

Representing Girls in the Juvenile Justice System

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Representing Girls in the Juvenile Justice System: An Introduction

Historically, female offenders were less frequently charged with serious law violations as law enforcement and the judiciary instead focused on girls' sexual behavior and morality.¹ However, in the early 1990s, because of a shift in juvenile justice policy and practices, the percentage of girls entering the juvenile justice system began to rise.² According to a report by the American Bar Association and the National Bar Association, the growth of girls in the juvenile justice system was not necessarily a result of a rise in criminal activity, but was instead due to transformations in policy and practice and biases in the juvenile justice system.³ Essentially, studies indicated that the percentage of girls in the system increased because of the (1) relabeling of girls' family conflicts as violent offenses; (2) shifting police practices concerning domestic violence; (3) processing of misdemeanor cases in a gender-biased manner; and (4) a misunderstanding of girls' developmental issues.⁴ Therefore, in 2002, girls were reported to be the fastest growing segment of the juvenile justice population despite the overall drop in crime by juveniles.⁵

As extensive research in this area has shown, girls are different from boys in several aspects, some of which include: the types of offenses with which they are charged; the frequency with which they experience childhood abuse; their physical health needs; the prevalence and types of mental health disorders they experience; the manner in which they are affected by romantic relationships; the impact of neighborhoods on the likelihood for delinquent behavior; and the way in which an early onset of puberty interacts with delinquent behavior.⁶ Therefore gender-responsive policies and practices are essential to ensuring that girls are adequately served by the juvenile justice system.⁷ Given these differences, it is critical that defense counsel become more knowledgeable about the pathways that most frequently lead girls to delinquency, as well as the obstacles girls face prior to entering, upon entering, and after leaving the juvenile justice system. In an effort to provide information to defense counsel, this document provides a compilation of research regarding girls in the juvenile justice system and suggests best practices and strategies for defense counsel representing girls in the juvenile justice system.

Representing Girls in the Juvenile Justice System: An Overview of the Population

Before considering best practices and strategies, some research may be useful in understanding girls as a population in the juvenile justice system.

¹ See Lisa Pasko, *Centennial Symposium: A Century of Criminal Justice: The People: Damaged Daughters: The History of Girls' Sexuality and the Juvenile Justice System*, 100 J. CRIM. L. & CRIMINOLOGY 1099, (3d ed. 2010).

² NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, GETTING THE FACTS STRAIGHT ABOUT GIRLS IN THE JUVENILE JUSTICE SYSTEM, 4, available at http://www.nccdglobal.org/sites/default/files/publication_pdf/fact-sheet-girls-in-juvenile-justice.pdf (Feb. 2009) (last visited July 31, 2012).

³ American Bar Association and National Bar Association, *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, 79 (1st ed. 2002), available at <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1182&context=wmjowl> (last visited July 31, 2012).

⁴ American Bar Association and National Bar Association, *supra* note 3, at 79; See Shabnam Javdani et al., *Gendered Social Forces: A Review of the Impact of Institutionalized Factors on Women and Girls' Criminal Justice Trajectories*, 17 PSYCH. PUB. POL'Y. & L., 161, 164 (May 2011).

⁵ American Bar Association & National Bar Association, *supra* note 3, at 79.

⁶ See GIRLS AND BOYS IN THE JUVENILE JUSTICE SYSTEM: ARE THERE DIFFERENCES THAT WARRANT POLICY CHANGES IN THE JUVENILE JUSTICE SYSTEM (2008), available at http://futureofchildren.org/futureofchildren/publications/highlights/18_02_Highlights_08.pdf (last visited July 31, 2012).

⁷ Paula Schaefer, *Girls in the Juvenile Justice System*, 25 GEN. PRAC. SOLO 16, 17 (April/May 2008).

❖ Girls in the Juvenile Justice System:

- **Population:** According to recent data, girls represent 30% of arrests⁸ and 15% of the incarcerated population, not including detained girls.⁹ Recent state reports indicate that 11% of incarcerated youth committed to youth development centers are girls, and 24% of youth admitted to detention centers are girls.¹⁰
- **Race:** Research consistently reveals the overrepresentation of both girls and boys of color in the juvenile justice system at critical decision points regardless of offense type.¹¹ Consistent with national data regarding overrepresentation of boys of color in the juvenile justice system, girls of color are placed in residential facilities, detention centers, and transferred to criminal court at higher rates than those of white girls, resulting in disproportionate representation in the juvenile justice system.
- **Sexual Orientation:** Given the difficulty involved with formally tracking the sexual orientation of juveniles and the scarcity of data collected by juvenile justice institutions concerning sexual orientation, researchers note that it is difficult to establish with certainty the number of lesbian, gay, bisexual, transgender, queer, or questioning (LGBTQ) youth in the juvenile justice system.¹² In spite of this difficulty, one of the first comprehensive studies on sexual orientation establishes that 15% of youth in the juvenile justice system identify as LGBTQ¹³ while another study surveying youth in schools projects that between 4% and 10% of youth identify as LGBTQ.¹⁴ In regards to girls, another recent study reveals that between one third and one-fifth of girls in a sample of 150 girls in the juvenile justice system identify as LGBTQ.¹⁵
- **Offense Types:** With regard to offenses, reports indicate that when girls commit offenses, they are usually less serious offenses such as simple assault, property

⁸ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *GIRLS DO MATTER*, 1 (May 2009), available at http://www.nccdgloba.org/sites/default/files/publication_pdf/girlsdmatter.pdf (last visited July 31, 2012).

⁹ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 8, at 1.

¹⁰ NORTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, 2009 ANNUAL REPORT, 27, 30 (2009), available at http://www.ncdjjdp.org/resources/pdf_documents/annual_report_2009.pdf (last visited July 31, 2012).

¹¹ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 2, at 7; NATIONAL COUNCIL ON CRIME AND DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUVENILE JUSTICE SYSTEM (2007), available at

http://www.nccdgloba.org/sites/default/files/publication_pdf/justice-for-some.pdf (last visited July 31, 2012); See Preeti Chauhan et al., *Racial Disparities Among Female Juvenile Offenders: The Contribution of Neighborhood Disadvantage and Exposure to Violence in Antisocial Behavior*, 43 C. REV., 10, 10 (2009); See Kim Taylor-Thompson, *Special Issue on Legal Representation of Children: Girl Talk – Examining Racial and Gender Lines in Juvenile Justice*, 6 N. L. J. 1137, 1137 (Spring 2006); American Bar Association and National Bar Association, *supra* note 3, at 79; See generally, OFFICE OF THE JUVENILE DEFENDER, ADDRESSING DISPROPORTIONATE MINORITY CONTACT (DMC) IN JUVENILE COURT (Aug. 2011), available at <http://www.ncids.org/JuvenileDefender/Guides/AddressingMinorityContact.pdf> (last visited July 31, 2012).

¹² Angela Irvine, *Symposium Volume: Gender on the Frontiers—Confronting Intersectionalities” We’ve Had Three of Them:” Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Nonconforming Youths in the Juvenile Justice System*, 19 COLUM. J. GENDER & L. 675, 677-679 (2010).

¹³ *Id.* at 677.

¹⁴ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 2, at 8.

¹⁵ Gena Castro Rodriguez, *Practitioner’s Section: LGBTQ Girls in the Juvenile Justice System: Discrimination, Alienation, and Marginalization*, 15 U.C. DAVIS J. JUV. L. & POL’Y, 433, 433 (Summer 2011); See generally, OFFICE OF THE JUVENILE DEFENDER, REPRESENTING LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, OR QUESTIONING (LGBTQ) YOUTH IN JUVENILE COURT (April. 2011), available at http://www.ncids.org/JuvenileDefender/Guides/LGBTQ_Guide.pdf (last visited July 31, 2012).

offenses, status offenses (e.g., running away, curfew violations, and underage drinking), and technical violations (e.g., contempt, probation, and post-release supervision violations).¹⁶ For status offenses, specifically, girls commit these types of offenses at a rate more than twice that of boys,¹⁷ and recent reports reveal that girls are disproportionately charged with offenses for violating court orders.¹⁸ Despite past reports that girls are the fastest growing segment of the juvenile justice population, in recent years, the arrest rate for violent crimes has decreased for both boys and girls.¹⁹ Furthermore, although girls tend to begin committing violent offenses at a younger age than boys,²⁰ the incarceration rate for girls committing violent offenses is reported as approximately half that of boys.²¹

❖ **Risk Factors and Obstacles Faced by Girls in the Juvenile Justice System:**

- **Childhood Abuse:** Research reveals that abuse is a risk factor associated with girls entering the juvenile justice system,²² and one of the most common factors associated with girls in the system.²³ According to one researcher, between 56% and 88% of girls in the juvenile justice system report emotional, physical, or sexual abuse, with the numbers being three times higher than boys for reports of sexual abuse.²⁴ Some researchers believe that one rationale for this discrepancy is that boys are less likely to report sexual abuse due to pressure from society to desire sex, specifically if there is a female perpetrator involved; difficulty connected to overcoming false claims of homosexuality if there is a male perpetrator involved; and a general need to be self-reliant and avoid any stigmas associated with abuse.²⁵ Another rationale for the discrepancy is that victimized girls often act out, engaging in substance abuse,²⁶ or committing status offenses

¹⁶ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 2, at 5; American Bar Association, *Special Issue: The American Bar Association's Youth At Risk Initiative: The Causes of Girls' Delinquency and Their Program Implications*, 5 FAM. CT. REV. 456, 457 (2007).

¹⁷ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 2, at 5; MARSHA LEVICK, ET AL., WHEN INDIVIDUAL DIFFERENCES DEMAND EQUAL TREATMENT: AN EQUAL RIGHTS APPROACH TO THE SPECIAL NEEDS OF GIRLS IN THE JUVENILE JUSTICE SYSTEM, 16, (May 2003), available at <http://www.worcestergirlzone.com/files/research/ssrn-id410368.pdf> (last visited July 31, 2012).

¹⁸ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 8, at 2; See Shabnam Javdani, *supra* note 4, at 190.

¹⁹ MARSHA LEVICK, ET AL., *supra* note 17, at 14.

²⁰ GIRLS AND BOYS IN THE JUVENILE JUSTICE SYSTEM: ARE THERE DIFFERENCES THAT WARRANT POLICY CHANGES IN THE JUVENILE JUSTICE SYSTEM, *supra* note 6, at 3.

²¹ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 2, at 5; MARSHA LEVICK, ET AL., *supra* note 17, at 16.

²² GIRLS AND BOYS IN THE JUVENILE JUSTICE SYSTEM: ARE THERE DIFFERENCES THAT WARRANT POLICY CHANGES IN THE JUVENILE JUSTICE SYSTEM, *supra* note 6, at 3; MARSHA LEVICK, ET AL., *supra* note 17, at 12. LESLIE D. LEVE, ET AL., RISKS, OUTCOMES, AND EVIDENCE-BASED INTERVENTIONS FOR GIRLS IN THE U.S. JUVENILE JUSTICE SYSTEM: RECOMMENDATIONS FOR NEXT STEPS IN RESEARCH, INTERVENTION, AND IMPLEMENTATION, 5-7 (Mar. 2012), available at http://www.modelsforchange.net/uploads/cms/documents/girls_exec-summary_and_paper-3_27_12.pdf (last visited July 31, 2012).

²³ MARSHA LEVICK, ET AL., *supra* note 17, at 12.

²⁴ *Id.*

²⁵ Mary L. Paine et al., *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOL. REV. 271-274-275 (2002); Samuel Vincent Jones, *The Invisible Man: The Couscous Neglect of Men and boys in the War on Human Trafficking*, 2010 UTAH L. REV. 1143, 1151 (2010).

²⁶ NATIONAL CHILD TRAUMATIC STRESS NETWORK, TRAUMA AMONG GIRLS IN THE JUVENILE JUSTICE SYSTEM, 4-5 (2004), available at http://www.nctsn.org/nctsn_assets/pdfs/edu_materials/trauma_among_girls_in_jjsys.pdf (last visited July 31, 2012); ACT 4 JUVENILE JUSTICE, A CAMPAIGN OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION COALITION, FACT SHEET: GIRLS AND JUVENILE JUSTICE, 2, available at http://act4jj.org/media/factsheets/factsheet_29.pdf (last visited July 31, 2012).

such as running away or breaking curfew in order to cope, all resulting in arrest and entry into the juvenile justice system.²⁷ Furthermore, reports of abuse while incarcerated are common among girls,²⁸ and the experience of abuse inside institutions, coupled with past abuse appear to place girls at risk of self-harm and unsafe conduct.²⁹

- **Physical Health:** Both girls and boys in the juvenile justice system report becoming involved in sexual behavior at earlier ages, having higher incidences of sexually transmitted diseases, and engaging in riskier sexual behavior than youth not involved in the system.³⁰ Researchers speculate that girls in the juvenile justice system experience higher rates of sexually transmitted diseases than boys in the system³¹ and girls in the community³² due to sexual abuse and involvement in prostitution and prostitution-related offenses leading to sexual violence.³³ Moreover, in jurisdictions where girls are arrested for prostitution-related offenses such as running away, drugs, or public order offenses at high rates, experts believe the arrest patterns conceal high rates of prostitution.³⁴ Generally, research also indicates that the rate of risky sexual behavior increases among girls in the juvenile justice system when girls experience substance abuse problems.³⁵ In terms of pregnancy, studies indicate that girls in the juvenile justice system tend to reproduce early,³⁶ and that approximately 10% of these girls experience a pregnancy while incarcerated, requiring prenatal care and related services.³⁷
- **Mental Health Disorders:** In reference to mental health disorders, research shows that girls are more likely to suffer from mental health disorders than boys,³⁸ with as many as three in four detained girls receiving mental health disorder

²⁷ SIOBHAN M. COONEY ET AL., GIRLS IN THE JUVENILE JUSTICE SYSTEM: TOWARD EFFECTIVE GENDER-RESPONSIVE PROGRAMMING, U. WIS.-MAD. & U. WIS.-EXT., 2 (No. 7 Jan. 2008), available at <http://oja.wi.gov/docview.asp?docid=12849&locid=97> (last visited July 31, 2012); ACT 4 JUVENILE JUSTICE, *supra* note 26, at 2; LESLIE D. LEVE ET AL., *supra* note 22, at 5.

²⁸ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 2, at 8; ACT 4 JUVENILE JUSTICE, *supra* note 26, at 2.

²⁹ Paula Schaefer, *supra* note 7, at 17.

³⁰ Steven Belenko et al., *Detecting, Prevention, and Treating Sexually Transmitted Diseases Among Adolescent Arrestees: An Unmet Public Health Need*, 99 AM. J. PUB. HEALTH, 1032, 1032-1033 (2009), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2679796/pdf/1032.pdf> (last visited July 31, 2012); Committee on Adolescence, *Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 AM. ACAD. PEDIATRICS, 799, 800 (2001), available at <http://pediatrics.aappublications.org/content/107/4/799.full> (last visited July 31, 2012).

³¹ Richard Dembo et al., *Gender and Racial Differences in Risk Factors for Sexually Transmitted Diseases Among Justice-Involved Youth*, 1 NEUROBEHAVIOR HIV MED. 9, 10 (2009), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2917819/pdf/nihms173527.pdf> (last visited July 31, 2012); LESLIE D. LEVE ET AL., *supra* note 22, at 16-17.

³² SIOBHAN M. COONEY ET AL., *supra* note 27, at 3; NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, SHACKLING OF PREGNANT WOMEN AND GIRLS IN CORRECTIONAL SYSTEMS, 1-2 (May 2009), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/girlsdomatter.pdf (last visited July 31, 2012).

³³ MARSHA LEVICK, ET AL., *supra* note 17, at 13.

³⁴ *Id.*

³⁵ LESLIE D. LEVE ET AL., *supra* note 22, at 16-17; Linda A. Teplin et al., *HIV and AIDS Risk Behaviors in Juvenile Detainees: Implications for Public Health Policy*, 93 AMER. J. PUB. HEALTH 906, 908-909 (No. 6 2003), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447866/pdf/0930906.pdf> (last visited July 31, 2012).

³⁶ See Elizabeth Cauffman, *Understanding the Female Offender*, 18 FUTURE CHILD. 125 (No. 2 2008), available at http://futureofchildren.org/futureofchildren/publications/docs/18_02_06.pdf (last visited July 31, 2012).

³⁷ ACT 4 JUVENILE JUSTICE, *supra* note 26, at 2.

³⁸ SIOBHAN M. COONEY ET AL., *supra* note 27, at 2.

diagnoses.³⁹ Some researchers find that certain youth fail to report mental health disorders to avoid any stigma associated with such disorders and treatment.⁴⁰ Despite the rationale behind why the diagnosis numbers are higher among girls, researchers note that girls seem to suffer more from internalizing mental disorders such as depression and anxiety,⁴¹ whereas boys are more likely to suffer from externalizing disorders such as attention deficit hyperactivity disorder and conduct disorder.⁴² Girls also experience higher rates of self-harming behavior,⁴³ post-traumatic stress disorder, and suicide attempts than boys.⁴⁴ Suicide rates are believed to be higher for girls because of depression and anxiety disorders, sexual, physical, and emotional abuse, and post-traumatic stress disorder.⁴⁵ Studies also reveal that incarcerated girls are more likely to have been diagnosed with more than one mental health disorder, or comorbidity, increasing the difficulty of treatment.⁴⁶ Furthermore, although substance abuse rates appear to be similar among boys and girls involved in the juvenile justice system, some studies indicate that comorbidity with mental health disorders may be higher for girls in the juvenile justice system with substance abuse problems.⁴⁷

- **Family Relationships:** According to several studies, difficulties such as ineffective parenting, caregiver transitions, and recurrent conflict with parents increase the likelihood that girls may engage in delinquent behavior.⁴⁸ Research further indicates that when girls are violent, the violence is frequently directed at members of their families at a rate much higher than boys, as girls have a tendency to fight with members of their families three times more likely than boys, who frequently fight with peers or strangers.⁴⁹ Because juvenile justice policies have relabeled girls' family conflicts as violent offenses and police practices address such behavior, girls involved in family conflicts continue to enter the juvenile justice system.⁵⁰

³⁹ LESLIE D. LEVE ET AL., *supra* note 22, at 12-13; NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 2, at 8; Michael A. Russell et al., *Profiles in Mental Health Disorder Among Incarcerated Adolescent Females*, 46 CT. REV., 16 (2009-2010).

⁴⁰ Pamela L. Owens et al., *Barriers to Children's Mental Health Services*, 41:6 J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY, 731, 732 (2002), available at http://www.nctsn.org/nctsn_assets/Articles/30.pdf (last visited July 31, 2012).

⁴¹ LESLIE D. LEVE ET AL., *supra* note 22, at 14.

⁴² GIRLS AND BOYS IN THE JUVENILE JUSTICE SYSTEM: ARE THERE DIFFERENCES THAT WARRANT POLICY CHANGES IN THE JUVENILE JUSTICE SYSTEM, *supra* note 6, at 3.

⁴³ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 2, at 8; MARSHA LEVICK ET AL., *supra* note 17, at 13.

⁴⁴ Michael A. Russell et al., *supra* note 39, at 20.

⁴⁵ *Id.*

⁴⁶ LESLIE D. LEVE ET AL., *supra* note 22, at 12-13; Michael A. Russell et al., *supra* note 39, at 26.; *See generally* Linda Teplin et al., *supra* note 35, at 1097.

⁴⁷ LESLIE D. LEVE ET AL., *supra* note 22, at 15-16.

⁴⁸ Paula Schaefer, *supra* note 7, at 19-20; SIOBHAN M. COONEY ET AL., *supra* note 26, at 2; American Bar Association, *supra* note 16, at 457; MARGARET A. ZAHN, ET. AL., GIRLS' STUDY GROUP: UNDERSTANDING AND RESPONDING TO GIRLS' DELINQUENCY – CAUSES AND CORRELATES OF GIRLS' DELINQUENCY, 5 (April 2010), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/226358.pdf> (last visited July 31, 2012); LESLIE D. LEVE ET AL., *supra* note 22, at 12.

⁴⁹ *See* MARGARET A. ZAHN, ET. AL., GIRLS' STUDY GROUP: UNDERSTANDING AND RESPONDING TO GIRLS' DELINQUENCY – VIOLENCE BY TEENAGE GIRLS: TRENDS AND CONTEXT, 7 (May 2008), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/218905.pdf> (last visited July 31, 2012); ACT 4 JUVENILE JUSTICE, *supra* note 26, at 2.

⁵⁰ American Bar Association & National Bar Association, *supra* note 3, at 79-80 (2002); GIRLS AND BOYS IN THE JUVENILE JUSTICE SYSTEM: ARE THERE DIFFERENCES THAT WARRANT POLICY CHANGES IN THE JUVENILE JUSTICE SYSTEM, *supra* note 6, at 2; *See* Shabnam Javdani et al., *supra* note 4, at 189 (May 2011).

- **Peer and Romantic Relationships:** Girls involved in the juvenile justice system are more apt to indicate that their closest peers are males, and more likely to engage in delinquent activities with those peers.⁵¹ In terms of romantic relationships, a stable romantic relationship appears to impact boys and girls differently.⁵² While such relationships are a positive for boys, and decrease participation in criminal activity, the reverse is true for girls.⁵³ Researchers reason that the discrepancy involves choice, as girls with behavioral problems are more likely to be romantically involved with boys with similar problems, whereas the opposite appears to be true among delinquent boys.⁵⁴ Further studies also indicate that when girls choose partners involved in delinquent behavior, the result may be abusive relationships, which in turn lead to girls running away or committing nonviolent offenses.⁵⁵ Some research also reveals that delinquent girls involved with delinquent partners are more likely to bear children in adolescence.
- **Schools Education:** Several studies find that school disengagement is associated with delinquent behavior,⁵⁶ and that appropriate engagement or caring about school and opinions of teachers is more likely to influence the behavior of girls than boys.⁵⁷
- **Neighborhoods:** When researchers examine neighborhoods, girls who are victims of violence that reside in an unsafe, impoverished neighborhood are more likely to be exhibit delinquent behavior.⁵⁸ Research also shows that when girls move to better neighborhoods, arrests for violent offenses and property crimes decrease, and girls are more likely to be successful at school.⁵⁹
- **Early Puberty:** Researchers conclude that early onset of puberty appears to increase the risk of delinquency for girls.⁶⁰ Early onset of puberty also has more of an impact on influencing the likelihood of delinquent behavior among girls, if they are from a disadvantaged neighborhood with a dysfunctional family; experience sexual abuse or other maltreatment; suffer from mental health disorders; or are engaged in a romantic relationship with a partner involved in delinquent activity.⁶¹

⁵¹ LESLIE D. LEVE ET AL., *supra* note 22, at 9.

⁵² SIOBHAN M. COONEY ET AL., *supra* note 27, at 2; American Bar Association, *supra* note 16, at 459.

⁵³ SIOBHAN M. COONEY ET AL., *supra* note 27, at 2; Barbara A. Oudekerk & N. Dickon Reppuci, *Romantic Relationships Matter for Girls' Trajectories: Recommendations for Juvenile Justice*, AM. JUDGES ASS'N. CT. REV., 52 (2009-2010).

⁵⁴ SIOBHAN M. COONEY ET AL., *supra* note 27, at 2.

⁵⁵ Barbara A. Oudekerk & N. Dickon Reppuci, *Romantic Relationships Matter for Girls' Trajectories: Recommendations for Juvenile Justice*, AM. JUDGES ASS'N. CT. REV., 52 (2009-2010).

⁵⁵ *Id.* at 54.

⁵⁶ LESLIE D. LEVE ET AL., *supra* note 22, at 10.

⁵⁷ American Bar Association, *supra* note 16, at 460.

⁵⁸ MARGARET A. ZAHN, ET. AL., *supra* note 48, at 9.

⁵⁹ American Bar Association, *supra* note 16, at 460.

⁶⁰ MARGARET A. ZAHN, ET. AL., GIRLS' STUDY GROUP: UNDERSTANDING AND RESPONDING TO GIRLS' DELINQUENCY – CHARTING THE WAY TO DELINQUENCY PREVENTION FOR GIRLS, 4 (Oct. 2008), *available at* <https://www.ncjrs.gov/pdffiles1/ojjdp/223434.pdf> (last visited July 31, 2012); *See* MARGARET A. ZAHN, ET AL., *supra* note 48, at 2-5, 8; American Bar Association, *supra* note 16, at 461.

⁶¹ MARGARET A. ZAHN, ET. AL., *supra* note 60, at 4; *See* MARGARET A. ZAHN, ET. AL., *supra* note 48, at 2-5,8; American Bar Association, *supra* note 16, at 460-461; LESLIE D. LEVE ET AL., *supra* note 22, at 11.

Representing Girls in the Juvenile Justice System: Best Practices & Strategies for Defense Counsel

Given the complexity associated with representing girls, the best strategy to begin addressing the unique problems of girls in the juvenile justice system include gender sensitivity coupled with zealous advocacy.⁶² Although the practices below provide guidance on representing girls involved in the juvenile system, it should be noted that all girls are different, and therefore defense counsel should carefully consider such differences, whether based upon race, culture, socio-economic status, or other distinctive characteristics when representing any juvenile.

- ❖ **Youth Interviews/Communication:** Research reveals that because girls value relationships, defenders representing troubled girls have an opportunity to influence their self-esteem.⁶³ While counseling the juvenile and ensuring that she understands the case and possible outcomes, take into consideration her thoughts without judging, questioning, or feeling the need to agree or disagree.⁶⁴ With a supportive disposition, remind the juvenile that everyone makes mistakes while acknowledging positive attributes and achievements.⁶⁵ Be aware that acting tough or disinterested may be an effort to conceal anxiety, confusion, or embarrassment, and therefore refrain from taking anything communicated personally.⁶⁶ Be honest, respectful, and encouraging.⁶⁷
- ❖ **Referrals and Charging Decisions:** Negotiate with prosecutors and court counselors to divert, dismiss, and mediate cases, when appropriate.⁶⁸ Some diversion options include continuing the case without conditions, continuing the case under certain conditions (e.g., restitution, community service, teen court, mediation), admitting responsibility but withholding adjudication, with or without conditions, and employing deferred prosecutions where allowed. To facilitate mediation, consider contacting local entities that provide mediation services. In addition, become knowledgeable of alternatives to court involvement such as programs that use a comprehensive methodology to concentrate on risk and protective factors.⁶⁹ Gender-competent programs with an emphasis on both risk and protective factors address low self-esteem, gender identity development, affirmative relationships with peers and families, school attachment and achievement, sexual, physical, and mental health, and life skills.⁷⁰

⁶² Paula Schaefer, *supra* note 7, at 17.

⁶³ *Id.* at 21.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ GIRLS AND BOYS IN THE JUVENILE JUSTICE SYSTEM: ARE THERE DIFFERENCES THAT WARRANT POLICY CHANGES IN THE JUVENILE JUSTICE SYSTEM, *supra* note 6, at 2.

See FRANCINE T. SHERMAN, GIRLS IN THE JUVENILE JUSTICE SYSTEM: PERSPECTIVES ON SERVICES AND CONDITIONS OF CONFINEMENT, 18, available at <http://www.juveniledefender.org/files/gjireportconditions.pdf> (last visited July 31, 2012).

⁶⁹ NATIONAL CHILD TRAUMATIC STRESS NETWORK, *supra* note 26, at 4-5; See American Bar Association, *supra* note 16, at 462 (2007).

⁷⁰ See CHRISTY SHARP & JESSICA SIMON, GIRLS IN THE JUVENILE JUSTICE SYSTEM: THE NEED FOR MORE GENDER-RESPONSIVE SERVICES, 23 (2004).

⁷⁰ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 8, at 1

- ❖ **Detention:** Be prepared to negotiate against detention, and ensure that it is utilized as a last resort⁷¹ as some research indicates that although girls are less likely than boys to be arrested and charged, once charged, girls are more likely than boys to be placed in secure confinement,⁷² for less serious offenses than boys (e.g., probation violations, status offenses, or other non-violent offenses).⁷³ Because girls involved in the juvenile justice system tend to have a history of trauma and detention may intensify distress leading to self-harming behavior and the likelihood of victimization while incarcerated,⁷⁴ advocate for your client’s release when detained or for programs or services when detention is a possibility.⁷⁵ Attempt to find programs and placements that address the juvenile’s needs.⁷⁶ Ensure that detention is not used in order to provide services, to protect against sexual victimization; to address fear of sexual identity; orientation, or activity; or to respond to girls who are non-cooperative.⁷⁷ Furthermore, advocate that girls not be shackled during proceedings as research has shown that such restraint may result in re-traumatization.⁷⁸ For pregnant girls specifically, inform the court at the commencement of the hearing that shackles may compromise health and result in pain as well, if necessary.⁷⁹
- ❖ **Disposition and Commitment to a Youth Development Center (YDC):** Given the research regarding girls and mental health, request evaluations or expert witnesses to prepare for hearings and to provide testimony against harmful dispositional recommendations.⁸⁰ Advocate for your client to remain in the community, when appropriate.⁸¹ If the juvenile is committed to a youth development center, during the dispositional hearing make the court aware of any conditions of confinement that may be detrimental to ensuring rehabilitation without further exacerbating existing mental health conditions by providing supporting research along with your recommendations.⁸² In addition, due to girls’ relational nature, ensure that access to family or children is not unnecessarily interrupted while confined.⁸³
- ❖ **Post-Disposition:** Although research has revealed girls’ rates of recidivism to be lower than those of boys, the use of probation, and post-release supervision violations have been shown to increase the likelihood, that without committing a crime, girls will return to detention or a youth development center.⁸⁴ Therefore, when representing a youth for violation of probation or post-release supervision, work thoroughly to investigate the allegations to determine if the violation has been willfully violated or

⁷¹ NATIONAL CHILD TRAUMATIC STRESS NETWORK, *supra* note 26, at 4-5.

⁷² GIRLS AND BOYS IN THE JUVENILE JUSTICE SYSTEM: ARE THERE DIFFERENCES THAT WARRANT POLICY CHANGES IN THE JUVENILE JUSTICE SYSTEM, *supra* note 6, at 2; *See* American Bar Association & National Bar Association, *supra* note 3, at 85.

⁷³ American Bar Association & National Bar Association, *supra* note 3, at 85. 86-87 (2002).

⁷⁴ NATIONAL CHILD TRAUMATIC STRESS NETWORK, *supra* note 26, at 4-5.

⁷⁵ Paula Schaefer, *supra* note 7, at 17; *See* American Bar Association & National Bar Association, *supra* note 3, at 90.

⁷⁶ Paula Schaefer, *supra* note 7, at 17; *See* American Bar Association & National Bar Association, *supra* note 3, at 90.

⁷⁷ Paula Schaefer, *supra* note 7, at 17; *See* American Bar Association & National Bar Association, *supra* note 3, at 90.

⁷⁸ NATIONAL CHILD TRAUMATIC STRESS NETWORK, *supra* note 26, at 4-5.

⁷⁹ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 32, at 1-2.

⁷⁹ GIRLS AND BOYS IN THE JUVENILE JUSTICE SYSTEM: ARE THERE DIFFERENCES THAT WARRANT POLICY CHANGES IN THE JUVENILE JUSTICE SYSTEM, *supra* note 6, at 4.

⁸⁰ *See* NATIONAL CHILD TRAUMATIC STRESS NETWORK, *supra* note 26, at 5.

⁸¹ *See* FRANCINE T. SHERMAN, *supra* note 68, at 18; *See* NATIONAL CHILD TRAUMATIC STRESS NETWORK, *supra* note 26, at 4-5.

⁸² *See* FRANCINE T. SHERMAN, *supra* note 68, at 18; *See* NATIONAL CHILD TRAUMATIC STRESS NETWORK, *supra* note 26, at 4-5.

⁸³ LESLIE D. LEVE ET AL., *supra* note 22, at 10; Paula Schaefer, *supra* note 7, at 19.

⁸⁴ NATIONAL COUNCIL ON CRIME AND DELINQUENCY CENTER FOR GIRLS AND YOUNG WOMEN, *supra* note 8, at 1.

if a lawful excuse exists; prepare alternatives for disposition that address the youth's needs if she is found to be in violation; and inform her of community-based programs that provide assistance during incarceration, as well as following incarceration to reduce the probability of recidivism (e.g., North Carolina Prisoner Legal Services' Incarcerated Youth Advocacy Project (IYAP)⁸⁵ and Advocates for Children's Services' (a project of Legal Aid of North Carolina) Juvenile Reentry Action Project (J-RAP)).⁸⁶ Be aware that entry into the juvenile justice system has some distinct long-term consequences for girls outside of those pertaining to all youth.⁸⁷ For instance, studies note that girls are more likely to have children at a younger age and exhibit compromised parenting skills.⁸⁸ Girls may also be more likely to experience and perpetrate domestic violence as adults.⁸⁹ Moreover, although research stipulates that marriage has a positive effect on male offenders, female offenders have a higher likelihood of marrying an antisocial partner and thereafter engaging in substance abuse and criminal behavior, and consequently entering or re-entering the criminal justice system.⁹⁰

Girls in the Juvenile Justice System: Conclusion

Girls are different from boys, and therefore gender-responsive policies and practices are essential to ensuring that girls are adequately served by the juvenile justice system. Understanding girls as a population in the juvenile justice system, their nature, causes and correlates leading to delinquency, and obstacles encountered are necessary to engage in zealous and effective representation.

⁸⁵ Currently, North Carolina Prisoner Legal Services' Incarcerated Youth Advocacy Project (IYAP) advocates for youth in the custody of the Division of Juvenile Justice, and provides post-disposition representation addressing commitment, conditions of confinement, and issues such as education, health and mental health needs, and sexual abuse. *See* NORTH CAROLINA PRISONER SERVICES, INC., INCARCERATED YOUTH ADVOCACY PROJECT, available at <http://www.ncids.org/JuvenileDefender/YouthAdvocacy/JuvDefBrochure%20-%20IYAP.pdf> (last visited July 31, 2012).

⁸⁶ Advocates for Children's Services' (a project of Legal Aid of North Carolina) Juvenile Reentry Action Project (J-RAP) offers civil legal services, mainly education advocacy, to youth exiting the juvenile justice system and transitioning back into their homes, schools, and communities. *See* ADVOCATES FOR CHILDREN'S SERVICES (A PROJECT OF LEGAL AID OF NORTH CAROLINA, INC.), JUVENILE REENTRY ACTION PROJECT (J-RAP), available at http://www.ncids.org/JuvenileDefender/JuvReentry/J-RAP_Flyer.pdf (last visited July 31, 2012).

⁸⁷ *See generally* Elizabeth Cauffman, *Understanding the Female Offender*, 18 FUTURE CHILD 119 (No. 2 2008), available at http://futureofchildren.org/futureofchildren/publications/docs/18_02_06.pdf (last visited July 27, 2012).

⁸⁸ *Id.* at 125.

⁸⁹ *Id.*

⁹⁰ *Id.*