

# Vera Institute of Justice

## Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/girls-matter>

### Policy Issue Resources

Centering Gender in Status Offense Reform Efforts

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*A 13-year-old girl runs away because her mother's boyfriend makes her feel uncomfortable, and her mother fights with her about trying to get his attention.*

*A 16-year-old girl is living on the street. Her parents will not let her live in their home because she is a lesbian. Her father wants her to stop dressing like a boy.*

*A 15-year-old girl repeatedly runs away from her foster home and misses school. She is pregnant and says everyone calls her a ho.*

*A 14-year-old transgender girl does not want to go to school because the other kids call her names and bully her.*

*A 15-year-old gender nonconforming child is skipping school. They don't fit into sex-segregated peer groups or activities since they are not only a boy or girl. They/theym is used in the singular as a pronoun of choice for people who don't identify as male or female. For more on this usage, see Merriam-Webster, Singular They: Though singular they is old, they as a nonbinary pronoun is new and useful, <https://www.merriam-webster.com/words-at-play/singular-nonbinary-they>. They don't know who to talk to and are worried even their family won't understand.*

The scenarios above illustrate some common ways that gender can profoundly shape the circumstances leading girls and lesbian, gay, bisexual, transgender, and gender nonconforming (LGB/TGNC) children into court and the juvenile justice system for status offenses. In each instance in this report the word girl is used to be fully inclusive of girls of transgender experience. All children have a gender identity that informs the way they live from the ways they are expected to behave, to how they relate to their peers and their families, to how they see themselves and their roles in their communities. The Vera Institute of Justice (Vera) embraces a broad and inclusive vision of gender-responsiveness, one that informs its work with all children, not just girls. Indeed, masculine social norms play as much of a role in the over-criminalization of boys as feminine social norms do of girls. Research has also shed light on the overrepresentation of children who are LGB/TGNC in court and detention facilities for status offenses compared to their straight and gender-conforming peers, which previously had gone unrecognized. See for example Angela Irvine and Aisha Canfield, Reflections on New National Data on LGBQ/GNCT Youth in the Justice System, *LGBTQ Policy Journal at the Harvard Kennedy School* 7 no. 1 (2016-17) <https://perma.cc/F4A9-X4ZD>. Much of the invisibility of LGB/TGNC children in the system is due to flaws and bias in data collection and lack of appropriate consideration by youth justice systems, which are like society as a whole organized according to assigned biological sex, and thus most often do not account for or respond to the needs of LGB/TGNC children.

Within this comprehensive gender-responsive framework, it is especially urgent to focus on girls, whose experiences have been left behind in a reform field focused largely on boys, and for whom the toll of sexism, racism, and misogyny is often exacerbated by justice involvement. That is why they are the focus of this guide. Wherever possible, we also work to highlight experiences of children whose sexual orientation, gender identity, or gender expression depart from cisgender and heterosexual norms, as well as suggest reforms to make systems more equitable for LGB/TGNC children. Our ability to do so is limited, as their experiences are often made invisible because the majority of juvenile justice systems analyze data and operate facilities in a sex-segregated manner based on a child's biologically assigned sex, and without regard to differential experiences according to sexual orientation, gender identity, or gender expression. Very little is known, for example, about boys of transgender experience who may be processed in the girls' side of the juvenile justice system, or the experience of gender non-binary children who don't identify with only one gender but are nevertheless forced into one category or the other because of the way systems are organized. It is critical for the juvenile justice field to invest in reform for girls and LGB/TGNC children as part of a comprehensive gender-responsive reform strategy that works to transform the gendered adversities that

Paying attention to gendered experiences of girls and LGB/TGNC children is especially important because skipping school, running away, disobeying authority, or violating curfew (behaviors also known as status offenses, which are only illegal for children under the age of 18) can set off a range of harsh consequences, beginning with an arrest and ending with probation, detention stays, or even time in a juvenile correctional facility. Although girls typically comprise just 25 percent of the overall juvenile justice system, 40 percent of children who are taken to court for status offenses and 55 percent of children who are taken to court specifically for running away are girls. In 2013, status offenses and technical violations of probation accounted for a combined 37 percent of girls' total detentions nationwide compared to 25 percent of boys' detentions. Analysis of OJJDP data at Easy Access to Juvenile Court Statistics: 1985-2014 (2017).

Using one-size-fits-all punitive responses that do not account for gender in addressing minor misconduct does nothing to confront what

drives girls to engage in these behaviors in the first place. For example, girls who run away from home may be experiencing sexual abuse or conflicts with their families over their sexual orientation, while girls who skip school might be the primary caregiver for a family member or may be experiencing harassment on school grounds. When adults either ignore or do not recognize the social context in which these behaviors occur and push girls into the justice system rather than toward community support, they reinforce the underlying convergence of sexism that drives the treatment of girls more generally: namely, that they should be compliant and ladylike even in the face of conditions such as sexual abuse or discrimination in school that warrant active resistance. Overlaying this is the issue of race. The criminalization of girls' responses to the adversity, violence, and trauma in their lives is disparately borne by girls of color, for whom sexism is further magnified by racism and classism. (See [How race and gender converge to shape system responses to status offenses](#).)

An awareness of gender can help explain how and why girls behave in different ways and what, if any, misperceptions of girls' behavior rooted in race and/or gender biases may exist among system actors or within girls' families. It also empowers stakeholders to analyze how policies and practices may be negatively or differently impacting girls and to address disparities that are missed when systems assessment and reform do not include a targeted gender lens.

This guide, which supplements Vera's [Toolkit for Status Offense System Reform](#), aims to help system leaders and staff do just that. Alessandra Meyer, Vidhya Ananthakrishnan, Annie Salsich, and Sydney McKinney, *A Toolkit for Status Offense System Reform* (New York: Vera Institute of Justice, 2013), <https://perma.cc/SD3T-FL75>. Chapter 1 begins with a brief history of how gender has shaped the development of the juvenile justice system. Chapter 2 provides an overview of previous national status offense reform efforts for girls. Chapter 3 offers guidance and action steps to approach gender into your reform process, including:

Chapter 4 concludes by suggesting areas for cross-system collaboration and partnership that can produce powerful results for girls. Ultimately, the goal of this guide is to ensure that girls' needs are no longer overlooked, and that all systems treat them fairly, knowledgeably, and with respect as communities work to end reliance on law enforcement and confinement for status offenses and other minor misconduct.

## The Sexist History of the Juvenile Justice System

### The Sexist History of the Juvenile Justice System

Bias against girls has been a constant feature of juvenile justice systems since their inception. The authors of *Reform and Resistance: Gender, Delinquency and America's First Juvenile Court*, a historical study of gender in the first juvenile court in Chicago in 1899, found that the courts created a category of delinquency offenses known as immorality or incorrigibility, which were used almost exclusively for girls. These offenses accounted for 80 percent of girls' cases in the Chicago court and only 2 percent of boys' cases, as boys were usually involved in the court for larceny or other violations of laws or ordinances. Anne Meis Knupfer, *Reform and Resistance: Gender, Delinquency, and America's First Juvenile Court* (New York: Routledge, 2001). Immorality offenses in early court systems included associations with vicious or immoral persons, vagrancy, frequent attendance at saloons or pool halls, the use of indecent language, nonviolent altercations with parents, sexual behavior, and even changes in a girl's appearance that indicated the possibility of sexual intercourse within the past few days. John R. Sutton, *Stubborn Children: Controlling Delinquency in the United States, 1640-1981* (Berkeley, CA: University of California Press, 1988); David Tanenhaus, *Juvenile Justice in the Making* (New York: Oxford University Press, 2004); Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1977); Steven Schlossman and Stephanie Wallach, The Crime of Precocious Sexuality: Female Juvenile Delinquency in the Progressive Era, *Harvard Educational Review* 48, no. 1 (1978); and Barry C. Feld, Violent Girls or Relabeled Status Offenders? An Alternative Interpretation of the Data, *Crime & Delinquency* 55, no. 2 (2009), 241-65.

In short, immorality offenses were used to criminalize girls for their disobedience and resistance to strict gender norms of the time. (In rare instances when immorality offenses were used against boys, they were employed against those who broke gender or sexual norms, essentially criminalizing boys for being gay. Knupfer, *Reform and Resistance* (2001), at 81-91.) At the heart of this sexist treatment of girls in early courts was a paternalistic view that girls who departed from feminine norms and moral standards needed the courts' protection and intervention to prepare them to become moral women, mothers, and wives. Meda Chesney-Lind, Judicial Paternalism and the Female Status Offender: Training Women to Know Their Place, *Crime & Delinquency* 23, no. 2 (1977), 122-123. This paternalism was reflected not only in the charges that led to girls' involvement in the courts, but also in laws that extended juvenile court jurisdiction over girls to older ages than boys. As recently as the 1970s, for example, New York State's status offense law still applied to girls until their 18<sup>th</sup> birthdays, but to boys only until they turned 16. Francine T. Sherman, Justice for Girls: Are We Making Progress?, *UCLA Law Review* 59, no. 6 (2012), 1584-1628, 1590, <https://perma.cc/9LG5-SA9C>. Today, statutes no longer explicitly codify gender-disparate treatment in laws governing the juvenile justice system, but the remnants of these sexist structures still remain. In fact, several studies have found that girls are more likely to be detained for status offenses and other low-level offenses and to be held for longer periods of time for such offenses than boys. Erin M. Espinosa and Jon R. Sorensen, The Influence of Gender and Traumatic Experiences on Length of Time Served in Juvenile Justice Settings, *Criminal Justice and Behavior* 43, no. 2 (2016), 187-203; Meda Chesney-Lind, Judicial Enforcement of the Female Sex Role: The Family Court and the Female Delinquent, *Issues in Criminology* 8, no. 2 (1973), 51-69. Also see Office of Juvenile Justice and Delinquency Prevention (OJJDP), Easy Access to the Census of Juveniles in Residential Placement: 1997-2015, <https://perma.cc/DS55-QUH6>. Much of the disparate treatment of girls remains rooted in the gendered expectations that boys will be boys, while girls are held to a different behavioral standard. Chesney-Lind, Judicial Paternalism and the Female Status Offender (1977), at 122.

When girls violate conventional expectations of compliant feminine behavior by breaking rules, skipping school, violating curfew, or disobeying authority, these misbehaviors are often perceived by adults as rebellious or problematic because they conflict with the notion that girls should be passive and submissive. *Ibid.* at 124. Girls whose gender identity, gender expression, or sexual orientation depart from societal norms are overrepresented in the juvenile justice system at an even greater rate than LGB/TGNC boys: one survey of 1,400 children across seven jurisdictions nationwide found that 40 percent of girls in detention halls identify as LGB/TGNC, compared to 13 percent of boys. Irvine and Canfield, Reflections on New National Data, (2016-17), at 30. For comparison, approximately 7 percent of children identify as LGB/TGNC, 61 percent of whom are girls. See Christy Mallory, Brad Sears, Amira Hasenbush, and Alexandra Susman, *Ensuring Access to Monitoring Programs for LGB/TQ Youth* (Los Angeles: The Williams Institute, 2014), 1, <https://perma.cc/J6AS-PDN9>. Also see Angela Irvine, Shannan Wilber, and Aisha Canfield, *Lesbian, Gay, Bisexual, Questioning, and/or*

*Gender Nonconforming and Transgender Girls and Boys in the California Juvenile Justice System: A Practice Guide* (Oakland, CA: Impact Justice and the National Center for Lesbian Rights, 2017), 3-5 (finding in the California juvenile justice system that 87.9 percent of boys reported they were straight and gender conforming compared to 48.9 percent of the girls), <https://perma.cc/PP63-8F4M>.

Disparate treatment by race and ethnicity for girls also has roots in early juvenile courts where German, Irish, and Polish immigrant girls, as well as black girls, were overrepresented. Knupfer, *Reform and Resistance* (2001), at 89, 92, & 106. Black girls specifically were segregated from their white peers. Ibid. Today, black girls, Native American girls, and Latina girls are overrepresented compared to their white peers. See Malika Saada Saar, Rebecca Epstein, Lindsay Rosenthal, and Yasmin Vafa, *The Sexual Abuse to Prison Pipeline: The Girls Story* (Washington, DC: Georgetown Law Center on Poverty and Inequality, 2015), 8, <https://perma.cc/E3LN-DQYH>. For girls of color, gender biases in the justice system are further compounded by racialized gender stereotypes, such as those that label black girls, for example, as promiscuous, aggressive, and angry. See Monique W. Morris, *Pushout: The Criminalization of Black Girls in Schools* (New York: The New Press, 2016); and Melissa V. Harris-Perry, *Sister Citizen: Shame, Stereotypes, and Black Women in America* (New Haven, CT: Yale University Press, 2011). A 2017 study by the Georgetown University Law Schools Center on Poverty and Inequality found that adults view black girls as young as five years old as more adult than their white peers, meaning, in part, that they were perceived as needing less protection and nurturing, being more independent, and knowing more about adult topics, including sexual all of which may contribute to their disparate arrest rates and involvement with the juvenile justice system. Rebecca Epstein, Jamilia J. Blake, and Thalia Gonzalez, *Girlhood Interrupted: The Erasure of Black Girls Childhood* (Washington, DC: Georgetown Law Center on Poverty and Inequality, 2017), 8 (Black girls were more likely to be viewed as behaving and seeming older than their stated age; more knowledgeable about adult topics, including sex, and more likely to take on adult roles and responsibilities than what would be expected for their age), <https://perma.cc/CA7E-A6WK>.

Another important facet of the juvenile justice systems treatment of girls that has its foundation in early juvenile courts is the treatment of girls who were victims of sexual abuse. In the first juvenile courts, sexually abused girls were often treated as immoral and blamed for enticing men to rape them or sent away to juvenile facilities ostensibly as a means to protect them from being raped again. Knupfer, *Reform and Resistance* (2001), at 94. Today, concerns about girls safety and their experiences as victims of sexual abuse often still land them in the justice system, as research finds exceptionally high rates of sexual violence among girls in the justice system. Saar, Epstein, Rosenthal, and Vafa, *The Sexual Abuse to Prison Pipeline* (2015), at 7-12. At times, the abuse itself is the direct cause of girls confinement, as it was in early courts. Ibid. at 19. For example, although federal law now prohibits sex trafficking of children, defined as a person who has not attained the age of 18 years, girls who are commercially sexually exploited still end up in court for status offenses and delinquency charges. 18 U.S.C. 1591. For a discussion of child sex trafficking as child sexual abuse, see Saar, Epstein, Rosenthal, and Vafa, *The Sexual Abuse to Prison Pipeline* (2015), at 19-21. Also see rights4girls, *There is No Such Thing as a Child Prostitute*, <https://perma.cc/6B7M-XWRV>.

Despite substantial declines in the number of children entering the juvenile justice system in recent years, girls continue to be arrested and referred to the court system regularly for non-criminal behaviors. Nationwide, girls accounted for more than a quarter of all delinquency petitions in 2014 that is, children formally referred to court for committing a crime. Yet, girls are disproportionately represented in status offense proceedings. They comprised more than 40 percent of all status offense petitions, including 55 percent of all petitions to court for running away. Sarah Hockenberry and Charles Puzanchera, *Juvenile Court Statistics 2014* (Washington, DC: National Center for Juvenile Justice, 2017), 73, <https://perma.cc/2WYF-QFPE>; and analysis of OJJDP data at Melissa Sickmund, Anthony Sladky, and Wei Kang, et al., *Easy Access to Juvenile Court Statistics: 1985-2014* (2017) (database), retrieved from <https://perma.cc/57EE-5APT>. (See Figure 1.) And, given their overrepresentation in the juvenile justice system as a whole, girls of color namely black, Latina, and Native American girls as well as those who are poor or LGB/TGNC, often face the brunt of this punitive response. Despite a lack of local and national data on LGB/TGNC children in the juvenile justice system, one survey of more than 1,400 children in six U.S. jurisdictions found that approximately 40 percent of girls in the juvenile justice system identified as LGB/TGNC, compared to approximately 14 percent of boys. See Angela Irvine and Aisha Canfield, *The Overrepresentation of LGBQ/GNCT Youth Within the Child Welfare to Juvenile Justice Crossover Population*, *Journal on Gender, Social Policy, & the Law* 24, no. 2 (2016), 243-61, 249 & chart 2, <https://perma.cc/UB3Y-4VHU>. For more on the intersection of LGB/TGNC children and the criminal justice system see Irvine, Wilber, and Canfield, *Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming, and Transgender Girls and Boys in the California Juvenile Justice System* (2017); Kathryn E. W. Himmelstein and Hannah Brckner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, *Pediatrics* 127, no. 1 (2011), 48-56 (finding that nonheterosexual youth, particularly girls, have greater odds than their peers of experiencing school and criminal-justice sanctions), <https://perma.cc/9RNP-HA6D>; Angela Irvine, *We've Had Three of Them: Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Non-conforming Youth in the Juvenile Justice System*, *Columbia Journal of Gender and Law* 19, no. 3 (2010), 675-701 (national survey data showed 15 percent of children in the juvenile justice system are LGB/TGNC), <https://perma.cc/SC8B-BNDN>; and Angela Irvine, *LGBT/GNCT Youth in Juvenile Justice*, National Council on Crime & Delinquency Blog, March 13, 2015, <https://perma.cc/2TXP-YV4E>.

Being arrested and/or sent to court for misbehavior or perceived misbehavior can start a downward spiral that leads girls into deeper involvement in juvenile justice. Why? As explained in Veras *Just Kids: When Misbehaving is A Crime*, even referring children to court impacts their self-esteem because of the stigma attached to court involvement, which may cause them to view themselves as bad or criminal, increasing the likelihood of future delinquency. Mahsa Jafarian and Vidhya Ananthakrishnan, *Just Kids: When Misbehaving is a Crime* (New York: Vera Institute of Justice, 2017), <https://perma.cc/CS6F-HUSS>. The experience of being arrested and going to court for these behaviors can be traumatic, exacerbating underlying trauma and driving children to re-engage in the behavior that initially led to court involvement. Ibid. For children who experience detention or juvenile justice placement as a result of a status offense, the harms are further compounded. National Juvenile Defender Center (NJDC), *The Harms of Juvenile Detention* (Washington, DC: NJDC), <https://perma.cc/SMR8-CGXG>; and Justice Policy Institute, *The Dangers of Detention* (Washington, DC: Justice Policy Institute, 2006), 6, <https://perma.cc/YQ6H-TVFY>.

National legislation recognizes the harm of involving children in the justice system for status offenses. The federal Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP), which outlines protections for children and families in the juvenile justice system, requires that children charged with status offenses be handled using community-based programs instead of locked facilities. Juvenile Justice and Delinquency Prevention Act of 2002, Pub. L. No. 107-273, 42 U.S.C. 5601 et seq. <https://perma.cc/KR6G-6ZC2>. However, research has shown that past state efforts spurred by the JJDP to deinstitutionalize children charged with status offenses have not necessarily benefited girls to the degree they should have. In fact, reforms have had unintended consequences for many girls, especially



those experiencing family violence. See for example Lisa Pasko, *Damaged Daughters: The History of Girls Sexuality and the Juvenile Justice System*, *Journal of Criminal Law and Criminology* 100, no. 3 (2010), 1099-1130, 1111-12 (some laws were modified to make it easier to classify females as sexual perpetrators). For example, the JJDPAs ban on confinement was not coupled with a requirement that states develop alternative programs or responses to children charged with status offenses. In the absence of the perceived absence of community-based programs to address girls' needs, they continued to enter the court system for the same underlying status offense behaviors, but were now charged with misdemeanors instead of status offenses a process sometimes referred to as upcharging. Several studies indicate that girls involved in physical altercations with their parents or other family members were charged with simple assault or misdemeanor assault instead of the past status offenses of incorrigibility, unruliness, or ungovernability a consequence of status offense reform that the studies document was specific to girls. See Feld, *Violent Girls or Relabeled Status Offenders?* (2009), at 241 & 261; and Donna M. Bishop and Charles E. Frazier, *Gender Bias in Juvenile Justice Processing: Implications of the JJDP Act*, *Journal of Criminal Law and Criminology* 82, no. 4 (1992), 1162-86. Also see Shabnam Javdani, Naomi Sadeh, and Edelyn Verona, *Gendered Social Forces: A Review of the Impact of Institutionalized Factors on Women and Girls Criminal Justice Trajectories*, *Psychology, Public Policy, and Law* 17, no. 2 (2011), 161-211; American Bar Association and National Bar Association, *Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System*, *William and Mary Journal of Women and the Law* 9, no. 1 (2002), 73-97.

Separately, a 1980 amendment to the JJDPa known as the Valid Court Order (VCO) exception has also negatively impacted girls by providing a loophole that allows them to be placed in custody. The VCO exception, which remains in use by over two dozen states, allows judges to detain children who have not met the conditions of court orders, which typically require them to desist from the original behavior, like skipping school or running away. Coalition for Juvenile Justice | SOS Project, *Fact Sheet: Use of Valid Court Order: State-by-State Comparisons*, <https://perma.cc/5YYK-6NNB>. Thus, depending on where a girl's case is being processed, she may be subject to sanctions for a status offense that may range from a court order with specific conditions, to probation, to even a stay in detention or placement. Act 4 Juvenile Justice, *Fact Sheet: Deinstitutionalization of Status Offenses Core Protection*, <https://perma.cc/A35S-FJ6N>. Once girls are under probation supervision for a case whether a status offense case or not minor misbehavior, including status offenses, that might otherwise have been overlooked can now result in a violation of probation, known as a technical violation, that can have more serious consequences, including detention and placement. Francine T. Sherman, *13 Pathways to Juvenile Detention Reform: Detention Reform and Girls Challenges and Solutions* (Baltimore, MD: Annie E. Casey Foundation, 2005), 29, <https://perma.cc/D6Q5-F5GX>. In 2013, status offenses and technical violations of probation accounted for a combined 37 percent of girls' total detentions nationwide compared to 25 percent of boys' detentions. Analysis of OJJDP data at Easy Access to Juvenile Court Statistics: 1985-2014 (2017).

As a result, status offense reform to date centered largely on changing policies to limit the use of detention or placement as proven to be insufficient to keep girls out of the system because mechanisms put in place do not respond to their underlying needs. Similarly, the ad hoc programmatic investments that have sometimes characterized reform efforts for girls do not often address the larger structural and policy issues that drive girls into the system, including a focus on equity for decision-making by system actors who continue to refer girls to court and place them in custody for reasons that are out of step with best practices for status offenses as codified in federal law through the JJDPa. Increasingly, experts on girls in the juvenile justice system are calling for a focus on structural equity for girls meaning a systemwide commitment to developing policies, procedures, and programs that focus on equitable treatment and responses for girls, especially those of color. Francine T. Sherman and Annie Balck, *Gender Injustice: System-Level Juvenile Justice Reforms for Girls* (Portland, OR: National Crittenton Foundation, 2015), 31-32, <https://perma.cc/R49S-GDAQ>. Systematically implementing such equity strategies for girls is essential to eliminating reliance on confinement for status offenses and similar low-level behavior and ensuring that girls are safe and supported in their communities.

Vera's [Toolkit for Status Offense System Reform](#) (Toolkit) outlines a four-module process for assessing how juvenile justice systems currently handle status offenses and what can be done at policy, practice, and programmatic levels to shift toward a more community-focused response. The following sections supplement this approach with an eye specifically to system changes that impact girls and LGB/TGNC children. They outline key considerations related to data collection and analysis, as well as policy and procedure reviews to help systems take stock of how gender factors into their responses to children and center gender in their reform processes.

[Module 1](#) of the Toolkit noted the value of assembling a stakeholder workgroup to lead the reform process. The Toolkit describes how to lay the foundation for productive engagement with stakeholders that leads to action and meaningful system change, including how to create a workgroup that will be responsible for assessing current practice; identifying areas of concern; and planning, implementing, and sustaining the change needed to address those areas. As part of this work, it will be valuable to your systems assessment and reform process to include experts in gender-responsive reform academic and policy experts, experts in practice and programming, as well as young people and families with lived experience. You should strive to create a group that is representative of the array of agencies, groups, organizations, and families involved with your system. These experts can work alongside other institutional partners Vera recommends be part of the stakeholder group, including education, health, and child welfare system representatives (see Chapter 4 [Create powerful partnerships for change](#)).

Ensuring gender diversity and expertise in this process means including local organizations that have specific expertise working with girls, boys, or LGB/TGNC children and children of color. To the extent possible, it also means your workgroup constituency should reflect the children, families, and communities involved in your status offense system. Module 1 of the Toolkit includes some helpful general considerations and resources for meaningfully incorporating children and family voices. Among the considerations should be whether the children and families you recruit represent gender diversity. In some situations, it may be impossible to include a perfect representation of children in your system or to include all the types of diversity you would like to see in your group. Consider how focus groups may allow you to incorporate diverse points of view that are not represented in your workgroup or how you might use participatory action research approaches. (See "Collect qualitative data to better understand gender-specific issues" and the discussion of girls' participation in Alameda County school reform in "[Resources for reformers: Education-focused programs and reforms in schools](#).")

Questions to ask yourself when considering whether gender-specific expertise and diversity is reflected in your stakeholder workgroup:

Once you identify who you will engage in your stakeholder group, [Module 1](#) recommends holding a launch meeting to kick off your reform process. The first meeting sets the tone for your work together, so implement gender-inclusive practices that make all participants

feel affirmed and invited. Use gender-inclusive language, ensure there are gender-neutral restrooms available, and identify a facilitator who is comfortable with key gender concepts.

Understanding your current system, including who it serves and what is happening to different groups of children, is an important first step in any reform process. Such an assessment can shed light on whether and how the juvenile justice system responds differently to girls compared to boys at various points, and where gaps in practice and programming may be driving disparate outcomes. [Module 2](#) of the Toolkit provides questions to guide data collection and analyses, including what basic demographic information is required. The suggested analysis below build on this information, elaborating on how to analyze the system with a focus on gender.

Begin by looking closely at how girls move through the system at every system point, such as arrest and detention. To do this, calculate the proportion of total cases involving girls at any given point and how this number changes as cases progress through the system. Figure 2 below provides a sample flowchart that breaks down data in this way, which can be a useful tool in visualizing trends. Figure 2 can be further broken down by charge categories to analyze trends in processing across each system point for specific status offenses. It should also be broken down by race and gender to show trends in how specific groups of girls move through the system. (See "[How race and gender converge to shape system responses to status offenses](#).")

Some questions to explore during this process:

Should your system not currently collect the data above, this may be an important first step to flag for different stakeholders and incorporate going forward. Importantly, in exploring all of the questions above, data should also be cross-tabulated by gender and race to understand whether there are differences within genders by race and ethnicity. This is particularly important, given that the cumulative effects of race and gender biases can magnify disparities for girls of color and LGB/TGNC children.

Having data about LGB/TGNC children is critical, but most systems do not yet collect this information. In an effort to better serve LGB/TGNC children, a group of probation agencies in California partnered with Impact Justice and the Prison Law Office to train all intake officers on the factors that drive LGB/TGNC children into the justice system and on how to ask children about their sexual orientation and gender identity. For more information on collecting data and responding to LGB/TGNC children involved with the juvenile justice system including a suggested questionnaire for collecting sexual orientation and gender identity data see *Lesbian, Gay, Bisexual, Questioning and/or Gender Non-Conforming and Transgender Girls and Boys in the Juvenile Justice System: A Practice Guide*. Angela Irvine, Shannan Wilber, and Aisha Canfield, *Lesbian, Gay, Bisexual, Questioning, and/or Gender Nonconforming and Transgender Girls and Boys in the California Juvenile Justice System: A Practice Guide* (Oakland, CA: Impact Justice and the National Center for Lesbian Rights, 2017), 10-13, <https://perma.cc/N3V4-MXUE>.

Although quantitative analysis is crucial, it is always helpful to also capture qualitative data to inform your assessment. In some jurisdictions, the number of girls of color, LGB/TGNC children, and other populations charged with status offenses may be too small for robust quantitative analysis, making qualitative analysis especially important. Collecting qualitative data with a focus on understanding gender-specific issues among children and families within a system makes it possible to capture insights from young people, families, court staff, law enforcement, and other stakeholders. One way to capture their insights is via interviews or focus groups. Another, more integral way, is to engage people directly impacted by an issue in the design, collection, and analysis of data an approach often called participatory action research or collaborative research. This approach engages young people in developing solutions to improve their lives and keep them out of the courts.

Examples of projects that use participatory action research to engage young people in reform include:

Beyond looking at data and conducting interviews, policy and procedure reviews are also helpful. The purpose of such a review is to identify some of the formal and informal ways that gender bias may be embedded in your system, thus leading to disparate outcomes for girls.

Start off with these basic questions:

Once you've answered these preliminary questions, it will make sense to move on to the following questions, which focus specifically on girls.

Family engagement especially for children who may be disconnected from relatives and/or without a permanent home is challenging but critical work. The resources below offer examples of strategies for engaging young people and their families.

### **Curricula that positively affirm girls identities.**

A number of curricula are available to help girls identify positive relationships with women and other girls in their lives, find support, and create positive associations with their gender.

### **Culturally-responsive programming.**

Building positive connections to one's racial heritage and culture is associated with higher self-esteem and self-acceptance for girls of color. See Avis A. Jones-DeWeever, *Black Girls in New York City: Untold Strength & Resilience* (Washington, DC: Institute for Women's Policy Research and Twenty-First Century Foundation, 2009), 19 (the more black girls successfully internalize a positive conception of their racial identity and embrace egalitarian gender role attitudes, the more likely they are to hold positive views of their appearance, fitness, academic achievement, and career aspirations), <https://perma.cc/A7MA-WZT7>.

### **Gender-responsive programs that divert girls from the justice system.**

Below are two examples of gender-responsive programs that have been used effectively to divert girls from the justice system and

evaluated to have positive outcomes for girls.

As your system transformation process takes hold, evaluating the progress and outcomes of different reforms will be essential to ensure they are achieving the desired results. At each stage of evaluation using intersectional data that accounts for race, ethnicity, sexual orientation, and gender identity will enable you to assess whether certain policy, practice, and program changes are benefiting subgroups of children equally, and where adjustments might be needed. Further, look at whether any changes have unintended consequences, such as charging girls engaged in status offense behaviors with misdemeanors or more serious offenses instead. (See [Chapter 2, above, on upcharging.](#))

An essential part of the reform process is to establish how well your major institutional partners education, child welfare, health care, and victim services systems are responding to girls and LGB/TGNC children at risk of court involvement. Many girls end up in the juvenile justice system for a status offense because stakeholders in other systems are either missing preventive opportunities by not identifying girls at risk before they enter court, or are referring girls to court when they don't know what else to do with girls who seem challenging or for whom they lack the resources to support. It's important to include these systems as a key component of your assessment in order to develop partnerships and cross-systems strategies with the goal of keeping girls out of court.

### School systems

Truancy is the status offense that leads the majority of children into court regardless of gender and therefore schools are inextricably involved in reforming status offense systems. Truancy may be driven by family dynamics or traumatic experiences outside of school, as well as by typical adolescent misconduct, but is also strongly linked to school-climate issues and school policies that disparately impact girls and LGB/TGNC children, especially those of color. Joseph G. Kosciw, Emily A. Greytak, Noreen M. Giga, et al., *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nations Schools* (New York: GLSEN, 2016), 45 (LGB/TGNC children are more likely to be absent when school climate is hostile), <https://perma.cc/37FS-UU6F>; and Catherine Hill and Holly Kearl, *Crossing the Line: Sexual Harassment at School* (Washington, DC: AAUW, 2011), 3, <https://perma.cc/EZU5-BQCT>.

Gender has far-reaching implications for girls' experiences of school climate and school discipline. One study found that 56 percent of school-age girls had experienced sexual harassment in school, and research with LGB/TGNC children has found a similar prevalence. For sexual harassment of girls, see Hill and Kearl, *Crossing the Line* (2011), at 11 & figure 1. For sexual harassment of LGB/TGNC children, see Kosciw, Greytak, Giga, et al., *The 2015 National School Climate Survey* (2016), at 24, 46-47 (more than 59 percent of LGB/TGNC students reported experiencing sexual harassment at school); Khadija Hudson and Brittany Brathwaite, *The Schools Girls Deserve: Youth-Driven Solutions for Creating Safe, Holistic, and Affirming New York City Public Schools* (New York: Girls for Gender Equity, 2017), 7, <https://perma.cc/4Y42-KTMV>; and Bright Research Group, *Valuing Girls Voices: Lived Experiences of Girls of Color in Oakland Unified School District* (Oakland, CA: Alliance for Girls, 2016), <https://perma.cc/78NN-PQFU>. In addition to intolerant school climates, school conduct policies or the biased enforcement of them can lead girls and LGB/TGNC children to disengage from school either by withdrawing at school, skipping school, or dropping out of school. For sexual harassment of girls in school, see Hill and Kearl, *Crossing the Line* (2011), at 22-25. For the experiences of LGB/TGNC children in school, see Kosciw, Greytak, Giga, et al., *The 2015 National School Climate Survey* (2016).

For example, subjective school policies governing conduct such as dress codes or policies related to pregnant or parenting students can promote gender bias, which may lead directly to court referrals for status offense behaviors or cause children to disengage from school. The National Womens Law Center, for example, suggests that schools examine whether their policies target hairstyles or clothing common to certain racial, ethnic, or religious groups, which may disparately affect girls of color. National Womens Law Center, *Let Her Learn: A Toolkit to Stop School Push Out for Girls of Color* (Washington, DC: National Womens Law Center, 2016), <https://perma.cc/9XXP-UV9G>. In 2016, the Education Law Center worked with the school district of Philadelphia to revise its dress code policy so that it no longer contains subjective language about clothing. Education Law Center, ELC Statement in Response to Philadelphia's Suspension and Dress Code Policy Changes, August 22, 2016, <https://perma.cc/67MA-9YKZ>. Additionally, girls who are parenting their own children may frequently miss school to attend to these responsibilities, or face an environment of discouragement that pushes them out of school. See Kelli Garcia and Neena Chaudhry, *Let Her Learn: Stopping School Push Out for Girls Who Are Pregnant or Parenting* (Washington, DC: National Womens Law Center, 2017), 4, <https://perma.cc/6AFA-GSES>.

Therefore, in addition to reviewing attendance and truancy protocols in order to ensure fair treatment of girls in school discipline, the process of reforming a status offense system should explore whether any school policies discourage girls and LGB/TGNC children from coming to school. Significant among the areas to explore is compliance with Title IX, the federal law that prohibits gender discrimination in public education; the Individuals with Disabilities Act, which requires accommodations for students with disabilities; and Title VI of the Civil Rights Act, which prohibits discrimination based on race, national origin, or language. The U.S. Department of Education produces guidelines to help schools comply, including guidance specific to LGB/TGNC children. Improved compliance with Title IX can help schools address issues such as sexual harassment and assault in schools, or discrimination against children who are pregnant and parenting, that contribute to students disengaging from school, becoming truant, or engaging in other behavior that results in referrals to court. See U.S. Department of Education, Office of Civil Rights, Sex-based Harassment, <https://perma.cc/7WRJ-Z6BW>; and U.S. Department of Education, Resources for LGBTQ Students, <https://perma.cc/97CE-K4C7>.

Child welfare systems are designed to address youth behavior stemming from family crises or abuse, so they have an important role to play in the reform of status offense systems. Families struggling with poverty and other challenges can receive support through an array of community-based services that can serve them in their homes or neighborhoods and are not necessarily linked to child welfare. But when homes are found to be unsafe, the child welfare system bears responsibility for a child's safety and to support the family in addressing abuse or improving harmful conditions.

It is critical for child welfare service providers to implement trauma-responsive programming and practice that is specific to girls' needs and development. In some jurisdictions, girls and other children frequently cross over from the child welfare system to the justice system for status offenses, an outcome that the reform process may need to address. Crossover of girls and LGB/TGNC children from foster care to juvenile courts often results from behavior such as running away from foster care placements or conflicts with other young people or



staff in child-welfare placements. Although girls represent less than a quarter of the overall U.S. juvenile justice population, they constitute between 37 percent and 47 percent of children who cross over from the child welfare system into the juvenile justice system. Denise C. Herz and Anika M. Fontaine, *Final Data Report for the Crossover Youth Practice Model, Aggregate Report, 2010/2011 Cases* (Washington, DC: Center for Juvenile Justice Reform, Georgetown University Public Policy Institute, 2013), 7-8, <https://perma.cc/6DRL-YJA9>. Data on crossover for LGB/TGNC children is limited, but one study of the Los Angeles system found that they are overrepresented in foster care, and the degree to which they cross over to the juvenile justice system is an issue that warrants attention. Bianca D.M. Wilson, Khush Cooper, Angeliki Kastanis, and Sheila Nezhad, *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles* (Los Angeles: The Williams Institute, UCLA School of Law, 2014), 6, <https://perma.cc/LGK4-P7EZ>.

Systems should make changes so that fewer girls who receive child welfare services become involved in courts. Some resources for child welfare reform are listed below.

Poor health and unaddressed trauma among girls can significantly contribute to their disengagement in school and to behavioral challenges that cause strain at home or in the child welfare setting. By the time some girls and LGB/TGNC children commit status offenses, their health and trauma-related needs may have led to a high degree of instability, which may include cycling among institutional placements, schools, foster homes, and periods of running away or homelessness, without being connected to a stable or continuous source of mental or physical health care.

Girls who are court-involved or detained by the juvenile justice system are at particularly high risk of poor health outcomes. A 16-year longitudinal study published in *Pediatrics* found that girls who had ever been detained by the juvenile justice system were nearly five times more likely to die than the general population by the time they reached young adulthood from preventable causes highly correlated with trauma, including suicide and drug overdose; as well as from homicide, including both firearm homicide and homicide without a weapon, which for young women is often connected to intimate partner violence. For firearm homicide deaths of children in the juvenile justice system, see Linda A. Teplin, Jessica A. Jakubowski, Karen M. Abram, et al., *Firearm Homicide and Other Causes of Death in Delinquents: A 16-Year Prospective Study*, *Pediatrics* 134, no. 1 (2014), 63-73, <https://perma.cc/XEQ5-XXMY>. For the correlation between intimate partner violence and trauma, see Emiko Petrosky, Janet M. Blair, Carter J. Betz, et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence* United States, 2003-2014, *Morbidity and Mortality Weekly (CDC)* 66, no. 28 (2017), 741-46 (finding that intimate partner violence is the leading cause of homicide among women and disproportionately impacts young women and women of color), <https://perma.cc/ZTG7-ALPD>. For the correlation of suicide attempts, alcoholism, alcohol abuse, and illicit drug use with trauma, see Vincent J. Felitti, Robert F. Anda, Dale Nordenberg, et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, *American Journal of Preventive Medicine* 14, no. 4 (1998), 245-58, <https://perma.cc/A6W3-JA7N>. For the correlation between drug overdose and childhood trauma, see Stephanie Lake, Kanna Hayashi, M-J Milloy, and Thomas Kerr, *Associations Between Childhood Trauma and Non-Fatal Overdose Among People Who Inject Drugs*, *Addictive Behaviors* 43 no. 1 (2015), 83-88; and Substance Abuse and Mental Health Services Administration, *Adverse Childhood Experiences*, updated September 5, 2017, <https://perma.cc/HG3M-KTJE>. Community-based health or victim services providers may be best positioned to provide the continuity of care required to address these underlying issues related to the health impacts of violence and trauma, especially when they partner with child welfare and educational systems.

The public health system is also key to responding to girls and LGB/TGNC children who are involved in commercial sexual exploitation, an underlying reason why many of them enter the status offense system. Responding to exploited children is challenging, and no one system can do so effectively alone. Over the past several years, many jurisdictions have engaged in cross-system collaboration to develop multidisciplinary policy and practice responses for this population.

Practice guides for collaborations across legal, health, and victim services systems exist to guide reform efforts.

Designing systems that can effectively respond to status offenses without justice involvement is a serious endeavor that requires understanding young people in all of their complexities and identities. For girls in particular, the importance of understanding how gender influences the status offense behaviors that can lead to an arrest, court involvement, or even confinement cannot be overstated. Centering gender in your system reform process can reveal the inherent gender biases that drive decision making or are embedded within specific policies and practices and result in the criminalization of girls. Ultimately, being aware of these biases and how they connect to race and class is a necessary step in designing new approaches and innovations that will promote better outcomes for all.

The Vera Institute of Justice (Vera) is leading a national effort to end girls incarceration, a goal that is ambitious, but within reach. The number of girls confined in any given jurisdiction is typically quite small and the majority of girls who are confined pose little or no threat to public safety. Reforms have reduced the absolute number of girls detentions to 45,847 nationally. Based on Veras analysis of OJJDP data. See Melissa Sickmund, Anthony Sladky, and Wei Kang, et al., *Easy Access to Juvenile Court Statistics: 1985-2014* (2017) (database), retrieved from <http://www.ojjdp.gov/ojstatbb/ezajcs/>. Over the past decade, reform efforts to divert low-level offenses have dramatically driven down the countrys juvenile justice population: Most states had fewer than 150 girls in placement on the day of the last census in 2015 and many had fewer than 50 girls in placement. Based on Veras analysis of OJJDP data. See Melissa Sickmund, Anthony Sladky, and Wei Kang, et al., *Easy Access to the Census of Juveniles in Residential Placement: 1997-2015* (2017) (database), retrieved from <http://www.ojjdp.gov/ojstatbb/ezajcs/>.

Still, the number of girls in the system has decreased more slowly than that of boys. Despite their small numbers, girls now make up a larger proportion of the juvenile justice population than ever before. This should not be the case. Recent juvenile justice reform efforts have explicitly focused on diverting youth who present little threat to public safety, and yet the majority of girls are still detained or placed for status offenses, technical violations, simple assault, and public order offenses excluding weapons.

The practice of detaining and placing girls who commit minor offenses not only goes against research on adolescent development and effective juvenile justice practice, but it also raises significant equity concerns, as girls are more likely to be held in custody and often spend more time in custody than boys for the same or similar low-level offenses. Erin M. Espinosa and Jon R. Sorensen, *The Influence of Gender and Traumatic Experiences on Length of Time Served in Juvenile Justice Settings*, *Criminal Justice and Behavior* 43, no. 2

(2016), 187-203; and Meda Chesney-Lind, Judicial Enforcement of the Female Sex Role: The Family Court and the Female Delinquent, *Issues in Criminology* 8, no. 2 (1973), 51-69. Further, persistent racial disparities among girls and the stark overrepresentation of lesbian, gay, bisexual, transgender, and gender nonconforming girls in juvenile facilities show that not all girls are treated equally.

In most cases, girls' presence in the system for low-level offenses is driven by use of the justice system as a means of addressing girls' unmet needs and the criminalization of behaviors related to family conflict, trauma, and violence including domestic sex trafficking or commercial sexual exploitation. Justice systems often end up trying to address these concerns when other child-serving systems in their communities cannot or will not do so.

This publication builds on Vera's [Status Offense Toolkit](#) by offering resources to help systems incorporate a focus on girls into their status offense reform process in order to eliminate girls' involvement in the juvenile justice system for status offenses, which account for a sizeable portion of girls' overall custody. Ending girls' incarceration relies heavily on eliminating reliance on arrests, courts, and custody to respond to status offenses and, instead, ensuring girls are safe and supported at home and in their communities.

For more information please visit [The Initiative to End Girls Incarceration](#).

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