors for Delinquency*, 1 FEMINIST CRIMINOLOGY 48 (2006); Kristen M. McCabe, Amy E. Lansing, Ann Garland & Richard Hough, *Gender Differences in Psychopathology, Functional Impairment, and Familial Risk Factors Among Adjudicated Delinquents*, 41 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 860 (2002).

2. *See* M. Diane Clark, Hanno Petras, Sheppard G. Kellam, Nicholas Ialongo & Jeanne M. Poduska, *Who's Most at Risk for School Removal and Later Juvenile Delinquency? Effects of Early Risk Factors, Gender, School/Community Poverty, and Their Impact on More Distal Outcomes*, 14 WOMEN & CRIM. JUST. 89, 113 (2003) ("It has been shown [for girls] that one adjudicated event (i.e., school removal) leads to additional adjudicated events (juvenile justice records). Not only adjudicated events are predicted by school removal, one finds a cascade of potentially negative outcomes that limit upward mobility, such as early pregnancy."); *see also* Matt Pearce, *Truancy? Honor Student Working Two Jobs Is Jailed; Outrage Ensues*, L.A. TIMES, May 29, 2012, http://www.latimes.com/news/nation/nationnow/la-na-nn-texas-honor-student-20120529,0,589866.story (detailing the recent story of Diane Tran, an honors high school student with two jobs, who was sentenced to a day in jail for violating aTexas truancy law of missing ten or more days of school in six months, and noting that Tran's absence was caused by the need for her to support her family after her parents' divorce).

When a girl[3] of color[4], like Sara, enters the juvenile justice system, a complex set of legal rules gives each system actor the discretion either to treat her as a child with background social problems for which she is not responsible or to commit her to the juvenile justice system as a delinquent who should be held accountable for her conduct. This discretion is at the heart of the juvenile court,[5] and it has been seen as central to its function. However, the way juvenile justice decisionmakers exercise this discretion helps to explain the significant increase in the number of girls of color who are under the supervision of the juvenile justice system.

There has been virtually no acknowledgment of this overrepresentation either in case law or as a policy matter. This creates the impression that all girls in the system deserve to be there. What is particular troubling about this state of affairs is that, as a formal matter, the juvenile justice system is explicitly structured to provide individualized, contextualized, case-by-case assessments.[6] While this

3. When discussing children, rhetoric matters. The ways in which we refer to "children," "youth," "juvenile," "girl," or "boy" affects our framework and understanding of the juvenile justice system. This Article uses the terms "girls" and "youth" to refer to children under the age of eighteen who interact with the juvenile justice system. For a thoughtful discussion of rhetoric in the juvenile justice system, see Elizabeth S. Scott, Essay, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 549 (2000) ("Since the establishment of the juvenile court in 1899, young offenders have been transformed in legal rhetoric from innocent children to hardened adult criminals."); *see also* Steven Friedland, *The Rhetoric of Juvenile Rights*, 6 STAN. L. & POL'Y REV. 137, 138 (1995) ("[A]ny reconfigured juvenile justice system . . . will be significantly shaped and influenced by the rhetoric used to describe juveniles. This is true because the descriptive rhetoric surrounding juveniles fashions society's understanding of them . . . .").

4. For purposes of this analysis, the term "of color" refers to girls and youth who identify as non-White. This Article is premised on a simplified notion of Whiteness that does not reflect the complexities of this issue, which is beyond the scope of this analysis. Among those who are considered White, there is considerable variation in the benefits Whiteness confers. *See, e.g.*, Camille Gear Rich, *Marginal Whiteness*, 98 CALIF. L. REV. 1497 (2010).

5. Juvenile court is defined as "a superior court exercising limited jurisdiction arising under juvenile law." *In re* Chantal S., 913 P.2d 1075 (Cal. 1996); *see also* BLACK'S LAW DICTIONARY 409 (9th ed. 2009). The discretionary nature of the court is synonymous with the broad jurisdiction given to the court at its inception. *See* U.S. DEP'T OF LABOR, JUVENILE-COURT STANDARDS: REPORT OF THE COMMITTEE APPOINTED BY THE CHILDREN'S BUREAU, AUGUST, 1921, TO FORMULATE JUVENILE-COURT STANDARDS, at vi (1923*), available at* http://www.mchlibrary.info/history/chbu/20531-1923.pdf ("[T]he [juvenile] court dealing with children should be clothed with broad jurisdiction, embracing all classes of cases in which a child is in need of protection of the State, whether the legal action is in the name of the child or of an adult who fails in his obligations toward the child.") Moreover, the primary purpose of the formation of the juvenile court was to take it out of the formalistic nature of the criminal court. David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction*, *in* A CENTURY OF JUVENILE JUSTICE 42, 69 (Margaret A. Rosenheim et al. eds, 2002) ("Clearly, the 'idea' of a juvenile court—that children should be removed from the criminal justice system—was firmly entrenched.").

6. *See* Part II, *infra*, for the origins of juvenile court and its informal, rehabilitative mandate.

commitment was developed with boys in mind since boys were the initial subjects of juvenile justice interventions, no one disputes that the commitment applies to girls as well.[7]

However, there is reason to believe that juvenile justice officials are not performing individualized, contextual assessments of girls of color. Instead of relying on their discretion to examine girls holistically, our current system treats them—as a group—as already a social problem.[8] There is virtually no effort to understand how significantly the circumstances under which girls of color live create pathways to the system. The only real contextualization that juvenile justice officials perform is to separate girls from boys.[9] That "single axis" approach, to borrow a term from Kimberlé Crenshaw, elides the intersectional vulnerabilities many girls face, including those that derive from the intersection of race, gender, and class.[10]

7. Part of the problem of examining girls is the data limitations. Delinquency studies, in general, have limitations since most of the data are self-reported (and therefore either overrepresentative or underrepresentative, depending on the situation); since the delinquency studies rely on adult data, which is not accurate with respect to frequency; and since "most delinquency studies are based on samples of boys, and it is unclear whether the same risk and protective factors apply equally well to girls." *See* MARGARET A. ZAHN ET AL., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, NCJ 226358, CAUSES & CORRELATES OF GIRLS' DELINQUENCY 2 (2010).

8. *See generally* Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584 (2012).

9. Prior to 1992, girls were separate from boys without a formalized mandate for gender specific programming. *See generally* FRANCINE T. SHERMAN, ANNIE E. CASEY FOUND., PATHWAYS TO JUVENILE DETENTION REFORM: DETENTION REFORM AND GIRLS 12–13 (2005), *available at* http://www.aecf.org/upload/publicationfiles/jdai_pathways_girls.pdf ("Federal attention to girls in the delinquency system began with the 1992 Juvenile Justice and Delinquency Prevention (JJDP) Act's requirement that states analyze their juvenile justice system's provision of 'gender-specific services' to female offenders and plan the delivery of gender-specific treatment and prevention services."). Today we have a more complex response to girls' needs but it is not enough. The JJDP Act was reauthorized in 2002 requiring that states "plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency," 42 U.S.C. § 5633(a)(7)(B)(i) (2006), and "assurance that youth in the juvenile justice system are treated equitably on the basis of gender." *Id.* § 5633(a)(15). However, as Sherman reported, "those core strategies by themselves—without specific policies, practices, and programs that address the particular challenges posed by girls—do not seem sufficient to eliminate disparities (e.g., girls' higher detention rates for status offenses), to improve program performance, or to ensure appropriate conditions of confinement." SHERMAN, *supra*, at 13.

10. *See* Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1243–44 (1991) ("[T]he experiences of women of color are frequently the product of intersecting patterns of racism and sexism, and . . . tend not to be represented within the discourses of either feminism or antiracism." (footnote omitted)); *see also* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (characterizing and criticizing "gender essentialism—the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of

Few scholars have paid close attention to these intersectional vulnerabilities, and public policy advocates and policymakers have largely neglected them as well.[11] Drawing on intersectional analysis,[12] this Article contributes to efforts to bring this problem into sharp relief. Central to intersectionality is the notion that race, gender, and class converge to produce distinct outcomes for individuals.[13] One sees this quite clearly in the juvenile justice system. In addition to highlighting the scope of this problem, this Article offers some tentative ideas about how we might fix it.

The starting point for the analysis is the claim that race, gender, and class intersect to create a distorted image of girls of color. More concretely, actors in the juvenile justice system are likely to view girls of color and Black girls[14] in particular as delinquents—as social problems themselves rather than as young girls affected by social problems. To some extent, every actor in the juvenile justice system exercises discretion consistent with that distortion, even while operating under nominally neutral rules. The cumulative effect of this is that girls of color find themselves effectively locked into the system and locked out of opportunities that would attend to the underlying causes of their social vulnerability.

---

experience"). Scholars have used a variety of different terms to describe this process including "compound discrimination." *See* Devon Carbado, *Black Rights, Gay Rights, Civil Rights*, 47 UCLA L. REV. 1467, 1518 (2000) (recognizing that discrimination may be compounded—that is, based on more than one facet of a person's identity). For a thoughtful discussion of the myriad ways to conceptualize compound discrimination, see Devon W. Carbado & Mitu Gulati, *The Fifth Black Women*, 11 J. CONTEMP. LEGAL ISSUES 701 (2001).

11. "Despite the existence of intersectionality theory to youth issues, its use within the juvenile justice literature is lacking. Only two known studies to date have specifically incorporated the intersectional approach in examining juvenile justice outcomes. These studies both find mixed levels of support for the intersectionality perspective, making future examinations of the theory worthwhile." Scott R. Maggard et al., *Pre-dispositional Juvenile Detention: An Analysis of Race, Gender and Intersectionality*, 35 J. CRIME & JUST. (forthcoming 2012) (manuscript at 3) (citations omitted) (citing Michael J. Leiber at al., *A Closer Look at the Individual and Joint Effects of Gender and Race on Juvenile Justice Decision Making*, 4 FEMINIST CRIMINOLOGY 333 (2009), and Lori D. Moore & Irene Padavic, *Racial and Ethnic Disparities in Girls' Sentencing in the Juvenile Justice System*, 5 FEMINIST CRIMINOLOGY 263 (2010)), *available at* http://dx.doi.org/10.1080/0735648X.2011.651793; *see also infra* Part III.

12. *See generally* Crenshaw, *supra* note 10; Maggard et al., *supra* note 11.

13. *See generally* Crenshaw, *supra* note 10; Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465 (2010) (arguing that our social and legal institutions should incorporate behavioral realism's finding that human beings are not perceptually, cognitively, or behaviorally colorblind).

14. This analysis speaks to issues impacting all girls of color; however, due to limited data available, many of the studies target the particular impact on Black girls. For a discussion of the data limitations, *see supra* note 7.

In Part I, I provide a brief history of the juvenile court, the purpose of discretion within the system, and the treatment of girls and youth of color. The wide grant of discretion at multiple levels in the system creates conditions for potential abuse through discriminatory exercise of that discretion. In Part II, I explicate studies that reveal inequities within the juvenile justice system based on the intersection of race and gender. This Part highlights studies that show that (1) the number of girls entering the juvenile justice system is on the rise;[15] (2) girls of color are disproportionately represented in this group, reflecting the role of race;[16] and (3) the cause of girls' delinquency differs in important ways from that of boys[17] in that

15. *See* CHARLES PUZZANCHERA & BENJAMIN ADAMS, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, NCJ 236477, JUVENILE ARRESTS 2009, at 5–6 (2011) [hereinafter PUZZANCHERA & ADAMS, JUVENILE ARRESTS 2009], *available at* http://www.ojjdp.gov/pubs/236477.pdf (noting that from 2000 to 2009, "in some categories (e.g., simple assault, larceny-theft, and disorderly conduct), female arrests increased"); *see also* ACOCA & DEDEL, *supra* note 1, at 2 (reporting that "in addition to serious, violent offenses, arrests of girls for larceny-theft and simple assault also increased significantly," and noting that, in the 1990s, "[i]ncreases in the number of delinquency cases involving young women handled by juvenile courts also outstripped those pertaining to young men"); CHARLES PUZZANCHERA ET AL., NAT'L CTR. FOR JUVENILE JUSTICE & OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE COURT STATISTICS 2008, at 12 (2011) [hereinafter PUZZANCHERA ET AL., JUVENILE COURT STATISTICS 2008], *available at* http://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2008.pdf (reporting that "the female delinquency caseload grew at an average rate of 3% per year between 1985 and 2008, while the average rate increase was 1% per year for males"). Nevertheless, overall youth crime has been on the decline. The number of adults arrested in 2010 increased 1 percent from 2001, whereas the number of juveniles arrested dropped a staggering 23.5 percent during the same time frame. *See Ten-Year Arrest Trends, Totals, 2001–2010*, FBI.gov, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl32.xls (last visited July 21, 2012).

16. Leslie Acoca, *Investing in Girls: A 21st Century Strategy*, JUV. JUST., Oct. 1999, at 3, 8 (analyzing a National Council on Crime and Delinquency (NCCD) study examining one thousand case files and interviewing two hundred girls in delinquency, *see* ACOCA & DEDEL, *supra* note 1, and noting that "[t]he disparate treatment of minorities appears to be an important factor in the processing of girls' cases[:] Nationally and in the NCCD sample, approximately two-thirds of the girls in the juvenile justice system are minorities, primarily African American and Hispanic."); *see also* PUZZANCHERA & ADAMS, JUVENILE ARRESTS 2009, *supra* note 15, at 6 (showing that female arrests increased in some categories and that "Black youth were overrepresented in juvenile arrests"); Kim Taylor-Thompson, *Girl Talk—Examining Racial and Gender Lines in Juvenile Justice*, 6 NEV. L.J. 1137, 1137–38 (2006) (stating that African American girls are overrepresented in the juvenile justice system and that they often receive more severe punishments and lower dismissal rates than White girls).

17. Acoca, *supra* note 16, at 7. NCCD data revealed that, similar to offense patterns of the last forty years, the majority of girls surveyed were charged with less-serious offenses such as property, drug, and status offenses rather than with violent crimes such as assault or murder. *Id.* Moreover, "the highest percentage . . . of these girls were probation violators, many of whom reported that their first offense was running away, truancy, curfew violation, or some other status offense." *Id.* Interestingly, the "small number of girls arrested for the most serious offenses—robbery, homicide, weapons offenses—reportedly committed these crimes almost exclusively within the context of their relationships with codefendants. These relationships fell into two distinct categories: dependent or equal.

girls are more likely to receive harsher punishment than boys for similar offenses and for status offenses (for example, running away or truancy),[18] and they are more likely to receive harsher punishment at younger ages.[19] These studies further suggest that gendered difference is also racialized. That is, while girls generally are subject to harsher punishment for status offenses, girls of color are particularly vulnerable to discriminatory treatment. In Part III, I examine the various theories scholars posit to explain the delinquency of girls. As I show, each of these theories suggests that race and gender matter. Finally, Part IV focuses on solutions. One obvious solution to the problems I describe is to eliminate the juvenile justice system. In other words, one could advocate a kind of juvenile justice system abolitionism.[20] Such an approach would track arguments criminal justice advocates advance vis-à-vis the abolition of prisons.[21] In principle, I support the notion of remaking the juvenile court, but as a matter of practicality the stakes are too high to

---

The first group included girls who were following the lead of male offenders (often adults) who were typically the primary perpetrators of the crime. The second group included girls functioning in female-only groups or mixed gender groups (including gangs) as equal partners in the commission of their offenses." *Id.* at 8.; *see also* Belknap & Holsinger, *supra* note 1, at 56, 66 (finding that girls report higher rate of abuse, have more frequent thoughts of harming themselves, and have lower self-esteem than boys).

18. *See* ACOCA & DEDEL, *supra* note 1, at 15 ("[T]he highest percentage of girls (36 percent) fell into the least serious offense category, probation violation. Many of these probation violators reported that their *first* offense was actually a status offense (such as running away or curfew violation . . . ."); Meda Chesney-Lind, *Criminalizing Victimization: The Unintended Consequences of Pro-arrest Policies for Girls and Women*, 2 CRIMINOLOGY & PUB. POL'Y 81, 84 (2002) (suggesting that mandatory arrest in cases of domestic violence and the relabeling of status offenses into violent offenses could explain the recent trend of increasing incarceration rates of girls when studies show that girls are actually becoming less violent).

19. Barbara E. Bloom & Stephanie S. Covington, *Effective Gender-Responsive Interventions in Juvenile Justice: Addressing the Lives of Delinquent Girls* 3 (paper presented at the 53d Annual Meeting of the Am. Soc'y of Criminology, Atlanta, Ga., 2001), *available at* http://centerforgenderandjustice.org/pdf/7.pdf (highlighting research that "documents that delinquent girls and young women have disproportionately high rates of victimization, particularly incest, rape and battering preceding their offending behavior," and exploring evidence of harsher punishment for girls than for boys); *see also* Belknap & Holsinger, *supra* note 1, at 55 (discussing survey results that indicate that younger girls receive harsher sentences).

20. *See generally* Janet E. Ainsworth, *Re-imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083 (1991) (arguing that the juvenile court system began under the auspices of a traditional social construction of childhood that viewed juveniles as immature, distinct from adult criminals, and not morally accountable for their actions, which is becoming increasingly anachronistic).

21. Scholars like Dorothy Roberts have thoughtfully suggested that one way to heal the adult criminal system, which is plagued by racism, is to abolish the system as we know it. *See* Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261, 263 (2007).

do so: If we eliminate the juvenile justice system, the default is our current, broken criminal justice system. Part IV thus proposes a more modest solution. I advocate that within the current system we approach the issues by individually assessing the circumstances of each child, including their intersectional vulnerabilities.

I. THE RACE AND GENDERED ORIGINS OF JUVENILE JUSTICE

It may come as no surprise that the founders of the juvenile court were purportedly interested in saving potentially criminal children—or rather, poor children—from becoming criminal.[22] Berry Feld, a noted juvenile justice expert, has characterized it clearly: "From its inception, the social control of ethnic and racial minority offenders has constituted one of the juvenile courts' most important functions."[23] Thus, from the start, the system developed with embedded notions of race and identity and the provision of discretion to system actors treating the youth.

Prior to the first juvenile court in Cook County, Illinois in 1899, there was a history of separating poor children from their families based on labor needs.[24] This began at the turn of the nineteenth century with the increase of poverty among urban children in New York, which was a direct result of industrialization, urbanization, and the immigration of Europeans and Asians.[25] In response to the increasing number of pauper children running the streets of New York, the State of New York authorized the New York City House of Refuge.[26] The House of Refuge (which eventually expanded to sixteen cities in the northeast) was authorized to house children who were vagrants or who were convicted of crimes by informal authorization—criminal conviction was not required.[27]

22. *See* Barry C. Feld, *The Transformation of the Juvenile Court—Part II: Race and the "Crack Down" on Youth Crime*, 84 MINN. L. REV. 327, 329–30 (1999) (discussing the "conception[s] of childhood and positive criminology," which resulted in the formation of the juvenile court); *see also* Marvin Ventrell, *Evolution of the Dependency Component of the Juvenile Court*, JUV & FAM. CT. J., Fall 1998, at 17.

23. Feld, *supra* note 22, at 330.

24. *See* Ventrell, *supra* note 22, at 22 ("In the case of the poor, the state felt authorized to remove poor children and apprentice them for the common good."). During this time, children were not afforded political or social rights. *See* Patricia Soung, *Social and Biological Constructions of Youth: Implications for Juvenile Justice and Racial Equity*, 6 NW. J.L. & SOC. POL'Y 428, 430 (2010) ("Until about 1830, social institutions regarded children primarily as property of their parents and a source of cheap labor. The notion of 'childhood' or 'adolescence' as a distinct state of life or a social category that afforded political and social rights was nonexistent." (footnote omitted)).

25. Ventrell, *supra* note 22, at 17, 22.

26. *Id.* at 22.

27. *Id.* at 22–23. For an illustrative history of this movement leading up to the founding of the juvenile court, see Sanford Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970).

While the House of Refuge expanded during the first half of the nineteenth century, reformatories[28] dominated the second half, and although they were created to be more progressive, detention in reformatories actually constituted "coercive, labor intensive incarceration."[29] These institutions "conformed to gender and racial beliefs of the era by establishing separate departments for girls and blacks."[30] After the Civil War, the demand for cheap labor was often satisfied through widespread arrests of Blacks for minor violations under Jim Crow laws.[31] As a result, there was overrepresentation of Black youth in the penal system—a sign of times to come.[32] Understood in this way, the juvenile justice system was part of the Jim Crow apparatus. And it was used not only as a vehicle for social control but also as a mechanism to facilitate economic exploitation.

By the early nineteenth century, however, questions had arisen about the legitimacy of this emerging system.[33] Those questions were largely settled in 1839. In that year, *Ex parte Crouse*,[34] a Pennsylvania state court decision, solidified the

28. Reformatories were the first form of what we now call juvenile detention centers. The first juvenile reformatory was established in New York in 1824. These institutions "offered [their] inmates such employment as will tend to encourage industry, basic education in reading, writing, and arithmetic, and instruction in the nature of their moral and religious obligations." Michael Grossberg, *Changing Conceptions of Child Welfare in the United States, 1820–1935*, *in* A CENTURY OF JUVENILE JUSTICE, *supra* note 5, at 3, 16–17 (citation and internal quotation marks omitted). Interestingly, these reformatories "lumped all disorderly and dependent [meaning children without parents] children together and offered them basically the same treatment." *Id.* at 7. This is a similar characteristic of the American system today. *Id.*

29. Ventrell, *supra* note 22, at 23.

30. *See* Grossberg, *supra* note 28, at 17.

31. *See* JAMES BELL & LAURA JOHN RIDOLFI, ADORATION OF THE QUESTION: REFLECTIONS ON THE FAILURE TO REDUCE RACIAL & ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM 4 (Shadi Rahimi ed., 2008).

32. *Id.* Today, many states have overrepresentation of youth of color in the juvenile justice system, a concept known as Disproportionate Minority Contact (DMC). DMC describes the overrepresentation of minority youth in the juvenile justice system relative to the general population and as compared to White youth. Minority populations, or youth of color, include American Indian and Alaskan Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander, and persons of mixed race or ethnicity. Andrea R. Coleman, *A Disproportionate Minority Contact (DMC) Chronology: 1988 to Date*, OFF. JUV. JUST. & DELINQ. PREVENTION, http://www.ojjdp.gov/dmc/chronology.html (last visited July 22, 2012); *see also National Disproportionate Minority Contact Databook*, OFF. JUV. JUST. & DELINQ. PREVENTION, http://ojjdp.gov/ojstatbb/dmcdb/asp/display.asp (last visited July 16, 2012).

33. *See* Grossberg, *supra* note 28, at 18 ("Concern about the jurisdiction and services offered by the reformatories led some parents to protest the incarceration of their children.").

34. 4 Whart. 9 (Pa. 1839).

legitimacy of the Refuge System.[35] More importantly, the case reinforced *parens patriae*, the notion that the court can assume the role of a parent—and, more particularly, the role of the father.[36] Family structure and formation in this context was, of course, deeply gendered. Men had full control over both their children and their wives.[37] The doctrine of *parens patriae* extended this authority to courts vis-à-vis children. That is to say, pursuant to *parens patriae*, the court—and indeed the state more generally—can legally stand in as the parent (historically, the father) of the child with many of the same explicit and implicit rights possessed by parents. This notion was quickly ratified with the founding of the juvenile court in Cook County, Illinois on July 1, 1899,[38] and it is a core feature of the juvenile justice system today.[39]

Significantly, the notion that the state could stand in for the parent carried with it a very specific institutional imperative—that the state, like the parent, should act as a disciplinarian.[40] Notably, the court was founded on the premise that

35. The subject in this case, Mary Ann Crouse, a minor, was committed to the Philadelphia House of Refuge by a justice of the peace warrant. Crouse's mother executed the warrant because Crouse was "beyond the control" of her mother. *Id.* at 9. Crouse's father had appealed the case and argued that the law's commitment of a child without a trial was unconstitutional. *Id.* at 10–11. The court summarily rejected the father's argument on the basis that the House was not a prison (even though Crouse was not free to leave), and the child was there for her own reformation and not for punishment. *Id.* at 11–12. In essence, the court here both acknowledged and sanctioned the state's authority to intervene in the family as ultimate parent via the *parens patriae* doctrine.

36. This notion is the underlying theory of juvenile court. "The child of the proper age to be under the jurisdiction of the juvenile court is encircled by the arm of the state, which, as a sheltering, wise parent, assumes guardianship and has power to shield the child from the rigors of the common law and from the neglect and depravity of adults." Elizabeth S. Scott, *The Legal Construction of Childhood*, *in* A CENTURY OF JUVENILE JUSTICE, *supra* note 5, at 113, 131 (citation omitted) (quoting MIRIAM VAN WATERS, YOUTH IN CONFLICT 3 (AMS Press 1926) (1925)) (internal quotation marks omitted).

37. *See* MEDA CHESNEY-LIND & RANDALL G. SHELDEN, GIRLS, DELINQUENCY, AND JUVENILE JUSTICE 161 (3d ed. 2004).

38. *See* Ventrell, *supra* note 22, at 26–27; *see also* Scott, *supra* note 36, at 116 ("[U]nder its historic *parens patriae* authority, the government has the responsibility to look out for the welfare of children and other helpless members of society. Thus, parental authority is subject to government supervision; if parents fail to provide adequate care, the state will intervene to protect children's welfare.").

39. *See* CHESNEY-LIND & SHELDEN, *supra* note 37, at 161. *Parens patriae*

> has its origins in medieval England's chancery courts. At that point it had more to do with property law than children; it was, essentially, a means for the crown to administer landed orphans' estates. *Parens patriae* established that the king, in his presumed role as the "father" of his country, had the legal authority to take care of "his" people, especially those who were unable, for various reasons (including age), to take care of themselves.

Id. at 160 (citation omitted).

40. *See In re* Gault, 387 U.S. 1, 16 (1967).

children are different than adults and should therefore be treated differently.[41] In other words, whereas rigid normative penalties may be appropriate for adults, the juvenile system was founded on the idea that actors within the system should exercise discretion to ascertain whether punishment is necessary or whether instead some other form of intervention might work. Animating this discretionary approach was the idea that the state, like a parent, should look at each child individually, taking into account his particular circumstances. Under this approach, the default was rehabilitation, not punishment.[42] The thinking was that it is never too late to save a child from a life of crime and that each youth who appears before the court should be treated holistically and individually, which is essentially what parenting entails. The progressive so-called child savers who founded the court conceived of it as a nonpunitive and therapeutic institution.[43] And courts articulated a similar view. In 1909, Judge Julian Mack, one of the first judges to preside over the nation's first juvenile court in Cook County, described the goals of the juvenile court:

> The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.[44]

In its ethos, then, the juvenile court was guided by a mission to rehabilitate. This does not mean, however, that this mission was carried out in an evenhanded way. It was not. Child savers were more invested in saving some (nonimmigrant, White) children than they were in saving other (immigrant and Black) children. Thus, some (Black and immigrant) children were more vulnerable to social control

41. *See, e.g.*, Michele Benedetto Neitz, *A Unique Bench, A Common Code: Evaluating Judicial Ethics in Juvenile Court*, 24 GEO. J. LEGAL ETHICS 97, 99 (2011).

42. *Id.* Moreover, the court was designed to separate youth incarceration facilities and courts from those designed for adults, which is not always the situation today. *See* Charlyn Bohland, Comment, *No Longer A Child: Juvenile Incarceration in America*, 39 CAP. U. L. REV. 193, 194 (2011) (arguing that juvenile justice institutionalization is not fulfilling the mission set forth by the original mission of juvenile justice as demonstrated by illegal practices and procedures within juvenile facilities in several states).

43. Feld, *supra* note 22, at 337.

44. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1909).

than other (White, nonimmigrant) children.[45] This explains why Black boys became overrepresented in the system relatively early in its institutional history.[46] This overrepresentation has comfortably coexisted with the notion that the juvenile justice system should treat each child individually. And the contradiction also characterizes the state of affairs with respect to girls of color today. That is to say, girls are overrepresented in the system, notwithstanding that the system is formally committed to treating girls individually. To understand why, one has to understand the structure of the system, a structure within which every system actor has a tremendous amount of discretion.

A. The Structure of the Juvenile Justice System and the Problem of Discretion

As a formal matter, the juvenile justice system today is structured around two guiding principles, both of which derive from the history I set out above. The first principle is that youth have "diminished culpability and greater prospects for reform."[47] The U.S. Supreme Court has repeatedly upheld this principle and affirmed it most recently in *Miller v. Alabama*[48] in June 2012. And second, "the court declared itself *parens patriae*, or 'father of the people,' to intervene . . . 'in the best interests of the child,' as opposed to the 'expressed interests' of a client in the criminal justice system."[49] To advance these interests, "juvenile courts adopted informal processes, excluded lawyers and juries, and conducted confidential hearings."[50] Many of these vestiges exist today. For example, juveniles, while given legal counsel, are not afforded the same due process rights as adult criminals.[51]

45. *See* Feld, *supra* note 22, at 337–40.
46. In addition, services for Black children were minimal. *See* BELL & RIDOLFI, *supra* note 28, at 3 (reporting that "the exclusion of Black children from rehabilitation services was rationalized as a waste of resources and a debasement of Whites").
47. Miller v. Alabama, No. 10-9646, slip op. at 8 (U.S. June 25, 2012).
48. No. 10-9646.
49. Soung, *supra* note 24, at 435 (quoting Feld, *supra* note 22, at 337); *see also* CAL. WELF. & INST. CODE ANN. § 202(b) (West 2008) ("Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment, and guidance consistent with their best interest and the best interest of the public.").
50. Soung, *supra* note 24, at 435.
51. *See* Emily Buss, *The Missed Opportunity in* Gault, 70 U. CHI. L. REV. 39, 39 (2003) (arguing that *Gault* contemplates a set of "rights ill-tailored to serve either the aims of the juvenile justice system or the interests of the children who hold those rights"); Rhonda Gay Hartman, Gault*'s Legacy: Dignity, Due Process, and Adolescents' Liberty Interests in Living Donation*, 22 NOTRE DAME J.L. ETHICS & PUB. POL'Y 67, 72–73 (2008); *infra* notes 54–57 and accompanying text.

In the late 1960s, the court underwent a transformation affecting the *parens patriae* concept of juvenile court. Two seminal cases effectuated this change. In 1966, the court began to dismantle *parens patriae* in *Kent v. United States*[52] by holding that any transfer of children to adult criminal court required due process.[53] Ten years later, in *In re Gault*,[54] the court expanded the scope of due process rights for juveniles.[55] More specifically, *Gault* established the rights of juveniles to have notice of charges, to confront and cross-examine witnesses, to avoid self-incrimination, and to access counsel.[56] Scholars and juvenile justice advocates continue to debate whether this outcome advances the best interest of the child. Some argue that *Gault* greatly advanced children's interests because it expanded the scope of their rights. Others have argued that this expansion carried with it a significant cost—the treatment of children like adults. That is, to the extent that children have due process rights, we are more likely to think of them as fully formed legal actors. Proponents of this view maintain that *Gault* marks the beginning of the end of treating children as children rather than as adults.[57]

In some ways the debate about *Gault* can be mapped onto the debate about discretion. That is to say, a flexible, discretionary-based system can be both a strength and a weakness. One aspect of this discretion is that in the process of building cases for these girls, the actors at every stage are interpreting facts based on what ethnographic researchers have called the "background expectancies" of the girls.[58] For court actors, the expectation has included notions of the girls' moral character, which in turn guides processing decisions.[59] These decisions can include the most important one: whether to move the case into the system or whether to

52. 383 U.S. 541 (1966).
53. *Id.* at 553–54.
54. 387 U.S. 1 (1967).
55. *Id.* at 33–34, 41, 55–57.
56. *Id.*; *see* Hartman, *supra* note 51, at 83–84.
57. *See* Buss, *supra* note 51, at 42–43; Ventrell, *supra* note 22, at 28.
58. Alexes Harris, *The Social Construction of "Sophisticated Adolescents": How Judges Integrate Juvenile and Criminal Justice Decision-Making Models*, 37 J. CONTEMP. ETHNOGRAPHY 469, 477 (2008) (finding that judicial decisionmaking in cases where juveniles are waived into adult court involves court members evaluating the structural, value-based, and legal factors associated with the offenders' lifestyle). While the study did not specifically address girls, the evaluation process is useful to understand and can be applied at any stage of the process to both girls and boys. Indeed, it may be even more likely that girls' moral character is at play given the nature of status offenses as discussed in note 131, *supra*.
59. *See id.* at 477 ("[C]ourt officers rely on notions of youths' moral character to guide processing decisions. Initially decision makers make a distinction between trouble [sic] and untroubled cases; this categorization helps officials determine whether cases need special handling or could be let go." (internal quotation marks omitted)).

leave it out entirely. Moreover, and perhaps most relevant for girls, court actors rely on girls' moral character[60] in exercising their discretion.[61] For girls of color in the system, discretion has been a weakness and has undoubtedly contributed to their overrepresentation in the system. In California, there are at least four institutional actors whose discretion is a key part of this overrepresentation problem: police officers, probation officers, district attorneys, and judges.[62] I discuss each actor in turn, focusing mostly on judges because studies have shown that girls of color in particular are subject to the judge's extraordinary discretion and have been subject to discriminatory sentencing.[63]

60. An issue that affects girls and girls of color significantly, which in turn affects normative views of their morality and thus the attitudes of relevant decisionmakers, is prostitution of minors or sex trafficking. Although a discussion thereof is beyond the scope of this analysis, it is worth mentioning given its disproportionate impact on girls of color. *See generally* Sherman, *supra* note 8; Mike Dottridge & Ann Jordan, *Children, Adolescence and Human Trafficking: Making Sense of a Complex Problem* (Am. Univ. College of Law Ctr. for Human Rights & Humanitarian Law Issue Paper 5, 2012). Alarmingly, this issue affects young girls in every major city in the United States. Los Angeles County probation office 2010 data identified 174 sexually trafficked youth in the juvenile justice system, of which 92 percent were African American (in a county in which approximately 10 percent of the girls are African American, *see American Factfinder*, U.S. CENSUS BUREAU, http://factfinder2.census.gov (last visited July 31, 2012), and came from the most poverty-stricken areas of the county. *See Domestic Minor Sex Trafficking Fact Sheet and Data*, SAVING INNOCENCE, http://www.savinginnocence.org/about/the-problem-1.html (last visited July 21, 2012).

61. *See* Harris, *supra* note 58, at 477–78.

62. Juvenile courts usually involve six stages, several of which may be combined: intake, detention, petition, waiver, adjudication, and disposition (or sentencing). For most youth, initial contact with the juvenile justice system begins with a police officer—usually in their community. For example, in California, when a police officer stops a youth, the officer can let him or her go, issue a ticket with notice to appear, or take him or her into temporary custody. An officer has the right to take youth into temporary custody, without a warrant, whenever the officer has reasonable cause to believe that the youth committed an offense, violated a juvenile court order, or is in need of medical attention. CAL. WELF. & INST. CODE §§ 625 (West 2008). When a youth is taken into custody, law enforcement may (a) warn and release him or her without citation; (b) bring the youth to a diversion program, shelter, or counseling program; (c) give the youth a "notice to appear"; or (d) bring the youth to a probation officer at a juvenile hall. *Id.* § 626(a)–(d). In making the decision regarding where to send the youth after temporary custody, the police officer must prefer the alternative that least restricts the youth's freedom of movement while being compatible with the minor's best interests and the interests of the community. *Id.* § 626. Youth can be detained by a law enforcement agency for a maximum of six hours. *Id.* § 207.1(d)(1)(B).

63. *See* Tina L. Freiburger & Alison S. Burke, *Status Offenders in the Juvenile Court: The Effects of Gender, Race, and Ethnicity on the Adjudication Decision*, 9 YOUTH VIOLENCE & JUV. JUST. 352, 361 (2011); (finding that in juvenile cases, gender matters with respect to ultimate adjudication, and Black and Hispanic girls appear to experience joint effects of racism and sexism: "Black girls will have a harder time exhibiting traditional feminine behaviors that the court views as important. . . . Hispanic girls in the juvenile justice system struggle with such things as discrimination, language barriers, and poverty." (citations omitted)); *see also* Moore & Padavic, *supra* note 11.

1. Police Officer

A youth's first encounter with the juvenile justice system is most likely with a law enforcement officer. Thus, the police are the initial decisionmakers regarding the youth's entry into the juvenile justice system. The police decide whether the matter should be formally processed or handled informally. Depending on the surrounding circumstances, the police may give the youth a warning to stay out of trouble or bring the youth to a diversion program to handle the matter informally. The police could also give the youth a "notice to appear" citation or take the youth to a probation officer at juvenile hall. Because police work involves complex situations, it is within the discretion of the police to decide how to handle incidents involving the youth. Law enforcement agents usually talk to any victims, the juvenile, and the parents or guardians and review any prior contacts with the juvenile system before making the decision to process the youth formally.[64]

2. Probation

If the police choose to bring the youth to the probation department, a probation officer must investigate the youth's circumstances and the need for further detention.[65] This is called the intake process. If there is insufficient evidence to prove the allegation, the probation officer may dismiss the case.[66] A juvenile may be offered an informal probation if the youth admits to committing a violation.[67] The probation officer may eventually dismiss the case if the youth meets certain conditions and terms of the probation.[68]

3. Prosecutor

If the probation department decides to keep the youth, it will detain the youth for a maximum of forty-eight hours until the District Attorney (DA) chooses to formally file a petition or file a criminal charge against the youth.[69] The DA may

64. *See Case Flow Diagram*, OFF. JUV. JUST. & DELINQ. PREVENTION, http://www.ojjdp.gov/ojstatbb/structure_process/case.html (last visited July 21, 2012).
65. *See* CAL. WELF. & INST. CODE § 628(a).
66. *See Case Flow Diagram*, *supra* note 64.
67. CAL. WELF. & INST. CODE § 258(a).
68. District Attorney Guidelines for Juvenile Cases, Los Angeles County (on file with author); *see Case Flow Diagram*, *supra* note 64.
69. CAL. WELF. & INST. CODE §§ 631(b), 631.1; CAL. R. CT. 5.752(b) (2012).

decline to prosecute if there was insufficient evidence or no need for judicial intervention.[70] If the DA decides to file criminal charges, then he or she must determine whether the youth's case will be adjudicated in adult court or juvenile court. The decision to file a case directly to adult court is usually based on the age of the youth and the severity of the crime.[71] If the case is being handled in the juvenile court, the DA files a delinquency petition.[72] This petition asks the court to declare the youth delinquent, making her or him a ward of the court.[73] When the youth becomes a ward of the court, he or she is under the care of the state. In most situations, a detention hearing is held before a judge to determine whether the youth committed a crime. At this hearing, the judge will review the petition submitted by the DA and further decide whether the youth should remain detained. On occasion, if the child is over 14 and the crime is serious, a fitness hearing is then held to determine whether the child will be tried as an adult. Assuming the youth is detained in juvenile court, a jurisdiction hearing is held. Upon hearing the facts and evidence presented, the judge decides whether the youth was responsible for the violation. If the judge finds the youth to be responsible, there will be a final disposition hearing to determine the appropriate sentence for the youth.[74]

4. Judge

Once a girl enters a courtroom, her fate is in the hands of a single person: the judge.[75] As a result, understanding the role of the juvenile court judge is crucial to understanding the vulnerability of girls of color in the juvenile justice system. The

70. District Attorney Guidelines for Juvenile Cases, *supra* note 68.
71. *See id.*
72. *See Case Flow Diagram*, *supra* note 64.
73. *See id.*
74. *See generally* LEARNING RIGHTS LAW CTR. & UCLA SCH. OF LAW, LOS ANGELES COUNTY JUVENILE JUSTICE MANUAL: A GUIDE TO NAVIGATING THE JUVENILE JUSTICE SYSTEM (forthcoming 2012) (on file with author) (to be published at http://www.learningrights.org) (describing the process in Los Angeles County).
75. At disposition, the judge decides on how and where the youth should be punished and rehabilitated. Disposition is the equivalent of sentencing: The court will decide what services and punishment the youth should receive. The type of disposition handed down depends on whether the youth is considered a ward of the court or a non-ward of the court. The judge considers the dispositional report, a social study of the youth written by the Deputy Probation Officer (DPO). *See* CAL. R. CT. 5.690(a) (2012). The DPO must include a recommendation for disposition of the youth in the dispositional report, although the judge does not have to do what the DPO recommends. *Id.* The judge should also consider any relevant evidence offered by the youth, his or her parent or guardian, or his or her attorney. *Id.* at R. 5.690(b).

youth's punishment may range from probation, to group or camp placement,[76] to juvenile hall. The judge will consider the probation officer's report and sentencing recommendation along with any relevant evidence offered by the youth, the parents or guardians, or the attorney before making the final disposition.[77] The judge, at disposition (or sentencing), has the ultimate power to decide how and where the girl will be punished and rehabilitated.[78] The question becomes, on what basis will she make such a decision? The primary difficulty of answering this question is twofold. First, judges may not be required to articulate the basis for their decision.[79] And second, even when they do, the factors on which they rely are facially race and gender neutral. For example, in California, when deciding the appropriate disposition of a juvenile case, the juvenile court judge will consider the youth's age, the youth's previous history of delinquency, and the circumstances and gravity of the youth's offense, "*in addition to other relevant and material evidence*."[80] None of these factors are expressly marked in terms of race or gender. Moreover, there are no guidelines for how judges should weigh or apply these factors, and judges themselves decide what counts as "other relevant and material

76. In California, those deemed wards of the court under section 602 of the California Welfare and Institutions Code can be sent to ranches or camps. The Los Angeles Probation Department runs Camps. Many of these camps are like military boot camps with a lot of structure and strict rules. The camps may require wards to

> labor on the buildings and grounds thereof, on the making of forest roads for fire prevention or firefighting, on forestation . . . , or to perform any other work or engage in any studies or activities on or off of the grounds of those ranches, camps, or forestry camps prescribed by the probation department [and] the county board of supervisors . . . .

CAL WELF. & INST. CODE § 883 (West 2008).

77. CAL. R. CT. 5.690.

78. In California, the judge has several choices in dispositions with the designation of wardship: (1) Send the youth home on probation, CAL. WELF. & INST. CODE § 729.2, (2) send the youth home on informal probation, *id.* § 727(a), (3) place the youth in foster care, *id.* §§ 706.5(b), 727(a), (4), send the youth to a juvenile home, *id.* § 730(a), or (5) send the youth to the Division of Juvenile Facilities, *id.* § 731.

79. *See* Barry C. Feld, Essay, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 695 (1991) ("Juvenile court personnel used informal, discretionary procedures to diagnose the causes of and prescribe the cures for delinquency. By separating children from adults and providing a rehabilitative alternative to punishment, juvenile courts rejected the jurisprudence of criminal law and its procedural safeguards, such as juries and lawyers."). Most dispositions (or sentences) by juvenile judges are routinized decisions in that they adopt the recommendation of the probation officers. *See* Margaret K. Rosenheim, *The Modern American Juvenile Court*, *in* A CENTURY OF JUVENILE JUSTICE, *supra* note 5, at 341, 349–50 ("Although the typical juvenile court act is sufficiently flexible to accommodate individualized plans of disposition (or 'treatment'), in fact the workload of the court encourages routinization of decisions . . . .").

80. CAL. WELF. & INST. CODE § 725.5 (emphasis added).

evidence."[81] All of this discretion creates space within the judge's decisionmaking process susceptible to being filled by explicit or implicit racial and gender stereotypes.[82] Empirically demonstrating that judges might be relying on stereotypes has proven elusive.[83]

In a study that focused on two juvenile court jurisdictions in Philadelphia and Phoenix, Elizabeth Cauffman and her colleagues examined the extent to which demographic, psychological, contextual, and legal factors predicted dispositional outcomes of probation versus confinement.[84] The researchers found that legal factors had the strongest influence in both jurisdictions; that is, juveniles with prior records were more likely to be confined.[85] Thus, there were no direct findings about race or gender. At the same time, this study did not eliminate the possibility of race, class, and gender bias, particularly because the study was merely a snapshot that focused on serious crimes committed.[86] Moreover, the researchers made clear that their study "cannot specifically address how or whether certain factors (for example, maturity) are being considered by the courts when making disposition decisions, because the rationale behind each decision is unknown, and because, in most instances, it is unlikely that the court has access to much of the individual and environmental data considered in this study."[87] It is entirely plausible that judges differentially apply race- and gender-neutral factors like maturity. That is, given stereotypes about race and gender, a judge may view a girl of color as more mature than a White girl[88] and thus subject her to different normative

81. *Id.*

82. In a 1996 study of Florida's juvenile justice system, researchers found that system actors indicated that "juvenile justice officials make decisions influenced in part by perceptions (or misperceptions) of youths' family backgrounds and circumstances." Donna M. Bishop & Charles E. Frazier, *Race Effects in Juvenile Justice Decision-Making: Findings of a Statewide Analysis*, 86 J. CRIM. L. & CRIMINOLOGY 392, 409 (1996).

83. This may be for a variety of reasons. For example, institutional actors may not have an interest in investigating and exposing implicit or explicit gender and racial stereotypes among judicial decisionmakers. Also, given the discretionary nature of the court system, it is difficult to isolate specific elements within the wide range of discretionary factors often applied.

84. Elizabeth Cauffman et al., *Legal, Individual, and Environmental Predicators of Court Disposition in a Sample of Serious Adolescent Offenders*, 31 LAW & HUM. BEHAV. 519 (2007).

85. *Id.* at 529–30.

86. *Id.* at 523. "Eligible crimes included felony offenses against persons and property, as well as several misdemeanor weapons offenses and sexual assault." *Id.*

87. *Id.* at 531.

88. *See* Bishop & Frazier, *supra* note 82, at 409 (asserting that juvenile justice officials' perceptions and misperceptions of youths' family background influence decisionmaking). System actors reported that when youths' families are perceived as incapable of providing good parental supervision, the youths are more likely to be referred to court and to be placed under state control. *Id.* Further, system actors

expectations.[89] Distortions of this sort are precisely what might provide at least a partial explanation for the disparate outcomes in the juvenile justice system the next Part sets forth. Understanding the cause of any disparate treatment of girls of color is essential for advocates to understand when, where, and how girls receive harsh or lenient treatment and ways to work toward a more appropriate treatment.[90]

II. DISPARATE OUTCOMES AT THE INTERSECTION OF RACE AND GENDER

While numerous studies over the past decade have examined and documented that at every stage of the juvenile justice system[91] youth of color "are more likely [than White youth] to be arrested, charged, detained, sentenced severely, and tried as adults,"[92] very few studies have examined the intersections of race and gender.[93] Those that have further support the notion that at the intersection of race and gender, unacknowledged judgments are made about girls of color that have significant impacts on their engagement with the juvenile justice system. An intersectional analysis allows us to see how the marginalization experienced by girls of color is different from that experienced by girls generally and boys of color.[94]

---

indicated that "at least in delinquency cases, black family systems generally tend to be perceived in a more negative light." *Id.* Moreover, girls of color may have physical characteristics rendering them to be perceived as seemingly more mature than White girls. Studies have shown that, on average, African American girls mature physically at a faster rate than White girls and as a result can be perceived as older. Ronald E. Dahl, *Adolescent Brain Development: A Period of Vulnerabilities and Opportunities*, 1021 ANNALS N.Y. ACAD. SCI. 1, 12. Since the perception of youth is critical to how they are treated by each actor within the juvenile justice system, particularly a judge, this psychical maturity may factor into a court actor's decision to treat Black girls more harshly than White girls. *See id.* at 18.

89. *See* Bishop & Frazier, *supra* note 82, at 409.

90. It is my opinion that nearly all girls of color who engage with the juvenile justice system do not deserve "punishment" in the traditional sense but rather deserve a restorative justice approach to advocacy, which is beyond the scope of this analysis. *See generally* T. Bennett Burkemper, Jr., Nina Balsam & May Yeh, *Restorative Justice in Missouri's Juvenile System*, 63 J. MO. B. 128 (2007) (defining restorative justice as focusing on the harm to the victim, ways to repair that harm with the offender taking responsibility for it, and community support the victim while holding offender accountable for harm and find ways to minimize future harm); *see also* Monya M. Bunch, Comment, *Juvenile Transfer Proceedings: A Place for Restorative Justice Values*, 47 HOW. L.J. 909 (2003–2004).

91. *See supra* notes 62–90 and accompanying text.

92. Soung, *supra* note 24, at 436.

93. *See* Maggard et al., *supra* note 11 (manuscript at 3).

94. While class is also a critical part of this examination, the studies relied on for this analysis did not consider class. As a result, it is not part of this discussion, although it is an important factor to consider when discussing race and gender. *See generally* Crenshaw, *supra* note 10 (discussing the importance

Studies have shown that gender and race play a role in the juvenile justice system.[95] However, these studies have been limited in scope, focusing mostly on the differences in gender variance among boys. These studies are compiled and presented here.

TABLE 1. Studies on Gender(G)/Race(R) Impact on Juvenile Justice System

Title Author(s) Year	G	R	Finding/Conclusion
Status Offenders in the Juvenile Court: The Effects of Gender, Race, and Ethnicity on the Adjudication Decision Tina L. Freiburger & Alison S. Burke 2011	✓	✓	After Native America boys, Black girls and Hispanic girls were most likely to be adjudicated.[96]
Racial and Ethnic Disparities in Girls' Sentencing in the Juvenile Justice System Lori D. Moore & Irene Padavic 2010	✓	✓	Racial and ethnic minority girls, except Hispanic girls, received harsher punishment than White girls.[97]
Urban African American Girls at Risk: An Exploratory Study of Service Needs and Provision Sarah Jane Brubaker & Kristan C. Fox 2010	✓	✓	Girls' needs are different from boys, thus girls require different types of programs and services. However, African American girls in particular face obstacles to meet their needs.[98]

of exploring intergroup differences in the context of violence against women because women's experiences are shaped by other dimensions of their identities, such as race and class); Maggard et al., *supra* note 11.

95. *See, e.g.*, Leiber et al., *supra* note 11, at 351 (finding that African American girls received lenient outcomes especially at the intake and petition stage but that African American males were likelier to receive more severe outcomes at detention and intake). *But see* Maggard et al., *supra* note 11 (manuscript at 13–14) (finding that "[r]ace was not a significant predictor of the detention decision" but that females were treated with more leniency compared to males).

96. Tina L. Freiburger & Alison S. Burke, *Status Offenders in the Juvenile Court: The Effects of Gender, Race, and Ethnicity on the Adjudication Decision*, 9 YOUTH VIOLENCE & JUV. JUST. 352, 360–62 (2011).

97. Moore & Padavic, *supra* note 11, at 279–80.

98. Sarah Jane Brubaker & Kristan C. Fox, *Urban African American Girls at Risk: An Exploratory Study of Service Needs and Provision*, 8 YOUTH VIOLENCE & JUV. JUST. 250, 262 (2010).

Title Author(s) Year	G	R	Finding/Conclusion
Gender and Juvenile Justice Decision Making: What Role Does Race Play? Lori Guevara, Denise Herz & Cassia Spohn 2006	✓	✓	Juvenile court judges were more likely to take race into account when making preadjudication detention decisions for males but were more likely to consider race in determining the appropriate disposition for females.[99]
Gender, Race, and Urban Policing: The Experience of African American Youths Rod K. Brunson & Jody Miller 2006	✓	✓	Though boys were the disproportionate recipients of aggressive policing tactics, girls were typically stopped more than young men for curfew or truancy violations.[100]
Race and the Fragility of the Legal Distinction between Juveniles and Adults Aneeta Rattan, Cynthia S. Levine, Carol S. Dweck & Jennifer L. Eberhardt 2012		✓	When participants believed that the juvenile was Black, they were more likely to support life without parole for nonhomicidal crime and to perceive juveniles as equally blameworthy as adults.[101]
Effects of Individual and Contextual Characteristics on Preadjudication Detention of Juvenile Delinquents Gaylene S. Armstrong & Nancy Rodriguez 2005		✓	Minority juvenile delinquents had a higher probability of preadjudication detentions.[102]

99. Lori Guevara et al., *Gender and Juvenile Justice Decision Making: What Role Does Race Play?*, 1 FEMINIST CRIMINOLOGY 258, 270–76 (2006).
100. Rod K. Brunson & Jody Miller, *Gender, Race, and Urban Policing: The Experience of African American Youths*, 20 GENDER & SOC'Y 531, 548–49 (2006).
101. Aneeta Rattan et al., *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, PLoS ONE (May 23, 2012), http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0036680.
102. Gaylene S. Armstrong & Nancy Rodriguez, *Effects of Individual and Contextual Characteristics on Preadjudication Detention of Juvenile Delinquents*, 22 JUST. Q. 521, 532–34 (2005).

Title Author(s) Year	G	R	Finding/Conclusion
The Individual and Joint Effects of Race, Gender, and Family Status on Juvenile Justice Decision-Making Michael J. Leiber & Kristen Y. Mack 2003	✓	✓	African Americans were more likely to be referred to court processing but also were more likely to be released. The negative effects of being African American were not gender specific.[103]
Detention Screening: Prospects for Population Management and the Examination of Disproportionality by Race, Age, and Gender Thomas J. Gamble, Sherrie Sonnenberg, John D. Haltigan & Amy Cuzzola-Kern 2002	✓	✓	Girls and those younger than 14 were detained at a higher rate.[104]
Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms George S. Bridges & Sara Steen 1998		✓	Probation officers attributed negative personality traits or attitude for Blacks' delinquency. These attributions contributed to the assessment that Blacks are more dangerous and at a higher risk for reoffending, which was partly responsible for harsher sentence recommendations.[105]
Race Effects in Juvenile Justice Decision-Making: Findings of a Statewide Analysis Donna Bishop & Charles Frazier 1996		✓	Nonwhite youths referred for delinquent acts were more likely to be referred for formal processing than White youths.[106]

103. Leiber & Mack, *supra* note 11, at 53–54, 57.
104. Thomas J. Gamble et al., *Detention Screening: Prospects for Population Management and the Examination of Disproportionality by Race, Age, and Gender*, 13 CRIM. JUST. POL'Y REV. 380, 389–90, 392–93 (2002).
105. George S. Bridges & Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 AM. SOC. REV. 554, 567 (1998).
106. Bishop & Frazier, *supra* note 82, at 405–06.

The three studies most relevant for my analysis are Brubaker and Fox's study of providers within Richmond, Virginia's juvenile justice and social services agencies and nonprofit agencies that serve Black girls in an urban environment,[107] Moore and Padavic's examination of disparities in sentencing,[108] and Guevara, Herz, and Spohn's examination of gender and race within disposition.[109] Brubaker and Fox offer a glimpse into the myriad intersectional vulnerabilities facing Black girls and, by extension, girls of color[110] within a system that is not created to address their specific needs. The researchers interviewed twenty system actors and found that, similar to findings in other literature regarding risks facing Black girls, the main problems facing the girls were "academic problems/truancy, mental health issues, sexual victimization/sexual promiscuity, dangerous neighborhoods, increased aggression/fighting, . . . interactions with boyfriends who engaged in criminal activity," and family instability.[111] Most of the girls were in custody because they were chronic runaways, and

> providers described the families of the[se] girls . . . as single/female-headed households with low incomes and few resources and high unemployment, living in dangerous neighborhoods without reliable transportation, and subjected to an inferior urban public school system. This combination of challenges often overwhelmed caregivers and made it difficult for [the girls] to navigate, understand, access, or appreciate the systems providing services.[112]

The study recommended more collaboration between agencies.[113] This study is novel in that it captures the intersectional vulnerabilities facing these girls and provides ways in which system actors can fill the unmet needs of these girls with a thoughtful approach.

107. Brubaker & Fox, *supra* note 98. The authors defined "providers" as men and women from social service agencies that serviced the girls in the area examined. *Id.* at 254.
108. Moore & Padavic, *supra* note 11.
109. Guevara et al., *supra* note 99.
110. Given the demographics of the area studied—Richmond, Virginia—the subject of this study is African American girls. The researchers state clearly that the findings represent the respondents' perception of the "experiences of poor, urban, African American girls, and their caregivers." Brubaker & Fox, *supra* note 98, at 255.
111. *Id.*
112. *Id.*
113. *Id.* at 262.

Second, Moore and Padavic's study of girls in Florida whose sentences accounted for prior offenses found that race matters with respect to sentencing.[114] The results of the study were consistent with prior findings that girls of color

> received harsher punishment than White girls, with one important exception: the case of Hispanic girls in some circumstances. As expected, compared to White girls, Black girls received more severe dispositions even after taking into account the seriousness of the offense, prior record, and age. This finding provides evidence of Black–White racial bias in the juvenile justice system.[115]

Moreover, their analysis revealed striking commentary about the system's distorted perception of girls of color:

> Our analyses revealed that the effects of race/ethnicity on disposition severity were conditioned by girls' current and prior offending behavior. In four of the six tests, White girls compared to Black girls were granted leniency in disposition decisions, but only up to a threshold, at which point their probabilities of receiving a harsher disposition either converged or surpassed their racial/ethnic minority counterparts. These findings suggest that the juvenile justice system is tolerant of White girls with minor-to-average offense severity levels and low-to-average prior records but relatively intolerant of their Black counterparts' [sic]. As White girls surpass what the juvenile justice system considers acceptable offending behavior for their racial group, it reacts in an increasingly punitive manner. The juvenile justice system appears to be unmoved by above-average levels of Black girls' offending behavior, perhaps because judges *expect high levels of deviance from this group*.[116]

Finally, a study that sought to examine precisely the issues presented in this analysis found results perfectly representative of the distortion facing girls of color. Looking at a sample of 1500 files, Guevara, Herz, and Spohn sought to examine predetention and postdetention outcomes.[117] Interestingly, the researchers found that "although race had a significant negative effect on both [probation and placement] for females, it had no effect on charge dismissal and significant positive effect on probation for males."[118] Interestingly here, "White females . . . were less like than non-White females to have all charges dismissed or to be placed on

114. Moore & Padavic, *supra* note 11, at 263.
115. *Id.* at 279.
116. *Id.* at 280 (emphasis added).
117. Guevara et al., *supra* note 99.
118. *Id.* at 273.

probation (rather than given an out-of-home placement)."[119] However, researchers suggested that the cause of this difference may be due to court officials' expectations based on the race of the girl:

> Court officials, in other words, may be more likely to view delinquency on the part of White girls as a violation of sex-role expectations and as a result, may punish White girls more harshly than non-White girls. *Court officials also may believe that White females have higher odds of rehabilitation and, thus, a greater likelihood of benefiting from an out-of-home placement than non-White females.*[120]

Researchers here do not hypothesize why these perceptions about the girls exist, but the existence and documentation of these perceptions illustrate the complexities of race.

The results of these studies collectively demonstrate that there are distinct outcomes when race and gender converge. Under the neutral rules of the juvenile justice system, decisionmakers exercise discretion in ways that heighten the social vulnerability of girls of color. Thus, the increasing number of girls of color entering the system is tied to the distorted way in which they are perceived.

III. GIRLS OF COLOR: INTERSECTIONAL PATHWAYS TO DELINQUENCY AND JUDICIAL DISCRETION

Scholars have documented the many pathways by which girls enter the delinquency system, but often without a critical examination of how race and class affect their trajectory.[121] It is important to understand these pathways in order to focus on whether girls of color, in particular, enter differently. Equally important is an understanding of the role of the juvenile court system in this path. As discussed earlier, each court actor relies on discretion at various points in the system.[122] These decisions in turn can affect whether a girl enters the system at all. Significantly, girls of color in particular are economically and socially marginalized compared

119. *Id.*
120. *Id.* at 276 (emphasis added).
121. *See* Meda Chesney-Lind, *Patriarchy, Crime, and Justice: Feminist Criminology in an Era of Backlash*, 1 FEMINIST CRIMINOLOGY 6, 10 (2006); *see also* Moore & Padavic, *supra* note 11, at 265.
122. *See supra* Part I; *see also* CHESNEY-LIND & SHELDEN, *supra* note 37, at 189–90 (discussing that police have several options when they make contact with a juvenile, including "warn and release").

to other groups.[123] As a result, this often "locate[s] them in position[s] of disadvantage in terms of offending and official reactions to their offending."[124]

To begin, status offenses are a primary reason girls enter the juvenile justice system.[125] Status offenses are acts that are not deemed criminal when committed by adults but carry juvenile court sanctions for youth because of their legal status as minors.[126] The mere existence of status offenses reveals the irony of the juvenile court: The juvenile court was intended to rehabilitate rather than to punish children, yet the very reason that girls, in particular, enter the system is because of conduct that, if committed by an adult, would not be considered criminal. Thus, the juvenile court is trying to rehabilitate or reduce behavior that would not be punished but for the age of the defendant. The point of rehabilitation is to reduce the likelihood that the youth will commit the same offense later in life; thus, it is aimless to rehabilitate status offenses when the conduct is not legally offensive if committed by adults. The most common of these status offenses include truancy, running away, underage drinking and curfew violations—all behaviors that are considered evidence that the child is ungovernable or beyond the control of his or her parents.[127] In reality, the behaviors associated with status offenses are seldom isolated incidents of defiance; they are more often manifestations of unmet and unaddressed educational, emotional, and economic needs.[128]

Research documents that police disproportionately detain girls for status offenses.[129] The arbitrary and discriminatory application of status offense laws

123. *See* Cheryl Hanna, *Ganging Up on Girls: Young Women and Their Emerging Violence*, 41 ARIZ. L. REV. 93, 101 (1999).

124. Moore & Padavic, *supra* note 11, at 261.

125. Between 1995 and 2008, the relative increase in the female-petitioned status offense caseload outpaced that of the male caseload for curfew (42 percent versus 22 percent) and liquor law violation cases (60 percent versus 20 percent). PUZZANCHERA ET AL., JUVENILE COURT STATISTICS 2008, *supra* note 15, at 77. Moreover, females accounted for 59 percent of petitioned runaway cases in 2008, the only status offense category in which females represented a larger proportion of the caseload than males. *Id.* And after age eleven, rates for running away were higher for females than for males in 2008. *See Easy Access to the Census of Juveniles in Residential Placement: 1997–2010*, OFF. JUV. JUST. & DELINQ. PREVENTION, http://www.ojjdp.gov/ojstatbb/ezacjrp (last updated Dec. 16, 2011); *see also* CHESNEY-LIND & SHELDEN, *supra* note 37, at 33–40.

126. *See* 28 C.F.R. § 31.304(h) (2011) (defining a status offender as "[a] juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult").

127. *See* PUZZANCHERA ET AL., JUVENILE COURT STATISTICS 2008, *supra* note 15, at 71–73.

128. *See* Alecia Humphrey, *The Criminalization of Survival Attempts: Locking up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN'S L.J. 165, 172 (2004).

129. *See supra* note 114.

occurs often and the inherent double standard has been criticized.[130] For example, one court in Virginia observed the following in 1977:

> [S]tatus offender legislation discriminates against females. It is apparent that status offense petitions can easily be used to bring under control young women suspected by their parents or by other authorities of promiscuous behavior. Our society tends to condemn female promiscuity more severely than male promiscuity, and this tendency may explain why females often are unfairly classified and treated as status offenders.[131]

The harsher punishment meted out to girls ignores that girls are often a product of the "violence that shapes their lives."[132] It has been estimated that among detained females in the juvenile justice system, 70 percent had been exposed to some form of trauma, 65.3 percent had experienced symptoms of posttraumatic stress disorder (PTSD) sometime in their lives, and 48.9 percent of these incarcerated females were experiencing the symptoms of PTSD at the time of the study.[133]

Second, recent research has found that girls tend to be punished for failing to meet gender expectations—that is, "anger and sex-role inappropriate behavior[, including sexually forward behavior] in girls evoke sanctions."[134] Other research has documented that girls who had unprotected sex were perceived to lack moral character as they were violating gender norms, while similar behavior by boys was largely ignored unless it rose to a criminal level (behavior that was criminally punishable). More specifically, behavior that is perceived to be male like can also subject girls to harsh sanctions: A study of girls in a detention facility found that when girls did not act "ladylike" (that is, when they acted more aggressively than other girls), they were penalized more harshly with legal sanctions than

130. *See* Taylor-Thompson, *supra* note 16, at 1144–47. Taylor-Thompson explains that although status offenses were not supposed to lead to delinquency, the U.S. Congress amended the Juvenile Justice and Delinquency Prevention Act in 1980 to "permit state juvenile courts to incarcerate status offenders who violated a valid court order." *Id.* at 1145 (citing 42 U.S.C. § 5633(a)(12)(A) (1994)).

131. State *ex rel.* Harris v. Calendine, 233 S.E.2d 318, 326 (W. Va. 1977).

132. Crenshaw, *supra* note 10, at 1241.

133. Elizabeth Cauffman et al., *Posttraumatic Stress Disorder Among Female Juvenile Offenders*, 37 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1209, 1212–14 (1998); *see also* Leslie Acoca, *Outside/Inside: The Violation of American Girls at Home, on the Streets, and in the Juvenile Justice System*, 44 CRIME & DELINQ. 561, 562–63 (1998) (reporting that a majority of girl offenders have experienced emotional, physical, or sexual abuse in and outside the juvenile system and recommending programs that appropriately address the needs of these girls).

134. Moore & Padavic, *supra* note 11, at 264–65.

verbal reprimands.[135] In essence, when girls did not follow feminine norms (behaviors or attitudes), they were seen "more like boys, and should be treated like boys would be."[136] These attitudes, which have fueled the disparate treatment of girls, have been identified but not sufficiently addressed.

The lack of a gender analysis when examining pathways to delinquency is compounded by a lack of attention to the intersection of gender and race.[137] Within the broader pattern of gender disparity, racial difference also has significant impact. Race seems to matter with respect to girls and status offenses—a 1996 Florida study of the juvenile justice system found that White and minority girls[138] "were less likely than their . . . male counterparts to receive detention . . . , but minority girls were more likely to receive detention than Whites of either sex."[139] A 2010 Florida study found that even more generally, Black girls received harsher punishment than White girls despite controlling for the seriousness of the offense, prior record, and age.[140] One possible source of this difference lies in the prevailing racialized and gendered perceptions of girls of color.[141] That is, when juvenile court actors perceive that girls of color have inherent, negative attributes, that perception affects the decisionmaker's judgment and may even outweigh their concern about prior criminality, seriousness of offense, and possibility for rehabilitation. Stereotypes[142] often operate at the subliminal level, are reinforced by prevailing cultural representations, and can have dramatic impact on offenders,

135. LAURIE SCHAFFNER, GIRLS IN TROUBLE WITH THE LAW 129 (2006), *cited in* Moore & Padavic, *supra* note 11, at 265.

136. Moore & Padavic, *supra* note 11, at 265 (quoting Emily Gaarder et al., *Criers, Liars, and Manipulators: Probation Officers' Views of Girls*, 21 JUST. Q. 547 (2004)) (internal quotation marks omitted).

137. Many other gender-based factors likely also are at play—for example, the actual or perceived maturity of girls compared to same-aged boys or the motherhood status of some girls—however the research in this field has to date been insufficient to provide a more complete picture. *See generally* REBECCA A. MAYNARD & EILEEN M. GARRY, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, FACT SHEET #50: ADOLESCENT MOTHERHOOD: IMPLICATIONS FOR THE JUVENILE JUSTICE SYSTEM (1997), *available at* http://www.ncjrs.gov/pdffiles/fs9750.pdf.

138. Researchers in this study indicated that "minorities" included Blacks and any Hispanics who were coded as Black because of their dark skin color. *See* Bishop & Frazier, *supra* note 82, at 398 & nn.13–14.

139. Moore & Padavic, *supra* note 11, at 266 (citing Bishop & Frazier, *supra* note 82).

140. *See id.* at 279–81.

141. *See id.* at 266–67.

142. For a thoughtful discussion of stereotypes, see generally Jerry Kang & Mahzarin Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action,"* 94 CALIF. L. REV. 1063, 1083–85 (2006). *See also id.* at 1084 ("Unconscious stereotypes, rooted in social categorization, are ubiquitous and chronically accessible. They are automatically prompted by the mere presence of a target mapped into a particular social category. Thus, when we see a Black (or a White) person, the attitude and stereotypes associated with that racial category automatically activate. Further, these attitudes and stereotypes influence our judgments, as well as inhibit countertypical associations." (footnotes omitted)).

particularly juveniles.[143] There has been little research on how stereotypes of girls of color affect juvenile court actors, but we do know that females of color are affected differently than White women.[144] The stereotypes that are most harmful to girls within the juvenile justice system have been documented.

White girls:	passive, in need of protection, nonthreatening, and amenable to rehabilitation;
Black girls:	independent, aggressive, loud, pushy, rude, sexual, unfeminine, violent, and crime prone;
Hispanic girls:	dependent, submissive, family oriented, domestic, and highly sexual.[145]

These stereotypes are particularly dangerous characterizations within a system that is built on subjective discretion. This discretion allows for stereotypes to play a role in decisions on how girls' cases should proceed in the delinquency system or, more importantly, whether they should *enter* the system at all.

For example, suppose we take Sara's case, the girl whose story I began with. Sara, as a young girl of color, has run away from home and, upon arrest, the police

143. *See* Robert J. Smith & Justin D. Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, 35 SEATTLE U. L. REV. 795, 797 (2012) ("[I]mplicit racial attitudes and stereotypes skew prosecutorial decisions in a range of racially biased ways."). This implicit bias has also been documented for juveniles: Researchers found that when police and probation were primed with words that related to the category of Black, they judged an adolescent's behavior as more dispositional, of greater culpability, and more likely to lead to recidivism. *See* Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 LAW & HUM. BEHAV. 483, 483 (2004). Researchers have also found that officials "consistently portray black youths differently than white youths in their written court reports, more frequently attributing blacks' delinquency to negative attitudinal and personality traits." Bridges & Steen, *supra* note 105, at 567.

144. *See, e.g.*, Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938, 948 (1997) ("Despite similar rates of substance abuse, however, Black women were ten times more likely than Whites to be reported to government authorities [in the 1990s]. Both public health facilities and private doctors were more inclined to turn in Black women than White women for using drugs while pregnant. Just as important as this structural bias against Black women is the ideological bias against them. Prosecutors and judges are predisposed to punish Black crack addicts because of a popular image promoted by the media during the late 1980s and early 1990s." (footnotes omitted)).

145. Moore & Padavic, *supra* note 11, at 266; *see also* Jody Miller, *An Examination of Disposition Decision-Making for Delinquent Girls*, *in* RACE, GENDER, AND CLASS IN CRIMINOLOGY: THE INTERSECTIONS 219, 239 (Martin D. Schwartz & Dragan Milovanovic eds., 1999) (reporting that a study of 244 Los Angeles County probation reports revealed that there was a more "paternalistic" discursive framework when describing the behavior of White and Hispanic girls and that, in contrast, more punitive constructs described African American girls).

discover that she is carrying a box cutter—possibly to protect herself from physical and sexual assaults while on the streets.[146] The prosecuting authority can choose to treat this young girl as a runaway, or in exercising discretion, the prosecutor might choose to charge her with possession of a prohibited weapon and enter her into the delinquency system. Here, the personal judgments of the prosecutor reflect any stereotypes she may hold of the girl in question. To the extent that the youth is a girl, her choice to arm herself could be seen as violative of appropriate behavior; to the extent that she is Black, she could be perceived as potentially violent and aggressive and thus an appropriate candidate for a delinquency petition. A growing literature in social psychology has documented how stereotypes can influence decisionmaking. In addition, courts have acknowledged that stereotypes about females factor into institutional decisionmaking and workplace personnel decisions, which are subjective determinations made by one individual that is analogous to a juvenile court actor—be it a police officer, probation officer, or judge.[147] Without attention to how these stereotypes can distort the assessment of girls of color, discretion can work to discriminate. The juvenile justice system's formal recognition that a dual distortion (comprising of gender distortion and race distortion) exists when girls like Sara are arrested would allow the system to better address her needs by focusing on her symptoms, which are undoubtedly impacted by her age, gender, and race.

146. This anecdote is adapted from a hypothetical in Taylor-Thompson, *supra* note 16, at 1145–46.

147. *See generally* Kang & Lane, *supra* note 13, at 473 ("Implicit biases—by which we mean implicit attitudes and stereotypes—are both pervasive (most individuals show evidence of some biases), and large in magnitude, statistically speaking. In other words, we are not, on average or generally, cognitively colorblind."); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012). *See, e.g.*, Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571, 601 (9th Cir. 2010) (affirming expert opinion that "social science research demonstrates that gender stereotypes are especially likely to influence personnel decisions when they are based on subjective factors, because substantial decisionmaker discretion tends to allow people to seek out and retain stereotyping-confirming [sic] information and ignore or minimize information that defies stereotypes" (internal quotation marks omitted)), *rev'd sub nom.* Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011). There are, however, limitations to whether courts will actually acknowledge and redress any discrimination that is a result of intersectional identities. *See* Suzanne B. Goldberg, *Discrimination by Comparison*, 120 YALE L.J. 728, 766 (2011) ("[E]ven if anecdotal and social science evidence reveals the real experience of intersectional discrimination, it will usually be impossible, as a practical matter, for an individual to find his or her negative mirror image to show that discrimination has occurred. As a result, . . . courts have basically given up on the complex subject." (footnotes omitted) (quoting Minna J. Kotkin, *Diversity and Discrimination: A Look at Complex Bias*, 50 WM. & MARY L. REV. 1439, 1462 (2009)) (internal quotation marks omitted)).

IV. SOLUTIONS: ACKNOWLEDGING THE DISTORTION FOR EFFECTIVE REMEDIES

To address the rise of delinquency among girls most effectively, it is imperative to address the issue without any distortion. Beyond the scope of this analysis are the myriad theories as to why there has been an increase in girls' delinquency. Some have argued that it is merely the relabeling of offenses and lack of alternatives to incarceration.[148] Meda Chesney-Lind, a leading expert, has found that the increases could be attributed to the rise in girls' involvement in gang activity; increasing attention to the problem of domestic violence, which has resulted in more arrests for both men and women; greater attention to normal adolescent fighting or girls fighting with parents; or a reflection of structural problems in modern society, including an increase in poverty, violence at home, poor education, and the "increasing acceptance of carrying and/or using weapons in our society."[149]

For years, experts and policymakers have made a case for gender-tailored programming to remedy the specific needs of girls.[150] However, the recommendations fail to incorporate race into their analyses adequately, which I argue may limit the ability of effective implementation. This Part highlights a few of these recommendations and offers general suggestions for effective solutions.

The first, and perhaps, the most important intervention the juvenile justice system can make to improve the lives of girls and girls of color is to acknowledge and directly address these distortions so that decisionmakers can, at every stage of exercising their considerable discretion, apply that discretion to the benefit of girls and girls of color. This can be done through educating judges,[151] police, probation

148. *See* CHESNEY-LIND & SHELDEN, *supra* note 37, at 53; Meda Chesney-Lind, *Challenging Girls' Invisibility in Juvenile Court*, 564 ANNALS AM. ACAD. POL. & SOC. SCI. 185 (1999); Shabnam Javdani et al., *Gendered Social Forces: A Review of the Impact of Institutionalized Factors on Women and Girls' Criminal Justice Trajectories*, 17 PSYCHOL. PUB. POL'Y & L. 161, 189–90 (2011); Interview With Donna Groman, Judge, Superior Court of L.A. Cnty. (Apr. 2012) (informally discussing how the lack of appropriate placements affects decisionmaking).

149. CHESNEY-LIND & SHELDEN, *supra* note 37, at 15.

150. *See, e.g.*, *id.* at 282–89 (discussing narrowly tailored programming); Barbara Bloom et al., *Improving Juvenile Justice for Females: A Statewide Assessment in California*, 48 CRIME & DELINQ. 526, 526 (2002) ("Effective programming for girls and women should be shaped by and tailored to their real-world situations and problems."); Sherman, *supra* note 8, at 1592–1595; Taylor-Thompson, *supra* note 16, at 1162–64.

151. There are apparently no reports that have documented the effective study of educating system actors, which further speaks to its need.

officers, and all the major decisionmakers who interact with the girls from start to finish.[152]

The comprehensive studies recently put forth by the Girls Study Group (GSG), a group of juvenile justice experts, fail to sufficiently incorporate intersectional issues that affect girls of color in important ways. The GSG was funded by the Department of Justice Office of Juvenile Justice Delinquency Prevention (OJJDP)[153] and involved experts reviewing 2300 social science articles and book chapters that examined factors affecting girls' delinquency for girls aged eleven to eighteen.[154] "The goal of the GSG project was to develop a research foundation to enable communities to make sound decisions about how best to prevent and reduce delinquency and violence by girls."[155] Most critically, the GSG was responsible for "developing and providing scientifically sound and useful guidance on program development and implementation to policymakers, practitioners, and the researchers."[156] However, none of these six studies provides any serious consideration of a racial lens.[157] That is, nowhere do the studies themselves or the recommendations mention particularities with respect to racial groups. This is

152. For a thoughtful discussion of effectively tailored remedies for delinquent youth of color, see Brent Pattison, *Minority Youth in Juvenile Correctional Facilities: Cultural Differences and the Right to Treatment*, 16 LAW & INEQ. 573 (1998) (arguing for culturally appropriate treatment for minority youth given historical context and providing model legislation for implantation). Pattison defines "culturally appropriate" as "treatment adapted to the unique needs of minority adolescents." *Id.* at 577. While Pattison does not provide gender-specific remedies, his analysis makes a compelling argument for the right to culturally tailored programming. *Id.*

153. The OJJDP was founded in 1974 as a result of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (codified as amended at 42 U.S.C. §§ 5601–5784 (2006)), and is guided by subsequent amendments. Its mission is to provide "national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. OJJDP supports states and communities in their efforts to develop and implement effective and coordinated prevention and intervention programs and to improve the juvenile justice system. *About OJJDP*, OFF. JUV. JUST. & DELINQ. PREVENTION, http://www.ojjdp.gov/about/about.html (last visited July 22, 2012).

154. *See* GIRLS STUDY GROUP, http://girlsstudygroup.rti.org (last visited July 22, 2012).

155. *About the Girls Study Group*, GIRLS STUDY GROUP, http://girlsstudygroup.rti.org/index.cfm?fuseaction=dsp_study (last visited July 31, 2012).

156. *Id.*

157. *See* MARGARET A. ZAHN ET AL., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, NCJ 223434, THE GIRLS STUDY GROUP—CHARTING THE WAY TO DELINQUENCY PREVENTION FOR GIRLS 2 (2008), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/223434.pdf (reviewing results from the six studies that compose the Girls Study Group, which comprises the following sections: introduction, violence by teenage girls—trends and context, causes and correlates of girls' delinquency, about the Girls Study Group, resilient girl—factors that protect against delinquency, suitability of assessment instruments for delinquent girls, girls' delinquency programs—an evidence-based review, development sequences of girls' delinquent behavior, and discussion).

particularly problematic with respect to both the factors that lead to delinquency and the solutions for preventing delinquency, both of which are critical for advocates seeking to prevent entry into the juvenile justice system and to provide adequate help to those girls who are caught up in it. For example, a GSG report provided the following recommendations, among many, that did not sufficiently address the racial dimensions but could benefit from adding an intersectional lens:

> - Responses to mental health problems such as depression, anxiety, and posttraumatic stress disorder should be integral components of programming for girls. Depression and anxiety are more frequently diagnosed in girls than in boys and may accompany delinquency. *Aggression by girls* may indicate earlier victimization and signify that these girls need intervention to deal with these experiences. An increase in family-centered programming may be useful.
>
> . . . .
>
> - *Positive school involvement* protects against delinquency in both girls and boys. School attachment is more significant for girls than for boys, while rule fairness and enforcement are more significant for boys.
>
> . . . .
>
> - *Interdisciplinary models* that place behaviors in social, psychological, and biological context for girls are critical in understanding and responding to early puberty as a risk factor. Helping girls who enter puberty early to understand and deal with peer and parental response is one way of offsetting some of the biological/emotional maturity disconnect.[158]

Each bullet point above would benefit from an acknowledgement of the particular needs facing girls of color. For example, in a study finding that Black girls perceive support or assistance from police and schools as unhelpful and counterproductive,[159] researchers found that instead of relying on system actors who should be helpful, the girls had rationalized that physical aggression was the most appropriate and efficient strategy for dealing with problems.[160] This investigation revealed how "[r]ace and gender (and class, although not specifically examined . . .) serve to structure girls' day-to-day experiences."[161] More specific to schools, Black

158. ZAHN ET AL., *supra* note 7, at 12 (emphasis added).

159. In a qualitative study involving eleven Black girls, researchers relied on an ethnic-modeling approach in which culturally relevant factors (for example, race) were considered throughout the process and found that "many of them felt let down by the very institutions that were designed to protect them, such as schools and the police." Aelace O. Pugh-Lilly et al., *In Protection of Ourselves: Black Girls' Perceptions of Self-Reported Delinquent Behavior*, 25 PSYCHOL. WOMEN Q. 145, 152 (2001).

160. *Id.* at 150.

161. *Id.* at 153.

girls are often perceived as "loud"[162] and are more likely (a) to be disciplined for talking "out" of what is considered nonconforming behavior,[163] (b) to have a parent be contacted for their in-school behavior,[164] and (c) to report having been suspended from school more than their White, Latina and Asian counterparts.[165] Given this, the GSG recommendations are limited in their ability to address effectively the concerns facing Black girls in particular. Each bullet point above should be modified: *Physical aggression* of girls should now take into account girls' lack of faith in the police; *positive school involvement* should examine girls' trust in schools and school actors' perceptions of them; and any *interdisciplinary models* should explicitly discuss the racial dimension to ensure their effectiveness in remedying the problems.[166]

A recent California report addresses the unique concerns facing girls within the juvenile justice system and is noteworthy. However, the absence of race is still prevalent. The Berkeley Center for Criminal Justice August 2010 Report on Gender Responsiveness and Equity in California's Juvenile Justice System lists several thoughtful recommendations:

(1) Provide staff training on how to respond to girls' needs.
(2) Use assessment tool validated for female populations.
(3) Develop and utilize gender-responsive community-based programming.
(4) Improve and increase the availability of programming for girls.
(5) Equip detention centers and residential facilities to deal with the unique physical and mental health needs of girls.

162. *See generally* Signithia Fordham, *"Those Loud Black Girls": (Black) Women, Silence, and Gender "Passing" in the Academy*, 24 ANTHROPOLOGY & EDUC. Q. 3 (1993).

163. *See id.* at 17 (discussing the anecdote of how a particular Black girl breached the cultural assumptions valued in the school context by talking back to a teacher which often lead her teachers to erase their perception of her as a bright, intelligent person).

164. *See* Pamela J. Smith, *Looking Beyond Traditional Educational Paradigms: When Old Victims Become New Victimizers*, 23 HAMLINE L. REV. 101, 158 (1999) (citing data that 22.6 percent of Black females have had their parents notified more than once for their behavior compared to only 10.7 percent of White females).

165. *See id.* at 159 (presenting statistics from the U.S. Department of Education that placed Black females second only to Black males in order of highest percentage of eighth graders who had been suspended); *id.* at 160 (reporting that Black girls represent 8.31 percent of the overall student population yet almost 11 percent of all students suspended).

166. Moreover, with respect to understanding puberty, an intersectional analysis is again helpful here because, as discussed earlier, Black girls have been found to achieve puberty at a younger age than White girls. *See supra* note 88.

(6) Change policies and programs in detention facilities that re-traumatize girls.[167]

Completely absent from these suggestions is any mention of race and the unique circumstances facing girls of color. Under the first recommendation—staff training—there is a suggestion that "[r]esearch-based training conducted by experts in . . . cultural differences would promote awareness of girls' needs."[168] While the mentioning of cultural differences may be a positive step in that it signals an acknowledgement of race, it still does not effectively address the intersectional vulnerabilities facing girls of color. Adding an intersectional framework to the recommendations above will allow for policymakers to address the myriad issues raised in this Article.

There has been a growing concern in the country over school discipline policies and their racial implications.[169] A 2011 report about school discipline by the Civil Rights Project at UCLA includes a thoughtful discussion of the racial implications of school discipline.[170] However, the report is completely devoid of a nuanced discussion of how this issue uniquely affects girls. Here is a slightly varied scenario: a discussion of race absent a gender frame. Given what we do know, the intersectional vulnerabilities of girls of color are critical to addressing the unique concerns they face. It is imperative to disaggregate the data and frame the analysis within a racial and gendered lens for effective remedies.

Experts have called for thoughtful remedies to help all girls within the juvenile justice system, all of which can benefit from an intersectional framework that includes a concerted effort to include girls and girls of color. These recommendations include: (a) involving system girls as activists in the advocacy work;[171] (b) working closely with public health officials to frame juvenile delinquency issues

167. BERKELEY CTR. FOR CRIMINAL JUSTICE, *supra* note 1, at 9–11.

168. *Id.* at 9.

169. *See generally* DIGNITY IN SCHS., http://www.dignityinschools.org (last visited July 22, 2012) (raising awareness about and challenging notions of pushing children out from schools and advocating for the human right of every child to be treated with dignity and to have a quality education).

170. DANIEL J. LOSEN, CIVIL RIGHTS PROJECT AT UCLA, DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE (2011).

171. *See, e.g.*, *Mission and History*, YOUTH JUST. COALITION, http://www.youth4justice.org/about-the-yjc/history (last visited July 31, 2012) ("The Youth Justice Coalition (YJC) is working to build a youth-led movement to challenge race, gender, and class inequality in the Los Angeles County juvenile *in*justice system.").

as public health concerns and not criminal ones;[172] (c) acknowledging and disclosing the ways in which the delinquency system seems to have two tracks based on racial inequalities;[173] (d) creating a Girls Court as part of a system of collaborative courts that focus on rehabilitation versus punishment;[174] (e) rethinking and remaking the structure of juvenile court operations;[175] (f) creating a multisystem approach to addressing runaway issues and status offenses;[176] (g) bringing legal challenges to ensure equal access and advancing gender-responsive programming for girls;[177] and (h) generally calling for data-driven decisionmaking that includes objective and validated risk/need assessments, which is fairer to both girls and boys.[178]

172. *See* Brandon C. Welsh, *Public Health and the Prevention of Juvenile Criminal Violence*, 3 YOUTH VIOLENCE & JUV. JUST. 23 (2005) (reviewing the role that public health currently plays in preventing juvenile criminal violence and exploring how the law-and-order approach—the dominant response to juvenile criminal violence—can benefit from the involvement of the health community).

173. *See* Taylor-Thompson, *supra* note 16, at 1159–62.

174. Orange County, California has established a Girls Court:

> Girls Court is a 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 the young participants facing mental health issues, substance abuse and academic failure to receive treatment and counseling, and to gain the skills and resources they need to achieve stable, productive lives. . . . It features a dedicated judicial officer and a team that includes representatives from the Court, the Health Care Agency, the Social Services Agency, the Probation Department, and the Orange County Department of Education.

Collaborative Courts, ORANGE COUNTY SUPERIOR CT., http://www.occourts.org/directory/collaborative-courts (last visited July 22, 2012).

175. *See* Emily Buss, *Failing Juvenile Courts, and What Lawyers and Judges Can Do About It*, 6 NW. J.L. & SOC. POL'Y 318, 331 (2011) (calling for judges and lawyers to reform the juvenile court hearing process by "bringing the young person to the center of the hearing," giving him or her experience in decisionmaking skills, and making him or her feel like part of the legal system).

176. *See generally* Alecia Humphrey, *The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN'S L.J. 165 (2004) (arguing that girls are at a disadvantage because a majority of their encounters with the juvenile justice system are through minor status offenses like running away and suggesting gender-specific programs that minimize the effects of victimization that could be caused by sexual and physical abuse, the strongest indicators of girls' juvenile delinquency).

177. *See* 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, 11 (2003) (discussing how the legal strategies brought under the Equal Protection Clause, state equal rights amendments and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (2006), can be adopted to help girls in the juvenile system receive gender-specific programming).

178. *See* Meda Chesney-Lind & Francine Sherman, Op-Ed, *Gender Matters in Juvenile Justice*, N.Y.L.J., Dec. 7, 2010, at 6 (arguing that incarceration rates of girls are on the rise, particularly for African American girls, and recommending "data-driven decision-making" because it is "fairer to both girls

Given the vast number of studies examining juveniles within the delinquency system, the numbers of studies that address girls of color is still minimal.[179] More studies should be undertaken examining the vulnerabilities of race and gender but should be done with the complexities of both dimensions kept in mind.[180] With more proper documentation of these intersectional issues, decision makers within the juvenile justice system will be forced to face the complexities at each step in the process that leads girls to enter the system. Most importantly, they will then be better informed on factors essential to the exercise of their discretion to the betterment of girls of color, and possibly also begin to create and implement effective solutions. And in turn, the juvenile justice system will return to its original goal of seeking to rehabilitate girls rather than to punish them.

CONCLUSION

In today's juvenile justice system, Sara will encounter multiple decisionmakers. Each will exercise varying degrees of discretion without sufficient regard for how her gender and her race affect their decisionmaking. Sara's gender and race are essential components of a holistic rehabilitative approach to addressing juvenile delinquency. Yet blind discretion will result in Sara being ill served and disproportionally punished compared to other youth in the system. The system must open its eyes. It must acknowledge the existence of this distortion, its pervasiveness, and its exacerbating nature when coupled with broad discretion. Only through rigorous examination, accurate study of this issue, and direct intervention to educate decisionmakers does Sara stand a fair chance. We can do better, and we should do better. We owe it to our future girls.

and boys by reducing individual bias in decision-making and promoting clear-headed identification of a youth's needs and strengths").

179. Among those that do consider the racial component of juvenile justice are Maggard et al., *supra* note 11, and Moore and Padavic, *supra* note 11.

180. *See* Laura Gómez, *Looking for Race in All the Wrong Places*, 46 LAW & SOC'Y REV. 221, 237 (2012) (suggesting that social science and legal studies can benefit from "comparative research on race," which includes "comparisons across racial groups, comparisons exploring heterogeneity within a racial group, and cross-national comparisons").