

ON A MISSION FOR GIRLS OF COLOR: INJUSTICE & THE JUSTICE SYSTEM

Girls of color are often overlooked when policymakers address issues of racial inequality in the juvenile justice system. That's why our 2016 Stand Against Racism campaign is centered on addressing the ways institutional and structural racism impacts girls of color. YWCA is on a mission to eliminate racism, empower women, stand up for social justice, help families, and strengthen communities.

On January 10, 2016, Gynnya McMillen was arrested and charged with misdemeanor assault after a domestic disturbance at her mother's home.ⁱ Once transported to the Lincoln Village Juvenile Detention Facility in Elizabethtown, Kentucky, she was instructed to take her sweatshirt off to be searched. When she refused, a guard physically restrained Gynnya with an Aikido martial arts technique while another guard patted her down and removed the sweatshirt. She was then placed in an isolation cell. Gynnya, a Black 16-year-old girl who had been in custody for only a day, was found dead the next morning. Guards failed to conduct every-15-minute checks on her physical safety during the night as required by the detention facility's established policy.

Gynnya's story is illustrative of the ways in which girls of color experience significant institutional and structural racism in America's justice system, even as they experience the same gendered disparities as other girls. Most girls come into contact with the juvenile justice system as a result of nonviolent behavior that poses no threat to public safety,ⁱⁱ such as status offenses, outstanding warrants, technical violations, and misdemeanors like minor assault.ⁱⁱⁱ Girls are more likely than boys to be detained for these nonviolent offenses.^{iv} Mandatory and pro-arrest policies that developed after passage of the Violence Against Women Act have also contributed to a rise in arrests of girls and young women for assaults, as law enforcement expanded policies aimed at addressing intimate partner violence to intra-family disputes.^v

Girls' presence in the juvenile justice system is often caused by the criminalization of survival crimes like running away, acting out behaviors like aggressiveness and truancy, and other behavioral responses to particular types of trauma and violence that are concentrated among girls and young women, including sex trafficking and sexual abuse.^{vi} Within this broader context, girls of color are disproportionately involved in the juvenile justice system and experience higher levels of detention.^{vii} They also experience particularly high rates of trauma and sexual violence.^{viii} And the experience of juvenile

detention itself can be re-traumatizing,^{ix} an outcome that seems out of proportion to the nonviolent behavior that brings many girls into the system.

Perceptions about girls' behavior violating cultural norms and stereotypes regarding feminine behavior also contribute to decisions to arrest and detain girls, even when that behavior is caused by trauma.^x This gendered bias is exacerbated for girls of color who also experience intersectional bias related to race and ethnicity.^{xi}

WHAT THE STATISTICS TELL US

Girls of color are disproportionately involved in the juvenile justice system, and are more likely than white girls to be arrested, detained in a juvenile justice facility, and processed through court. For example:

- Black girls are the fastest growing group within the juvenile justice system, and are particularly vulnerable to entering the juvenile justice system from schools, where they represent 43 percent of girls arrested at school but only 17 percent of the female student population.^{xii}
- In 2013, Black girls were nearly three times as likely as white girls to be referred to juvenile court for a delinquency offense, 20 percent more likely to be detained, and 20 percent more likely to be formally petitioned to court.^{xiii} American Indian and Native Alaskan girls were 40 percent more likely to be referred to juvenile court for delinquency, 50 percent more likely to be detained, and 20 percent more likely to be adjudicated.^{xiv}
- Black girls are 14 percent of the general population nationally, but 33.2 percent of the girls who are detained and committed in juvenile justice systems. Native American girls are 1 percent of the general youth population, but 3.5 percent of detained and committed girls.^{xv}
- For nonviolent, "public order" offenses such as gambling and prostitution, Latino and Latina youth were more likely than White youth to be admitted to state public facilities, and were incarcerated more than 50 percent longer than White youth (220 days vs. 147 days).^{xvi}

A majority of girls who have contact with and are detained in the juvenile justice system pose little or no threat to public safety.^{xvii}

- 37 percent of detained girls were held for status offense and technical violations (as compared to 25 percent of boys), and 21 percent of girls were detained for simple

assault and public order offenses where no weapons were involved (as compared to 12 percent of boys).^{xviii}

Moreover, girls in the juvenile justice system have experienced high rates of sexual abuse and trauma.

- The rate of sexual abuse for girls who are involved in the juvenile justice system is four times higher than it is for boys, and in a study of Adverse Childhood Experiences (“ACEs”) among justice-involved youth, 45 percent of girls had experienced five or more ACEs making their rate of complex trauma nearly twice as high as boys.^{xix}
- According to the Survey of Youth in Residential Placement, 42 percent of girls in custody reported past physical abuse, 44 percent reported past suicide attempts, and 35 percent reported past sexual abuse.^{xx}
- Approximately 40 percent of Black women report experiencing coercive sexual contact by the age of 18, indicating a high rate of sexual trauma among girls of color.^{xxi}
- The criminalization of trauma disproportionately impacts girls of color, particularly Black, Native American, and Latina girls.^{xxii}

RESPONSES THAT MAKE A DIFFERENCE

Implementation of specific policies at federal, state, and local levels offers opportunities to dismantle the justice system structures and institutions that perpetuate racial disparities and inequity for girls of color. To address these inequities and disparities, we advocate for policies and approaches that:

- 1. Prioritize intersectional race and gender research and analysis to better understand and respond to justice system involved girls of color.** While much is known, for example, about arrest and detention rates for girls from specific racial and ethnic backgrounds and about the overwhelmingly high rates of sexual violence among girls who are sent to the justice system, we know far less about the distinct and nuanced pathways that girls of different racial and ethnic backgrounds take into the justice system. More robust and comprehensive intersectional research and analysis would provide the information and context needed to effectively target specific interventions to alter those pathways, to develop off-ramps that would effectively address underlying trauma and behavioral issues, and enable juvenile justice decision makers to exercise their considerable discretion in ways that better serve girls of color.^{xxiii} YWCA USA incorporates this kind of intersectional approach in

the [Racial Profiling Community Watch Checklist](#), an important resource to help community members identify patterns and practices of institutional and structural racism.

- 2. Utilize gender- and culturally-responsive, trauma-informed, and developmentally appropriate approaches.** Such approaches would recognize the different pathways by which girls enter the justice system as compared to boys,^{xxiv} their distinct needs with respect to intervention and treatment, and the intersectionality of structural racism and gender disparity that girls of color experience. Implicit in this is the need to provide training and professional development for law enforcement, court personnel, correctional facility employees, and others who may come into contact with girls of color in the juvenile justice system

- 3. Prohibit the placement of girls who are status offenders or victims of sex trafficking in the juvenile justice system.** While 11 states have decriminalized prostitution for minors,^{xxv} most states still allow girls who are victims of commercial sexual exploitation to be charged, detained, and prosecuted for prostitution-related offenses *despite being too young to legally consent to sex.*^{xxvi} Shifting policing practices to treat trafficked girls as victims, not criminals, would provide a more supportive response.^{xxvii} Moreover, status offenses like running away, truancy, and curfew violations are most often signs of trauma for girls, and the behaviors are only punishable by the court because the behavior is exhibited by a young person under the age of majority. Alternatives to incarceration that are rooted in the community and utilize a holistic approach are a less punitive, developmentally appropriate, and less expensive means of addressing underlying behavior without the risk of re-traumatization that so often occurs when girls are detained in the juvenile justice system.^{xxviii}

- 4. Amend mandatory and pro-arrest policies for domestic violence to ensure those policies are utilized in situations involving intimate partner violence, not in response to youth and intra-family conflict.** The Violence Against Women Act was specifically intended to address intimate partner violence. Its expansion by law enforcement to intra-family disputes like arguments between parents and children has had the unintended consequence of drawing more girls into the juvenile justice system where the underlying reasons for their behavior — most often trauma — are not addressed and are often exacerbated. Providing guidance to law enforcement officers would help to ensure more appropriate use of these policies.^{xxix}

5. Strengthen the Juvenile Justice and Delinquency Prevention Act (JJDP A).

Established in 1974 and last reauthorized in 2002, JJDP A supports state programs that assist communities in taking a comprehensive approach to juvenile crime prevention and in addressing the needs of vulnerable youth. JJDP A conditions state eligibility for funding on compliance with four core protections for youth: the deinstitutionalization of status offenders (DSO); removal of juveniles from adult jails; sight and sound separation of juveniles from adult inmates; and addressing disproportionate minority contact (DMC) with the juvenile justice system. In addition to other important advancements, JJDP A reauthorization legislation proposed in the 114th Congress would take important steps to address the needs of girls of color by:

- Including as one of the purposes of the act the support of a trauma-informed continuum of programs to address the needs of at-risk youth and youth who come into contact with the justice system;^{xxx}
- Strengthening the DMC core protection by requiring states to implement plans to ensure fairness and reduce racial and ethnic disparities in the detention of juveniles;^{xxxi}
- Strengthening the DSO core protection by phasing out and eliminating the authority of courts to issue an order detaining juveniles who have been charged with status offenses in secure detention or correctional facilities, a practice which is currently allowed through what are known as valid court order and interstate compact exceptions;^{xxxii}
- Requiring juvenile justice systems to screen young people to determine if they are victims or at risk of becoming victims of human trafficking, and if so, to divert them to appropriate services and programs instead of detaining them in juvenile justice facilities;^{xxxiii}
- Encouraging states to ensure that programs and practices designated to address the needs of system-involved youth are trauma-informed;^{xxxiv} and
- Expanding requirements for state plans to include community-based alternatives to the detention of juveniles in correctional facilities, and enhanced mental health and substance abuse screening and services by trained professionals.^{xxxv}

In addition, a reauthorized JJDP A should require gender-specific programs when implementing its provisions and prioritize the collection of data on girls in the juvenile justice system and their outcomes, disaggregated and cross-tabulated by race and ethnicity, including data on sexual exploitation prior to entering the system, and conditions of confinement while detained.^{xxxvi}

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- ⁱ <http://www.cbsnews.com/news/teen-girl-gynnya-mcmillen-dies-in-kentucky-juvenile-detention-few-details-released/> and <http://www.thedailybeast.com/articles/2016/02/03/what-happened-to-gynnya-mcmillen-in-jail.html>
- ⁱⁱ “Policy Guidance: Girls and the Justice System.” Office of Juvenile Justice and Delinquency Prevention (2015) at p. 3.
- ⁱⁱⁱ Saar, M.S., Epstein, R., Rosenthal, L. and Vafa, Y. “The Sexual Abuse to Prison Pipeline: The Girls’ Story.” Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, and Ms. Foundation for Women (2015) at p. 7.
- ^{iv} “Girls, Status Offenses and the Need for a Less Punitive and More Empowering Approach.” Coalition for Juvenile Justice SOS Project. Issue No. 1 (2013) at p. 5.
- ^v OJJDP Guidance, *supra* note ii, at p. 3.
- ^{vi} OJJDP Guidance, *supra* note ii, at p. 3. See also, Kerig, P.K., and Ford, J.D. “Trauma Among Girls in the Juvenile Justice System.” National Child Traumatic Stress Network (2014) at p. 5; and Sherman, F.T., and Balck, A. “Gender Injustice: System-Level Juvenile Justice Reforms for Girls.” The National Crittenton Foundation and the National Women’s Law Center (2015) at p. 6.
- ^{vii} Sexual Abuse to Prison Pipeline, *supra* note iii, at p. 7.
- ^{viii} Crenshaw, K.W., Ocen, P. and Nanda, J. “Black Girls Matter: Pushed Out, Overpoliced and Underprotected.” African American Policy Forum and Center for Intersectionality and Social Policy Studies (2015) at p. 11 and 37.
- ^{ix} “Trauma among Girls in the Juvenile Justice System.” National Child Traumatic Stress Network (2014) at p. 7.
- ^x Sexual Abuse to Prison Pipeline, *supra* note iii, at p. 7.
- ^{xi} See, “Girls, Status Offenses and the Need for a Less Punitive and More Empowering Approach” at p. 4 (“With regards to girls of color, the implicit bias can manifest as one of both race and gender”), and Gender Injustice, *supra* note vi, at p. 22 (“Existing patterns of both sexism and racism collide in their effect on girls of color, increasing their chance of arrest and driving them deeper into the system”).
- ^{xii} Gender Injustice, *supra* note vi, at p. 22 and 23.
- ^{xiii} OJJDP Guidance, *supra* note ii, at p. 2.
- ^{xiv} OJJDP Guidance, *supra* note ii, at p. 2.
- ^{xv} Sexual Abuse to Prison Pipeline, *supra* note iii, at p. 7.
- ^{xvi} Villarruel, F.A., and Walker, N.E. “Donde esta la justicia? A call to action on behalf of Latino and Latina youth in the U.S. justice system.” Michigan State University Institute for Children, Youth and Families (2002) at p. 2-3.
- ^{xvii} OJJDP Guidance, *supra* note ii, at p. 3.
- ^{xviii} OJJDP Guidance, *supra* note ii, at p. 3.
- ^{xix} Sexual Abuse to Prison Pipeline, *supra* note iii, at p. 8-9. See also Gender Injustice, *supra* note vi, at p. 20 and 26.
- ^{xx} OJJDP Guidance, *supra* note ii, at p. 3.
- ^{xxi} “Women of Color Network Facts & Stats Collection: Sexual Violence, Communities of Color.” http://www.doj.state.or.us/victims/pdf/women_of_color_network_facts_sexual_violence_2006.pdf.
- ^{xxii} Harris, L. “Women’s Mental Health: an Intersectional Feminist Social Justice Issue.” Each Mind Matters [blog] <http://www.eachmindmatters.org/ask-the-expert/womens-mental-health-intersectional-feminist-social-justice-issue/>
- ^{xxiii} See, e.g., Gender Injustice, *supra* note vi, at p. 20 and 26.
- ^{xxiv} See “Girls, Status Offenses and the Need for a Less Punitive and More Empowering Approach” at p. 5 (“The pathways girls take into the justice system differ from those of their male counterparts in the prevalence and type of trauma, family loss, and separation they experience. Research shows that court-involved girls and young women have disproportionately high rates of victimization, particularly incest, rape, and battering.”)
- ^{xxv} Gender Injustice, *supra* note vi, at p. 39.
- ^{xxvi} OJJDP Guidance, *supra* note ii, at p. 4.
- ^{xxvii} Gender Injustice, *supra* note vi, at p. 39-40.
- ^{xxviii} See Gender Injustice, *supra* note vi, at p. 56-57.
- ^{xxix} OJJDP Guidance, *supra* note ii, at p. 3.

^{xxx} Summary: S. 1169 – 114th Congress (2015-2016), available online at <https://www.congress.gov/bill/114th-congress/senate-bill/1169>

^{xxxi} Summary: S. 1169, *supra* note XXX.

^{xxxii} Summary: S. 1169, *supra* note XXX.

^{xxxiii} “10 Ways a Reauthorized JJDPa Would Improve Young Lives, Communities.” Act 4 Juvenile Justice (Jan. 26, 2016). <http://sparkaction.org/content/10-ways-reauthorize-jjdp>.

^{xxxiv} “10 Ways a Reauthorized JJDPa Would Improve Young Lives, Communities,” *supra* note XXXiii.

^{xxxv} Summary: S. 1169, *supra* note XXX.

^{xxxvi} Sexual Abuse to Prison Pipeline, *supra* note iii, at p. 15-16.