

## GOOD GIRLS: GENDER-SPECIFIC INTERVENTIONS IN JUVENILE COURT

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### *Abstract*

*In the juvenile legal system, many jurisdictions are adopting interventions that target girls for specialized treatment. The proliferation of so-called Girls Courts—or specialty courts designed to address the specific challenges faced by system-involved girls—is one such intervention. Girls Court rejects gender-blindness in the juvenile justice system in order to address the unique needs of system-involved girls. This Article enlists Critical Race Feminism to argue that, although well intentioned, these gender-specific juvenile courts enlist harmful gender stereotypes to guide girls towards an antiquated and hegemonic form of femininity. By examining the underlying assumptions that drive Girls Court, this Article assesses the line between gender-consciousness and gender stereotyping and critiques the role of law in entrenching harmful notions about what “good girls” ought to be.*

*Lifting ideologies from problem-solving courts, Girls Court purports to serve the most at-risk girls, with some jurisdictions placing special emphasis on holistic intervention for child victims of sexual exploitation. Girls Court targets girls, mostly girls of color, for enhanced scrutiny and surveillance. Although heightened services are needed for girls battling intersecting forms of oppression, this Article argues that Girls Court exemplifies important limitations to gender-specific reform. While the court’s approach rightly acknowledges the role of gender in shaping outcomes for young people, it also targets girls for intrusive and punitive methods of social control. Girls Court funnels girls towards a very specific notion of girlhood—one centered in white, middle-class notions of femininity. Through criminalization, an emphasis on sexual purity, and a desire to instill obedience,*

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*Girls Court advances certain subordinating stereotypes about girls, particularly girls of color.*

*At its core, this Article argues for an increased duty of care when it comes to programming for girls. It urges a careful examination of all the messages we send, and the values we promote, when we target young girls for intervention.*

## INTRODUCTION

It is an early morning session of a Girls Court in California and a female judge presides over a routine progress report.<sup>1</sup> Sitting in the gallery are representatives from a local teen clinic and a county organization that provides services to Commercially Sexually Exploited Children.<sup>2</sup> A young brown-skinned girl sits beside her attorney, slightly hunched over with her head cast down. She recently ran away while en route to a court ordered group home, euphemistically referred to as a “placement.” Her mother is present at the hearing and sits behind her in the gallery with the Girls Court service providers. Her mother, the District Attorney, and the judge all believe that an out-of-state placement would be best for her, and that the girl needs to be removed from her current environment. The girl is opposed, but says very little. During the proceeding, her mother stands up to address the court. According to the girl’s mother, after her daughter fled the rehabilitation program, the mother found her in the charge of a pimp. The situation was dangerous—for both the mother and her child. As the mother addresses the court, her desperation is palpable. The mother begins to describe her altercation with the exploiter, but the presiding judge interrupts her. The judge explains that part of the court’s duty is to protect the health and well-being of the child, and this includes protecting the child from degradation through the recounting of traumatic experiences. The judge is stern yet compassionate. She gestures towards the crowded courtroom, explaining that here, the child is particularly vulnerable to an invasion of privacy that could harm or humiliate her. The judge turns to the girl inviting her to speak. When she finally speaks, her voice is soft and timid, highlighting the intensity of the reprimand. “I don’t know,” she whispers. Then a little louder she mutters, “My grades were

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1 A progress report is a hearing designed to evaluate a young person’s compliance with the terms and conditions of their juvenile court supervision.

2 For a definition of commercial sexual exploitation of children, see KATE WALKER, CALIFORNIA CHILD WELFARE COUNCIL, ENDING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: A CALL FOR MULTI-SYSTEM COLLABORATION IN CALIFORNIA 11 (2013) (“[Sex trafficking of minors or children is] the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act . . . in which the person induced to perform such act has not attained 18 years of age. The commercial aspect distinguishes sex trafficking from other sexual crimes like assault, rape, or child sexual abuse.”).

better when I was inside,” referring to her time inside the juvenile jail school. “And, well . . . that made me feel some kinda way.” The judge concludes that an out-of-state placement is best for the girl. After a short lecture from the judge, a court officer escorts the girl out of the courtroom door and back to the holding area. Shortly after, another girl enters the courtroom through the same door.

Over the last decade, as problem-solving courts have emerged in the criminal justice system, courts like this one, so-called “Girls Courts,” have developed to address the specific challenges of young women in the juvenile legal system.<sup>3</sup> Drawing from common practices in juvenile drug courts, Girls Courts rely on heightened disciplinary and rehabilitative practices as a response to female delinquency.<sup>4</sup> Law enforcement, legal professionals,<sup>5</sup> and criminologists have lauded Girls Courts as an appropriate way to address the specialized needs of adolescent girls in the juvenile justice system.<sup>6</sup> As a result, Girls Courts have spread across states, including in California,<sup>7</sup> Michigan,<sup>8</sup> Hawai’i,<sup>9</sup> and Florida.<sup>10</sup>

The organization and programming of Girls Courts varies across jurisdictions,<sup>11</sup> but the scene described above illustrates how Girls Courts approach system involvement for young girls. For someone unfamiliar with juvenile court practice and procedure, Girls Courts raise many questions. One might question the presence of social service providers

3 MEDA CHESNEY-LIND & RANDALL G. SHELDEN, *GIRLS, DELINQUENCY, AND JUVENILE JUSTICE* 312 (4th ed. 2014).

4 *Id.* at 312 (“The court, which was built on key notions that the founding judge had learned in Juvenile Drug Court, included frequent monitoring of youth, more active involvement of the judge as part of a team, and the provision of needed services to youths in a timely fashion.”).

5 See Wendy S. Heipt, *Girls’ Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. FOR SOC. JUST. 803 (2015) (arguing for the establishment of Washington State’s first Girls Court).

6 See CHESNEY-LIND & SHELDEN, *supra* note 3, at 312.

7 *Collaborative Courts*, THE SUPERIOR COURT OF CALIFORNIA, <http://www.occourts.org/directory/collaborative-courts/> [perma.cc/T9N4-8MDY].

8 *Local Advocates for Women and Girls Recognized*, THE BURTON VIEW, [http://burtonview.mihomepaper.com/news/2015-06-18/News/Local\\_advocates\\_for\\_women\\_and\\_girls\\_recognized.html](http://burtonview.mihomepaper.com/news/2015-06-18/News/Local_advocates_for_women_and_girls_recognized.html) [perma.cc/6Q8N-B54Q].

9 HAWAI’I GIRLS COURT, <http://www.girlscourt.org/> [perma.cc/7MCS-RPBR].

10 *‘Girls Court’ Provides Alternatives to Prison for Delinquent Girls*, (PBS NewsHour Extra Sept. 11, 2015), [http://www.pbs.org/newshour/extra/daily\\_videos/girls-court-provides-alternatives-to-prison-for-delinquent-girls/](http://www.pbs.org/newshour/extra/daily_videos/girls-court-provides-alternatives-to-prison-for-delinquent-girls/) [perma.cc/2TWA-TNG9].

11 Heipt, *supra* note 5, at 833–37.

in the court, who are enlisted to direct the girl's supervision. One might also note the role of families who, battling the everyday violence of poverty, commonly rely on the court to fulfill unmet social needs. When the girl speaks on her own behalf, one might note her explicit reference to school and academic achievement. Why would she choose to discuss school in this moment? Is school important to her? Was it nervous chatter? Or, does she know that schooling carries significant weight in this court?

Of particular importance is the procedural posture of the case. It is not a disposition (sentencing in juvenile court) or adjudicative proceeding (conviction in juvenile court), but a progress report. This is because the girl's case has already been adjudicated and she is now under court supervision. In fact, the term "Girls Court" is slightly misleading. Girls Court is not a specialty "court," where trials and other proceedings take place.<sup>12</sup> Girls Court is a post-adjudicative intervention that is available only after a juvenile proceeding is completed and a girl is declared a ward of the court.<sup>13</sup> Critically, to be eligible for Girls Court, a girl's juvenile case must be adjudicated in a manner that concludes her guilt, either because of an admission of guilt or a finding of guilt at trial. In this regard, Girls Court is not like adjudication, but is more like an augmented form of probation.<sup>14</sup> This distinction points to an underlying limitation of the court—being in Girls Court does not impact how the girl is charged or tried once in the system. It does not affect whether the girl is labeled guilty or innocent. Girls Court only influences how the girl is *supervised* once her guilt has been determined. Since the purported mandate of juvenile court is to look beyond guilt and innocence, Girls Court enters the picture to guide her rehabilitation.

This Article examines Girls Court and considers the role Girls Court plays in the lives of girls in the juvenile legal system. It asks whether Girls Court addresses the particular issues that system-involved girls face. Most importantly, this Article draws from Critical Race Feminism to critique the underlying notions of gender and femininity that Girls Court promotes. While girls enter Girls Court for a wide array of conduct, this Article pays specific attention to how Girls Court addresses the gender specific needs of Commercially Sexually Exploited girls and girls considered at risk for exploitation. In every jurisdiction, Girls Court operates on the fundamental premise that girls are different from boys and that this

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12 Tamar Lerer, *Hawai'i Girls Court: Juveniles, Gender, and Justice*, 18 BERKELEY J. CRIM. L. 84, 89 (2013).

13 Typically, Girls Court functions as a post-adjudication intervention. However, some jurisdictions, like the Harris County Girls Court in Texas, accept girls both pre- and post-adjudication. See Heipt, *supra* note 5, at 836.

14 Lerer, *supra* note 12, at 89.

difference influences their development, social experience, and relationships. While there is much to say about the treatment of boys in the juvenile system, as boys remain the largest population of system-involved youth, this Article attends to gender as it is understood and reified in Girls Court. Examining how gender and gender disadvantage is constructed in Girls Court provides an opportunity to understand how gender stereotypes function more broadly in the juvenile legal system.

The aim of this Article is both descriptive and normative. It provides an account of Girls Court, and describes its mode of operation. It also challenges and critiques the means by which Girls Court operates. Specifically, it enlists Critical Race Feminism to argue that practices and policies in Girls Court advance antiquated and harmful gender stereotypes about appropriate girlhood. Put another way, Girls Court interventions are constructed around rigid notions of femininity that actually work to discourage independence and autonomy in girls. This Article proceeds in four parts. Part I describes the social and political climate that gave rise to Girls Court. Part II situates Girls Courts in a long history of well intentioned, but misguided, juvenile justice reforms. Part II goes on to introduce the concept of hegemonic femininity. Borrowing from Critical Race Feminism, I use this theory as an interpretive lens through which to examine the work of Girls Court. Part III complicates the standard narrative around Girls Courts. The claim I advance here is that Girls Court draws on the patriarchal structure of the family and the coercive power of the law to gain control over girls. In doing so, the court adopts stereotypes about the value of female obedience. As I explain, the aim of court intervention is to secure girls' submission, rather than their social and economic independence. Part IV examines the stereotypes embedded in the primary supervisory tool in Girls Court: probation. I argue that common probation terms reflect antiquated stereotypes rooted in the values of white middle-class girlhood. Specifically, Girls Court relies on the racist and classist mythology that institutional environments like schools and families actually work for poor girls of color trapped in the juvenile legal system. By enforcing probation terms that require girls to attend failing schools or live in cramped or abusive home environments, the court shepherds girls towards narrow constructs of femininity in ways that are damaging and irrelevant to their lives. Finally, I conclude with new ways to conceptualize female delinquency and thoughts for future advocacy on behalf of girls in the juvenile justice system.

### **I. The Rise of Girls Court**

In 1992, the Juvenile Justice and Delinquency Prevention Act was reauthorized, requiring states to reevaluate their juvenile court programming to address the gender-

specific needs of system-involved youth.<sup>15</sup> Although girls constitute almost one-third of youth in the juvenile legal system,<sup>16</sup> the system is largely constructed around male-centered notions of delinquency. While boys comprise the largest population of youth caught in the juvenile legal system, the population of girls in the system is on the rise nationwide, exposing a dearth of programming for system-involved girls: “From 1990–1999, there was a 50% increase in the number of female delinquency cases entering detention compared with a 4% increase for boys.”<sup>17</sup> Between 1985 and 2007, the number of female delinquency cases increased by 101% for girls, compared to 30% for boys.<sup>18</sup> While juvenile arrest rates began to decline in 2002, arrest rates for girls were slower to diminish compared with rates for boys.<sup>19</sup>

Girls often enter the juvenile legal system on different trajectories than boys. They are more likely to come into contact with the legal system for lower-level offenses.<sup>20</sup> A girl in the system is also more likely to be detained for probation violations and technical noncompliance with the rules of her supervision than her male counterpart.<sup>21</sup> Nationally, the detention rates of girls jumped by ninety-eight percent between 1991 and 2003, compared to a twenty-nine percent increase for boys.<sup>22</sup> The rapid growth in girls’ detention rates compared to boys is partly attributable to the harsher punishment of girls for nonviolent offenses. Courts and other actors tend to respond harsher to girls who exhibit non-compliance. In 2007, approximately 65,000 girls were delinquent for status offenses, offenses that would not be criminalized if committed by an adult, such as running away, truancy, curfew violations, and liquor violations.<sup>23</sup> Arrest and incarceration for status

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15 Heipt, *supra* note 5, at 831–32.

16 *Id.* at 803–04.

17 FRANCINE T. SHERMAN, DETENTION REFORM AND GIRLS: CHALLENGES AND SOLUTIONS 10 <http://www.pretrial.org/juvenile-justice/> (follow “JDAI Pathway 13 Detention Reform and Girls Challenges and Solutions” hyperlink) [perma.cc/ZNX5-L6FR].

18 CHARLES PUZZANCHERA ET AL., NAT’L CTR. FOR JUV. JUST., JUVENILE COURT STATISTICS 2006–2007 12 (2010).

19 *Id.* at 12 (stating that the arrest rate in 2002 declined twenty-one percent for girls compared to thirty-one percent for boys).

20 *See* Heipt, *supra* note 5, at 804.

21 *Cf. id.* (addressing the fact that girls in the system tend to commit low-level offences).

22 *Id.* at 808.

23 PUZZANCHERA ET AL., *supra* note 18, at 76–77.

offenses reflect a more punitive approach to girls' misbehavior and violation of gender role expectations. As Cynthia Godsoe describes, courts and society often overlook boys' "youthful missteps," whereas norms of appropriate behavior are heavily policed for girls.<sup>24</sup> In juvenile courts, disparate punishment falls along gender and racial lines, as racial bias and anti-blackness in particular compounds punishment for girls of color.<sup>25</sup> Not only are girls of color overrepresented in the juvenile system, they are typically system-involved for longer than their white peers, and their arrest rates outpace boys in some categories.<sup>26</sup> In many states, black girls represent the fastest growing segment of the juvenile legal system. Recent research in California reveals that although black women constitute only 3% of the state's female population, they represent between 24% and 40% of youth in detention.<sup>27</sup> When viewed from an intersectional perspective, courts' tendency to punish the transgression of gender roles works to further disadvantage already marginalized women and girls of color.

Pointing to rates of girls' juvenile justice involvement, child advocates assert that Girls Courts are necessary because girls enter the system with a fundamentally different set of needs than boys. They argue that system-involved girls have experienced unique victimization that necessitates a gendered response.<sup>28</sup> Research indicates that girls do enter the system with profound trauma histories that often differ from boys. In a 1998 study, 92% of girls interviewed in four California counties said they had suffered some form of abuse—88% reported physical abuse, and 56% reported one or more forms of sexual abuse (40% reported at least one incident of forced sex and 17% reported more than five incidents).<sup>29</sup> Research in mental health shows that girls are more likely than boys to have diagnosable illnesses like post-traumatic stress disorder, suicidal ideation, eating

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24 Cynthia Godsoe, *Punishment as Protection*, 52 HOUS. L. REV. 1313, 1362 (2015).

25 Jaya Davis & Jon R. Sorensen, *Disproportionate Juvenile Minority Confinement A State-Level Assessment of Racial Threat*, 11 YOUTH VIOLENCE AND JUV. JUST. 296–312 (2013).

26 Heipt, *supra* note 5, at 816.

27 MONIQUE W. MORRIS ET AL., AFR. AM. POL'Y F., CONFINED IN CALIFORNIA: WOMEN AND GIRLS OF COLOR IN CUSTODY, <http://static.squarespace.com/static/53f20d90e4b0b80451158d8c/53f399a5e4b029c2ffbe26cc/53f399c5e4b029c2ffbe2a77/1408473541175/Confined-in-California.pdf?format=original> [perma.cc/QAN9-298G].

28 U.S. DEP'T OF JUST., OFF. OF JUV. JUST. AND DELINQ. PREVENTION, JUVENILES IN CORRECTION 14–15 (2004) <https://www.ncjrs.gov/pdffiles1/ojjdp/202885.pdf> [perma.cc/5ZX9-7UCB].

29 LESLIE ACOCA & KELLY DEDEL, NAT'L COUNCIL ON CRIME AND DELINQ., NO PLACE TO HIDE: UNDERSTANDING AND MEETING THE NEEDS OF GIRLS IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM 6 (1998).

disorders, and depression.<sup>30</sup> Early proponents of Girls Court argued that the juvenile legal system, largely centered on male conceptions of delinquency, was ill-equipped to address both the number of system-involved girls and their histories of trauma.<sup>31</sup> Local, state, and federal attention directed toward system-involved girls prompted an array of interventions across the country. Bernalillo County, New Mexico established the Program for the Empowerment of Girls in 2004.<sup>32</sup> The Hawai'i Girls Court program began shortly after that.<sup>33</sup> Some of the Girls Courts that followed paid particular attention to certain subsets of at-risk girls. For example, in 2008, California State Assembly Bill 499 authorized the Alameda County District Attorney to create Girls Court as a legislative response to growing concern surrounding the commercial sexual exploitation of minors.<sup>34</sup> The San Francisco Bay Area is one of the nation's highest-intensity areas for the sex trafficking of minors and Alameda County emerged as a hub of child sexual exploitation.<sup>35</sup> From 2011 to 2016, the Oakland Police Department pursued 454 sex trafficking cases.<sup>36</sup> Proponents of the Alameda County Girls Court argued that sexually exploited girls were being arrested and prosecuted for prostitution and related offenses despite a growing consensus that these girls were victims.<sup>37</sup> Supporters of Girls Court argued girls needed a separate judicial forum to serve their specific needs.<sup>38</sup> For proponents, Girls Court represented the appropriate means to adjudicate the cases of commercially sexually exploited girls caught in the court system.

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30 Heipt, *supra* note 5, at 804–05.

31 CHESNEY-LIND & SHELDEN, *supra* note 3, at 186.

32 Heipt, *supra* note 5, at 834.

33 *Id.* at 835.

34 Act of Sept. 27, 2008, ch. 359, sec. 2, 2008 Cal. Legis. Serv. ch. 359 (West) (codified as amended at CAL. WELF. & INST. § 18259 (West 2018)).

35 *Commercial Sexual Exploitation of Children (CSEC)*, H.E.A.T. WATCH, OFFICE OF THE DIST. ATTORNEY, ALAMEDA CTY., [http://www.heatwatch.org/human\\_trafficking/about\\_csec](http://www.heatwatch.org/human_trafficking/about_csec) [perma.cc/3BZY-GDN8] (“Oakland, CA, is a thriving underage sex market, and is the epicenter of a trafficking triangle between San Francisco & Contra Costa counties. 46% of all prosecuted human trafficking cases in California since 2011 came from the Alameda District Attorney’s office.”).

36 *Id.*

37 See Patricia Leigh Brown, *A Court’s All-Hands Approach Aids Girls Most at Risk*, N.Y. TIMES (Jan. 28, 2014), <http://www.nytimes.com/2014/01/29/us/a-courts-all-hands-approach-aids-girls-most-at-risk.html> [perma.cc/4KGX-2LYA].

38 See CHESNEY-LIND & SHELDEN, *supra* note 3.

These reformers point to research that girls typically enter into sexual exploitation between the ages of twelve and fourteen,<sup>39</sup> when they are “recruited” by exploiters who use brutal tactics to force girls into submission. These tactics include sexual and physical abuse, isolation, manipulation, and other forms of violence.<sup>40</sup> Aside from their age, race and class are also salient dimensions to the population of girls who are sexually exploited. In many areas, sexually exploited children are disproportionately girls of color who come from conditions of poverty.<sup>41</sup> Black girls in particular are over-represented in this population: they are arrested at higher rates than white girls and their age of entry into exploitation is typically younger.<sup>42</sup> Proponents argue that by establishing a girls-only court, the juvenile system could offer effective treatment to court-involved girls with severe trauma histories.<sup>43</sup> These reformers envisioned a court where heightened supervision, access to girl-sensitive rehabilitation, and specialized case management would serve vulnerable girls.<sup>44</sup> Today, Girls Courts are a growing, but vastly understudied, juvenile justice phenomenon.

## II. Girls Court in Historical Context

There is no doubt that some may see the Girls Courts’ founders as well-intentioned, feminist reformers. After all, proponents of Girls Court argue against gender-blindness in the juvenile legal system, and advocate on behalf of an incredibly marginalized population. In order to critique the underlying framework of Girls Court, it is important to situate these efforts in historical context. The call for gender-specific reform can be viewed as part of a long history of juvenile justice reforms that reflect “each era’s attitudes about gender, race

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39 See *Domestic Minor Sex Trafficking: Hearing on H.R. 5575 Before the Subcomm. on Crime, Terrorism, & Homeland Sec. of the H. Comm. on the Judiciary*, 111th Cong. 144 (2010) (statement of Ernie Allen, President and CEO of the National Center for Missing & Exploited Children).

40 See Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 *YALE J. L. & FEMINISM* 109, 111 (2006).

41 Francine T. Sherman & Lisa Goldblatt Grace, *The System Response to the Commercial Sexual Exploitation of Girls*, in *JUVENILE JUSTICE: ADVANCING RESEARCH, POLICY, AND PRACTICE* 331, 336 (Francine T. Sherman & Francine H. Jacobs eds., 2011).

42 *Id.* at 336.

43 See ‘*Girls Court*’ Provides Alternatives to Prison for Delinquent Girls, *supra* note 10 (“[The Florida] Girls Court, as the experiment is called, started a year ago in Jacksonville as way to address the fact that many of the young women in the state’s juvenile justice system find themselves committing crimes due to trauma experienced earlier in life.”).

44 See CHESNEY-LIND & SHELDEN, *supra* note 3.

and class.”<sup>45</sup> While today’s advocates for gender-specific programming in the juvenile legal system are often considered at the vanguard, efforts to police and control girls through the penal system dates back to the founding of juvenile courts.

The creation of juvenile courts is largely attributed to the first generation of Progressive Era reformers when interest in the social and moral regulation of young people coincided with the growth of immigrant populations in America’s urban centers.<sup>46</sup> These reformers insisted that young people needed a separate system to monitor and control their behavior.<sup>47</sup> During the late nineteenth and early twentieth century, reformers began to construct childhood as a distinct social and developmental stage, which, in turn, influenced legal perspectives.<sup>48</sup> Previously, youth were routinely viewed and treated as “little adults”<sup>49</sup> who were subject to harsh physical punishment.<sup>50</sup> Between 1750–1850, as many Irish and German immigrants fleeing economic hardship arrived on American soil, public support for the social control of immigrant children grew.<sup>51</sup> America’s business and professional classes argued fervently for state intervention in the social and moral instruction of youth. In response, in 1824, the New York legislature established the first correctional institution for young children in the United States—the New York House of Refuge.<sup>52</sup> Early correctional institutions were not necessarily reserved for youth who committed actual crimes, but also housed youth considered “incorrigible” or “beyond control.”<sup>53</sup>

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45 *Id.*

46 *See generally* LAMAR TAYLOR EMPEY, *AMERICAN DELINQUENCY: ITS MEANING AND CONSTRUCTION* (rev. ed. 1982).

47 *See generally* JOSEPH M. HAWES, *CHILDREN IN URBAN SOCIETY: JUVENILE DELINQUENCY IN NINETEENTH-CENTURY AMERICA* (1971).

48 *See generally* PHILIPPE ARIES, *CENTURIES OF CHILDHOOD: A SOCIAL HISTORY OF FAMILY LIFE* (Robert Baldick trans., 1965).

49 *See generally id.*

50 CHESNEY-LIND & SHELDEN, *supra* note 3, at 184 (citing *THE HISTORY OF CHILDHOOD* (Lloyd deMause ed., 1974)).

51 *See* BARBARA M. BRENZEL, *DAUGHTERS OF THE STATE: A SOCIAL PORTRAIT OF THE FIRST REFORM SCHOOL FOR GIRLS IN NORTH AMERICA, 1856–1905* (1983).

52 CHESNEY-LIND & SHELDEN, *supra* note 3, at 186.

53 *See* HAWES, *supra* note 47, at 186.

Punishment and surveillance in early juvenile courts and correctional institutions were also deeply gendered. For girls—particularly immigrant girls—deemed products of “unfit” households, policing the boundaries of sexual behavior was an important function of the juvenile system.<sup>54</sup> Girls who had sex out of wedlock, engaged in sexual activity with more than one partner, or were victims of sexual exploitation were often condemned to institutions for their “immorality” and “waywardness.”<sup>55</sup> Reformers viewed girls’ sexual transgressions as a threat to morality in domestic and public life.<sup>56</sup> Girls’ alleged behavioral missteps, sexual and otherwise, were thought to jeopardize the social order of the family.<sup>57</sup> As a result, states established correctional institutions and training schools to reform young girls, particularly young girls from lower- and working-class families.<sup>58</sup>

One of the primary legal doctrines invoked by reformers to justify state intervention in the lives of young people was the doctrine of wardship. Wardship refers to the paternal-like legal relationship between the court and the child in juvenile proceedings. This relationship still exists today but its roots can be traced to the doctrine of *parens patriae* in medieval England’s Chancery court.<sup>59</sup> Under the doctrine, the court acts as parent—more specifically, as father—to the child and is given broad discretion in the regulation of the child’s moral and social behavior.<sup>60</sup> The doctrine was originally a mechanism of property regulation, allowing the Crown to administer the assets of landed orphans.<sup>61</sup> The doctrine has since evolved to describe the state’s relationship to the minor child and to justify the extreme discretion afforded courts in the resolution of juvenile cases.<sup>62</sup> Once wardship is declared, the court, in its parent-like authority, has a legal basis to intervene in *every* aspect of the

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54 MARY E. ODEM, *DELINQUENT DAUGHTERS: PROTECTING AND POLICING ADOLESCENT FEMALE SEXUALITY IN THE UNITED STATES, 1885–1920* (2d ed. 1995).

55 *Id.*

56 ROGER J. R. LEVESQUE, *DANGEROUS ADOLESCENTS, MODEL ADOLESCENTS: SHAPING THE ROLE AND PROMISE OF EDUCATION* 27, 30 (2006).

57 ODEM, *supra* note 54, at 112.

58 *See id.*

59 CHESNEY-LIND & SHELDEN, *supra* note 3, at 185.

60 *Id.* at 194.

61 JOHN R. SUTTON, *STUBBORN CHILDREN: CONTROLLING DELINQUENCY IN THE UNITED STATES, 1640–1981* (1988).

62 *See* BEYOND CONTROL: STATUS OFFENDERS IN THE JUVENILE COURT (Aidan R. Gough & Lee E. Teitelbaum eds., 1977).

child's life, including familial and social relationships. Almost nothing is outside of the court's purview when it comes to rehabilitating the moral and social behavior of youth.

For the founders of juvenile courts, *parens patriae* provided a basis for broad judicial discretion as a means of advancing the "best interest of the child" rather than focusing exclusively on guilt and innocence.<sup>63</sup> If the courts secured complete control over young people's lives, the founders argued, wayward children could be saved. Today, courts still receive extreme latitude in the rehabilitation of delinquent children. Understanding the historical origins of the court acting as a parental figure to the child is critical to contextualizing the informality and paternalism of juvenile proceedings.<sup>64</sup> Judges in Girls Court, as well as in the juvenile system more generally, have the power and discretion a parent would have to direct the lives of system-involved girls.

### A. Critical Race Feminist Methodology

Today, the paternal structure of juvenile court affects both girls and boys. In fact, some jurisdictions have created Boys Courts to address system involvement for young boys.<sup>65</sup> This Article focuses specifically on Girls Court because conduct that deviates from conventional notions of femininity, like running away or incorrigibility, more often results in harsher punishment for girls than for boys.<sup>66</sup> By examining the nature of punishment in Girls Court, we may understand how certain punishment regimes reinforce assumptions about appropriate girlhood. Like the poor, immigrant, and working-class girls whose sexuality and behavior were policed by early reformers, today's system-involved girls are monitored and surveilled by gender-specific interventions like Girls Court. Girls Court is given vast authority to "rehabilitate" girls, but all too often, this rehabilitation advances a stereotypical notion of girlhood. Early reformers sought to create chaste and obedient girls through the juvenile legal system. Today, Girls Court attempts to inculcate a particular vision of femininity in girls—a femininity deeply rooted in a white middle-class understanding of womanhood.

To distinguish the specific notion of femininity promoted in Girls Court, I borrow the

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63 CHESNEY-LIND & SHELDEN, *supra* note 3, at 189.

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

65 See Katherine M. Harrison, *A New Approach to Juvenile Justice: An Analysis of the Constitutional and Statutory Issues Raised by Gender-Segregated Juvenile Courts*, 2 U.C. IRVINE L. REV. 773 (2012).

66 Heipt, *supra* note 5, at 808–09.

concept of hegemonic femininity as outlined by Black Feminist scholar Patricia Hill Collins in her book *Black Sexual Politics: African Americans, Gender and the New Racism*.<sup>67</sup> Hegemonic femininity presumes that there is some ideal form of femininity to which all other expressions of femininity are subordinate. In other words, it describes a “normative yardstick for all femininities” and that yardstick proscribes “appropriate” behavior for all women, but only some women are able to achieve the hegemonic status.<sup>68</sup> Deeply ingrained in this concept are hierarchal notions of womanhood that place some women closer to the feminine ideal than others.

This hierarchy of femininities is central to the concept of hegemonic femininity. Women are not only subordinate to men, but “a pecking order among women also produces hegemonic, marginalized, and subordinated femininities.”<sup>69</sup> In this hierarchy, middle-class, heterosexual, white femininity is normalized, and all other femininities are judged against this standard.<sup>70</sup> White middle-class women stand as the “epitome of Woman.”<sup>71</sup> If hegemonic femininity is advanced in *Girls Court*, girls unable to conform to the hegemonic ideal, because they are not white, because they are low-income, or because they are genderqueer or gender non-conforming, will be disadvantaged.

Collins outlines numerous “benchmarks,” or ideals, of hegemonic femininity. The first ideal maintains that “good girls” should not be like boys in appearance and behavior. In particular, “good girls” should not adopt the male characteristic of willfulness.<sup>72</sup> As Collins notes, the expectation of obedience is central to maintaining the organization of work and home life, where girls are expected to be subordinate to their male superiors, intimate partners, and family members. Later in this Article, I will explain how *Girls Court* enlists a criminalization model to direct and coerce girls into such obedience.

The next ideal—heterosexism—underscores the role sexuality plays in the social approval of girls. “Good girls” should engage in strictly heterosexual behavior and adopt

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67 See PATRICIA HILL COLLINS, *BLACK SEXUAL POLITICS: AFRICAN AMERICANS, GENDER, AND THE NEW RACISM* (2d ed. 2005).

68 *Id.* at 193.

69 *Id.*

70 *Id.*

71 Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581, 585 (1990).

72 COLLINS, *supra* note 67, at 196.

the values of sexual chastity until marriage.<sup>73</sup> Heterosexism maintains what Collins deems the “male prerogative of access” and privileges sexual behavior in the context of marriage.<sup>74</sup> At the same time, sexual chastity aligns with historically rooted sexual mores about appropriate girlhood behavior. Through this lens, whether by choice or coercion, sexually active girls in Girls Court have already transgressed the sexual dimensions of appropriate femininity. Girls who identify as lesbian, trans, or genderqueer also violate the hegemonic ideal of male access and appropriate femininity. This underscores a fundamental failure in Girls Court—absent from the rationale of Girls Court is a critical interrogation of the underlying complexity of labeling some youth “girls” and referring them to Girls Court. By labeling and sorting youth into rigid gender categories, Girls Court contributes to what Harper Keenan describes as the “state enforcement of binary gender categorization [which] makes trans bodies impossible.”<sup>75</sup> As Keenan explains, the state’s imposition of gendered “scripts” on young people contributes to trans erasure resulting in “fatal consequences of institutional invisibility.”<sup>76</sup> These consequences manifest in inadequate or dangerous healthcare, hyper-policing and violence towards trans bodies. In Girls Court, the very act of labeling and sorting youth into strict gender categories that permit little room for self-definition reinforces the ideal of heterosexism and furthers the marginalization of transgender and genderqueer youth. While Keenan focuses primarily on the scripted imposition of gender in the school context, his theory sheds important light on the role of state-sanctioned expectations of femininity and masculinity and its consequences for youth who exist outside the gender binary.

Finally, there is a salient class dimension to the category of “good girl.” “Good girls” belong in the home or at school, where they prepare for lives cultivating a nuclear family subordinate to a male head of household.<sup>77</sup> Girls who reject these duties because they must earn money, or choose to earn money, are placed lower on the hierarchy of femininity. Girls of color, poor, and working-class girls whose economic contributions to their households have historically been essential, as opposed to supplemental, are therefore excluded.<sup>78</sup> Later

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73 *Id.*

74 *Id.* at 197–98.

75 Harper Benjamin Keenan, *Unscripting Curriculum: Toward a Critical Trans Pedagogy*, 87 HARV. EDUC. REV. 538, 552 (2017).

76 *Id.* at 539.

77 COLLINS, *supra* note 67, at 198.

78 *Id.* (stressing that, fundamentally, these notions of femininity are a symptom of—and reaction to—a gender ideology that maintains men’s dominant social role over women in which rigid gender norms prescribe

in this Article, I discuss how common terms of probation in Girls Court mirror antiquated perceptions that compel girls to attend failing schools, force girls to choose between detention or potentially dangerous domestic life, and create obstacles to earning money.

The concept of hegemonic femininity is useful in analyzing the objectives of Girls Court supervision. One of the professed objectives of Girls Court and, indeed, the larger juvenile legal system, is rehabilitation. We can use the concepts of hegemonic femininity to unpack what a rehabilitated girl might embody and present as in Girls Court.<sup>79</sup> This girl is white. This girl is sexually chaste, straight, and conventionally “feminine.” This girl is obedient. This girl does not need to work outside the home. This girl is assumed to have a safe and stable school life. This is the essential *girl* in Girls Court. For decades, this idea of gender essentialism has been described by Critical Race Feminist scholars as the notion that “there is a monolithic ‘woman experience’ that can be described independently of other facets like race, class and sexual orientation.”<sup>80</sup> Girls Court attempts to reform girls towards an *essence* of girlhood, and hegemonic femininity explains how Girls Courts have characterized this essence.

Significantly, this essentialist model does not admit deviation. Girls in Girls Court must contort themselves, often with great strain, to conform to rigid gender stereotypes. Naturally, a hierarchy of femininities means that some girls will be more successful at maneuvering within the court, avoiding detention, and shortening their probation terms. For others, particularly for girls of color, girls from poor and working-class homes, and girls who may identify as (or present as) gender non-conforming or LGBTQI+, hegemonic femininity ensures that they are systematically disadvantaged in Girls Court. Unable to conform to rigid gender norms, girls are left to languish in detention centers and on

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appropriate conduct for all women and implicitly construct the role of men and boys).

79 I also analyze the punishment in Girls Court using Professor Kimberlé Crenshaw’s theory of intersectionality. Intersectionality presumes that a person’s lived experiences are a result of intersecting and inseparable identities. Central to the concept is that “oppression cannot be reduced to one fundamental type, and that oppressions work together in producing injustice.” COLLINS, *supra* note 67, at 18. For girls in Girls Court, the majority of whom are both poor and non-white, their lives “cannot be captured wholly by looking at the race or gender dimensions of those experiences separately.” Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991). The disparate punishment of girls of color in the juvenile legal system must be understood as a collision of multiple subordinating identities (i.e. race, gender, class). These multiple identities do more than compound disadvantage; they “interact in a synergistic way” to create *distinct* forms of oppression. Valerie Purdie-Vaughns & Richard P. Eibach, *Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate-Group Identities*, 59 SEX ROLES 377 (2008).

80 Harris, *supra* note 71, at 585.

probation for longer periods. Critically, through Girls Court the state can reinforce and reproduce gender hierarchy, even as it purports to enlist a gender-specific lens to help girls. By advancing stereotypes constructed around a white middle-class notion of girlhood, Girls Court reinforces and reproduces a false ideal.

### III. Girls Court, Guilt, and Submission

In her seminal work, *Are Prisons Obsolete?*, Dr. Angela Y. Davis tells the story of the female reformers who, following figures like Elizabeth Fry, helped cement the foundation for the modern female prison system. These Reformers, Davis argues, firmly believed that “women were capable of redemption.”<sup>81</sup> What went unchallenged in their vision of a women’s penal system were the ideological assumptions underlying a women’s subordinate place in society. Davis writes, “they did not question the very notion of ‘fallen women.’ Rather, they simply opposed the idea that ‘fallen women’ could not be saved.”<sup>82</sup> Their belief in gender-specific interventions helped drive the expansion of the modern penal system. Davis’ analysis of early prison Reformers prefaces another story of Girls Court—Maria’s story. Maria pled guilty to a misdemeanor drug possession charge and was transferred to Girls Court.<sup>83</sup> Maria was sixteen, she had an older boyfriend, and was newly pregnant. In the eyes of the judge, Maria was a good candidate for the girls-only specialty court. The judge believed that through its collaborative model, Girls Court would connect Maria to more gender-specific services than she would receive under conventional juvenile supervision. Maria came to the Girls Court with many needs. She needed access to adequate prenatal care and she needed a job to help support herself and her child. Although she lived with two supportive parents, the family was financially strained and could not support both Maria and her future child. Maria wanted to live independently with her growing family. When she was charged with selling drugs at school, she eventually pled guilty to a misdemeanor possession charge and she was sentenced to probation in Girls Court. Maria seemed poised for success on probation; she came from a stable home, this was her first time in the juvenile system, and the offense was a non-violent misdemeanor. She entered Girls Court hoping to get services for her new baby and get on with her life. Nevertheless, getting out of the system once she became involved in Girls Court would prove challenging for Maria.

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81 ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 70 (2003).

82 *Id.*

83 The story of Maria (a pseudonym) is based on the author’s knowledge of the experiences of a girl in one California Girls Court.

Like many young people, she quickly grew frustrated with the terms of probation, which seemed to be focused more on her control than her rehabilitation—an eight o'clock curfew, monthly drug tests, a search clause, orders to participate in gendered programming that was not relevant to her goals, and an order to remain within the county even though the father of her child lived outside of the county. For Maria, gender-specific services and care in Girls Court proved illusory. A muddled constellation of providers, intakes, and referrals meant the services that Maria thought she would have access to once under Girls Court supervision—services that would allow her to find a job, prenatal care, and a doctor—remained inaccessible to her. Although the judge wanted to see Maria take steps to prepare for motherhood, Maria was not connected with clinics or prenatal services through Girls Court. In an effort to police Maria's movements, the court prevented her from leaving the county to see the father of her child. As a result, building a life with her new family proved even more difficult with court intervention than it might have been without the "helpful" involvement of Girls Court. The court became preoccupied with Maria's schooling. Maria lived in an under-resourced, struggling school district where educational options for pregnant teenagers were limited or virtually non-existent. Her schools were heavily policed, and her juvenile case had actually originated in school where her guidance counselor had called the police suspecting Maria was using and/or selling drugs. Like many youth, Maria was arrested and expelled for the same conduct. Maria had extreme social anxiety in these challenging school settings and her pregnancy meant that medication to manage her anxiety was not an option. In order to avoid a probation violation and possible detention, Maria felt forced to scramble together enough funds to register for a GED program. The court also wanted her to participate in counseling for at-risk girls that Maria found unhelpful, but she knew she would be punished for not connecting with her counselor. Maria knew that if the court was not pleased with her progress in school, she risked losing her freedom and potentially being separated from her child. Maria knew what she wanted: she wanted to live a healthy, independent life with her new baby. However, Maria had already pled guilty and was labeled a delinquent by the court. In Girls Court, because access to services is tied to an adjudication of guilt, the court gained the power to enforce Maria's obedience through a constellation of technical demands.

In the vast majority of Girls Courts, a finding of guilt is a necessary precursor to gender-specific interventions.<sup>84</sup> Like Maria, the gender-specific treatment girls receive comes only after they are found guilty of a crime—at the arrest stage, the trial stage, and the sentencing stage, girls ostensibly have the same options as boys.<sup>85</sup> Maria's story of criminalization and

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84 Lerer, *supra* note 12, at 89.

85 *Id.* at 89 ("Girls Court is best understood as a post-adjudication form of supervised release.").

frustration in Girls Court is not unique. Many girls struggle with the criminalization model (e.g., a model that requires a finding of guilt before rendering services) on which Girls Court relies.<sup>86</sup> Proponents of Girls Court understand court involvement as an important first step to bring a girl under control and render appropriate services.<sup>87</sup> They argue that arrest and criminalization provide an opportunity to address the girl's underlying needs.<sup>88</sup> Even if the girl must be found guilty of a crime before she gains access to services, proponents believe that bringing the girl under court control will ultimately help her. Yet criminalization strategies, like those championed in Girls Court, have been widely criticized by feminist scholars who point to an underlying tension between the aims of a punitive system and broader feminist goals of "ending women's subordination, dismantling hierarchy, and seeking distributive fairness."<sup>89</sup> I offer three primary critiques of the criminalization model in Girls Court. When examined through the lens of hegemonic femininity, criminalization in Girls Court may be recast as a form of feminized punishment that 1) normalizes female obedience to a patriarchal figure, 2) increases girls' chances of detention by heightening state surveillance of their lives, and 3) undermines female autonomy.

### **A. Court as Father: Normalizing Female Submission and the Individuation of Delinquency**

In Girls Court, but also in juvenile court more broadly, there is virtually only one opinion that matters: the judge's.<sup>90</sup> The right to a jury trial exists only for adults.<sup>91</sup> When young people enter juvenile court, they are immediately subject to the broad discretion and power of the judge.<sup>92</sup> While probation officers, attorneys, and families can

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86 *Id.* at 95.

87 Brown, *supra* note 37 ("[T]he optimal strategies for helping these young people are still being developed, but that training judges, lawyers and others to identify them is a first step.").

88 Lynsey Clark, *There is No Such Thing As a Child Prostitute*, EAST BAY EXPRESS (July 2, 2014), <http://www.eastbayexpress.com/oakland/there-is-no-such-thing-as-a-child-prostitute/Content?oid=3998333> [perma.cc/2222-E2MV] ("Police and prosecutors, however, defend the system, arguing that locking up kids is the only effective way to separate them from their exploiters and connect them to social services.").

89 Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 603 (2009).

90 There are many overlaps between the court's authority in Girls Courts and the reality across the juvenile legal system. However, in order to highlight the gendered effects of this system, I will discuss the court's authority in Girls Courts.

91 *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

92 Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA

provide recommendations to the judge, the judge determines what weight to give these recommendations. This means that in Girls Court, the length of the girl's court supervision will largely depend on the judge's subjective determination that she has been sufficiently rehabilitated. The quicker she can satisfy the judge, the quicker her case is dismissed. Thus, in Girls Court, a girl's "success" depends on her ability to conform to the judge's subjective standard of appropriate girlhood behavior. She must demonstrate her rehabilitation through compliance. While all youth in the juvenile legal system must demonstrate obedience, in Girls Court, I argue, the focus on female obedience reveals an underlying limitation of gender-specific interventions writ large. If not closely examined, these interventions can work to normalize antiquated gender norms such as obedience to a patriarchal figure.

Once the girl has been criminalized, the court's *parens patriae* authority is triggered, giving the court the power to interfere with every aspect of the girl's life.<sup>93</sup> The court's broad discretion functions as a highly effective tool in the social control of young girls precisely because perceptions of crime and misbehavior are deeply gendered. Court officials who supervise the girl, including the judge, probation officers, prosecutors, and service providers, are susceptible to these gendered perceptions.<sup>94</sup> Historically, as explained above, girls have been disproportionately criminalized and confined for childhood behavior that results in status offenses.<sup>95</sup> These status offenses—such as running away, incorrigibility, or truancy—"center on disobedience, and even include broad offenses such as 'ungovernability.'"<sup>96</sup> Perceptions that girls are non-compliant or strong-willed can have grave impacts on girls' ability to navigate the juvenile system. The imbrication of vaguely worded status offenses, broad discretion in juvenile court, and gendered (mis)perceptions of crime and misbehavior leave girls more vulnerable to incarceration than their male peers.<sup>97</sup> This dynamic also routinely reinforces the importance of compliance and obedience to a patriarchal court figure.

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L. REV. 1502, 1505 (2012).

93 *Id.* at 1512.

94 *Id.* at 1502.

95 Godsoe, *supra* note 24, at 1372–73.

96 *Id.* at 1372.

97 Heipt, *supra* note 5, at 808–09 (“[T]he number of system girls are rising due to a harsher system response to their characteristic behaviors and because girls tend to receive tougher sanctions than boys for the same offenses.”).

At the core of this criminalization model is the individuation of delinquency. In Girls Court, just as the court's discretion is elevated, the girl's autonomous choices are cast as a product of individual pathology rather than social inequity. In this context, delinquency is not a result of failing schools, housing instability, or over-policing. Instead, delinquency is cast as a lapse in *personal* judgment and a failure in *individual* responsibility. As Professor Jyoti Nanda writes, girls in juvenile court are often seen "as social problems themselves rather than as young girls affected by social problems."<sup>98</sup> From this vantage point, the system is left to focus on fixing the *girl* without attending to the larger socio-political contexts that shape her conduct and the consequences for that conduct. Epitomizing the essence of criminalization, the child becomes the vessel for delinquency. This individuation distracts the system from the social forces that contribute to female delinquency such as limited economic opportunities, under-resourced educational environments, gentrification and displacement, and racial and gender discrimination. Criminalization allows the court to focus on control, perpetuating the notion that girls will be safer if the court can control what they do, where they go, and whom they see. It is this instinct to control girls that defines Girls Court. By assuming that the girl should not be in charge of her own life decisions, Girls Court attacks the legitimacy of girls' autonomy and normalizes their subordination to a paternal court. A "successful" girl in Girls Court will relinquish all power. The court will then simultaneously enlist the protective role of a paternal figure and the coercive force of the penal system. Like a parental figure, the court has the power to connect the girl to material resources, but before it makes these connections, it marshals the coercive power of the state to criminalize and control her. This is the logic inherent in Girls Court—care through criminalization—and young girls are expected to be submissive to a caring and coercive paternalistic court.

Individuation of delinquency also risks intensifying the stigma attached to delinquency, sexual exploitation, and court involvement. Since individuation casts delinquency as a product of individual failures, meaning it assumes girls make poor decisions, exercise bad judgment, or show little self-control, it also perpetuates negative perceptions and attitudes towards delinquent girls. This model obscures the conditions of poverty and desperation facing many system-involved girls, while reinforcing the social stigma attached to criminality and sexual victimization. System-involved girls, particularly victims of sexual exploitation, "often suffer extreme shame about their experiences" and battle social stigma associated with court-involvement and "sexual promiscuity."<sup>99</sup> As a program of

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98 Nanda, *supra* note 92, at 1507.

99 DEVELOPMENT SERVICES GROUP, INC., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN/SEX TRAFFICKING 3 (Aug. 2014), <https://www.ojjdp.gov/mpg/>

supervision, Girls Court does not alleviate the stigma associated with delinquency or sexual exploitation. Court actors routinely subject girls to public discussion about their private, traumatic experiences. Girls Court ultimately relies on labels like “delinquent” to identify girls and provide them with material resources. Criminalizing youth before rendering critical services sends a message that girls are not victims, but a problem in need of control.<sup>100</sup> The use of a delinquency court to prevent the re-victimization of minors places a heavy reliance on a criminalization model that emphasizes punishment for wrongdoing. This use of a criminalization model severely limits the court’s ability to address the underlying social conditions that increase some girls’ vulnerability to exploitation and abuse. Far from a panacea to these social ills, Girls Court enters girls’ lives as a coercive entity. Through technical violations, girls are criminalized for noncompliance rather than for committing new crimes, and they are much more susceptible than boys to arrest and incarceration for these offenses.<sup>101</sup> Once arrested and adjudicated delinquent, the court’s rehabilitative mandate authorizes it to intervene in every aspect of girls’ lives, keeping them under the cover of court protection. As Collins asserts, surrender to a paternalist figure is an ideal of hegemonic femininity and ultimately cultivates subordination to male relatives, intimate partners, colleagues, and friends.<sup>102</sup> Under the guise of protection, Girls Court uses the coercive power of the state to promote the gendered ideal of obedience. While the court may have a positive vision for the girl, the desire to control her conduct and win her obedience emerges as the central tactic to achieve this vision. This reliance on criminalization as a tool to shepherd girls towards lives of obedience is cause for alarm. By relying on a criminal model, Girls Court runs the risk of preparing girls for lives of subordination and control.

## B. Increasing Surveillance, Increasing Detention

Proponents of Girls Court also argue that criminalization serves girls by allowing the court to more closely monitor them. Part IV will conduct a more in-depth examination of

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litreviews/CSECSexTrafficking.pdf [perma.cc/3DFA-N6XS] (citing WALKER, *supra* note 2).

100 See Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584, 1586 (2012) (“[A] closer look suggests that what professes to be social welfare is often social control of teenage girls who frustrate child welfare and juvenile justice systems with their chronic disobedience of home, court, and agency rules.”).

101 See Heipt, *supra* note 5, at 808–09.

102 COLLINS, *supra* note 67, at 196 (“The theme of female submissiveness also shapes private, domestic sphere activities of family and community. Well-functioning families adhere to this allegedly natural authority structure that fosters female submissiveness.”).

probation, but by deputizing probation officers, school officials, and service providers, courts are able to supervise girls in almost every facet of their lives.<sup>103</sup> A common argument favoring Girls Court is that this heightened surveillance means that girls are less likely to run away or fail to attend court-ordered services. Girls have limited options; they can either engage with service providers or risk incarceration.

One of the unique characteristics of Girls Court, compared to the rest of the juvenile legal system, is the way it enlists service providers. A number of social services partner with Girls Court to provide counseling, mentorship, case management, employment training, and life skills to participants.<sup>104</sup> These service providers comprise the girl's rehabilitation "team." As a *New York Times* article describes, "Girls Court brings an 'all-hands-on-deck' approach to the lives of vulnerable girls, linking them to social service agencies, providing informal Saturday sessions on everything from body image to legal jargon, and offering a team of adults in whom they can develop trust."<sup>105</sup> This depiction of multi-actor collaboration in Girls Court fails to acknowledge many of the downsides that plague collaborative court models. Critics of problem-solving courts point to the often-onerous rules of participation in these courts and the exposure to harsher punishment if participants fail to meet the demands of the court.<sup>106</sup> Similarly, the "all-hands-on-deck" approach means that girls face increased obligations and surveillance while under court supervision.

Social services in Girls Court are often tied to increased responsibilities and constraints, such as doctor's visits, weekend programs, trauma counseling, substance abuse counseling, parenting classes, in addition to standard probation and court appearances. Once again, these obligations are tethered to an uncoordinated matrix of providers, referrals and intakes. If the requirements of participation do not match the logistical support that girls receive to meet these obligations, they become more vulnerable to detention and retraumatization.<sup>107</sup>

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103 See Harrison, *supra* note 65, at 774 (describing the multi-stakeholder model of Girls Court).

104 For example, the Alameda County Girls Court's service partners include, but are not limited to, Bay Area Women Against Rape (BWAR), Alameda County Social Services Agency, MISSEY - Motivating, Inspiring, Supporting and Serving Sexually Exploited Youth, and West Coast Children's Clinic (WCC). *What We Do*, H.E.A.T. WATCH, OFFICE OF THE DIST. ATTORNEY, ALAMEDA CTY., [http://www.heatwatch.org/heat\\_watch/what\\_we\\_do/alameda\\_county\\_ywep](http://www.heatwatch.org/heat_watch/what_we_do/alameda_county_ywep) [perma.cc/W7ZS-JBPE].

105 Brown, *supra* note 37.

106 Mae C. Quinn, *Whose Team Am I on Anyway? Musings of a Public Defender About Drug Treatment Court Practice*, 26 N.Y.U. REV. L. & SOC. CHANGE 37, 61 (2001).

107 Heipt, *supra* note 5, at 808 (explaining that detention disproportionately retriggers trauma for young girls).

For many girls, finding a service provider they trust or collecting enough bus fare to attend appointments is a severe obstacle.

For girls navigating sexual exploitation and trafficking, providing services through criminalization is particularly counterproductive. Most exploited girls are under the control of an exploiter who subjects them to a constellation of violence, manipulation, isolation, and threats.<sup>108</sup> These tactics often are so effective at creating a hyper-dependent bond between a girl and her exploiter that it may take an exploited child twenty attempts before she is able to permanently escape her abuser.<sup>109</sup> If isolated from alternative sources of economic, emotional, and psychological support, escaping an exploiter becomes an even more distant possibility.<sup>110</sup> If an exploited child is system-involved, returns to an exploiter often manifest as technical violations of probation, rather than new crimes.<sup>111</sup> A technical violation of probation occurs when a girl fails to meet a certain term of probation but does not commit a new crime. A girl can technically violate probation when she misses her curfew, forgets to charge her electronic monitor, fails to call her probation officer before getting a haircut, or skips school. The criminalization of this behavior through probation is particularly harmful to exploited girls, especially those still under the control of an exploiter or who experience social and economic barriers to compliance. The compliance/non-compliance model simply cannot make room for the upheavals in the girls' life as she navigates the demands of trying to escape an exploiter. Critically, under Girls Court supervision, the opportunity for technical violations increases because Girls Court adopts a collaborative model between judicial and social services, meaning more opportunities for violations and more eyes watching for a misstep. This is not to discredit the need for social services, as they are necessary and valuable for girls, especially girls in juvenile system. All girls deserve access to comprehensive, wrap-around services. Yet in the context of criminalization, agencies risk operating as an extension of court monitoring and surveillance. With every service provider comes an added court-ordered duty, another opportunity to violate court orders, and an increased risk of detention.

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108 WALKER, *supra* note 2, at 14–15.

109 *Id.* at 16 (“For an exploited child, the process may involve twenty relapses before she is able to permanently free herself of her exploiter.”).

110 Godsoe, *supra* note 24, at 1346.

111 *Id.* at 1316–17.

### C. Impeding Independence

One of the core underpinnings of Girls Court is the recognition that system-involved girls are often victims in their own right, particularly in the area of neglect and sexual abuse. Girls' experiences with sexual victimization vastly outpace boys' in the juvenile legal system.<sup>112</sup> Nationwide, over one-third of detained girls have a history of sexual abuse, compared with eight percent of boys.<sup>113</sup> Part of the purported aim in Girls Court is to ensure that girls are not simply treated as criminals, but as victims in their own right.<sup>114</sup>

Girls Court closely monitors girls facing sexual trauma and exploitation in an effort to prevent their revictimization. The underlying theory is that sexual exploiters and abusers will have a harder time exerting power over girls if the court is policing them. However, efforts to supervise and control girls run counter to evidence that the most effective programming shares power with girls and “increase[s] their options for self-determination, autonomy, and control.”<sup>115</sup> These efforts also ignore the important voices of girls themselves.

Studies conducted with girls involved in the sex trade champion a Harm Reduction (“HR”) approach.<sup>116</sup> An HR approach privileges the girls' sovereignty and understands their actions as autonomous decisions made within the constraints of poverty and desperation.<sup>117</sup> Given the girls' troubled histories with the police, social service providers, the foster system, and the courts, HR advocates believe that girls should have greater responsibility for their own rehabilitation.<sup>118</sup> Current research advocates for increased feelings of self-

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112 See Anna Gorman, *Addressing Girls' Health Needs at Juvenile Detention Centers*, L.A. TIMES (Mar. 16, 2013), <http://articles.latimes.com/2013/mar/16/local/la-me-juvenile-girls-health-20130317> [perma.cc/TU97-RAK8].

113 MALIKA SAADA SAAR ET AL., *THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY 7* (2015), [http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_report\\_final.pdf](http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_report_final.pdf) [perma.cc/XCE7-WAY6].

114 ‘*Girls Court*’ Provides Alternatives to Prison for Delinquent Girls, *supra* note 10 (“Girls Court, as the experiment is called, started a year ago in Jacksonville as way to address the fact that many of the young women in the state’s juvenile justice system find themselves committing crimes due to trauma experienced earlier in life.”).

115 WALKER, *supra* note 2, at 28.

116 *Id.*

117 *Id.* at 26–30.

118 *Id.* at 28.

determination and empowerment for girls seeking to escape exploitation and other forms of gender abuse.<sup>119</sup> These evidence-based solutions are utterly at odds with Girls Court, which is based on discouraging independent action while encouraging compliance and obedience. Girls Court ignores the reality that girls need more than access to services—they need self-esteem, a sense of autonomy, and empowerment to use available services to take command of their lives. Subjecting girls to constant court surveillance—by service providers or other agents of the court—may undermine the very tools they need to escape gender subordination.

Criminalization strategies in Girls Court mean that efforts to “serve” girls often manifest as harsh efforts to win their submission and obedience. While girls who enter the court may have access to a piecemeal set of services, the ideological assumption that girls should be subordinate remains intact. In this way, Girls Court uses a criminalization model to herd girls to a narrow, hegemonic conception of girlhood, one where girls do not share power over their own lives.

#### IV. The Vision of Probation

In an effort to achieve the system’s goal of rehabilitation, juvenile courts lean on probation officers for information about the daily life of young people.<sup>120</sup> Probation officers serve as the court’s primary surveillance and monitoring arm. It is through probation that the three primary forms of control over girls—paternalism, surveillance and constraints on independence—are most apparent. In the juvenile court system, the role of probation officers is intentionally broad in order to emphasize the court’s rehabilitative role.<sup>121</sup> In Girls Court, probation officers are charged with the girl’s oversight and are expected to report to court officials when the girl is in violation of any of the many terms of her probation. It is worth introducing commonly-imposed conditions of probation because they elucidate the values that guide the court’s interventions. Implicit in these terms is the notion of “appropriate girlhood,” which Girls Courts champion. Commonly-imposed conditions of probation include:

- a. Obey a court-imposed curfew
- b. Obey rules of home and/or school
- c. Attend school daily without suspension and without incident

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119 *Id.*

120 CHESNEY-LIND & SHELDEN, *supra* note 3, at 194.

121 *Id.*

- d. Work or participate in activities deemed appropriate
- e. Pay restitution
- f. Obey stay away orders and no contact orders
- g. Undergo drug testing.<sup>122</sup>

I will discuss two of the most common probation requirements in an effort to explain the vision of girlhood in Girls Courts: 1) mandatory school attendance and 2) directives to stay at home. While these conditions of probation are common to both girls and boys, they produce a gendered effect in the context of Girls Court that is important to discuss. Drawing on the ideals of hegemonic femininity, I argue that these terms are constructed around a narrow understanding of femininity that emphasizes obedience, undermines autonomy, and is largely divorced from the social obstacles many system-involved girls face.

### A. Criminalized and Underserved at School

A reoccurring and important term of supervision in Girls Court and in the juvenile legal system is mandatory school attendance.<sup>123</sup> This should be distinguished from school achievement since academic achievement is markedly low among system-involved girls.<sup>124</sup> Court directives to attend school underscore how the juvenile legal system and the public school system overlap and reinforce each other with both gendered and racialized outcomes. As Sabina Vaught writes, “[j]uvenile prisons and what we call public school are two interconnected systems—state apparatuses that enjoy compulsory relationships with youth and for which exclusive systems of Whiteness pay out to protect their exclusive property.”<sup>125</sup>

Juvenile courts have an immense preoccupation with school and mandatory school attendance is a virtually standard term of probation.<sup>126</sup> A disproportionate number of girls

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122 Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297, 308 (2015).

123 Heipt, *supra* note 5, at 842 (discussing mandatory education components in both the New Mexico and Hawai'i Girls Courts).

124 CHESNEY-LIND & SHELDEN, *supra* note 3, at 290.

125 SABINA E. VAUGHT, COMPULSORY: EDUCATION AND THE DISPOSSESSION OF YOUTH IN A PRISON SCHOOL 33 (2017).

126 See Weisburd, *supra* note 122.

arrive in the juvenile legal system with little or no connection to school;<sup>127</sup> these girls are routinely ordered to attend school as a condition of probation.<sup>128</sup> Critical examination of this probation term complicates the commonly-held belief that mandatory school attendance affords girls more, rather than less, life opportunities. System-involved girls typically come from impoverished communities<sup>129</sup> and contend with chronically under-resourced schools.<sup>130</sup> Instead of fostering feelings of security, these schools require girls to confront violence, gang activity, sexual harassment, and a lack of educational opportunity.<sup>131</sup> School officials routinely stereotype young women of color, perceiving them to be rowdy or masculine,<sup>132</sup> or ignore them, assuming that early pregnancy and motherhood will curtail their academic careers.<sup>133</sup> For these girls, the link between academic success and social mobility is more tenuous, since social conditions constantly influence outcomes for even the most diligent students.<sup>134</sup>

Additionally, in recent years, poor schools have become sites of increased criminalization and militarization.<sup>135</sup> For the last four decades, the United States has massively expanded its systems of incarceration and surveillance,<sup>136</sup> and schools, like other major institutions, play an important part in this security apparatus.<sup>137</sup> Research on school discipline demonstrates

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127 Heipt, *supra* note 5, at 827.

128 See Weisburd, *supra* note 122.

129 Sherman & Goldblatt Grace, *supra* note 41, at 336.

130 CHESNEY-LIND & SHELDEN, *supra* note 3, at 288–89 (“Most of the girls involved in the juvenile justice system come from environments that could be described as ‘hostile.’ . . . The poverty and resulting poor school in the lives of such girls have been thoroughly documented.”).

131 *Id.* at 151.

132 Joy L. Lei, (*Un*)Necessary Toughness?: Those “Loud Black Girls” and Those “Quiet Asian Boys”, 34 ANTHROPOLOGY & EDUC. Q. 158, 163 (2003).

133 CHESNEY-LIND & SHELDEN, *supra* note 3, at 150–53.

134 JAY GILLEN & BOB MOSES, EDUCATING FOR INSURGENCY: THE ROLES OF YOUNG PEOPLE IN SCHOOLS OF POVERTY 63 (2014).

135 Heipt, *supra* note 5, at 811 (“Additionally, overall increases in punitive sanctions used in response to school disciplinary issues also contribute to girls (and boys) entering the juvenile justice system through their schools.”).

136 Sherman & Goldblatt Grace, *supra* note 41, at 352–68.

137 Letter from American Civil Liberties Union Texas et al. to Mark D. Harnitchek, Director, Defense Logistics Agency (Sept. 15, 2014) (on file with the NAACP Legal Defense and Education Fund, Inc.), <http://>

that “schools naturalize surveillance that is centered on racial categories.”<sup>138</sup>

For girls of color, in particular, school is increasingly a site of criminal punishment and neglect. Nationwide, almost 25% of high school girls do not graduate high school in four years.<sup>139</sup> When examined through a racial lens these numbers are even more staggering: 40% of Latinas, 50% of Native American girls, and 40% of black girls are pushed out of school before graduation.<sup>140</sup> Black girls also suffer some of the highest rates of school pushout from punitive discipline.<sup>141</sup> The Office for Civil Rights at the United States Department of Education found that from 2011 to 2012, black girls in public elementary and secondary schools nationwide were suspended at a rate higher than girls of any other race or ethnicity, at a rate of 12% for black girls compared to just 2% for white girls.<sup>142</sup> A recent report authored by the American Civil Liberties Union found that black students were three times more likely to be arrested at school than white students, and Native students were twice as likely to be subjected to arrest in school than white students.<sup>143</sup> Girls and particularly girls of color in high-punishing schools are more vulnerable to over-policing and harsher punishment that may result in contact with the penal system.<sup>144</sup> Instead of preparing girls for higher education and rewarding jobs, high poverty schools are more likely to shepherd girls towards chronic unemployment or underemployment, poverty, and the juvenile legal system.<sup>145</sup>

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[www.naacpldf.org/files/case\\_issue/LDF-Texas%20Appleseed-1033%20Letter.pdf](http://www.naacpldf.org/files/case_issue/LDF-Texas%20Appleseed-1033%20Letter.pdf) [perma.cc/8KFT-2QW7].

138 ERICA MEINERS, *RIGHT TO BE HOSTILE: SCHOOLS, PRISONS, AND THE MAKING OF PUBLIC ENEMIES* 39 (2007).

139 Heipt, *supra* note 5, at 827.

140 *Id.* at 828.

141 *Id.*

142 U.S. DEP'T OF EDUC. OFF. FOR C.R., *CIVIL RIGHTS DATA COLLECTION: ISSUE BRIEF NO. 1, DATA SNAPSHOT: SCHOOL DISCIPLINE 3* (Mar. 21, 2014), <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf> [perma.cc/XDH4-8V9B].

143 LINNEA NELSON ET AL., *CAL. ACLU, THE RIGHT TO REMAIN A STUDENT: HOW CALIFORNIA SCHOOL POLICIES FAIL TO PROTECT AND SERVE 3* (2016), [https://www.aclunc.org/sites/default/files/20161019-the\\_right\\_to\\_remain\\_a\\_student-aclu\\_california\\_0.pdf](https://www.aclunc.org/sites/default/files/20161019-the_right_to_remain_a_student-aclu_california_0.pdf) [perma.cc/Y3NA-YNSK].

144 *See generally* MEINERS, *supra* note 138.

145 *See* JOEL MCFARLAND ET AL., *NAT'L CENT. EDUC. STAT., U.S. DEP'T EDUC., TRENDS IN HIGH SCHOOL DROPOUT AND COMPLETION RATES IN THE UNITED STATES: 2013* (2016), <https://nces.ed.gov/pubs2016/2016117rev.pdf> [perma.cc/77F8-LFV4]; *see also* KIMBERLÉ WILLIAMS CRENSHAW ET AL., *AFR. AM. POL'Y F., BLACK GIRLS MATTER: PUSHED OUT, OVER POLICED AND UNDERPROTECTED 24–25* (2015) (explaining the link between high dropout rates of African American women and the economic status of African American families); *see also*

Not only have schools adopted the harsh policies of retributive justice that permeate the penal system, they have also adopted its physical environments and technologies.<sup>146</sup> As early as kindergarten, black students are over ten times more likely to attend high-poverty schools<sup>147</sup> and these schools have been ground zero for an influx of military-grade equipment.<sup>148</sup> The Department of Defense's 1033 Program authorizes the transfer of military weapons to local school districts and police departments for use in K–12 public schools.<sup>149</sup> School districts in Texas have received M-16 rifles, M-14 rifles, automatic pistols, ammunition, tactical vests, military vehicles, and armed plating.<sup>150</sup> At least six school districts in California allow campus officers to carry high-powered rifles.<sup>151</sup> The influx of military grade weapons contributes to school environments that normalize racial surveillance. As Erica Meiners argues:

Increasingly select schools physically resemble prisons and prepare students for an institutionalized life. Students are required to wear uniforms, to be scanned by metal detectors and frisked by security guards, to use clear plastic bags and backpacks so that their items are visible at all times, and more. Through these physical practices, coincidence or by

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CHESNEY-LIND & SHELDEN, *supra* note 3, at 150–53.

146 See ZERO TOLERANCE: RESISTING THE DRIVE FOR PUNISHMENT IN OUR SCHOOLS: A HANDBOOK FOR PARENTS, STUDENTS, EDUCATORS, AND CITIZENS (William Ayers et al. eds., 2001).

147 ELAINE WEISS & EMMA GARCIA, ECON. POL'Y INST., BLACK AND HISPANIC KINDERGARTNERS ARE DISPROPORTIONATELY IN HIGH-POVERTY SCHOOLS (June 25, 2014), <http://www.epi.org/publication/Black-hispanic-kindergartners-disproportionately/> [perma.cc/7JBJ-XQRB].

148 Evie Blad, *School Police May Once Again Acquire Military Equipment*, EDUC. WK., Sept. 6, 2017, at 5, <https://www.edweek.org/ew/articles/2017/09/06/school-police-may-once-again-acquire-military.html> [perma.cc/L5JG-C488]; see also Arezou Rezvani et al., *MRAPs and Bayonets: What We Know About the Pentagon's 1033 Program, List of Agencies Receiving Equipment*, NAT'L PUB. RADIO (Sept. 2, 2014), <https://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program> [perma.cc/G6ET-L5E2].

149 10 U.S.C. § 2576a (2012) (granting the Secretary of Defense permanent authority to transfer defense material to federal and state agencies for use in law enforcement, particularly those associated with counter-drug and counter-terrorism activities).

150 Tom Boggioni, *Texas School Districts Militarize Campus Cops with Free Surplus Weapons, Armored Vehicles*, RAWSTORY (Sept. 5, 2014), <https://www.rawstory.com/2014/09/texas-school-districts-militarize-campus-cops-with-free-surplus-weapons-armored-vehicles/> [perma.cc/ASD5-FEQ9].

151 Rezvani et al., *supra* note 148.

design, schools prepare youth for the life of the other state institutions, including prisons.<sup>152</sup>

According to Meiners, the criminalization and militarization of school environments prepare students for the hyper-visibility and surveillance of the modern penal system.<sup>153</sup>

The disturbing correlation between hyper-punishment, under-education, and involvement in the juvenile and adult legal systems has been well-theorized by scholars as the school-to-prison pipeline. And later scholars articulated the school-to-prison pipeline paradigm as falsely suggesting a linear trajectory from the social “goods” of schooling to the social maladies of prison. As Vaught writes, this logic “inadvertently at times cement[s] school as a site of remedy and possibility.”<sup>154</sup> If anything, the hyper-discipline of poor girls of color in school helps demonstrate the limitations of the pipeline as a framework. For these girls, schools are equally implicated in their criminalization as police, courts, and detention centers.

The criminalization of schooling is a major obstacle to educational achievement, particularly for poor girls and girls of color.<sup>155</sup> Examined in this context, mandatory school attendance is out of touch with the institutional forces that shape girls’ lives. The rationale for this probation term is rooted in an ideal of white, middle-class schooling. According to this ideal of schooling, school is normally a site of social mobility and there are direct links between academic achievement and social and economic progress.<sup>156</sup> In this ideal, school is also a site for safety, where responsible and caring adults guide students towards lives as productive and moral citizens.<sup>157</sup> However, for the girls who appear in Girls Court, school attendance can lead to vastly different outcomes. Organized around a suburban ideal of schooling, school attendance as a term of probation does not automatically foster mobility and safety for girls in the juvenile legal system. Girls who decide not to attend school may not be engaged in a wholesale rejection of the social, moral, and economic goods of educational attainment, but rather they may be evaluating and responding to the

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152 MEINERS, *supra* note 138, at 143.

153 *Id.*

154 VAUGHT, *supra* note 125, at 36.

155 See Diane Scott-Jones & Maxine L. Clark, *The School Experiences of Black Girls: The Interaction of Gender, Race, and Socioeconomic Status*, 67 PHI DELTA KAPPAN 520, 520–26 (1986).

156 GILLEN & MOSES, *supra* note 134.

157 *Id.*

social conditions they face as female students and girls of color in impoverished schools.<sup>158</sup> Poor school attendance may instead reflect the girls' rejection of environments that neglect and police them. Relying on a suburbanized and idealized myth of schooling, probation disrupts girls' evaluative process by forcing them to attend dangerous, failing schools. The uniform enforcement of mandatory school attendance does not just signal to girls that "good girls" practice blind obedience rather than independent thought, it also casts girls' school failure as an individual problem while obscuring the role that politicians, school officials, and public policy play in creating vastly unequal educational settings.<sup>159</sup>

Some readers may balk at any conclusion that suggests we should allow court-involved girls to "drop out" of school. Nevertheless, any advocate interested in promoting girls' wellness must acknowledge that Girls Court positions girls between two troubling social realities: obey court orders and attend potentially dangerous, failing schools or disobey court orders and risk enhanced discipline by the penal system. Either way, system-involved girls are vulnerable to surveillance, punishment, and detention whether at school or in the court system. The experience of system-involved girls in school complicates the conventional belief that school is inherently "good," revealing the role of probation in shepherding girls into environments that both hyper-police and under-educate them.

## B. Life at Home

Another common condition of probation requires girls to live at home and obey house rules. Requiring girls to live at home stems from the norms of hegemonic femininity that limit girls to the domestic sphere for social and moral instruction.<sup>160</sup> Implicit in this condition is the assumption that home is a site of safety and security. When situated in the context of poverty and exploitation, however, confining a girl to the home can actually put her at risk of abuse and arrest. Of course, homes are not always bad for girls, nor are low-income communities a site of pathology, but for many system-involved girls, life at home implicates a different set of concerns that courts are poorly positioned to address. Studies show that these girls are more likely to face familial disruptions, neglect, and abuse.<sup>161</sup> Many system-involved girls come from "hostile" environments that force them to navigate

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158 See NIKKI JONES, *BETWEEN GOOD AND GHETTO: AFRICAN AMERICAN GIRLS AND INNER-CITY VIOLENCE* (2009) (explaining that girls draw on interpersonal and situational strategies as they navigate neighborhood and school settings where interpersonal violence is governed largely by a hyper-masculine, eye-for-an-eye ethic).

159 MEINERS, *supra* note 138, at 141.

160 COLLINS, *supra* note 67, at 198.

161 WALKER, *supra* note 2, at 8.

violence.<sup>162</sup> A study of girls in Portland found high rates of abuse including incest, physical abuse, and emotional abuse.<sup>163</sup> When girls find themselves in desperate situations, they often choose to run away from the chaos and violence plaguing their domestic lives.<sup>164</sup> Running away is the most common status offense for girls.<sup>165</sup> While on the run, these girls are vulnerable to exploitation and abuse.<sup>166</sup> The proliferation of policies that criminalize family disputes means that girls frequently find themselves in the juvenile legal system because of conflicts with family members or individuals with whom they share close social relationships.<sup>167</sup>

The frequency of violence in girls' private lives leads some advocates to argue that girls' needs should be addressed by the child welfare system and transferred to dependency court.<sup>168</sup> Proponents of this solution argue that, unlike the juvenile justice system, the child welfare system is designed to address the needs of children who have experienced abuse at home or in their communities.<sup>169</sup> However, dependency court implicates another set of concerns. Studies show deep connections between the child welfare system and the exploitation of girls. A study conducted in Oakland found that, of 204 youths served by a nonprofit aiding commercially sexually exploited girls, fifty-three percent had lived in a foster care group home.<sup>170</sup> Other studies have similar findings, suggesting that "where children are poorly cared for, the child welfare system inadvertently plays a part in making girls vulnerable to exploitation."<sup>171</sup> Studies also indicate that would-be exploiters seek out

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162 CHESNEY-LIND & SHELDEN, *supra* note 3, at 288.

163 Farley, *supra* note 40.

164 Heipt, *supra* note 5, at 813.

165 *Id.*

166 WALKER, *supra* note 2, at 8.

167 Heipt, *supra* note 5, at 815.

168 Clark, *supra* note 88 ("Advocates say that, rather than being processed through the juvenile delinquency court, which tries cases involving children who have committed crimes, sexually exploited youth should be sent to juvenile *dependency* court, which processes children who have experienced abuse.").

169 *Id.*

170 MISSEY, MISSEY DATA HIGHLIGHTS: JUNE 2009 3 (2009), [http://missey.org/wp-content/uploads/2014/10/2009-data\\_report\\_.pdf](http://missey.org/wp-content/uploads/2014/10/2009-data_report_.pdf) [perma.cc/24ED-PTSB].

171 SAADA SAAR ET AL., *supra* note 113, at 19.

vulnerable children in foster care group homes.<sup>172</sup>

The risk that domestic life poses to the girls is not lost on Girls Court officials. To the contrary, many players in Girls Court understand that sending a girl home or to a group home can do more to derail her life than to repair it. Consequently, for girls without safe and stable housing, detention is one of the few solutions Girls Court can provide. District Attorneys in the court often argue for girls' detention as a way to protect them from street life.<sup>173</sup> Detention as protection for girls is a common theme, not just in Girls Court, but also throughout the juvenile legal system.<sup>174</sup> Studies show that girls spend more time in detention, a tool often justified as "servicing" girls, than their male counterparts for the same offenses.<sup>175</sup> The use of detention to protect girls presents cause for alarm when one considers the conditions of confinement in many juvenile detention centers. California has been criticized for its overcrowded confinement conditions, and "[a]s the rate of detention for girls has increased, already poor environmental conditions and inequities in programming, physical exercise, mental health treatment, and education have become worse."<sup>176</sup> From basic issues of sleeping conditions, personal hygiene and healthcare, to broader issues of educational attainment, detention centers routinely violate girls' rights and dignity.<sup>177</sup> Detention re-traumatizes girls and "trigger[s] the feelings of helplessness that can result in suicide and self-mutilation."<sup>178</sup>

By narrowly framing girlhood as a time during which girls should live at home, Girls Court potentially exposes girls to harm under the guise of protection and rehabilitation. Girls are caught in a vicious cycle; unsafe private lives make them vulnerable to abuse,

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172 *E.g.*, WALKER, *supra* note 2, at 18.

173 Clark, *supra* note 88 ("We take them to detention because it's the safest place for them," said Alameda County Deputy District Attorney Jennifer Madden. "Sometimes it is necessary to detain them for a brief period for their own safety.").

174 SHERMAN, *supra* note 17, at 11 ("Moreover, nationally in 2001, technical violations were thirty-one percent of detained girls but sixteen percent of committed girls, supporting the hypothesis that courts are using detention to 'protect' or 'service' girls who do not end up committed post-adjudication.").

175 Heipt, *supra* note 5, at 808–09 ("Instead, the number of system girls are rising due to a harsher system response to their characteristic behaviors and because girls tend to receive tougher sanctions than boys for the same offenses.").

176 SHERMAN, *supra* note 17, at 12.

177 *Id.* at 19–20, 26.

178 Heipt, *supra* note 5, at 818.

exploitation and court-involvement, the very same social conditions used to justify their detention for the sake of their protection. This cycle makes girls vulnerable to recurrent periods of incarceration that severely disrupt their lives. Probation terms, thus, emphasize a restricted form of femininity that is largely divorced from structural reality. Nevertheless, girls in Girl Court are shepherded towards this narrow and hegemonic understanding of girlhood. If girls cannot fall in line with this vision, the court may take increasingly coercive measures including incarceration or out-of-state rehabilitation programs. The use of these coercive measures to address social conditions like unstable housing, poverty, childhood trauma, and failing schools facilitates what Erica Meiners calls “the privatization of public issues”<sup>179</sup> where families and communities are left to deal with the fallout of poor public policy. By neglecting the institutional inequalities that influence decisions, gender-specific programs like Girls Court continue to punish girls individually for the structural failures surrounding them.

### CONCLUSION

Permeating throughout gender-specific interventions are harmful judgments about the appropriate role and behavior of girls. Girls Court reforms girls along the lines of hegemonic femininity, which trades on a white, middle-class ideal of womanhood that relegates girls of color and poor girls to gender-based violence, low educational attainment, and low-wage work.<sup>180</sup> While we should not refrain from gender-conscious remedies, for the most disadvantaged girls, remedies that center the benchmarks of hegemonic femininity will never be a source of liberation.

Despite the shortcomings of Girls Court, we must reject gender blindness across institutions that serve children, particularly within the juvenile legal system where so many girls have experienced a tremendous amount of gendered violence. A recent study of the California juvenile justice system found that most system-involved girls share a history of trauma:

[A] good proportion had experienced (and in some cases witnessed) the death of one or both parents from HIV, suicide, gang violence, or drug overdose. Most have seen relatives, siblings or boyfriends sent to prison. Also, more than 90% had been abused physically or sexually. About one-

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179 MEINERS, *supra* note 138, at 140.

180 COLLINS, *supra* note 67, at 196.

fourth had been made a ward of the court because of parental or caretaker neglect.<sup>181</sup>

We must remember that these statistics, although profoundly troubling, should not obfuscate critical thinking. Left unexamined, an “abstraction of numbers”<sup>182</sup> can be used to justify flawed gender-specific remedies like Girls Court. Indeed, the negative experience of girls in the juvenile legal system, often cited by Girls Court advocates, could instead be understood to reveal the limitations of the court system for both girls and boys. As Erin R. Collins writes, these courts “ultimately remove the populations who most highlight the system’s dysfunction, and in so doing they provide an expressive release that may disincentivize systemic reform.”<sup>183</sup>

At a time when overall rates of youth system involvement are decreasing, the rate of girls’ involvement in the juvenile legal system is growing disproportionately.<sup>184</sup> However haunting, this trend should not be used to fuel policies that rely on hyper-criminalization and control. Instead, these trends should encourage us to pursue policies that redistribute resources from the discipline and surveillance of girls to fostering their creative and physical development, their educational opportunities, their economic independence, their mental and emotional health, and their safe and stable housing. Efforts to serve girls should acknowledge the multiple systems of oppression they battle every day. Proponents of gender-specific programming must routinely and critically examine the understanding of girlhood that informs their efforts.

Most importantly, criminalization strategies that condition services on a finding of guilt should be wholly abolished. Policies that serve girls must adopt a decriminalization approach that embraces opportunities to address issues outside of the juvenile system. Although an imperfect solution, as a practical matter, converting Girls Courts into a pre-adjudication diversion program is an important step towards decarceration for all girls. As a diversion program, girls can access services without making an admission of guilt or being found guilty. As a matter of course, rather than constructing more “problem-solving courts” or “status courts,” advocates could turn their attention to creating and funding more diversion programs that bypass the juvenile legal system entirely.

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181 CHESNEY-LIND & SHELDEN, *supra* note 3, at 287.

182 DAVIS, *supra* note 81, at 92.

183 Erin R. Collins, *Status Courts*, 105 GEO. L. J. 1481, 1484 (2017).

184 SAADA SAAR ET AL., *supra* note 113, at 7.

Architects of gender-specific interventions must also exercise humility as we have much to learn from the girls themselves. Effective programming will recognize that girls consistently evaluate, respond to, and subvert their gendered subordination. In her ethnography of African American girls navigating inner-city violence, Dr. Nikki Jones discusses girls' development of "situated survival strategies."<sup>185</sup> Jones argues that girls situated between "unrealistic physical and behavioral expectations"<sup>186</sup> and the everyday threats of violence and poverty develop their own strategies to "navigate the difficult and often unpredictable inner-city terrain."<sup>187</sup> In developing these survival strategies, girls draw on an advanced understanding of their environment, personal resources, personality traits, and structural positions.<sup>188</sup> Jones' analysis provides a useful starting point for gender-specific programming. Successful interventions will not try to control girls, but will instead build on girls' own understanding of the conditions that subordinate them and the obstacles to their survival. Combating the paternalism in juvenile courts will mean co-creating space for girls to identify their own issues and craft solutions on their own behalf. Convening working groups of system-involved girls is one important step towards addressing girls' incarceration and oppression. These working groups should always find ways to compensate girls for their participation and time to demonstrate the importance of the girls' knowledge, teach young people the value of their labor, and prevent exploitation of girls' stories. Once we recognize that young girls are already fighting back against gender subordination, we will be better equipped to support them in this fight as compassionate allies.

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185 JONES, *supra* note 158, at 52.

186 *Id.* at 53.

187 *Id.* at 52.

188 *Id.* at 53.