



A National Juvenile Justice Coalition of State and National Members

**Written Statement by the Steering Committee of the
National Juvenile Justice and Delinquency Prevention Coalition**

**before the
House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
July 16, 2019**

Hearing on “Women and Girls in the Criminal Justice System”

Chairman Bass, Ranking Member Ratcliffe, and Members of the Committee:

On behalf of the National Juvenile Justice and Delinquency Prevention Coalition (NJJDPC) Steering Committee, we write to offer comments on today’s hearing titled, “Women and Girls in the Criminal Justice System.” NJJDPC is a collaborative array of national and state youth and family-serving, social justice, law enforcement, corrections, and faith-based organizations, working to ensure healthy families, build strong communities, and improve public safety by promoting fair and effective policies, practices, and programs for youth involved or at risk of becoming involved in the juvenile and criminal justice systems. We welcome the Subcommittee’s focus on women and girls in the criminal justice system.

Girls in the Justice System

From its inception, the juvenile justice system has shown a bias against girls. A historical study of gender in the first juvenile justice court, which was created in Illinois in 1899, revealed that the court created a category of delinquency offenses known as “immorality” or “incorrigibility,” which were used almost exclusively for girls.¹ In fact, these offenses accounted for 80 percent of girls’ cases in the court.² These offenses were used to criminalize girls for violating gender norms or just general disobedience.³

¹ LINDSEY ROSENTHAL, VERA INSTITUTE FOR JUSTICE, GIRLS MATTER: CENTERING GENDER IN STATUS OFFENSE REFORM EFFORTS (2018), available at <https://www.vera.org/girls-matter#introduction> (citing ANNE MEIS KNUPFER, REFORM AND RESISTANCE: GENDER, DELINQUENCY, AND AMERICA’S FIRST JUVENILE COURT (2001)).

² *Id.*

³ *Id.*

Even as legislators began to make reforms to the juvenile justice system, the experiences and needs of justice-involved girls were often overlooked, causing the proportion of girls in the system to stagnate even as the total number of young people coming into contact with the system fell.⁴ Girls' pathways into the justice system often stem from their efforts to cope with and survive abuse, especially sexual violence.⁵ Girls are far more likely than boys to enter the system for non-violent and status offenses, such as incorrigibility, running away, and truancy. These behaviors are common responses to trauma and violence. This remains true at the deepest end of the system, where 85 percent of all girls committed in the juvenile justice system are there on nonviolent charges, including 34 percent for technical violations and status offenses.⁶

When girls with economic stability and familial/community supports are hurt by sexual violence, the protective layers of functional schools, safe neighborhoods, and access to mental health services tend to buffer them from further victimization.⁷ For marginalized girls and young women, the experience of sexual abuse too often lands them behind bars.⁸ In fact, sexual abuse is a primary predictor for justice involvement in girls. Nationally, approximately 73 percent of girls in the juvenile justice system report past histories of physical and sexual abuse— but figures in some states are even higher.⁹ For example, a study on delinquent girls in South Carolina revealed that 81 percent of girls reported experiences of sexual violence.¹⁰ An Oregon study found 93 percent of girls in the juvenile justice system had suffered physical or sexual abuse.¹¹ The connection between sexual abuse in girls and their ultimate incarceration is not coincidental— sexual abuse is a direct, contributing cause of girls' detention.¹²

Therefore, for girls—and particularly girls of color—too often a sexual abuse-to-prison-pipeline ensnares them in the justice system. According to the Office of Juvenile Justice Delinquency and Prevention (OJJDP), nearly 270,000 girls are arrested in the U.S. annually,¹³ and approximately 6,500 girls are detained or committed daily.¹⁴ Other pathways by which girls enter the system, such as crossing over from the child welfare system or family violence situations, are also rooted in experiences of violence and abuse.

⁴ Melissa Sickmund, Anthony Sladky, and Wel Kang, *Easy Access to Juvenile Court Statistics: 1985-2017* (2019), available at <https://www.ojjdp.gov/ojstatbb/ezajcs/>.

⁵ MALIKA SAADA SAAR, *ET AL.*, RIGHTS FOR GIRLS, GEORGETOWN LAW CNT. ON POVERTY AND INEQUALITY, MS. FOUNDATION FOR WOMEN, *THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY* (2015), available at https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf.

⁶ Sickmund, *et al.*, *surpa* note 4.

⁷ MALIKA SAADA SAAR, *ET AL.*, RIGHTS FOR GIRLS, GEORGETOWN LAW CNT. ON POVERTY AND INEQUALITY, MS. FOUNDATION FOR WOMEN, *THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY* (2015), available at https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf.

⁸ *Id.*

⁹ *Juvenile Justice*, RIGHTS4GIRLS, <http://rights4girls.org/issue-areas/?issue=juvenile-justice> (last visited July 7, 2019).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ SAMATHAN EHRLMAN, NINA HYLAND, AND CHARLES PUZZANCHERA, OFFICE OF JUSTICE PROGRAMS, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *JUVENILE JUSTICE STATISTICS: GIRLS IN THE JUVENILE JUSTICE SYSTEM* (Apr. 2019), available at <https://www.ojjdp.gov/pubs/251486.pdf>.

¹⁴ Sickmund, *et al.*, *surpa* note 4.

In addition, girls are also frequently arrested for their own victimization. For example, in many states, child sex trafficking survivors are arrested on prostitution charges. In fact, although child sex trafficking survivors are often too young to legally consent to sex, in 2017, 218 minors were arrested for prostitution.¹⁵ Further, girls comprise nearly 61 percent of all juvenile arrests for prostitution.¹⁶ Trafficking survivors also enter the system on other offenses for behaviors directly related to their being trafficked.¹⁷

Girls, including those who have been trafficked or survived sexual assault, also are subject to the state laws that allow at least 76,000 children each year to be prosecuted in the adult criminal justice system.¹⁸ Many of these girls are trying to protect themselves from further harm. For example, Tennessee's Cyntoia Brown, was trafficked at the age of sixteen and repeatedly raped and abused by her pimp.¹⁹ Cyntoia was picked up by a 43-year-old man, Johnny Allen, who took her to his home for sex.²⁰ Fearing for her life, Cyntoia shot and killed Allen.²¹ She was later convicted in adult court and sentenced to life without parole.²² Cyntoia's case received national attention as an example of the injustice faced by victims of sexual abuse. After she had served 15 years in prison, Governor Bill Haslam granted Cyntoia clemency.²³ Yet Cyntoia's story is not unique. California's Sara Kruzan faced a similar fate. At 11, she was lured into a car by a man named George Howard, who sexually assaulted Sara for several years before trafficking her for sex.²⁴ Sara was a vulnerable target, having been abused by her mother and molested by her mother's boyfriends.²⁵ At sixteen, she too was convicted in adult court and sentenced to life without parole for protecting herself from her trafficker.²⁶ The judge told Sara she lacked "moral scruples."²⁷ Sara spent 19 years in prison before finally being released.²⁸

¹⁵ RIGHTS4GIRLS, THE JUVENILE JUSTICE SYSTEM AND DOMESTIC CHILD SEX TRAFFICKING (Sept. 2018), *available at* <http://rights4girls.org/wp-content/uploads/r4g/2018/09/JJ-DCST-Sept-2018-final.pdf>.

¹⁶ *Id.*

¹⁷ Cynthia Godsoe, *Contempt, Status, and the Criminalization of Non-Conforming Girls*, 34 CARDOZO L. REV. 1091 (2014), *available at* <http://ssrn.com/abstract=2446224>; Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584 (2012). *See also*, CTR. FOR PUBLIC POLICY STUDIES, HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, STATE JUSTICE INST., DEALING WITH HUMAN TRAFFICKING VICTIMS IN A JUVENILE CASE (Nov. 2013), *available at* http://www.htcourts.org/wp-content/uploads/HT_Victims_inJuvenileCases_v02.pdf?InformationCard=Dealing-With-HT-Victims-Juvenile.

¹⁸ CHARLES PUZZANCHERA, MELISSA SICKMUND, AND ANTHONY SLADKY, NAT'L CENTER FOR JUVENILE JUSTICE, YOUTH YOUNG THAN 18 PROSECUTED IN ADULT COURT: NATIONAL ESTIMATE, 2015 CASES (2018), <http://www.cfyj.org/images/Transfer-estimate.pdf>

¹⁹ Mallory Gafas and Tina Burnside, *Cyntoia Brown is Granted Clemency after Serving 15 Years in Prison for Killing Man Who Bought Her for Sex*, CNN (Jan. 8, 2019), <https://www.cnn.com/2019/01/07/us/tennessee-cyntoia-brown-granted-clemency/index.html>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Angelina Chapin, *Sex Trafficked Children Can Be Locked Up For Life. A New Bill Could Prevent That*, HUFFPOST (Mar. 29, 2019), https://www.huffpost.com/entry/federal-bill-would-protect-child-sex-trafficking-victims-from-spending-their-lives-in-prison_n_5c9cd7cfe4b07c8866323860.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Pre-existing trauma is prevalent among girls in the justice system.²⁹ Unfortunately, once girls become involved in the justice system they must navigate a punitive system that is ill-equipped to deal with the specific needs of girls. Once incarcerated, girls are subject to harmful and degrading conditions of confinement that often exacerbate their existing trauma.³⁰ Often, girls are subject to solitary confinement and restraints—practices that are especially injurious to victims of sexual and physical violence. Girls are strip searched throughout the duration of their detention, including when returning from family visitation hours, after a medical visit, or at the completion of a work shift. Girls also consistently report being physically and sexually assaulted by staff and other youth while behind bars.

Further, pregnant girls in detention are sometimes subject to shackling during transport, labor, or delivery. While there is limited data available on pregnant and parenting system-involved girls, a report by the National Council on Crime and Delinquency found that of the 1,000 girls participating in a statewide study, 16 percent had been pregnant while incarcerated.³¹ Of those girls who had been pregnant while in custody, 29 percent had been placed in physical restraints, including shackled at the wrists, belly and/or ankles, during labor, delivery and/or post-delivery.

Similar to boys, girls of color are disproportionately impacted by the justice system. Black girls comprise only 14 percent of the youth population, but make up 33 percent of girls who are arrested.³² Native American girls are five times more likely to be incarcerated compared to their white peers, and the share of Latina girls in residential placement has almost doubled in the last two decades.³³

The Federal Response

Fortunately, the particular impact of the justice system on girls has not been lost on Congress. In recent years, Congress has taken steps to protect justice-involved girls. This includes the 2018 reauthorization the Juvenile Justice and Delinquency Prevention Act (JJDP), which added several provisions throughout the law to address the specific needs of girls.³⁴ Under the updated law, OJJDP's annual report to Congress must include the number of youth in custody of secure detention and correction facilities who report being pregnant. Further, states must produce a plan to eliminate the use of restraints on known pregnant youth during labor, delivery, and postpartum

²⁹ RIGHTS4GIRLS, GIRLS' EXPERIENCES PRIOR TO JUSTICE INVOLVEMENT, available at <http://rights4girls.org/wp-content/uploads/r4g/2016/08/R4G-Physical-and-Mental-Health-Needs-fact-sheet.pdf> (last visited Feb. 4, 2019).

³⁰ PATRICIA K. KERIG, PHD AND JULIAN D. FORD, PHD, NAT'L CHILD TRAUMATIC STRESS NETWORK, JUVENILE JUSTICE CONSORTIUM, TRAUMA AMONG GIRLS IN THE JUVENILE JUSTICE SYSTEM (2014), available at https://www.nctsn.org/sites/default/files/resources//trauma_among_girls_in_the_jj_system.pdf; LIZ WATSON AND PETER EDELMAN, GEORGETOWN CTR. ON POVERTY, INEQUALITY, AND PUBLIC POLICY, IMPROVING THE JUVENILE JUSTICE SYSTEM FOR GIRLS: LESSONS FROM THE STATES (2012), available at http://www.law.georgetown.edu/academics/centers-institutes/poverty/inequality/upload/JDS_VIR4_Web_Singles.pdf.

³¹ *Conditions of Confinement*, Rights4Girls, <http://rights4girls.org/issue-areas/?issue=conditions-of-confinement> (last visited July 12, 2019).

³² RIGHTS4GIRLS, THE SEXUAL ABUSE TO PRISON PIPELINE FACT SHEET (Nov. 2017), available at http://rights4girls.org/wp-content/uploads/r4g/2016/08/SAPP-fact-sheet_Updated-Nov-2017-Final.pdf.

³³ *Id.*

³⁴ The Juvenile Justice Reform Act of 2018, Pub. L. 115-385.

recovery by 2020, and implement that plan by 2021.³⁵ States must also eliminate the use of abdominal restraints, leg and ankle restraints, behind-the-back wrist restraints, and four-point restraints on known pregnant youth.³⁶ State plans must also include a plan to provide alternatives to detention for survivors of commercial sexual exploitation as well as develop procedures to screen for and identify trafficking survivors and divert identified survivors away from the justice system to services.³⁷

The reauthorization of the JJDP Act also has greatly expanded the use of funding under both Titles II and V of the Act.³⁸ The allowable program categories under the state formula grants have been expanded to include, “programs that address the needs of girls in or at risk of entering the juvenile justice system, including pregnant girls, young mothers, survivors of commercial sexual exploitation or domestic child sex trafficking, girls with disabilities, and girls of color, including girls who are members of an Indian Tribe.”³⁹ The definition of “delinquency prevention programs” that can be funded through Title V’s Youth PROMISE grants has also been expanded to include “training and education programs for pregnant teens and teen parents” as part of a “coordination of a continuum of services.”⁴⁰

While Congress has made progress, there have also been setbacks. In 2018, OJJDP removed multiple pages and policy guidance from its website, including several key pages about girls in the system.⁴¹ Both the “Girls and the Juvenile Justice System” and the “Girls at Risk” page were removed.⁴² Of note, the “Girls at Risk” page provided details on the still-active National Girls Initiative, a program funded by OJJDP and run by National Crittenton.⁴³ The program is aimed at taking a non-punitive approach to girls in the juvenile justice system, a perspective at odds with the current Administrator who has taken a decisively more punitive approach to juvenile justice.⁴⁴

Recommendations

While the JJDP Act reauthorization was a step in the right direction to recognizing the particular needs of girls, there is much more that could be done. Federal policy must address the unique

³⁵ ACT 4 JUVENILE JUSTICE, JUVENILE JUSTICE AND DELINQUENCY PREVENTION (JJDP) FACT SHEET SERIES: GIRLS AND SEXUALLY EXPLOITED YOUTH IN THE JUVENILE JUSTICE SYSTEM (Feb. 2019), *available at* <http://www.act4jj.org/sites/default/files/resource-files/Girls%20Fact%20Sheet.pdf>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Jon Campbell, *Takedown of DOJ Juvenile Justice Office Webpages about Still-Active Initiatives Highlights Its Shift Towards a More Punitive Approach*, THE SUNLIGHT FOUNDATION (Oct. 4, 2018), <https://sunlightfoundation.com/2018/10/04/ojjdp-website-changes-reflect-punitive-direction-of-office/>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*; Del Quentin Wilber, *Justice Dep’t Officials Say the Agency is Changing How It Approaches Juvenile Justice*, LA TIMES (May 23, 2019), <https://www.latimes.com/nation/la-na-pol-harp-juvenile-justice-qa-20190523-story.html> (“Juvenile justice and this office have kind of drifted into a very social-work kind of focus. They lost [the importance of] the rule of law, the interest of the victim and the protection of public safety. We lose touch with that as we begin to focus on just the kid in front of us, and that is what can’t happen. It’s a court system at the end of the day.” Caren Harp, Administrator of OJJDP).

experiences and needs of girls in the juvenile justice system, and we recommend an approach emphasizing ending girls' incarceration, connecting girls with services and supports needed to heal from trauma, tailoring juvenile justice systems to the needs of girls, providing for adequate data collection and reporting, and supporting robust appropriations for such programs.

As noted, many youth in both the juvenile justice and child welfare systems have a history of trauma, mental health conditions, or substance abuse issues that require specialized treatment, but this is particularly true for girls. Estimates indicate that as many as 55 percent of children in the juvenile justice system have had previous contact with the child welfare system.⁴⁵ A California-based study found that a large proportion of juvenile justice involved girls were child welfare referred.⁴⁶ Congress should pass legislation like the bipartisan Child Outcomes Need New Efficient Community Teams (CONNECT) Act (S. 1465) that seeks to help states identify and respond to the needs of children who come into contact with both the juvenile justice and child welfare systems.

Congress should also consider legislation like Sara's Law (H.R. 1950), named after Sara Kruzan. This bill would allow judges to depart from any mandatory minimum sentence or suspend any portion of a sentence when a child has committed a crime against someone who has previously sex trafficked or sexually abused them.⁴⁷ This legislation provides appropriate discretion to judges when sentencing children and refocuses sentencing considerations to better account for a child's background and exposure to early childhood trauma. It also guarantees children the opportunity for sentencing review after a reasonable point into their incarceration.

Further, while Congress made critical updates to the JJDPa, more can be done to protect girls from winding up justice-involved for behavior that often stems from trauma or even regular childhood behavior. While the JJDPa currently prohibits detaining youth for status offenses, like truancy and running away from home, there remains a valid court order (VCO) exception to the Deinstitutionalization of Status Offenders (DSO) core requirement.⁴⁸ The VCO exception allows judges and other court personnel to detain youth adjudicated as status offenders if they violate a valid court order or a direct order from the court, such as "stop running away from home" or "attend school regularly."⁴⁹

The Juvenile Justice Reform Act of 2018 made important changes to this provision to ensure the VCO exception is truly an exception rather than a rule.⁵⁰ However, even with these protections,

⁴⁵ Hui Huanga, Joseph P. Ryan, and Denise Hercz, *The Journey of Dually-Involved Youth: The Description and Prediction of Reporting and Recidivism*, 34 CHILDREN AND YOUTH SERV. REV. 1, 254-260 (2011), available at <https://www.sciencedirect.com/science/article/pii/S0190740911003860>.

⁴⁶ SHAY BILCHIK & MICHAEL NASH, CHILD WELFARE AND JUVENILE JUSTICE: TWO SIDES OF THE SAME COIN, IN JUVENILE AND FAMILY JUSTICE TODAY 16-20 (Fall 2008).

⁴⁷ Sara's Law, H.R. 1950, 116th Cong. (2019).

⁴⁸ P.L. 96-509, 94 Stat. 2755 (December 1980).

⁴⁹ *Id.*

⁵⁰ Pub. L. 115-385 (Under the new law, youth who are found in violation of a valid court order from an underlying status offense may be held in detention, for no longer than seven days, if the court finds that such detention is necessary and enters an order containing the following: 1) the valid court order that has been violated; 2) the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order; 3) findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile; 4) the length of time,

evidence shows that detaining and incarcerating non-delinquent youth who have engaged in status offense behaviors is counter-productive: it is costlier and less effective than home and community-based responses. It interrupts education, pulls children away from family and community, and stigmatizes youth.⁵¹ Research clearly shows that once detained, youth are also more likely to commit unlawful acts, potentially leading to “deeper” involvement in the system.⁵² In recognition of these and other dangers that youth face when they are incarcerated for status offense behaviors, nearly half of all states have already stopped using the VCO exception.⁵³ Although judges, court personnel, and advocates are working hard to effectively address the VCO exception on the state level, its mere existence in the JJDPa undermines the DSO core requirement and harms youth. Congress should pass legislation to eliminate the exception. Until the exception is eliminated, we also urge Congress to require OJJDP to make public state data on use of the VCO, disaggregated by race, ethnicity, and gender.

Conclusion

We thank the Subcommittee for holding this important hearing. As we continue to make progress in reforming our criminal justice and juvenile justice systems, it is critical that members Congress remember the unique needs of girls and women in both prevention efforts and system reforms. We look forward to working with the Subcommittee on further addressing this important issue.

If you have questions, please feel free to contact any member of the NJJDPC Steering Committee, whose contact information can be found here:
<https://www.promotesafecommunities.org/steeringcommittee>.

not to exceed seven days, that the status offender may remain in a secure detention facility or correctional facility, and includes a plan for the status offender's release from such facility. Such an order may not be renewed.)

⁵¹ DOUGLAS W. NELSON, ANNIE E. CASEY FOUND. A ROAD MAP FOR JUVENILE JUSTICE REFORM (2008), available at <https://www.aecf.org/resources/a-road-map-for-juvenile-justice-reform/>.

⁵² *Id.*

⁵³ COMPLIANCE DATA FOR FY2013-FY2014, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, available at <http://www.ojjdp.gov/compliance/FY2013-FY%202014VCO-state.pdf> (last visited Jan. 31, 2019).