Sugar and Spice and Everything Nice: Female Juvenile Delinquency and Gender Bias in Punishment and Behavior in the Juvenile Courts

Jennifer Thibodeau
"The face of the juvenile delinquent in America is changing—and her sad eyes reflect the pain of a childhood lost."¹

The juvenile court system in the United States is reaching a flash point concerning female juvenile offenders. On the one hand, some judges and state legislatures cling to the old-fashioned rehabilitative models of treating girls for "incorrigibility" and sexual promiscuity, thinking this will keep girls from leading a life of crime. They look to a time when girls could be sent away for treatment based on truancy. Since the passage of the 1974 Juvenile Justice and Delinquency Prevention Act,¹ two treatment centers have released all status offenders³ by law. The other looks to the juvenile courts as mini-adult courts, where sentences are handed out to those who break the law, without consideration of age or rehabilitative potential.

A curious situation has developed between these two viewpoints because they now stand closer than ever. Girls are being committed to state facilities, but not because of involvement in possible violent crimes. Instead, most of the commitments occur as a result of violations of orders from the court.⁴ Scholars believe that courts are "bootstrapping" the laws to permit status offenders to be incarcerated. The courts are "bootstrapping" probation violations and court ordered violations to commit girls, but the unfortunate reality is that girls are more violent than they used to be.⁵

Girls are committing more violent crimes than ever before, and while not surpassing boys in actual numbers, they are in the percentages.⁶ Girls are being prosecuted for many of these offenses the first time, but the punishments are less severe than they would be for boys. The girls are learning the laws, are learning how to bend the court to their advantage, and are learning how to avoid

---

³ A status offender is "a juvenile who has come into contact with the juvenile authorities based upon conduct that is an offense only when committed by a juvenile. A status offense is conduct that would not be defined as a criminal act when committed by an adult." CLIFFORD E. SIMONSEN, JUVENILE JUSTICE IN AMERICA 95 (3d ed. 1991).
⁴ Cheryl Dalby, Gender Bias Toward Status Offenders: A Paternalistic Agenda Carried Out Through the JJDDA, 12 LAW & INEQ. J. 429, 441-42 (1994).
⁶ Id.
being caught again. Those who are caught again are often not brought in for another violent offense, but a violation of their probation, or a violation of a court order.

This Note examines the disparate treatment of male and female juvenile delinquents in the juvenile court system in the states. The first part will look at the history of the juvenile court system, its paternalistic attitudes towards female delinquents, and the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) and its impact on status offenders. The second part will look at female juveniles as criminals in society; how they were viewed in the past and how they are viewed today. A significant factor is the rising crime rate of girls, especially girl gangs, will also be addressed. The third part will address crimes and punishments in today’s juvenile courts. Virginia and Michigan law will be specifically reviewed, two states with contrasting viewpoints in how juveniles should be adjudicated. The nature of punishments handed down across the country in juvenile courts will be looked at as well.

**BACKGROUND MATERIALS ON FEMALE JUVENILE DELINQUENCY**

Simply put, boys commit more crimes than girls. This reality has led to female juveniles being left out of most studies conducted on juvenile delinquency. They are often not included in academic studies because they “confound” issues, skewing the neat results and conclusions many scholars hope to achieve.

Historically, the juvenile justice system aimed at intervening in juveniles’ lives, treating them in order to allow them to reenter the population as law-abiding citizens. The attitudes of those presiding over the system were by and large paternalistic in character, laying grandfatherly hands upon the child and guiding them away from a future of crime. Females in the system were guided even more, the diversion not so much from a life of crime as from a life of ill repute. Females have enjoyed, and to some extent still do, a system

---

7. A juvenile is:

A person subject to juvenile court proceedings because a statutorily defined event was alleged to have occurred while his or her age was below the statutorily specified limit of original jurisdiction of a juvenile court. A juvenile delinquent, then, has been adjudicated by an officer of a juvenile court for law violations that would be crimes if they had been committed by an adult. SIMONSEN, supra note 3, at 4.


10. Id.
JUVENILE DELINQUENCY AND GENDER BIAS

that thinks girls are way-ward, but not necessarily criminal. The system seems to believe that boys become hardened criminals, but girls merely need to be put back onto the path of goodness.

The adult courts, which juveniles generally only see on appeal, have applied different standard to juveniles, based on gender. As late as the 1960s, the Supreme Court held in *Michael M. v. Superior Court of Sonoma Country* a California statutory rape law that only prosecuted males was constitutional, and the government’s interest in preventing teenage pregnancies was greater than the boys’ due process rights. *Michael M.* carried the banner for different standards for juveniles based on their gender.

The Court in *Michael M.* followed a precedent extending back to the turn of the nineteenth century, when women and children had the legal status of chattel, property owned by the father or husband. In fact, it was not until the late nineteenth century when females, as a distinct class, were recognized as legal entities in the United States.

Girls have been arrested since the nineteenth century for status offenses, which would not be considered crimes if committed by adults. Status offenses include school truancy, runaways, underage sexual activity, and “incorrigibility.” Many states in recent years have begun implementing specific programs for status offenders, such as CHINS (Children in Need of Supervision), but have not eliminated the offenses themselves from the books. They remain misdemeanors, subject to dispositions handed down by juvenile court judges.

These laws were originally designed to be rehabilitative, not punitive. Their intent was to steer girls away from a life of ill repute. Females were, and still are, charged disproportionately

12. “We still live in a world where antisocial behavior is tolerated in boys but abhorred in girls.” Lederman & Brown, supra note 1, at 912.
14. Dalby, supra note 4, at 431.
15. Id. at 430-34.
16. For instance, women did not claim economic autonomy in Virginia until the 1890s. Until that time, she was not allowed to own property. Her father owned her property, and it was transferred to her husband when she married. See generally Virginia Code of 1950, Title 5, Chapter 3, Property Rights of Married Women, case law history.
17. See Simonsen, supra note 3, at 95.
18. Id.
20. Dalby, supra note 4, at 437 & n.69-70.
with status offenses than males.\textsuperscript{21} Males who are picked up for more serious offenses, such as drug offenses or assaults, could also have been picked up for status offenses.\textsuperscript{22} This discretionary behavior of the police is opposite for girls. Based on nondescript arrest statistics, police prefer to pick up girls for status offenses rather than other crimes.\textsuperscript{23}

In light of children being considered chattel by their parents throughout history, the question remains whether juveniles as a class made any stride for equality in the courts. The answer is yes, but the Supreme Court did not address juvenile issues until the 1960s.\textsuperscript{24} Basic constitutional rights that adults take for granted did not attach to juveniles until very recently.\textsuperscript{25} Fortunately, with the exception of \textit{Michael M.}, the Court has extended these rights equally regardless of gender.\textsuperscript{26}

\textit{Kent v. United States} was a landmark case when the Supreme Court decided it in 1966.\textsuperscript{27} \textit{Kent} guaranteed due process rights for juveniles in juvenile court proceedings consistent with adult constitutional rights in criminal trials.\textsuperscript{28} In \textit{Kent}, the Court found the juvenile was denied a full and fair hearing on various issues related to his trial in the District of Columbia circuit court.\textsuperscript{29}

\textit{In re Gault} is referred to as the case that extended constitutional due process rights to all aspects of juvenile court proceedings.\textsuperscript{30} The Court heard an appeal from an Arizona juvenile whose juvenile proceeding denied him a fair hearing on the charges.\textsuperscript{31} Included in the rights granted to juveniles by the Court is the right to counsel, the privilege against self-incrimination, giving notice to a juvenile’s parents as to the charge,\textsuperscript{32} and absent a

\textsuperscript{21} See discussion on Virginia and Michigan juvenile systems, infra.
\textsuperscript{23} Id. at 437.
\textsuperscript{24} Beginning with \textit{Kent v. United States}, 383 U.S. 541 (1966).
\textsuperscript{25} These include the Fourth, Fifth, Sixth and Eighth Amendments. See \textit{McKeiver v. Pennsylvania}, 403 U.S. 528 (1971), for an example of rights juveniles do not have.
\textsuperscript{26} Id.
\textsuperscript{27} 383 U.S. 541 (1966).
\textsuperscript{28} Id.
\textsuperscript{29} Id.
\textsuperscript{30} 387 U.S. 1 (1967).
\textsuperscript{31} Id.
\textsuperscript{32} Parental notice of a juvenile’s court appearance is still contested today, even in light of \textit{Gault}. In Virginia, the courts have addressed that exact issue in the last year with a series of cases, including: Moore v. Virginia, 259 Va. 405 (2000); Moore v. Virginia, 259 Va. 431 (2000); Roach v. Director, Dep’t of Corr., 258 Va. 537 (1999); Virginia v. Baker, 258 Va. 1 (1999). For a commentary on these and other parental notice cases, see Robert E. Shepherd, Jr., \textit{Annual Survey of Virginia Law: Legal Issues Involving Children}, 34 U. RICH. L. REV. 999, 940-46 (2000).
confession the prosecution must present evidence subject to cross-examination.\(^3\) Considering \textit{Gault} was decided only a year after the narrow due process decision of \textit{Kent}, the sweeping grant of constitutional rights was groundbreaking. Only Justice Stewart dissented in the case, stating that due process constitutional rights should not be, and were not intended to be, extended to juveniles or juvenile court proceedings.\(^3\)

The Court's decision in \textit{In re Winship} in 1970 was not as sweeping as \textit{Gault}.\(^3\) The Court held the prosecution must prove beyond a reasonable doubt offenses in juvenile courts charges which would be considered a crime if committed by an adult and brought before a general court.\(^3\)

\textit{McKeiver v. Pennsylvania},\(^3\) decided in 1971, was a setback to juvenile advocates who had seen strides in juvenile constitutional equality in the previous five years. \textit{McKeiver} affirmed that juveniles are entitled to hearings where fundamental fairness to the juvenile is at issue.\(^3\) The Sixth Amendment right for an adult criminal defendant to receive a jury trial is not a guaranteed right for juveniles.\(^3\) The Court did not create a blanket ban, however, and left the question of juvenile jury trials to the States.\(^3\)

While the Court has continued to hear cases on juvenile issues, \textit{Breed v. Jones} was one of the last major cases that extended previously denied constitutional rights to juveniles.\(^4\) \textit{Breed} protects juveniles from double jeopardy.\(^4\) Before \textit{Breed}, juveniles could be tried once in a juvenile court for an offense, and then again in adult court for the same offense.\(^4\) The Court extended the same protections of double jeopardy for juveniles as for adults, finding that jeopardy attaches either when the first witness is sworn to testify or when the jury is impaneled.\(^4\)

In 1974, the United States Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDPA).\(^4\) This monumental legislation sought to codify and regulate juvenile
justice under the federal government.\textsuperscript{46} The Act endeavored to pull together legislation from across the country in an attempt to create a more uniform system.\textsuperscript{47} In the Act, Congress ordered studies to create solutions to curb juvenile delinquency, as well as establishing federal programs to oversee those studies.\textsuperscript{48}

One provision of the JJDPA was a mandate to release all status offenders held in detention centers.\textsuperscript{49} The Act did not permit the incarceration of future status offenders.\textsuperscript{50} They had been held in detention for being runaways, or at the behest of parents for being "incorrigible."\textsuperscript{51}

This freedom from incarceration for status offenders, and the alternative mandated preference for treatment over punishment, did not last long. In 1980, Congress passed an amendment to the JJDPA commonly referred to as the "valid court order" amendment.\textsuperscript{52} This amendment permits judges to order detention time for juveniles who violate a valid court order. A court order issued by a juvenile judge, especially for a status offender, can be as simple as an order to attend school every day, or to not leave home after a certain time.\textsuperscript{53} A judge can circumvent the "no detention" mandate in the JJDPA when a status offender fails to attend school. The judge can do what he may have wished in the first place, putting the status offender in a detention center.

This change, which was never publicly debated in either the House or the Senate, effectively gutted the 1974 JJDP act by permitting judges to recategorize a status offender who violated a court order as a delinquent. This meant that a young woman who ran away from a court-ordered placement... could be relabeled a delinquent and locked up.\textsuperscript{54}

The "valid court order" amendment also offers an alternative for juvenile judges, police, and prosecutors to sentence females for violations of court orders that were part of dispositions of prior offenses, rather than prosecute for new offenses.

\begin{footnotes}
\footnotetext[46]{Id.}
\footnotetext[47]{42 U.S.C. § 5602.}
\footnotetext[48]{See 42 U.S.C. § 5601 (discussing Congressional findings).}
\footnotetext[49]{See 42 U.S.C. § 5633(a)(12)-(a)(13).}
\footnotetext[50]{Id.}
\footnotetext[51]{Voluntary admissions are an example of one way girls are detained for status offenses.}
\footnotetext[52]{See Dalby, supra note 4, at 440-46. Dalby criticizes the valid court order amendment.}
\footnotetext[53]{Id.}
\footnotetext[54]{MEDA CHESNEY-LIND, THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME 70 (1997).}
\end{footnotes}
The JJDPA did explicitly target the rising female delinquency rates with one particular statute that called for gender-specific programs to be established to divert female delinquency.\(^5\) This diversion normally comes from treatment and counseling programs implemented by the states that specifically target female concerns and are different from male programs.\(^6\) Some of these programs were immediately established around the country, while others did not come into existence until the 1990s.\(^7\)

**ARE GIRLS MORE VIOLENT THAN BEFORE?**

Status offenses have existed since the nineteenth century. Juveniles, especially young girls, were convicted of status offenses in high numbers, and the court often ignored other offenses the girls may have committed. Because of adjudications of status offenses dominating juvenile records, trends in violent female juveniles are difficult to explore, and even more difficult to prove. Many girls were incarcerated for being a runaway, or sexually “loose,” instead of incarcerated for other criminal activity.\(^8\)

In Victorian times, when a woman’s sexual behavior was seen as sin, society and courts in turn sought to keep girls away from a possible future of misbehavior and ostracism from society.\(^9\) Misbehavior by girls became a crime.\(^10\) Centers were built to house these girls and train them to be proper women.\(^11\) As misdemeanor offenses, jail time was often not an available penalty, but the courts were still able to incarcerate girls. Girls convicted of status offenses were sent to training centers to learn how to behave, cook, sew, and become restrained, proper Victorian women.\(^12\) They were held to protect them from themselves, for as long as it took to correct their deviant behavior.\(^13\) Girls, apparently, were more worthy of “reform”
than boys, who were locked in jails with the men, sentenced to a life of criminality.  

The fact that female juveniles are being arrested and sentenced at a higher rate now for violent-type offenses can be in part credited to the JJDNA.  

Because status offenders cannot be detained solely on the basis of that offense, the juvenile justice system is discovering that girls also commit criminal-type offenses.

One needs only look at today's popular talk shows.  It appears that girls are far more violent now than ever in modern history, and the media does not hold back.  Girls on these shows are irreverent, foul-mouthed, indifferent, and proud of their violence.  They willingly admit to hitting their parents and siblings with baseball bats and cutting them with knives, what criminal jurisprudence terms as assault with a deadly weapon.  

The image viewers receive from watching these shows is that society is heading downhill fast, led by these violent little girls.

Historically, the criminology of female delinquency pointed towards a model of female behavior driven by sexual impulses. Girls who committed crimes were driven by sexual, even biological, reasons, and those reasons could not possibly be reconciled with criminal behavior in boys.  

Some of the more unusual reasons for girls' delinquent behavior included hysteria, recalling ancient Greek philosophers, and premenstrual syndrome.  

All too often it is this nymphomanian urge in adolescents which is responsible for young girls running away from home, or custody, only to be found wandering in the park or following the boys. These girls can be helped, and their criminal career abruptly ended with hormone therapy.

Cultural factors have also been utilized to account for girls' behavior, to varying degrees of acceptance. Many factors are valid,

---

64. For an overview of juvenile correctional history, at least in Virginia, see Paul W. Keve, The History of Corrections in Virginia 149-79, 218-37 (1986).


66. See generally episodes of the "Maury Povitch Show."


68. Id.

69. Id.


71. Id.

72. Id. at 493 (quoting Katherine Dalton).
including physical and emotional abuse of the girl by a family member, educational deficiencies, and socioeconomic issues.73

One amusing theory proffered in the 1970s was the women's equality movement responsibility for the rise in crimes committed by women.74 Proponents argued that women wanted to be like men in every way, and maintained "that the liberation of women from age-old restraints will give rise to a wave of much worse delinquent behavior than that of males, since females will go to extremes to try to prove their equality."75

Today, girls psychologically are receiving mixed signals from society. On one hand, they need to be the women of tomorrow - strong, independent, empowered - like the Spice Girls.76 On the other hand, they need to attractive, polite, and demure in order to catch a husband and be a mother of the future.77 They hear that being too empowered and independent is not a virtue, but a detriment, both at work (the lady attacking the glass ceiling) and at home (wives are not supposed to boss around their husband).

Basically, today's girls are as confused as many adult women. Unfortunately, girls are not receiving the help they desperately need to understand their role in the future. They are not supposed to act too much like boys, and those who do are punished both by society and the courts.78

New behavioral biases and theories are being developed, but factors concerning disposition for violent behavior still slant on a gender bias. Textbooks point to indicators of violent behavior in juveniles including: past history of violence; age, fifteen to nineteen are at highest risk; gender, males still do commit more violent crimes; race; socioeconomic status; and drug and alcohol usage.79 Violence among girls is increasing in number of incidents. The classic example of "girl fights" still happen, with hair pulling and scratching, but the girls who fight more like the boys gain more respect from both boys and girls.80 The "rules of engagement" have

73. See ANNE CAMPBELL, GIRL DELINQUENTS 239 (1981).
74. CHESNEY-LIND, supra note 54, at 34.
75. BINDER, supra note 70, at 487.
77. Id.
78. Id.
79. SIMONSEN, supra note 3, at 179-80. "Girls in schools [are] hanging more with boys than they did in the past, and may be absorbing boys' 'rules of engagement' but not all of them." CAMPBELL, supra note 73, at 149.
80. CAMPBELL, supra note 73, at 149.
long been established for boys, but now girls are learning these rules and making them their own.\textsuperscript{81}

The reasons why girls fight also are being explored more now than in the past. Fights between girls are of a more personal nature: boys tend to fight over territorial disputes, whereas girls fight over boyfriends or personality clashes.\textsuperscript{82} The distinctions between girls and boys are distinct on other levels as well. For instance, girls who use weapons tend to use those that require personal attacks.\textsuperscript{83} Knives and razors are the weapons of choice across the country for girls to carry with them to school.\textsuperscript{84} Boys prefer distance weapons, such as guns.\textsuperscript{85}

In 1995, girls accounted for nearly twenty-five percent of all juvenile arrests nationwide.\textsuperscript{86} While a large percentage of those arrests are for property crimes – the most popular form of offense for both female and male juveniles – many of those arrests were for violent-type offenses.\textsuperscript{87}

The following are examples of violent offenses being committed by girls across the country, taken from newspaper and magazine articles:

In St. Petersburg, Florida, the following happened in the schools: Nov. 3 – Middle School girl threw a crowbar at another student; Nov. 17 – High School girl was found carrying pepper spray; Nov. 22 – Middle School girl threw a “star dart”; Dec. 14 – High School girl was found carrying a knife; Dec. 15 – High School girl found carrying a razor knife.\textsuperscript{88}

In Boston, Massachusetts: two fifteen year-old girls and one seventeen year-old were arraigned in juvenile court following the sexual assault and beating of another girl until she was unconscious on a Boston subway because the girls had seen the Moroccan immigrant hold hands with another girl.\textsuperscript{89}

\begin{thebibliography}{99}
\bibitem{81} Id.
\bibitem{82} CHESNEY-LIND, supra note 54, at 40.
\bibitem{83} Id.
\bibitem{84} Id.
\bibitem{85} Id. at 39.
\bibitem{86} Id. at 11.
\bibitem{87} Id. at 11-14.
\end{thebibliography}
“Carla,” a smiling, intelligent, blond, fourteen year-old student is also a gun-toting gang member who carries a gun at all times. One night after leaving home against her parent’s wishes, conducted a drive-by shooting of a rival gang member, severely injuring the boy, laid low overnight to avoid the police, but was caught the next day at school, where no one had any idea that this bright student could be a gang-banger. She was arrested and convicted of aggravated assault, sent to a boot camp for a short period, and skipped out on probation within twenty-four hours of meeting with her probation officer.90

The instances of female juvenile violence are increasing across the country at an alarming rate. For example, in San Diego, California, female juvenile arrests have increased 204% as opposed to a 72% increase over a similar period for boys.91 The lack of studies conducted on female juvenile delinquency has made this disturbing trend something of an enigma.92 Some authorities still rely on surveys and theories proffered in the 1960s to find solutions to the problem.93 Many older scholars believed that women are the more “treatable” of the genders.94 The problem is that “whatever tactics” that may have worked with women do not necessary work anymore, and female delinquency is a problem.95

In May 2001, a study by the American Bar Association and National Bar Association sought to foster new thinking.96 Included in the report was a list of factors that delinquent girls had in common. These include past abuse, poor school performance, and developmental problems.97 The report cites to the inordinately high detention of girls for minor offenses such as traffic violations and status offenses such as running away.98 In addition, the report says that of the 670,000 juveniles arrested in 1999, nearly twenty-

---

91. Lau, supra note 56.
92. See Lederman & Brown, supra note 1, at 910.
94. “If men could be induced to behave in the same manner – by whatever tactics work with women – we would have gone a very long way toward a solution to the problem of delinquency.” BINDER, supra note 70, at 506.
95. Id.
97. Id. at 15.
98. Id.
seven percent were girls. Of those offenses, girls were disproportionately charged with status offenses.

While overall statistics for juvenile crime are falling, female juveniles have alarmed many in government with rising numbers, especially when compared to male juveniles.


<table>
<thead>
<tr>
<th>Offense</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Girls</td>
<td>114.5%</td>
</tr>
<tr>
<td>Boys</td>
<td>52.9%</td>
</tr>
<tr>
<td>Robbery</td>
<td>136.8</td>
</tr>
<tr>
<td>Aggravated Assault</td>
<td>128.3</td>
</tr>
<tr>
<td>Violent Crime</td>
<td>143.1</td>
</tr>
<tr>
<td>Other Assaults</td>
<td>137.3</td>
</tr>
<tr>
<td>Weapons Possession</td>
<td>101</td>
</tr>
</tbody>
</table>

Recidivism is also on the rise among girls. "[O]nce females are initiated into crime or delinquency, they become more hard core than males and commit delinquent acts with greater frequency," and as will be discussed below, the juvenile courts seem to turn aside blindly to the recidivism problem. Some girls are getting away with numerous assaults before the courts intervene and say they need to be turned over the department of corrections for an extended stay, both for detention and for treatment.

New programs, in accordance with the JJDPA, are being implemented to specifically target girls. One program in San Diego is trying to find a new approach to dealing with girls, and not simply mirror treatment centers already in place for boys. "The male point of view [in detention] is very much oriented toward teamwork and sports.... The goal [of the new WINGS program for girls] is to help them understand themselves, rebuild their lives, strengthen this self-esteem and learn social and work skills."

**GIRLS AND GANGS**

Girls are not just committing more offenses, but they also are joining and forming gangs in large numbers. Girl gangs are

---

99. *Id.* at 11.
100. CHESNEY-LIND, supra note 54, at 38.
102. See Lau, supra note 56.
103. *Id.*
hardly a new phenomenon; girls have been a part of male gangs almost since they came about. The image of the Pink Ladies from the movie _Grease_, however, is not the reality that exists today. The 1950s are gone, and while the Pink Ladies had attitude, they were little more than a shadow of their boyfriends' gang.

The usual image of the arm candy of male gang members is still around, but more and more girls are joining gangs in their own right, being “sexed in” or shooting their way into respect among the boys. More girls are “jumping in” to gangs that are girl-only. For the most part, girls in predominantly male gangs are considered little more than sexual chattel of the gang member, to be controlled and used at the boy’s will and command.

In the late 1980s and early 1990s, society began to take notice of these girl gangs. Magazines, newspapers, and TV shows started exploring this mystery. Much of the media looked for ways to compare girl gangs to boy gangs, in mannerisms and behaviors. The police in many of the largest cities in the country denied, and still do deny to some extent, that organized girl gangs actually existed. What they found was truly unexpected. The following is an excerpt from _8 Ball Chicks_, describing one particularly menacing girl gangster in Los Angeles.

> I had heard all about Shygirl before I ever laid eyes on her. Wherever I went in Lennox, her reputation preceded her. One gang banger boasted Shygirl jumped him in. For a sole female to participate in a boy’s initiation beating was unusual; I wanted to know whether Shygirl had hit as hard as the others. “Hell, she threw the first punch! She had her arm around my shoulders, then all of a sudden — boom! She hit me in my face with her right, knocking me to the ground. She’s crazy.” Another one warned, “She is the real thing, the most real you will ever get. She can act low-key, but when she gets angry she

---

105. Id.
107. Id.
109. See generally Gini Sikes, _8 Ball Chicks_ (1992) for a critically acclaimed account of girl gangsters across the country.
112. Shows such as _Montel Williams, Maury Povich, and Sally Jesse_ are to the point where violent girls are part of their regular lineup of show topics.
113. Id.
114. Sikes, _supra_ note 109, at xxii.
just snaps. It's like she gets tunnel vision, her eyes narrow, her whole face changes. She will take down anyone in a minute; she does not care. She eats, sleeps, and lives Lennox [L.A. street gang]."

The gang unit at the Lennox sheriff's station also knew her.... "We tried questioning her, but Shygirl's a poker face. I mean, you get no emotion. You sit there and talk to her – she just gives you a blank stare. Like stone. As far as her gang's concerned, it's probably one of her best attributes."

The level of girls' involvement in the Lennox cliques went in cycles over the years. At times the boys' gangs welcomed girls, at others they pushed them aside, denigrating them as whores, bitches, snitches, and spies. Girls frequently found themselves in a catch-22: male leaders would order the prettiest to infiltrate an enemy party to set up or lure a rival – at high risk to herself – only to resent her and all females for making men vulnerable. "Right now girls are at the bottom of the totem pole. They've been reduced to nothing," Muse said. "Except Shygirl. I could see her shoot somebody in a heartbeat."

When I finally saw her, Shygirl's appearance fit the descriptions I'd heard. She looked like a Latino boy, slouched unsmiling in a corner, her husky frame draped in a striped shirt that hid her breasts. Downy hair covered her upper lip like the debut mustache of a teenage boy. Shockingly, the word LENNOX was tattooed on her forehead in indigo blue.115

Girl gangs tend to form in a familial style, with members relying on each other the way they would family members.116 For the most part, girls who are members of gangs are seeking out these familial relationships because they do not have a family that protects them at home.117 Many are victims of abuse, physical, emotional, or sexual, or have parents who themselves are criminals and cannot provide any sort of support system.118 For some girls, gangs have always been part of their lives. Their mothers were in gangs, and it seemed like the family business, regardless of whether the parent had made efforts to steer her away.119

115. SIKES, supra note 109, at 29-31.
116. CHESNEY-LIND, supra note 54, at 46.
117. Id.
118. Id.
Girl gangs typically do not engage in the type of criminality boy gangs do. While many boy gangs are formed for the purpose of economic illegality, such as drug trafficking, girl gangs are more social in character. This is not to say that girl gangs are not violent; they are very violent, and arrest rates reflect it. Girls fight, assault, and even kill, but the reasons are still unknown for many of their actions. Personality clashes and revenge for incidents against gang members are two possible reasons for the violence. The "rules of engagement" as taught by boys for proper conduct in fights still apply. Girls get more respect, even from other girls, when they fight more like the boys.

Even popular prime time television is looking at girl gang violence. In the fall of 2000, the television drama "ER" had a subplot that included a character's nephew being gunned down. Revealed in a later episode, the murderer was a member of the same girl gang that his girlfriend belonged. The nephew was trying to get the girlfriend out of the gang. This gang, it appears, is violent and requires lifelong allegiance. The girlfriend also makes an appearance as a hospital patient, after being assaulted for witnessing the murder and still wanting to leave the gang.

PUNISHMENT IN THE JUVENILE JUSTICE SYSTEM

In the area of punishment in the juvenile justice system, gender plays a large role in whether a juvenile will receive probation or commitment to the state. For the most part, the offenses will automatically determine the sentence imposed, and those judges who look blindly upon the gender of the juvenile. The judge who only sees a juvenile in need of help represents a group who should be thanked. Status offenses and violent-type offenses could not be further apart based on their statutory definitions, but their punishments come closer together than they should.

"The range of behavior generally considered acceptable is narrower for females and different factors appear to affect how

120. CHESNEY-LIND, supra note 54, at 46.
121. Id.
122. Id.
123. See generally SIKES, supra note 109.
124. CAMPBELL, supra note 73, at 149.
125. Id. at 172.
127. Id.
128. Id.
129. Id.
females are processed. Females may receive more restrictive, harsher, and longer interventions than comparable for males.\textsuperscript{130} This attitude of benevolent intervention can do more harm than good. A way judges are able to impose harsher dispositions now than before on many more females include re-labeling of status offenses into assaults and other criminal acts.\textsuperscript{131} For instance, a family disturbance where the offender attacked a parent or sibling was previously adjudicated as "incorrigible," but now is assault.\textsuperscript{132} In one review of arrests and charges in Maryland, 97.9\% of reports of violations of status offenses also involved assaults.\textsuperscript{133} This, like the valid court order amendment to the JJDPA, permits court officials, including prosecutors, to bootstrap status offenses into violent-type offenses.

Those referred to juvenile court for violations of court orders often find themselves in adversarial positions they did not expect. "Female offenders referred for contempt were more likely than females referred for other criminal-type offenses to be petitioned to court, and substantially more likely to be petitioned to court than males referred for contempt."\textsuperscript{134} For the typical female juvenile offender brought before the court for a violent-type offense, there is a 4.3\% chance of being incarcerated for the offense, but if brought before the court for contempt, the juvenile faces a 29.9\% chance of being detained.\textsuperscript{135}

The findings of early studies of the influence of gender on juvenile justice processing suggests... a sexual double standard. Compared to their male counterparts, female status offenders were singled out for especially harsh protectionist treatment. At the same time, male delinquents... received harsher and more punitive penalties than their female counterparts.\textsuperscript{136}

Gender bias in juvenile court proceedings extends in both directions. Females are treated more harshly for status-type offenses, being taken to task by the judge when they do not follow the court-ordered program or attend school regularly, while their

\textsuperscript{130} Kempf-Leonard & Tracy, supra note 93, at 458 (citations omitted).
\textsuperscript{131} Chesney-Lind, supra note 54, at 39.
\textsuperscript{132} Id.
\textsuperscript{133} Id.
\textsuperscript{135} Id.
male counterparts are treated punitively for minor crimes and offenses that females would receive a lesser disposition. Female juveniles who understand and can manipulate the system can continue to be brought in on violent-type offenses, and so long as they can "sweet-talk" the probation officers and judges, they can manipulate the system and leave the court with little penalty. They do their time and then commit another offense, only to be brought in again, sometimes in front of the same judge. For those girls who are not trying to work their will on the system, but violate their court orders or violate their probation, the judges act with undo harshness.

CRIME AND PUNISHMENT ON THE STATE LEVEL

As addressed above, a juvenile cannot commit a crime as commonly defined because crimes per se cannot be adjudicated by juvenile courts. Juveniles commit offenses, are adjudicated according to the laws of the state, and are handed dispositions in response to the adjudication.\textsuperscript{137} Juveniles who are held in custody for an extended period of time are considered remanded to a department of juvenile justice, not sentenced to jail. Even the terminology of the juvenile justice system is designed to be rehabilitative, not punitive.\textsuperscript{138}

In general, most offenses committed by juveniles are adjudicated in juvenile court. The overwhelming majority of offenses committed by juveniles are property offenses.\textsuperscript{139} These include shoplifting (the highest percent offense for female juvenile offenders), petty larceny, and grand larceny.\textsuperscript{140}

Violent-type offenses are usually separated into felonious offenses and non-felonious offenses. Felonious offenses include murder, aggravated assault, and rape.\textsuperscript{141} Non-felonious offenses are the more simple assaults where no serious injury occurred.\textsuperscript{142}

In most state jurisdictions, serious violent offenses will have automatic transfer provisions that will take the adjudication out of

\textsuperscript{137} See generally JUVENILE JUSTICE AND PUBLIC POLICY: TOWARD A NATIONAL AGENDA (Ira M. Schwartz ed., 1992) on some of the rationales of the juvenile justice system and opinions on the future of juvenile courts.

\textsuperscript{138} SIMONSEN, supra note 3, at 192-96, 276-301.

\textsuperscript{139} \textit{Id.}

\textsuperscript{140} \textit{Id.}

\textsuperscript{141} \textit{Id.}

\textsuperscript{142} \textit{Id.}
the hands of the juvenile court system.\textsuperscript{143} Depending on the state, however, the age at which a child will be introduced to the adult criminal court system varies.\textsuperscript{144}

Overall, females comprise twenty-five percent of juveniles arrested, but the majority of female juveniles arrests are still status offenses.\textsuperscript{145} Girls are picked up for skipping school, running away from home, or “deviant” sexual behavior more than they are for underage drinking or smoking, being in possession of weapons or drugs, or simple assaults.\textsuperscript{146} The police's decision regarding whom to arrest for what offense still “reflects a chivalrous tendency to protect girls from themselves or the ‘outside world.’”\textsuperscript{147} At any rate, it is a decision well grounded in the past.

Another problem with the police in equalizing the arrests of female and male juveniles is that many police departments across the country are in denial that female juvenile violence is on the rise, let alone exists.\textsuperscript{148} Status offenses are not considered part of their tally for juvenile violence. In gang-related violence, for example, girls are very rarely the targets of investigations.\textsuperscript{149} The reason stated by many police officers is that girl gangsters do not exist.\textsuperscript{150} As mentioned above, many officers believe that the girls are only the arm candy of male gang members, and not capable of violence on their own.\textsuperscript{151} The numbers do not belie the truth, however, that more girls are committing more offenses, especially violent-type offenses.\textsuperscript{152}

Because girls are primarily arrested for status offenses, they go into the system as status offenders, and are issued court orders to guide their behavior. Under the JJDPA, if a girl violates the court order, such as failing to attend school, the judge can adjudicate based on the violation of a court order and the offender can be ordered to detention.\textsuperscript{153} For many judges, detention was their original wish, but their hands were legally bound until a violation

\textsuperscript{143} In most states, these transfer provisions are when the offenses are particularly heinous in nature, such as murder, aggravated rape, and felony murder.

\textsuperscript{144} See Virginia and Michigan, infra, as examples. The average age is around fourteen.

\textsuperscript{145} Chesney-Lind, supra note 54, at 11.

\textsuperscript{146} See detention tables, infra.

\textsuperscript{147} Ollenburger & Trihey, supra note 58, at 234.

\textsuperscript{148} See Sikes, supra note 109.

\textsuperscript{149} Edwards, supra note 104.

\textsuperscript{150} Id.

\textsuperscript{151} See supra notes 104-29 on girl gangsters.

\textsuperscript{152} Between 1985-1994, arrests of girls for assaults increased 143%. Chesney-Lind, supra note 54, at 33.

occurred.\textsuperscript{154} For the percentage of girls who are picked up for serious offenses, such as assaults, drug possessions, and weapons, the tendency still remains for the system to use "kid gloves" in adjudication of female juveniles.\textsuperscript{155}

Many prosecutors and social scientists caution against easier treatment for girls than boys. Halifax Crown attorney Catherine Cogswell has become impatient with such an approach. "What's facing the system is how to get out the message that violence is wrong and not to deal with girls with kid gloves," she says. "I have seen parents, police officers, social workers and judges be more lenient because the case involves a girl. I have walked away and thought, really, this is sexist."\textsuperscript{156}

Across the country, juvenile courts are faced with increases in juvenile arrests and prosecutions for juvenile offenses. One official report listed that of the juvenile arrests, sixty-two percent went into the juvenile court systems, while thirty percent were either handled at the police stations or the juveniles were released.\textsuperscript{157} Unfortunately, those numbers do not break down into gender, but an educated guess would lead one to believe that many girls received the later treatment, even those who probably should have gone into the system.

Virginia and Michigan are instructive examples of how states adjudicate juvenile offenses. Unlike states such as California, New York, or Massachusetts, the juvenile justice systems of Virginia and Michigan have not undergone any recent radical upheavals that would make a survey of laws difficult.\textsuperscript{158} The most obvious reason for selecting the two are geographic – one southern and one northern – with their respective histories of criminology developed along separate tracts. In addition, Virginia law authorizes the death penalty for capital offenses – juveniles are included in those who can receive the death penalty.\textsuperscript{159} Michigan, on the other hand,

\textsuperscript{154} For violations of their court orders, see supra notes 45-57 on the JJDPA and the valid court order amendment.

\textsuperscript{155} Patricia Chisholm, \textit{Girls Are Becoming More Violent}, in \textit{YOUTH VIOLENCE 37 (David Bender, et al. ed., 1993)}.

\textsuperscript{156} Id.


\textsuperscript{158} New York and Massachusetts, for instance, have recently overhauled their juvenile justice system, creating a whole new system that is still too new to compare to other states reliably.

\textsuperscript{159} See \textit{VA. CODE ANN. § 18.2-31} (Michie 2000) for definition of capital offenses; \textit{VA. CODE ANN. § 19.2-264.4} (Michie 2000) for sentencing of death penalty.
is one of the few remaining states that do not consider the death penalty for any crime. So that politics will not enter into the discussion of the states, both states have Republican governors, and have had one for at least the last six years.

Virginia

Virginia's juvenile court system is, as in many states, on the same tier of courts as general district courts, with appeals of juveniles going first to the circuit court of the local jurisdiction. For most juvenile offenses, the juvenile court will be proper jurisdiction for purposes of adjudication.

For violent-type offenses, however, the prosecution may transfer the juvenile to adult circuit court for adjudication so long as the juvenile is over the age of fourteen at the time of the offense, and a proper transfer of jurisdiction hearing is conducted. For the most serious offenses, such as murder, the juvenile court judge will grant a waiver of jurisdiction to the circuit court so long as he meets the age requirement. In deciding whether to waive or transfer jurisdiction, the juvenile court will, at the preliminary hearing, determine if probable cause is established by the prosecution "that the juvenile committed the delinquent act... which would be a felony if committed by an adult."

The juvenile's competency to stand trial will factor into the hearing. For violent-type offenses, or other offenses that would be classified as a felony if committed by an adult, other factors will be determined by the court as to whether to transfer the juvenile to adult court. These include age, the seriousness or number of offenses (paying close attention to the violence of the offense and the juvenile's culpability), the length of time the juvenile could be committed, alternative treatments available, the juvenile's prior criminal record, any escapes from treatment, possible mental illness, school record, and the physical and emotional maturity of

165. Id.
166. Id.
the juvenile. While these factors should be considered at a transfer hearing, the lack of contemplation of any of the above would not warrant reversible error on the part of the judge. Because boys tend to be more violent at younger ages, they receive disproportionate transfers based on their past.

Of importance in all these factors is the age of the juvenile at the time of the offense. For instance, if a juvenile is thirteen years old on the date of the offense, but turns fourteen the next day, for the purposes of adjudication the juvenile is thirteen and will not be subject to a transfer hearing. The rule is the date of the offense, not the date of arrest or trial.

The laws governing Virginia's juvenile justice system are gender neutral, both female and male juveniles are considered under the same statutes for purposes of offenses and procedural matters. One 1994 change to Virginia law was a restructuring of the disposition guidelines available to juvenile court judges. The prior rule was that a juvenile's commitment to the Department of Juvenile Justice could not exceed twelve months. The General Assembly changed the law as a result of a shift in public policy so that if a juvenile is fourteen or older, a juvenile judge may commit a juvenile for up to seven years or until the juvenile turns twenty-one, whichever comes first. The General Assembly wanted to reduce the number of juvenile transfers to circuit court, where they could be sentenced for an extended period.

If a juvenile is transferred to adult court, or chooses to pursue an appeal at the circuit court level, the juvenile has the option of a jury trial. If there is a jury trial, the jury can only decide upon the juvenile's guilt or innocence on the offense charged. Unlike adult trials, the jury is not able to decide the juvenile's sentence. The judge alone is vested with that authority. The judge who hears a juvenile case has two options as to types of sentences: the judge may rely on adult sentencing guidelines for the offense, or the judge

172. Id.
173. Id.
174. Id.
176. Id.
may still decide the juvenile's sentence based on available juvenile court guidelines.177

One notorious case in Virginia was resolved in January 2000 when Douglas Christopher Thomas was executed for the deaths of Kathy and James Wiseman, II.178 They were the parents of Jessica Wiseman, Thomas's girlfriend in 1990 when they were murdered in their home.179 At the time of the murder, Thomas was seventeen and Jessica was fourteen.180 Under Virginia law at the time, Jessica could only be adjudicated in juvenile court, receiving the maximum of seven years in juvenile detention for her part in the murder.181 Thomas was transferred to the adult circuit court, convicted of double homicide as an adult, and sentenced to the death penalty.182 After Thomas was sentenced and on death row, reports indicated that Wiseman may have committed one of the murders.183 Of concern to many children's rights advocates was the imposition of the death penalty to a minor. Because Thomas was seventeen at the time of the murders, his execution was allowable under Virginia's sentencing guidelines.184

The case of Jessica Wiseman and Douglas Thomas illustrates part of the problem that the General Assembly sought to remedy when they changed the transfer law in 1994. The attention paid to juveniles by the General Assembly of Virginia, in both protecting their interests and the public interest in safety from violent juveniles, is surprisingly mild in relation to other states.

This is a recent accounting of juveniles adjudicated in Virginia based upon the type of offense and by gender:

177. Id.
178. Because of the tremendous publicity associated with the case, the following are examples of newspaper stories about the case:


179. See generally the articles listed supra note 178.
180. Id.
181. Id. The transfer age at that time in Virginia was fifteen years old.
182. Id. For Thomas's appeal, based primarily on lack of parental notice and his sentence, see Thomas v. Garraghty, 522 S.E.2d 865 (Va. 1999).
183. See articles listed supra note 178.
184. Id.
Census of Juveniles – Detailed Offense Profile by Sex, 1997\textsuperscript{185}

<table>
<thead>
<tr>
<th>Most Serious Offense</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>2,882</td>
<td>2,391</td>
<td>489</td>
</tr>
<tr>
<td>Violent Person Crimes</td>
<td>843</td>
<td>741</td>
<td>102</td>
</tr>
<tr>
<td>Property</td>
<td>744</td>
<td>657</td>
<td>87</td>
</tr>
<tr>
<td>Drug Offenses</td>
<td>189</td>
<td>174</td>
<td>15</td>
</tr>
<tr>
<td>Public Order</td>
<td>198</td>
<td>171</td>
<td>27</td>
</tr>
<tr>
<td>Technical</td>
<td>765</td>
<td>582</td>
<td>183</td>
</tr>
<tr>
<td>Status Offenses</td>
<td>141</td>
<td>63</td>
<td>78</td>
</tr>
</tbody>
</table>

Census of Juveniles – Offense Profile of Committed Residents, 1997\textsuperscript{186}

<table>
<thead>
<tr>
<th>Most Serious Offense</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>1,665</td>
<td>1,437</td>
<td>228</td>
</tr>
<tr>
<td>Violent Person Crimes</td>
<td>573</td>
<td>522</td>
<td>54</td>
</tr>
<tr>
<td>Property</td>
<td>495</td>
<td>441</td>
<td>51</td>
</tr>
<tr>
<td>Drug Offenses</td>
<td>120</td>
<td>108</td>
<td>9</td>
</tr>
<tr>
<td>Public Order</td>
<td>87</td>
<td>78</td>
<td>9</td>
</tr>
<tr>
<td>Technical Violations</td>
<td>309</td>
<td>243</td>
<td>66</td>
</tr>
<tr>
<td>Status Offenses</td>
<td>81</td>
<td>42</td>
<td>39</td>
</tr>
</tbody>
</table>

Of particular note in the second table is the number indicating the female juveniles committed as a result of technical violations, such as a violation of probation or court order, and status offenses. Those two areas comprise nearly half of those female juveniles committed to the department of juvenile justice in Virginia for an extended period of time.\textsuperscript{187} In 1991, a report by probation officers in Virginia reported the following offenses received recommendations for commitment of female juveniles to the state:

\begin{thebibliography}{99}
\bibitem{187} Id.
\end{thebibliography}
Offense\textsuperscript{188} & Percentage \\
Violation of Probation & 46\% \\
Repeat Runaway & 44 \\
Self-victimization & 43 \\
Failure to attend treatment & 29 \\
Chronic Delinquency & 27 \\
Punishment & 8 \\
Treatment not local & 7 \\
Heinous violent crime & 7 \\
Frustration within system & 5 \\
Noncompliance with court order & 5 \\
Made example to juveniles & 5 \\

Most troubling about these numbers is that the majority of recommendations for commitment to the state department of juvenile justice were for non-violent offenses, while only seven percent were committed for "heinous violent crime."\textsuperscript{189} Most commitments came as a result of technical violations or repeated status offenses. These haphazard assignments of detentions was what the JJDPA targeted when it initially banned detention of status offenders, but pulled back on in the valid court order amendment of 1980.\textsuperscript{190}

\textit{Michigan}

One of the problems with a review of Michigan's juvenile justice system with respect to female offenders is also a valid criticism of its juvenile justice system. Of the 3,580 juvenile offenders reported in 1997, only 573 were female.\textsuperscript{191} Based upon nationwide statistics, it would seem nearly impossible that this state escaped from the overall increase in female violence and female delinquency.

\begin{footnotes}
\item{188} Chesney-Lind, supra note 54, at 83.
\item{189} Id.
\item{190} Id.
\item{191} See detention tables, infra.
\end{footnotes}
Census of Juveniles – Detailed Offense Profile, 1997

<table>
<thead>
<tr>
<th>Most Serious Offense</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>3,580</td>
<td>3,006</td>
<td>573</td>
</tr>
<tr>
<td>Violent Person Crimes</td>
<td>1,284</td>
<td>1,110</td>
<td>171</td>
</tr>
<tr>
<td>Property</td>
<td>1,119</td>
<td>981</td>
<td>138</td>
</tr>
<tr>
<td>Drug Offenses</td>
<td>216</td>
<td>195</td>
<td>21</td>
</tr>
<tr>
<td>Public Order</td>
<td>279</td>
<td>249</td>
<td>30</td>
</tr>
<tr>
<td>Technical Violation</td>
<td>294</td>
<td>231</td>
<td>63</td>
</tr>
<tr>
<td>Status Offenses</td>
<td>390</td>
<td>240</td>
<td>150</td>
</tr>
</tbody>
</table>

Census of Juveniles – Offense Profile of Committed Residents, 1997

<table>
<thead>
<tr>
<th>Most Serious Offense</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>2,460</td>
<td>2,016</td>
<td>444</td>
</tr>
<tr>
<td>Violent Person Crimes</td>
<td>966</td>
<td>834</td>
<td>132</td>
</tr>
<tr>
<td>Property</td>
<td>738</td>
<td>636</td>
<td>102</td>
</tr>
<tr>
<td>Drug Offenses</td>
<td>129</td>
<td>111</td>
<td>18</td>
</tr>
<tr>
<td>Public Order</td>
<td>198</td>
<td>174</td>
<td>24</td>
</tr>
<tr>
<td>Technical Violations</td>
<td>141</td>
<td>114</td>
<td>30</td>
</tr>
<tr>
<td>Status Offenses</td>
<td>285</td>
<td>147</td>
<td>138</td>
</tr>
</tbody>
</table>

According to these statistics, it appears that Michigan is similar to Virginia because many of each state’s committed female juveniles are detained for violations of court orders and status offenses. Of the total offenses, status offenses constitute nearly one-third, as opposed to a fraction of the total for male juveniles.

Because Michigan does not have the death penalty as a form of punishment for capital offenses, potential death sentences are replaced by the incarceration of children for very long periods of time. In 1997, Michigan passed a series of changes to its juvenile

---

194. Id.
195. See Editorial, Judicious Words in a Michigan Court, CHI. TRIB., Jan. 15, 2000, at N-20, available at 2000 WL 3626898 [hereinafter Judicious Words]. By no means is Michigan the only state that incarcerates juveniles for exceeding long periods. Kipland P. Kinkel convicted of killing his parents and two high school classmates in Eugene, Oregon. He was sentenced to 111 years without the possibility of parole. Maxine Bernstein, Judge Sentences Kinkel to
justice statutes that were even harsher for juvenile offenders, stripping many rehabilitative remedies. As one major Michigan newspaper said in an editorial, "The former system was a giant but ineffective treatment program that was constantly manipulated and abused by offenders." The newspaper further stated that, "The best deterrence is to shift the focus of juvenile justice from trying to 'reform' violent youth to incarceration. The rehabilitation of offenders, youthful or adult, is beyond the capacity of penologists or social workers."

Part of Michigan Governor Engler's pledge to reduce juvenile crime is the building of new "punk prisons." These are depositories of juvenile offenders, many of them violent, rather than centers for rehabilitation and treatment. These prisons are built by the state, but are leased out to corporations for management, costing hundreds of millions of dollars to the state in rent and payments. These prisons are only for male juveniles. Because it appears that very few female juveniles commit offenses in Michigan, their lack of housing should not be a problem for the state.

There is no minimum age of competency to stand trial in adult courts in Michigan. Prosecutors can conduct a transfer of jurisdiction hearing for a juvenile of any age who has committed an offense which would be considered a felony if committed by an adult. This is required if the juvenile was charged as a juvenile; there is no minimum age to charge as an adult. In late 1999, a thirteen-year old boy was convicted of second-degree murder when

---

197. Id.
199. Id.
200. Id.
201. Id.
202. Id.
203. MICH. COMP. LAWS § 712A.2d (2000); see also Laura Berman, Society Hasn't Learned Its Lesson about how to Deal with Tough Kids, DET. NEWS, Nov. 18, 1999, at C1, available at 1999 WL 3945299 ("[T]he only state where any child can be prosecuted for any crime as an adult and, potentially, receive adult punishment.").
204. MICH. COMP. LAWS § 712A.2d (2000). For a juvenile to waive jurisdiction to adult court, see MICH. COMP. LAWS § 712A.4.
he was eleven years old. While the boy, Nathaniel Abraham, was suspected of many violent offenses, he was on trial for the murder. At the time of the verdict, Michigan Governor Engler was said to have "welcomed the verdict, saying that 11-year-olds were mature enough to understand the seriousness of firing a gun." Civil and children's rights groups were opposed to Abraham having been tried as an adult. In what some politicians called bowing to public pressure, the judge issued a sentence of seven years in a juvenile facility. The prosecutors wanted juvenile time plus additional time after Abraham turned twenty-one.

As an interesting counterpoint to a juvenile being sentenced to life in prison for a crime committed when the juvenile was a teenager, Michigan juvenile proceedings are not considered criminal in nature. Therefore, any records of juvenile delinquency, from grand theft auto to simple assault, will be purged upon the child turning eighteen regardless of how serious in nature. In Virginia, the rules are similar; juvenile delinquency records are generally purged upon the juvenile turning eighteen, except that conviction of a felony, including non-violent offenses, such as drug possession or grand larceny, will follow a juvenile into adulthood. Unlike Michigan, in Virginia a stupid prank while a teenager will follow the juvenile throughout his or her life.

As a discriminatory tool based on gender, male juveniles are more likely to be hurt by this than female juveniles. More males than females are charged as juveniles with felonies, non-violent as well as violent; females tend to enter the juvenile system with misdemeanor charges. As seen above, many of the crimes female juveniles are convicted of would be considered non-felonious in nature.

In no way is it presumed that these two states are the norms for the rest of the states. They are, however, an interesting contrast in their approaches to the rising rates of juvenile crime.

207. Id.
209. Id.
211. Id.
213. Id.
215. Status-type offenses are usually classified in state law as misdemeanors.
CONCLUSION

Without something being done soon on a massive scale, it is quite likely that female juvenile delinquency, most notably violent-type offenses, will only get worse. It will only be a matter of time before more courts and legislatures believe, as Michigan politicians already seem to do, that the only solution to juvenile crime is punitive incarceration of the offenders.

Judges in the juvenile justice system have a difficult job. They must sit in judgment over children, potentially sentencing them to years of detention in the custody of the state, separated from their parents. In some cases, the parental separation is not necessarily a bad thing, especially when abuse is involved.\(^\text{216}\) Because of this caretaker role they have over juveniles, many judges assume a paternalistic role over adjudicating and sentencing female juveniles.\(^\text{217}\) Teenage females are notorious for their ability to lie and twist the truth to get their way.\(^\text{218}\) Some female offenders, even those charged with violent offenses, can convince judges if they have "just one more chance" they will be different.

Criminal attorneys are relatively new to the arena of juvenile courts, because it is only within the last forty years that the Supreme Court has extended criminal due process rights to juveniles in juvenile court proceedings.\(^\text{219}\) Prior to those decisions, proceedings were a one-on-one confrontation with the judge, with only a slight possibility of a prosecutor being present.\(^\text{220}\) Some attorneys, both prosecution and defense, treat juveniles as mini-adults, capable of the same kind of behaviors and maturity levels of an adult.

Above the statistics about arrests and prosecution of offenses is the deeply rooted belief of scholars that female juveniles are craftier than their male counterparts. They believe female juveniles probably do commit many more crimes than are reported, but are smarter than male juveniles in being able to hide their culpability in the action.\(^\text{221}\)

\(^{216}\) Lederman & Brown, supra note 1, at 914-15.
\(^{217}\) Id.
\(^{218}\) "Adherents of this position point to the common belief among workers in juvenile detention centers that facilities for girls pose much more serious control problems than facilities housing boys. They insist that girls don't play by the rules, that is, rules regarded by men as sensible and sporting." BINDER, supra note 70, at 487.
\(^{219}\) See supra notes 24-44 on U.S. Supreme Court cases concerning juvenile's rights in court.
\(^{220}\) See GRINNEY, supra note 9, at 23-34.
\(^{221}\) BINDER, supra note 70, at 489-90.
Unfortunately, most court officials—namely police and probation officers making recommendations on sentencing and treatment programs—do not seem to have either the resources or the willpower to address the problem at its source. For many juvenile offenders, especially female juveniles, early intervention in their lives is necessary. Many female juveniles report that if steps had been taken early to curb their behavior, especially if parental figures are not available to discipline effectively, their current incarceration would not have been necessary.

Society does, however, need to look at those female offenders who resemble many of their male counterparts—those who like, or are good at, committing crimes and have no desire to stop. Some are gang members who are seeking to climb the ladder to impress others around them. We will not know, however, how large a group exists like this in female delinquency unless scholars, both legal and sociological, undertake studies to research the myriad problem of female juvenile delinquency. Those in academia need to fight the temptation of writing off girls to minority statistical status, and relying on male juveniles to be the sole area of study. Studies such as psychological reasoning for habitual offenders, of which girls make up a significant proportion, need to offer more solutions rather than analyze the problem.

Solutions are hard to come by to solve the problem of gender bias, both for and against female juveniles, without knowing the root causes of their criminal behavior. One solution that appears almost intuitive, except to state politicians, is that more preventative measures need to be taken to curb behavior. For example, the WINGS program in San Diego is specifically designed for female juvenile offenders, and offers specialized programs directed toward the girls' needs. This program from San Diego focuses on the reasons why the participants engaged in criminal activity, with the goal of providing the girls safe places where they can grow. Programs are being developed in other cities and states, but at the heart of these programs are counselors who understand teenage girls and can help them with their problems. Another such program is the PACE program in Florida. Its purposes and goals are similar to that of the WINGS program. The problems, such as

\[222.\] Edwards, supra note 104.
\[223.\] Id.
\[224.\] A prime example is Mama Sheik, profiled in Sikes, supra note 109, at 177-96.
\[225.\] Lederman & Brown, supra note 1, at 910.
\[226.\] See Lau, supra note 56.
\[227.\] JUSTICE BY GENDER, supra note 96, at 32.
self-esteem, need to be taken seriously, and contributory to their behavior.

We are further along in juvenile justice than we were when the JJDPA was passed in 1974, yet we are far from the scales of blind justice that the judiciary is supposed to strive for in equality before the law. The new century presents an excellent opportunity to reach a new level in juvenile justice, and be able to look back to the previous century and say, look how far we have come.

JENNIFER THIBODEAU