

Gender-Specific Solutions From a Dependency Perspective

Girls' Court Recommendations for Judge Susan M. Breall

Audrey Chin

## Introduction

Females constitute the fastest growing population in the United States' juvenile justice system, generating a need for reassessment and reform of this aging institution (Miazad, 2002). Because the juvenile justice system has historically catered to a nearly all-male demographic, the existing programming fails to sufficiently address the unique needs of young women. The programming also fails to address the needs of LGBTQ+ youth, although due to the constraints of scope this paper is predominantly focused upon cis-gendered female youth. The necessary reforms will take into account the different lived experiences and needs of girls, adapting procedures and programs to create gender-specific solutions. Yet, it would be remiss to design gender-specific juvenile justice reforms without critically examining the link between delinquency and dependency. A research summary on crossover youth by Dr. Denise Herz of California State University Los Angeles finds growing evidence that girls make up a disproportionately large segment of crossover youth, as compared to the delinquent youth population (Herz, n.d.). Thus, if girls are becoming increasingly involved in the juvenile justice system and girls in foster care are especially vulnerable to "crossing over" into delinquency, then foster girls demonstrate an urgent need for gender-specific solutions.

In recent years, responding to the need for gender-specific solutions in juvenile justice, courts across the country have begun pilot "Girls' Court" programs. According to the government website for California courts,

"Girls' courts are for girls in the juvenile justice system who have a history of trauma or exploitation, or may be at risk for these things. The goal of a girls' court is to have a different track from traditional delinquency court that recognizes these girls' unique and gender-specific risks and needs. The court focuses on providing services rather than on convictions or detentions" ("Girls Courts," n.d.).

The majority of the existing Girls' Courts cater specifically to girls already involved in the juvenile justice system. For example, the Hawai'i Girls Court aims to support female juvenile offenders in moving away from delinquency, re-establishing stronger parental bonds, and encouraging positive community engagement. This court uses a holistic approach and builds upon each girl's personal strengths while maintaining accountability. Girls attend monthly court sessions as well as bimonthly activities such as community service, computer classes, arts and crafts, and mother-daughter retreats, which provide opportunities to strengthen familial and community bonds. However, much of the programming aims to restore family ties, which assumes a traditional nuclear family and precludes the full participation of foster youth, many of whom have unconventional or alternative living arrangements. Moreover, because of its delinquency focus, the Hawai'i Girls Court does not serve girls who are at high risk but not yet involved in juvenile justice system, for whom preventative measures may be highly beneficial and much more efficient than remedial measures.

This paper will address gender-specific solutions not from the perspective of delinquency, but rather from the perspective of dependency. If dependency courts work towards the Girls' Court mission by supporting at-risk girls, then they can work preventatively and constructively as opposed to correctively or even punitively. Of the many areas requiring urgent gender-specific solutions for girls in the foster care system, this paper selects three to concentrate upon: crossover risk, teen pregnancy & sexual health, and mental illness. Each section includes a summary of the impetus for gender-specific solutions in a given domain, followed by recommendations for reforms at the local, state, and federal levels where applicable. The paper

subsequently presents specific recommendations for dependency judges implementing a Girls' Court model, followed by a brief conclusion.

### **Crossover Risk**

Girls in the foster care system experience high rates of abuse, trauma, and relationship distress, which are major risk factors for delinquent behavior. Abuse is a stronger predictor of delinquency in girls than in boys, as Associate Professor of social behavior Elizabeth Cauffman demonstrates in her paper *Understanding the Female Offender*. Cauffman cites numerous statistics including that 92% of justice-involved girls in California have experienced some form of abuse (emotional, sexual, physical) prior to their delinquent behavior (Cauffman, 2008). In comparison, the rate of abuse among justice-involved boys is often cited around 30%, although this may be artificially low due to underreporting (Cauffman, 2008).

Additionally, familial turbulence such as “conflict over supervision” or “parental disruptions” have a greater effect on the delinquent behavior of girls than on that of boys (Cauffman, 2008). Thus, the familial fragmentation that is a common experience among foster care youth likely more strongly affects girls than boys in inciting delinquent behavior. This is likely another factor in the increased rates of “crossing over” for girls in the foster care system. The following solutions seek to mitigate the risk of foster girls crossing over into the delinquency system.

#### **Recommendations:**

1. Dependency & delinquency judges MUST communicate at the local level. When possible, dependency judges should strive to keep girls in dependency court, especially

for minor and non-violent offenses, which constitute the majority of violations by foster girls. If girls are moved into delinquency court, dependency judges should help delinquency judges understand their acting out in context of their background, especially in the case of trauma. Moreover, dependency judges should maintain communication when possible and advocate for community-based alternatives to incarceration. For girls with traumatic backgrounds and/or mental health issues, it is imperative to prevent placing them in environments with high risk of retraumatization.

2. States should pass or change legislation to enable foster youth to simultaneously participate in both delinquency and dependency courts, if not across-the-board then at least for status offenses and minor non-violent crimes (which are disproportionately committed by girls).
3. The federal government should provide additional grants to community-based organizations that support girls in the foster system, especially for programming that provides stability and long-term mentorship.

### **Teen Pregnancy & Sexual Health**

Girls in foster care experience extremely high rates of teen pregnancy. Overall, the teen pregnancy rate is more than twice as high among foster girls as among their peers (Boonstra, 2011). In some states, the discrepancy is even more pronounced, often due to poor sexual-education or lack of sexual health services for foster girls. For example, recent reports on teen pregnancy rates in Texas show foster girls experiencing teen pregnancy at almost five times the frequency of their peers (Levine, 2019). Moreover, according to the 2006-2010 National

Survey of Family Growth, the probability of a female having had a first birth by age 19 was inversely correlated with the presence of biological parents (Martinez et al., 2011). For living situations with both biological parents present until age 14, the probability of teen pregnancy was 7%, as compared to 23% for those in alternative living arrangements such as foster care (Martinez et al., 2011).

Elevated teen pregnancy rates among foster care are concerning for a plethora of reasons. Firstly, they suggest that foster girls may not be receiving the education, support, and services they need to make informed decisions about their reproductive health. Secondly, they may be indicative of higher rates of sexual abuse, trafficking, and exploitation of foster girls. Thirdly, teen pregnancies can severely limit foster girls' options (e.g. potential for adoption or long-term placement, ability to participate in programs). Fourthly, teen pregnancy decreases likelihood of educational achievement (e.g. 59% of teen mothers do not complete high school) and can perpetuate intergenerational poverty ("Teenage Births: Outcomes," 2008). In their analysis of the 2006-2010 National Survey of Family Growth, authors Martinez, Copen and Abma (2011) highlight the intergenerational patterns of teenage pregnancy. As Martinez et al. (2011) note, a 20-year-old female born to a teen mother is more than twice as likely to become a teen mother than a 20-year-old female born to a mother aged 20 or over. At younger ages, the difference is even larger. A 17-year-old female born to a teen mother is more than three times as likely to become a teen mother than is a 17-year-old female born to a mother aged 20 or over. Thus, daughters of teen mothers are at greater risk of becoming teen mothers—especially young teen mothers—themselves. Moreover, the children of teen mothers are also more likely to be involved in dependency and enter foster care ("Teenage Births: Outcomes," 2008). In light of these

intergenerational effects of teen pregnancy, it is especially crucial to evaluate and address the factors contributing to high teen pregnancy among foster girls. The following recommendations seek to combat unplanned teen pregnancy among foster girls and support foster girls in developing an informed understanding of their sexual health.

Recommendations:

1. The county should provide CASA training on how to discuss sexual and reproductive health with foster youth. This training should prepare CASAs to help foster youth to feel safe, supported, and comfortable asking questions or seeking help without fear of judgement or retaliation. It should specifically prepare CASAs to understand the unique experiences of girls who have suffered sexual abuse and/or trafficking. This training is dually important in terms of breaking down the shame experienced by many victims of sexual abuse and also in terms of empowering girls to take agency over their sexual health and to feel empowered to make choices about their bodies.
2. The state is responsible for providing comprehensive sex education to adolescents and should provide out-of-school sex-ed programs with curriculum tailored to the needs of foster youth and publicize clinics where youth can access sexual health services and contraceptives with confidentiality. The state should also make sexual health a mandatory part of pre-service curriculum for foster parents. The state should also extend sexual health services beyond age 18 for foster girls because “aging-out” is a period of uncertainty during which girls may have difficulty finding appropriate and accessible services.

3. The federal Teen Pregnancy Prevention Program (TPP), managed by the Office of Adolescent Health (OAH), is a step in the right direction for providing higher quality and more accessible sexual health education and services. However, while its mission statement does establish the intention of serving vulnerable populations including foster youth, its implementation thus far has not been sufficiently foster-inclusive. In the most recent performance report available on the TPP website, none of the performance measures specifically assessed whether programs were meeting the needs of foster girls (or even foster youth). While there were demographic breakdowns of age, urbanicity, gender, grade, and setting of the youth served, there lacked any statistical evaluation of the foster youth served. This is an unfortunate omission, especially because the vast majority of services (>85%) were provided through a middle school or high school setting, which potentially makes them significantly less effective at reaching foster youth (due to the frequency of school changes and the prevalence of truancy in the foster youth population). Thus, the very first change the federal government should immediately implement is to include TPP performance measures that assess the success of programs at reaching and serving the needs of foster girls. Then, if the programs are not adequately serving foster girls, as is a strong probability, the government should reallocate TPP grants to fund more foster-inclusive programs. It is inadmissible that the federal teen pregnancy prevention initiative does not adequately serve one of the most at-risk populations.

## **Mental Illness**

Mental illness is prevalent among the girls in the foster care system. While up to four out of five foster youth have significant mental health challenges and additional mental health services are necessary for all foster youth, the matter is especially urgent for girls, who because of higher rates of abuse “tend to exhibit psychopathology including PTSD, suicidal behavior, dissociative disorder, and borderline personality disorder, more frequently than do boys” (“Mental Health and Foster Care,” 2016; Miazad, 2002). The placement disruptions, scarcity of healthy attachments and long-term relationships, and instability often experienced while in foster care can especially exacerbate mental health issues. Additionally, girls are often penalized for “acting out” more harshly than boys—a pattern attributable to paternalistic attitudes engrained in the justice system—without acknowledgement of the underlying mental health causes of their behavior (Miazad, 2002). The below recommendations aim to improve the experience of girls with mental illness in the foster care system.

#### Recommendations:

1. In the courtroom, best efforts should be made by all involved (judges, CASAs, lawyers etc.) to de-stigmatize mental illness and to frame psychological and psychiatric assistance (therapy, medication) as a healthy and positive step forward. Judges should ensure that therapy and medication are included in girls’ case plans when applicable, especially for those with a history of trauma or abuse. For any girl with a history of self-harm or suicidal ideation, the judge, caseworker, and CASA should in consultation with the girl make an individualized “safe plan” of what to do, where to go, who to contact when she

feels unsafe. The girl should participate in the process of creating her safe plan and her input should be welcomed and valued and given equal weight.

2. States should extend mental health services for foster girls aging out of the foster care system. Abrupt changes in therapist or loss of therapy can be difficult and potentially even dangerous, especially in combination with the other turbulence and uncertainties that accompany aging out. Additionally, States should increase programs like Multidimensional Therapeutic Foster Care (MTFC), which has been successful at serving the needs of foster youth with mental illness.
3. The Federal government should mandate a psychological assessment of all youth entering out-of-home care. Currently, States each set different standards, meaning youth can fall through the cracks and not receive appropriate mental health services.

### **In the Courtroom: Recommendations and Best Practices for Judges**

Judges admittedly face a difficult task in reaching and assisting foster youth. Because they represent authority and the government, they can often be the target of resentment or distrust. Additionally, because they have limited interactions with the youth (sometimes 6 months between hearings) and communicate with foster care in a fairly “performative” setting (the courtroom, many attorneys present, a significant amount of procedural language etc.) it can be more difficult for judges to develop deep connections with foster youth. However, despite these challenges judges wield immense power and significantly influence the well-being of foster girls. The section below outlines best practices for dependency judges who have adopted a Girls’ Court model:

### Addressing Crossover Risk

1. Communicate with judges in delinquency courts and try to keep jurisdiction over cases, especially for girls with only minor infractions and misdemeanors.
2. For girls who are transferred into delinquency court, work with the delinquency judges to limit incarceration and promote community-based alternatives, especially for girls with trauma and mental health issues. Communicate that their “acting out” is likely a product of difficult circumstances and encourage constructive (as opposed to punitive) measures.

### Addressing Sexual Health

1. Check in with caseworkers and CASAs to ensure that there is healthy dialogue and that girls are aware of and receiving all necessary sexual and reproductive services. Make sure the case plan includes appropriate provisions for sexual health (e.g. contraceptives) and that these provisions have been determined in consultation with the girls, especially for girls known to be in vulnerable positions (e.g. living with or in close contact with their exploiter).
2. For girls with a history of exploitation or sexual abuse, keep all perpetrators and accused perpetrators out of the courtroom during the girl’s hearings (even if they are family members); Girls’ Court must be a safe space for the girls to come and share openly.

### Addressing Mental Health

1. Continue to combat the stigma around mental illness and therapy. Make sure the language used in the courtroom describes mental illness as a medical condition and not a sign of personal fault. Therapy and medication should be framed positively.

2. Make mental health services a priority, even for girls who aren't staying in placement. Also, work with case workers to ensure girls can access therapy in a medium they are comfortable with.
3. For each girl in therapy, solicit reports from her therapist that include the therapist's recommendations for how the court can best fulfill the girl's emotional needs and support her mental health (without breaching confidentiality).
4. For girls with a history of depression, self-harm, and suicidal ideation, work with them to create a "safe plan." Girls should actively participate in the creation of their safe plan.

#### Additional Best Practices

1. Acknowledge the agency and voices of foster girls. Listen actively to girls' contributions in the courtroom and respond directly to their questions and concerns. Avoid dismissing, diminishing, or delaying their comments when possible and, when denying girls' requests, explain the rationale.
2. Ask girls for verification of caseworker and CASA reports
  - a. Questions should include not only "do you agree?" questions that can be answered with a simple yes/no, but also "why? how? tell me more..." prompts as well.
3. Help build girls' positive self image.
  - a. Ask for affirmations, for example, "can you tell me about something you are proud of?"
  - b. Support girls in engaging in prosocial activities.

4. Utilize off-the-record time to build rapport with the girls. Provide girls with specific examples of what kinds of help the court can provide so they are able to advocate for their needs.
5. Explain rulings to girls in layman language and encourage questions. Explain why you are making your decisions; it is important for the girls to respect your authority and to view you as a fair arbiter.
6. Incentivize girls to come to court and engage in the court. Girls' Court cannot function properly without willing and active participation.
  - a. Strive to make Girls' Court a place where girls feel safe, comfortable, and heard. The ultimate goal should be for girls to come to Girls' Court without external incentives.
  - b. However, intermediately, some incentives (gift cards, goodie bags etc.) may be necessary to encourage girls to come to the courtroom and these should be used as needed.
7. Long-term mentorship is crucial! Girls really need role models who above all else show commitment and loyalty. Especially for girls with a history of trauma, so much of their destructive behaviors stems from lack of healthy attachments and even one person who will "rock with them" all the way can make all the difference. Strive to figure out whether girls have a "person" in their life who is a stable lifeline and mentor (could be a teacher, coach, their CASA, a grandparent etc.). If a mentor exists, provide whatever aid possible to support his or her relationship with the girl. Even if the relationship has no potential for adoption or

guardianship, it is still extremely valuable for girls to have a long-term relationship where they can build trust. For girls for whom no such mentor exists, work with CASAs and caseworkers to seek out long-term mentorship programs.

## **Conclusion**

The recommendations specified above should be understood in the context of the limitations of this paper. Firstly, due to limitations of scope, this paper focuses solely on three areas (crossover risk, mental health, and sexual health) with high need for gender-specific solutions. This is not to suggest that these are the only domains of the dependency and delinquency systems that require gender-specific solutions. Secondly, this paper focuses predominantly on the needs of girls and does not adequately address the needs on non-binary or LGBTQ+ youth in the foster care system. The needs of non-binary and LGBTQ+ foster youth require further study, resources, and attention. Thirdly, the applicability and feasibility of recommendations of the paper will vary from court to court dependent on state- and county-level rules, regulations, procedures, and funding.

Yet, recognizing these limitations, it is imperative that we move with speed to implement reforms. Moreover, as reforms are implemented they **MUST** be regularly and thoroughly evaluated. In order to better serve not only foster girls, but all foster care youth, we must be able to evaluate the efficacy of programs for foster youth, especially with regard to long-term outcomes and nation-wide scope. On this front, we must move from uncoordinated or nonexistent data collection to comprehensive data collection and analysis. We also need to be flexible and dynamic, to treat girls as individuals of value and integrity, and to raise each youth

up from their strengths and their background and their community. This will require both compromise and creativity and can only succeed through the joint collaboration of local, state, and federal governments with community organizations, CASAs, caseworkers, and judges. The author sincerely hopes that this paper will support the awareness and implementation of gender-specific solutions from a dependency perspective and that it will provide additional guidance for judges interested the Girls' Court model.



## Works Cited

- Boonstra, H. D. (2011, June 1). *Teen Pregnancy Among Young Women in Foster Care: A Primer*. Retrieved from <https://www.guttmacher.org/gpr/2011/06/teen-pregnancy-among-young-women-foster-care-primer#6>
- Cauffman, E. (2008). Understanding the Female Offender. *The Future of Children*, 18(2), 119-135.
- Center for Juvenile Justice Reform. (n.d.). *Crossover Youth Practice Model Research Summary*. Dr. Denise Herz.
- Curtis, L. & Nadon, M. (2018). *Gender Responsive Juvenile Justice: A Girls Court Literature Review Update*. Center for Children & Youth Justice.
- Dworsky, A. & Courtney, M.E. (2010). The Risk of Teenage Pregnancy Among Transitioning Foster Youth, *Children and Youth Services Review*, Elsevier 32(10), 1351-1356.
- Girls' Courts. (n.d.). Retrieved July 8, 2019, from <http://www.courts.ca.gov/37353.htm>
- Goodson, M. & Morash, M. (2016). Court-Involved Girls' Perceptions of the Attainability of a Desired Possible Self and Its Connection to Past Adversity and Current Behavior. *Feminist Criminology* 12(4), 384-404.
- Grayson, R. (2019). *Hello My Name is "Foster Kid."*
- Huber, J. & Grimm, B. (n.d.) *Most States Fail to Meet the Mental Health Needs of Foster Children*. Retrieved from <https://youthlaw.org/publication/most-states-fail-to-meet-the-mental-health-needs-of-foster-children/>

- Lerer, T. (2013). Hawai'i Girls Court: Juveniles, Gender, and Justice. *Berkeley Journal of Criminal Law*, 18(1).
- Levine, C. (2019, January 30). *Foster Care in Texas Engenders Soaring Teen Pregnancy Rates*. Retrieved from <https://nonprofitquarterly.org/foster-care-in-texas-engenders-soaring-teen-pregnancy-rates/>
- Martinez, G., Copen, C.E., & Abma, J.C. (2011). Teenagers in the United States: Sexual activity, contraceptive use, and childbearing, 2006–2010 National Survey of Family Growth. National Center for Health Statistics. *Vital Health Statistics*, 23(31).
- Miazaad, O. (2002). The Gender Gap: Treatment of Girls in the United States Juvenile Justice System. *Human Rights Brief*, 10(1), 10-13.
- National Conference of State Legislatures. (2016, May 9). *Mental Health and Foster Care*. Retrieved from <http://www.ncsl.org/research/human-services/mental-health-and-foster-care.aspx>
- Office of Adolescent Health. (2019, May 07). *About TPP*. Retrieved from [https://www.hhs.gov/ash/oah/grant-programs/teen-pregnancy-prevention-program-tpp/about/old\\_index.html](https://www.hhs.gov/ash/oah/grant-programs/teen-pregnancy-prevention-program-tpp/about/old_index.html)
- Our Mission & Program Values. (2013). Retrieved July 7, 2019, from <http://www.girlscourt.org/mission.html>
- Pasko, L. (2017) Beyond Confinement: The Regulation of Girl Offenders' Bodies, Sexual Choices, and Behavior, *Women & Criminal Justice*, 27(1), 4-20.
- Schuyler Center for Analysis and Advocacy. (2008, December). *Teenage Birth Outcomes for Young Parents and Their Children*.

The Department of Health and Human Services & The Office of Adolescent Health (October

2017), *Performance Measures Snapshot, The Teen Pregnancy Prevention Program:*

*Performance in Fiscal Year 2017 (Year 2)*. Retrieved from

<https://www.hhs.gov/ash/oah/sites/default/files/tpp-performance-measures-year-2-brief.pdf>