

DAMAGED DAUGHTERS: THE HISTORY OF GIRLS' SEXUALITY AND THE JUVENILE JUSTICE SYSTEM

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We try to give the girls the skills to make better choices and take responsibility for their actions. We tell them, "It's now up to you when you leave here," but I know it's not going to work for most of them. . . . They're just too much in the life, you know? They come in here with a lot of damage.

—Therapist, girls' residential facility

Throughout transformations and legal changes in juvenile justice, the character and constitution of the female juvenile offender population has changed very little, with girls infrequently charged with serious law violations and commonly judged in terms of their moral welfare and sexual behavior. This Article examines the treatment of girls' sexuality in the justice system, from the early reformatories to the contemporary era. It looks at how juvenile courts and girls' correctional institutions have traditionally constructed and controlled girls' sexual choices, sexual abuse histories, identities, and orientation. Specifically, it shows how, over the past one hundred years, legal actors and correctional practitioners have consistently focused on girls' sexuality and identified similar causes for girls' sexual deviance (disrupted families, economic deprivation, educational and vocational deficits, and unhealthy relationships with older men), but have framed such causes, as well as their responses, differently.

I. INTRODUCTION

In the early years of the juvenile justice system, adolescent offenders were viewed as little adults, often receiving punishments—in the form of retaliation, retribution, and banishment—commensurate with older lawbreakers. By the late 1800s, increases in immigration, urbanization, and industrial jobs heightened poverty and subsequent societal concerns. Poor

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became synonymous with delinquent, as poor and neglected children often turned to criminal activity as a means of dealing with familial neglect and abandonment.¹ Because incarceration with adult offenders did not seem to deter youth from criminal behavior, reform schools—Houses of Refuge—were founded. Their primary intent was to provide discipline and education to incorrigible youth who lacked desirable character—to save these children from themselves and their surroundings.

The movement to create separate institutions for juvenile offenders was part of the larger Progressive movement that, among other things, was ardently troubled about social and moral evils, such as promiscuity and prostitution.² Spearheaded by privileged women, the child savers' movement and the establishment of family courts provided an opportunity for these women "to patrol the normative boundaries of the social order."³ Particularly concerned with sexual morality, "fallen" rescue homes, homes for unwed mothers, and girls' reformatories served the multiple functions of restoring girls' moral core, providing prenatal and natal care, and containing sexually transmitted diseases. Whereas the first juvenile court originally defined "delinquent" as those under sixteen who had violated a city ordinance or law, when the definition was applied to girls, the court included incorrigibility, associations with immoral persons, vagrancy, frequent attendance at pool halls or saloons, other debauched conduct, and use of profane language in its definition.⁴

Ultimately, many of the activities of the early child savers and juvenile courts revolved around monitoring the behavior of young girls, particularly immigrant girls and girls of color, to prevent their straying from the path of sexual purity. This Article examines such efforts, from the genesis of the first industrial school to contemporary correctional residential settings. It shows how legal actors and correctional practitioners historically framed girls' sexuality issues—from promiscuity and prostitution to sexual orientation and sexual offending. Using interview research performed in girls' youth correctional facilities, this Article also examines the current construction and control of girl offenders' sexuality in the juvenile justice system.

¹ See generally DEAN J. CHAMPION, *THE JUVENILE JUSTICE SYSTEM: DELINQUENCY, PROCESSING, AND THE LAW* (1992); ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (1977).

² See generally MEDA CHESNEY-LIND & LISA PASKO, *THE FEMALE OFFENDER: GIRLS, WOMEN & CRIME* (2d ed. 2004); NICHOLE HAHN RAFTER, *PARTIAL JUSTICE: WOMEN, PRISONS, AND SOCIAL CONTROL* (2d ed. 1990).

³ CHESNEY-LIND & PASKO, *supra* note 2, at 56.

⁴ ANNE MEIS KNUPFER, *REFORM AND RESISTANCE: GENDER, DELINQUENCY, AND AMERICA'S FIRST JUVENILE COURT* 81 (2001).

II. GIRLS, SEXUALITY, AND THE EARLY YEARS OF JUVENILE JUSTICE

In the early years of juvenile corrections, the concerns with girls' sexuality were moral, with a few categories of behaviors explicitly labeled as "sex offenses," and the primary cure for such moral disorder was rescue from and of the family. For example, Barbara Brenzel wrote that in late-nineteenth century Lancaster, Massachusetts, girls were sentenced to reform school in order "to punish petty larceny; to supply a home; to effect moral salvation; to prevent further 'lewd' acts; and to provide protection from physical abuse."⁵ Similarly, Ruth Alexander traced how delinquent young women in early-twentieth century New York—"wayward" girls institutionalized for various morals offenses—contested constraints of female heterosexual virtuous norms and were sent to reformatories for indulging in the sorts of freedoms that their wealthy sisters exercised, such as going on unsupervised dates and spending their money as they pleased; yet their wealthy sisters were not branded as being "wild," immoral, deviant, or useless to their families.⁶ Sexual purity became the ultimate marker of femininity, as mothers and fathers believed it solidified their daughters' chances of leaving the home, of maintaining a good reputation for the family, and of becoming a good wife and mother.

Mary Odem, in her study of juvenile justice in late-nineteenth century Los Angeles and Oakland, also found that working-class young women who sought opportunities for social and sexual independence ended up in police holding cells, juvenile courts, and training schools for their morally offensive behaviors.⁷ Odem showed that reform efforts led by morally concerned, conservative women to protect girls from marauding men were ineffectual.⁸ The girls themselves received judicial penalties for their willfulness and sexual encounters (even if such encounters were coerced), whereas their male partners received little to no legal or social condemnation.⁹ Indeed, not only did girls remain sexually vulnerable, but justice professionals, as well as familial intimates, openly questioned whether girls' victimization resulted from fervent promiscuity or personal feeble-mindedness.

⁵ BARBARA M. BRENZEL, *DAUGHTERS OF THE STATE: A SOCIAL PORTRAIT OF THE FIRST REFORM SCHOOL FOR GIRLS IN NORTH AMERICA, 1856-1905*, at 130 (1983).

⁶ RUTH M. ALEXANDER, *THE "GIRL PROBLEM": FEMALE SEXUAL DELINQUENCY IN NEW YORK, 1900-1930* (1995).

⁷ MARY E. ODEM, *DELINQUENT DAUGHTERS: PROTECTING AND POLICING ADOLESCENT FEMALE SEXUALITY IN THE UNITED STATES, 1885-1920* (1995).

⁸ *Id.*

⁹ *Id.*

Likewise, Anne Knupfer found in her analysis of the early juvenile court in Chicago that between 1904 and 1927, 60% to 70% of delinquent girls placed on probation or in institutions were charged with incorrigibility.¹⁰ Judges more frequently institutionalized girls than boys for sexual delinquency or immorality, considering it a “more dangerous” sex offense. Embedded in these deliberations was a dichotomous image of girls—on one hand, a victim, an errant yet essentially good girl, and on the other, a “sexualized demon,” a danger not just to herself but to the larger society.¹¹ Consequently, nearly all girls who had sex with more than one partner were institutionalized. Additionally, nearly 70% of the girls who were institutionalized were victims of incest, although this “discovery” was noted mostly as fact and not as a mitigating circumstance.¹²

Discourse surrounding girls’ “sexual offending” in early 1920s New York and Illinois revealed similar conclusions. Psychiatrist William Thomas asserted, in his summary report of “unadjusted” girls from juvenile courts in these two states, that sexually promiscuous and prostituting girls were “wild” in their character and their casual sexual behaviors were part of a “high life,” in which girls used sex for access to restaurants, shelter, moving pictures, and clothes.¹³ Asserting that sexually active girls do not enjoy sex and have no sexual awakening, he also wrote that “sexual passion does not play an important role” and “very few girls ever allege actual want . . . as a reason for entering prostitution.”¹⁴ Understanding this economic motivation, Thomas continued by explaining that the girls’ fathers claimed to “have no use for them if they did not bring home all their pay,” which led girls into a predicament of fighting with their fathers for their earnings or exchanging sex for money or desired goods to supplement what their fathers harvested from their daughters’ paychecks.¹⁵ He wrote, “It is true in general that if you have a good family you do not have a bad individual. The well-organized family, with property and standing, is in a position both to regulate and gratify the wishes of its members.”¹⁶ Blaming poverty and immigration, he stated that girls’ sexual “tendency to demoralization” was the result of immigrant and disordered families in need of visiting by Christian women, receiving food or money, and coming to the rescue in times of crisis.¹⁷

¹⁰ KNUPFER, *supra* note 4, at 91.

¹¹ *Id.* at 94.

¹² *Id.*

¹³ WILLIAM I. THOMAS, THE UNADJUSTED GIRL 109-112 (1928).

¹⁴ *Id.* at 109, 118.

¹⁵ *Id.* at 150.

¹⁶ *Id.* at 151.

¹⁷ *Id.*

Thomas's account of the girls also underscored the constant ways sexual assault was constructed by the institutions—as a form of sexual delinquency and a result of girls' bad choices. For example, he wrote about Annie, age fifteen, who had suspected sexual relations with two men prior to her appearance at juvenile court for the offense of prostitution and incorrigibility:

January 22, 1922. Her story goes as follows: She met Simon Craw in an ice-cream parlor, flirted with him, and they became acquainted. He asked her to go joy riding. She said "no" but made a date with him to go to a moving picture. After the show they went to an ice cream parlor and ate hot chocolate. Simon introduced her to a soldier whose name she forgot. She told them she did not want to go home, as it was 11 P.M. and she had promised to be home at 8 P.M. The soldier said he knew that the proprietor of the Ohio Hotel would let all three of them have one room for the night. She said, "I don't want to go. I don't want to be used by everybody." Simon said "you don't have to" and the two men persuaded her to go, where she proceeded to have relations with them.¹⁸

Similarly removing aspects of coercion or victimization, Katharine Davis, a superintendent of the New York girls' reformatory, wrote about girls' prostitution as often being the outcome of the girls' having been easily "convinced to engage in relations" and "to become sexual servants" due to weak minds and weak controls at home, at school, and from the Church.¹⁹ She stated in her 1922 report: "Very few prostitutes come from homes where all the conditions are good—good family life, opportunity for education, economic security. The occupations of the fathers show low economic status."²⁰ This lack of economic security in girls' lives then produced "defective" girls who became unwed mothers, used "drink or drugs," and found "bad company."²¹ She then "assure[d]" the state that the "prostitute status" is not fixed and that the girl can emerge from it via marriage to a "man who has a great deal of money" and "attends church regularly."²²

Also focusing on how poverty produced immorality, unwanted pregnancies, and sexual delinquency, case file reports on girls who were in New Haven's juvenile court from 1907 to 1913 show that nearly two-thirds were charged with "sexual offenses," ranging from residing in or frequenting a "House of Ill Fame," or engaging in "lascivious carriage," to "nightwalking." The key "underlying offenses" for the girls' sexual

¹⁸ THOMAS, *supra* note 13, at 115.

¹⁹ KATHARINE BEMENT DAVIS, A STUDY OF PROSTITUTES COMMITTED FROM NEW YORK CITY TO THE STATE REFORMATORY FOR WOMEN AT BEDFORD HILLS 203-05 (1922) (on file with author) (emphasis added).

²⁰ *Id.* at 205.

²¹ *Id.*

²² *Id.* at 221.

misconduct included immorality (65%), waywardness (21%), and drunkenness (10%). Additionally, 72% were foreign-born or from foreign-born parents, an on-going focus in the reports. For example, one file noted:

The parents drink and are by turns over-harsh and then careless with their daughters. The homes are not attractive The parents give the girls no moral training, in fact the majority of the fathers and mothers lack a strict moral sense themselves. Hence the girls are driven from an unpleasant and often immoral home to find their pleasures secretly outside. . . .

These are the conditions which exist, especially among the foreign-born families²³

As recommendations for prevention and intervention, this report suggested that teaching "sex hygiene in the public schools" would be beneficial since most did not receive

any real training at home, and are quite ignorant of the real significance of things, although they may have a broad knowledge of evil ways. . . .

Teaching girls that control of their minds and bodies is necessary for success in any one thing is a lesson that is fundamental. . . .

An important part of the educational work of settlements is in keeping the standard of morals and conduct high and showing the boys and girls that they can have a good time in a clean, wholesome way.²⁴

In Honolulu, from 1929 to 1930, Hawaiian and part-Hawaiian girls also received similar treatment; over half of the girls referred to court were charged with "immorality," which was applied to girls suspected of sexual intercourse. Another 30% were charged with waywardness. Police and social workers collected evidence of "immorality" by "questioning the girl and, if possible, the boys with whom she was suspected of having sex."²⁵ Doctors reported other evidence of "exposure" through gynecological examinations that routinely noted the condition of the hymen; "admits intercourse, hymen ruptured," "no laceration," and "hymen ruptured" are typical notations on the forms.²⁶ Girls were also twice as likely as boys to be detained during this period, and they spent, on average, five times as long in detention as their male counterparts.²⁷ They were also nearly three times more likely than boys to be sentenced to the training school.²⁸

²³ MABEL A. WILEY, *A STUDY OF THE PROBLEM OF GIRL DELINQUENCY IN NEW HAVEN* 13 (1915).

²⁴ *Id.* at 23-24.

²⁵ CHESNEY-LIND & PASKO, *supra* note 2, at 57.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Indeed, girls made up half of those committed to training schools in Honolulu well into the 1950s.

In addition to low moral constitution, incorrigibility, poverty, immigration, and feeble-mindedness, the early years of juvenile justice response often blamed one main culprit for girls' sexual delinquency: the military man. June Purcell-Guild's 1917 study of 131 girls in Chicago's juvenile detention home showed how girls' "sudden, complete moral degeneration" was due to the "lure of the uniform."²⁹ Girls—who were also characterized as "hysterical," "erratic," "adventure-loving," "ultra-emotional," "excitable," and displaying an "amazingly indifferent attitude concerning the effects of her acts on herself and her parents"—claimed that the "man in uniform" led them to immoral sexual conduct either through force, promise of marriage, or "crazy" connection.³⁰ Despite revealing manipulation or coercion on the part of the man in uniform, the girls were nonetheless assessed as responsible for their own sexual delinquency because they already had a propensity for moving picture shows and popular magazines that dealt with "lurid sex problems," and had "ineffective" mothers.³¹ Indeed, one girl in Purcell-Guild's sample was under arrest for this particular act of juvenile sexual delinquency: "writing indescribably obscene letters to various soldiers with whom she was not personally acquainted."³²

B. MID- TO LATE-TWENTIETH CENTURY CONCERNS

An examination of judicial sentiments and sentencing practices with regard to girls throughout the mid-twentieth century shows few changes. For example, Paul Tappan evaluated several hundred cases in the Wayward Minor Court in New York City during the late 1930s and early 1940s.³³ These cases led Tappan to conclude that there were serious problems with a statute that brought young women into court simply for disobedience of parental commands or because they were in "danger of becoming morally depraved."³⁴ Tappan was particularly concerned with legislating and legally enforcing morality, noting that many young women were being

²⁹ June Purcell-Guild, *Study of One Hundred and Thirty-One Delinquent Girls Held at the Juvenile Detention Home in Chicago, 1917*, 10 J. AM. INST. CRIM. L. & CRIMINOLOGY 441, 446 (1919).

³⁰ *Id.* at 445-46.

³¹ *Id.* at 446.

³² *Id.* at 445.

³³ PAUL W. TAPPAN, *DELINQUENT GIRLS IN COURT: A STUDY OF THE WAYWARD MINOR COURT OF NEW YORK* (1947).

³⁴ *Id.* at 33.

charged simply with sexual activity.³⁵ Since consensual, age-appropriate sexual intercourse was not illegal, he asked, “What is [girls’] sexual misbehavior—in a legal sense—of the nonprostitute of sixteen, of eighteen, or of twenty, when fornication is no offense under criminal law . . . ?”³⁶

Studies of the juvenile courts and reformatories well into the second half of the twentieth century suggest that judges and other legal and correctional professionals participated rather directly in the enforcement of puritanical heterosexuality. From 1920 to 1950 in Los Angeles, the overwhelming majority of girls continued to be referred to family court for status or moral offenses, and sexual misconduct still largely defined female delinquency.³⁷ The concern for female sexual conduct remained determinative in shaping social policy in the 1950s, despite the tenfold decrease in rates of venereal disease among court-involved girls.³⁸ In 1956, according to the President’s Commission on Law Enforcement and the Administration of Justice, half of the girls petitioned to the juvenile court were appearing for status offenses, as compared with only one-fifth of the boys.³⁹

John Ball and Nell Logan’s research on female delinquents’ early sexual behaviors demonstrates this on-going emphasis on girls’ sexual behavior. Almost all of their sample had been incarcerated for “sexual misbehavior.”⁴⁰ “[R]ebelliousness, truancy or incorrigibility might be recorded, while sexually promiscuous behavior was the actual reason for incarceration.”⁴¹ Furthering the relationship between sexual behaviors and low socio-economic status, the authors underscored that this was partly due to poor, “broken” families and contended that the most immediate cause for girls’ delinquency was “sexual promiscuity and its attendant conflicts with parental and community authority.”⁴² It is interesting to note that while the authors maintained that once girls lost their virginity they were prone to repeated sexual intercourse, about 80% of their sample reported that they “did not enjoy coitus or that they afterwards felt guilty about their

³⁵ *Id.* at 33-34.

³⁶ *Id.*

³⁷ Mary E. Odem & Steven Schlossman, *Guardians of Virtue: The Juvenile Court and Female Delinquency in Early 20th-Century Los Angeles*, 37 *CRIME & DELINQ.* 186, 200 (1991).

³⁸ *Id.*

³⁹ Mary Kaaren Jolly, *Young, Female and Outside the Law: A Call for Justice for the Girl “Delinquent,”* in *TEENAGE WOMEN IN THE JUVENILE JUSTICE SYSTEM: CHANGING VALUES* 97, 98 (Ruth Crow & Ginny McCarthy eds., 1979).

⁴⁰ John C. Ball and Nell Logan, *Early Sexual Behavior of Lower-Class Delinquent Girls*, 51 *J. CRIM. L., CRIMINOLOGY & POLICE SCI.* 209, 211 (1960).

⁴¹ *Id.*

⁴² *Id.* at 213.

behavior”⁴³ and 22% said the reason for engaging in coitus for the first time was “the boy’s use of force.”⁴⁴ As with the early research on the responses of juvenile court, girls’ sexual abuse histories were collected and known, but connection of such trauma to an understanding of the girls’ delinquent pathways was not fully explicated.

Other examinations of girl offenders throughout the mid-twentieth century expressed similar findings. Clyde Vedder and Dora Somerville, in their 1960s study of girls in training schools, showed that although the female juvenile offenders in their sample were incarcerated for running away from home, incorrigibility, probation violation, and truancy, “[t]he underlying vein in many of these offenses is sexual misconduct by the girl delinquent.”⁴⁵ Likewise, R. Hale Andrews and Andrew Cohn found in New York in 1972 that judges’ concerns about girls’ sexual morality continued, as did their personal and stereotypical opinions of girls as sexual manipulators and troublemakers.⁴⁶ Consequently, girls, in comparison to their male counterparts, were sentenced more harshly for status offenses and, despite the absence of serious law violations, were as likely as boys to be institutionalized.

Gisela Konopka’s examination of adjudicated delinquent girls in 1960s New York found that the court often viewed girls’ offenses—whether shoplifting, running away from home, or truancy—as “accompanied by some disturbance or unfavorable behavior in the sexual area, thus involving her own total being and affecting her relationships with others.”⁴⁷ She explained that the sexual (mis)behavior of the delinquent girl was egregious in the court’s view because it “hit[] close to the personal feelings of most people,” and that “hidden fear” and “unnamed horror” about sex was “present in much [correctional workers’] talk about delinquency in girls and [is] translated into the almost unbelievably neglectful—and sometimes cruel—treatment of these girls in many institutions and communities.”⁴⁸

Konopka’s research also showed how girls’ training schools defined and dealt with lesbian, bisexual, or queer (LBQ) girls in custody.⁴⁹ She

⁴³ *Id.* at 212.

⁴⁴ *Id.* at 211.

⁴⁵ CLYDE B. VEDDER & DORA B. SOMERVILLE, *THE DELINQUENT GIRL* 147 (1970).

⁴⁶ *See Note, Ungovernability: The Unjustifiable Jurisdiction*, 83 *YALE L.J.* 1383 (1974).

⁴⁷ GISELA KONOPKA, *THE ADOLESCENT GIRL IN CONFLICT* 4 (1966).

⁴⁸ *Id.*

⁴⁹ LBQ is defined as lesbian, bisexual, and sexually questioning girls. Discussion of transgendered girls was not found in the historical records or literature nor mentioned in the contemporary research this paper will present. Konopka’s research is one of the first to explore such issues in girls’ correctional facilities. For earlier works on the inner social life and dynamics of women’s and girls’ facilities, see, for example, MARY B. HARRIS, *I KNEW THEM IN PRISON* (1936).

found that staff saw lesbian activity as a safer outlet, a form of higher love, a way out of loneliness in the institution, or a way of gaining popularity, all of which resulted from men's rejection of the girls involved, which left the girls wondering how they could ever find a "'decent man' who would want something more than 'sex' from them."⁵⁰ Because girls were seeking revenge against past lovers and were frustrated and disappointed, they entered into "homosexual activities" as a "simpler" way of getting "satisfactions."⁵¹ Framed as an active choice, staff considered girls' sexual relationships with other girls as another form of rebellion. Additionally, for those girls whom staff identified as "true butch," a mental disease definition was applied, although girls were often unable to seek "treatment" for the disease due to laws directly forbidding homosexuality:

Rarely can they talk freely, because every expression of their doubts, fears, and desires in this particular area may be held against them. The punitive laws against homosexuality and the horror and disgust connected with it make it impossible for the girl to seek help. She cannot approach her social worker, psychologist, psychiatrist, or teacher because she knows that they have the power to deprive her of her freedom or privileges—and she herself expects punishment, even for her thoughts. It is known that illness cannot be treated if the patient deliberately prevents the physician from knowing about it. Yet this is infrequently the position into which the girl is forced in her battle with the problem of Lesbianism.⁵²

III. THE CONTEMPORARY ERA

Since the 1960s, many significant changes have occurred in the juvenile justice system, and the following represents only a brief summary of the major transformations affecting girls and sexuality. First, beginning in the early 1970s, concerted efforts were made at the federal and (some) state levels to deinstitutionalize status offenders. The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP) required that states receiving federal delinquency prevention money begin to divert and deinstitutionalize their status offenders and cease detaining noncriminal youth.⁵³ Despite inconsistent enforcement of this provision and some resistance from states to decriminalize status offenders, girls were the clear beneficiaries of the reform, as they no longer could be directly incarcerated for filial disobedience, running away, truancy, or immorality. The commitment rates of female juvenile offenders in correctional and detention centers across the United States dropped in the decades following its passage, which was in

⁵⁰ KONOPKA *supra* note 49, at 102.

⁵¹ *Id.*

⁵² *Id.* at 102.

⁵³ See CHESNEY-LIND & PASKO, *supra* note 2, at 63-65.

distinct contrast to the prior trends of the century.⁵⁴ The JJDP, and its consequent reauthorization and re-visitations (1992, 2001, and 2009), also addressed the extent of services offered to girls within the juvenile justice system and opened up Federal Formula Grant funds for girl-specific programming and research.⁵⁵

Second, beginning at approximately the same time, several social and legal processes converged to diminish general support for rehabilitation and state benevolence as well as support for a juvenile court and correctional system that widely used commitment and other forms of state social services as a means of re-socializing misbehaving noncriminal adolescents.⁵⁶ For example, concerns about juveniles' due process rights and procedural safeguards emerged, and courts gradually came to view the youthful offender as an autonomous, responsible person, not a vulnerable, malleable dependent deserving of care.⁵⁷ The unintended consequence was a juvenile justice system that focused on finding proof of fault and in delivering just deserts—essentially a shift from rehabilitation to punitive sanctions. What followed this shift was the proliferation of direct files to the adult system, the incarceration of juveniles in adult prisons, and the use of detailed risk assessments and placements in private behavioral health care facilities for juveniles who could afford such diversion from formal court control.⁵⁸

The final significant change that had an impact on girls, sexuality, and juvenile corrections entailed the changing characterization of the “dangerous” juvenile sex offender. The psychiatric, legal, and social movements of the 1970s effectively and, somewhat unknowingly, coalesced their agendas and initiated juvenile courts' redefinition of the “dangerous adolescent sex offender” from the prostituting girl to the sexually abusive boy. Historically, boys' juvenile sexual offenses were deemed by law enforcement and psychiatric professionals as the “experimentation” or “curiosity” of teenage boys who were experiencing “adjustment reactions”

⁵⁴ See *id.* at 63.

⁵⁵ For a review of research on girl delinquents, gender-specific programming, and funding directed to girl offender issues, see generally Presentations by Topic, GIRLS STUDY GROUP, RESEARCH TRIANGLE INST., http://girlsstudygroup.rti.org/index.cfm?fuseaction=dsp_presentations (last visited Nov. 2, 2010).

⁵⁶ For a thorough examination of such processes as well as the overall transformation of juvenile justice during the twentieth century, see generally BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* (1999).

⁵⁷ *Id.* at 109-165. For the most notable Supreme Court decision, see *In re Gault*, 387 U.S. 1 (1967).

⁵⁸ FELD, *supra* note 56, at 166-244.

to adolescence and puberty.⁵⁹ Out of reluctance to label the male teenager a “sexual offender,” families, communities, and legal actors often chose to define his sexual acting-out activity as a “naughty” behavior, a “boys will be boys” action, or a “nuisance” to the neighborhood.⁶⁰ Punishment for such a behavior was left up to the family, or for the more serious “nuisance” offenses (such as repetitive exhibitionism), the boy may have been referred to a mental health counselor or a minimal stay in a boys’ home facility. For those few cases that did reach the juvenile courts, often the charges were nonsexual in nature.⁶¹ As aforementioned, courts continued to view the most serious juvenile sex offenses as arising from girls’ associations with Houses of Ill Repute or nightwalking.⁶²

By the 1960s, this judicial reaction changed. Increasing levels of medical research⁶³ and graphic media accounts of child abuse⁶⁴ flooded academic and popular reads. Additionally, challenges to the privacy of the family and the home,⁶⁵ a sexual liberation movement and the growth of

⁵⁹ See BENJAMIN KARPMAN, *THE SEXUAL OFFENDER AND HIS OFFENSES: ETIOLOGY, PATHOLOGY, PSYCHODYNAMICS AND TREATMENT* (1957); GAIL RYAN & SANDY LANE, *JUVENILE SEXUAL OFFENDING* 187 (1997); Robert Longo & Bradley McFadin, *Sexually Inappropriate Behavior: Development of the Sexual Offender*, 29 *LAW & ORDER* 21, 23 (1981); Mervyn Shoor, Mary Helen Speed, & Claudia Bartelt, *Syndrome of the Adolescent Child Molester*, 122 *AM. J. PSYCHIATRY* 783 (1966).

⁶⁰ RYAN & LANE, *supra* note 59, 187.

⁶¹ See Nat’l Adolescent Perpetrator Network, *The Revised Report from the National Task Force of Juvenile Sexual Offending of the National Adolescent Perpetrator Network*, 44 *JUV. & FAM. COURT J.* 5, 5 (1993).

⁶² See, e.g., WILEY, *supra* note 23.

⁶³ See, e.g., C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 *JAMA* 17 (1962).

⁶⁴ For example, the 1966 Indiana trial and conviction of Gertrude Baniszewski for the child abuse and murder of Sylvia Likens, a sixteen-year-old boarder left in her care. *Two in Torture Death of Girl Are Sentenced for Life*, *N.Y. TIMES*, May 25, 1966, at 72.

⁶⁵ As the social problem of child abuse ignited the general public and the standards for child care increased, legislation began to permit greater surveillance and protection of children. The Social Security Act of 1962 urged the development of child welfare services in every county, while in 1967 the Supreme Court extended Bill of Rights protection to children. Mandatory laws, which were drafted by the U.S. Children’s Bureau, appeared in every state, stating that medical professionals had an obligation to report child abuse and neglect to public welfare agencies. By the end of the decade, child protection services began incorporating awareness of sexual abuse into their initiatives. For example, in 1967, the Children’s Division of the American Humane Association conducted studies on child victims of sexual abuse and stressed the importance of apprehension, conviction, and punishment of the offender, albeit a family member or stranger to the victimized child. In addition, during this time, child sexual abuse had become a popular subject in both the media and among child protection groups. Groups dealing with child abuse and sexual exploitation—such as Enough is Enough Campaign, National Center for Missing and Exploited Children, National Law Center for Children and Families, American Professional Society on the Abuse of Children, and the National Victim Center—made material available to parents on how to “safeguard your children from becoming a victim of sexual abuse.”

sexuality research, the feminist movement's push to define sexual victimization as a serious offense, and a societal demand to preserve childhood as a period of innocence and shelter all led to a series of similar proclamations and discoveries: (1) sexual victimization is a serious criminal law violation; (2) offenders of sexual assault must be identified; and (3) sexual offending patterns can begin as early as age five.⁶⁶ This "scientific" revelation—that adult child molesters begin offending in their youth—allowed juvenile and adult courts, profit-motivated clinicians, victims' rights groups, and others to shift the legal and political definition of sexual dangers from prostitution to actual assault.⁶⁷

What mushroomed afterwards was a justice system and an industry focused on the identification and treatment of sexually abusive youth. In 1982, three identified institutions—the Adolescent Clinic at the University of Washington, the Florida juvenile sexual offender treatment center (under the control of the state's Department of Health and Rehabilitative Services), and the Juvenile Abuser Treatment Program at Children's Hospital National Medical Center in Washington, D.C.—were designed to work specifically with the adolescent sex offender population.⁶⁸ By 1990, there were over eight hundred centers.⁶⁹ In addition to this redefinition of the juvenile sexual offender, several advocacy groups surfaced that urged the judicial recognition of teenage prostitution as victimization, exploitation, and a consequence of sexual trafficking, and not as a criminal offense that has the potential to stigmatize girls and further damage them.⁷⁰ However, while it might seem that girls would benefit completely from these societal and legal changes (both as victims and offenders), laws on the books and laws in action were also modified to more easily include females as sexual perpetrators.⁷¹

Child Assault Prevention (CAP) projects, calling for volunteers to end child sexual abuse, appeared in many cities and contributed the public's already growing fear of the neighborhood child molester, which oftentimes took the face of an adolescent male. See Lisa Pasko, *From Sin to Syndrome: The Medicalization of Juvenile Sexual Offense* (Dec. 1997) (unpublished M.A. thesis, University of Nevada, Reno) (on file with author).

⁶⁶ See, e.g., RYAN & LANE, *supra* note 59, at 393.

⁶⁷ This is not to claim that courts and communities lifted puritanical sexual norms for girls or no longer cared about prostitution. Certainly abstinence was still encouraged, prostitution was criminal, and the sexual double standard continued. I am only referring to juvenile sexual offenses.

⁶⁸ Pasko, *supra* note 65, at 19.

⁶⁹ For a complete examination of this history, see FRANKLIN E. ZIMRING, *AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING* (2004).

⁷⁰ Such groups include the anti-Commercial Sexual Exploitation of Children (CSEC), Polaris Project, and Laboratory to Combat Human Trafficking.

⁷¹ See, e.g., CAL. PENAL CODE § 288(a) (West 2008) (criminalizing any "lewd or lascivious act" with a child under the age of 14).

How have such historical renovations in the way juvenile courts process and penalize delinquent and criminal youth—particularly sexually offending youth—affected girls? Has the shift to deinstitutionalize status offenders, to punish juvenile criminals as adults, to triage juveniles' aberrant behaviors to treatment centers (if they can afford it), and to focus on sexually abusive behaviors (of primarily boys) changed the courtroom and correctional environments, in terms of girls' sexuality? What is clear from the contemporary research on girls and sexuality is that the pattern of sanctioning and institutionalizing girls for sexual misconduct continues in present-day juvenile justice processing, despite these social, cultural, and legal transformations.

A. IMPACT OF JUVENILE JUSTICE TRANSFORMATIONS ON GIRLS

With a focus on their physical appearance and sexuality, the characterizations of girls in their official court records and case files regularly deem them to be deceitful, manipulative, hysterical, wildly sexual, and verbally abusive.⁷² Under a paternalistic ideology, the current juvenile justice institutions—police, courts, and corrections—exercise the repeated “need to protect their daughters, usually from sexual experimentation and other dangers on the streets.”⁷³ At the same time, the court frequently labels girls as sexually promiscuous, untrustworthy, and unruly, without connecting such behaviors to their life histories and social contexts. For example, Emily Gaarder and colleagues' research on probation officers revealed how their negative assessments of girls outweighed the girls' realities.⁷⁴ Girls' personal histories and delinquent activities were conceived of as problematic internal attributes and independent character flaws, while links to poverty, prior victimization experiences, family disruption, educational deficits, and other current needs were not used as explanations nor offered as underlying factors.

Concentrating on the LBQ girl in custody, current research also shows how girls regularly experience heteronormative policies and overall homophobia, from both staff and other inmates. Katayoon Majd and

⁷² See generally LAURIE SCHAFFNER, *GIRLS IN TROUBLE WITH THE LAW* (2006); Lisa Bond-Maupin, James R. Maupin & Amy Leisenring, *Girls' Delinquency & the Justice Implications of Intake Workers' Perspectives*, 13 *WOMEN & CRIM. JUST.* 51, 65-66 (2002); Emily Gaarder, Nancy Rodriguez & Marjorie S. Zatz, *Criers, Liars, and Manipulators: Probation Officers' Views of Girls*, 21 *JUST. Q.* 547, 556-57 (2004); Stacy L. Mallicoat, *Gendered Justice: Attributional Differences Between Males & Females in the Juvenile Courts*, 2 *FEMINIST CRIMINOLOGY* 4, 18-19 (2007).

⁷³ MEDA CHESNEY-LIND & RANDALL G. SHELDEN, *GIRLS, DELINQUENCY, AND JUVENILE JUSTICE* 171 (1998).

⁷⁴ Gaarder et. al., *supra* note 72, at 560.

colleagues'⁷⁵ and Mary Curtin's studies⁷⁶ demonstrated how lesbian and bisexual identities are often ignored in juvenile courts and correctional settings, with staff assuming youth are always "straight." In addition, girls in lock-up are often encouraged to develop a heterosexual understanding of themselves and their sexuality and to engage in hetero-feminine forms of gender conformity. Pressure to conform takes the form of pressure to wear makeup and "feminine" clothing, prohibitions on shaved heads, "reparative therapy" to address sexual identity confusion,⁷⁷ and heterosexual life skills and safe sex education. When the girls in Curtin's study did engage in consensual same-sex relationships and expressed their LBQ orientation, staff treated them with distrust, fear, negative remarks, and occasional punishments, such as being denied roommates, being held in isolation, and being forbidden to shower with other girls.⁷⁸ Consequently, such policies enforced other inmates' homophobic responses. "Every participant reported witnessing openly homophobic peer behavior such as anti-gay name calling and threats of violence. Some reported that girls 'out' lesbian or bisexual girls to staff to get them in trouble or to have them removed from their rooms."⁷⁹

B. METHODOLOGY

Although the juvenile justice system varies widely throughout the United States, there exists a similar process nationally: after juveniles are arrested, their cases are dismissed by the prosecutor, referred to diversion, or formally petitioned; the case then proceeds to court. In rare cases (especially for girls), the case may be waived to adult jurisdiction. Once the state files the delinquency petition, the youth may accept responsibility and admit to the charges (plead guilty), and the case moves toward disposition (sentencing). The youth may also deny the allegations (plead not guilty) and receive an adjudicatory hearing. Once in court, the judge has several

⁷⁵ KATAYOON MAJD, JODY MARKSAMER & CAROLYN REYES, HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS 43 (2009), available at http://modelsforchange.net/publications/237/Hidden_Injustice_Lesbian_Gay_Bisexual_and_Transgender_Youth_in_Juvenile_Courts.pdf.

⁷⁶ Mary Curtin, *Lesbian & Bisexual Girls in the Juvenile Justice System*, 19 CHILD & ADOLESCENT SOC. WORK J. 285, 290-91 (2002).

⁷⁷ Reparative therapy is conversion/reorientation therapy, where gay and lesbian sexuality is considered a "lifestyle" choice, and the goal of the therapy is to "calm gay distress" and encourage acceptance to heterosexual lifestyle. It is currently not accepted by most national psychiatric and psychological associations. For additional information on reparative therapy, see JOSEPH NICOLosi, REPARATIVE THERAPY OF MALE HOMOSEXUALITY: A NEW CLINICAL APPROACH 183-204 (1991).

⁷⁸ Curtin, *supra* note 76, at 291-92.

⁷⁹ *Id.* at 293.

options: to adjudicate the case without a disposition (essentially, to dismiss the case), to place the juvenile on probation with a set of conditions and requirements (such as house arrest, electronic monitoring, curfew restrictions, psychological evaluations, medical examinations, community service, fines, or specialized program attendance), to detain the juvenile (short-term custody), or to commit the juvenile (long-term residential sentence). In addition, if the juvenile is part of a child protective services (or equivalent department) case, the probation officer, judge, attorneys, and other social workers may decide that residential treatment, not as a commitment of juvenile court but as a social service placement, is needed.⁸⁰ Custodial arrangements also run the gamut in most states, from privately-run, non-secure, group-home-like placements to secure, prison-like, centralized youth correctional facilities. Some states may use a combination of private and public placements, and the decision about which to use depends on the severity of the juvenile's offenses, the severity of the juvenile's needs, or both. The decision to commit is not an isolated judicial decision; many juvenile justice professionals contribute to the information known about the juvenile offender, and the court uses this information when exercising its discretion. Specifically, probation officers and parole officers will complete risk assessments and social histories of juveniles and give recommendations to the court. Many times, judges follow these recommendations and arguments when deciding residential placements, believing that these juvenile justice professionals know the juvenile best.

The data in this Article comprise a subsection of a larger study that focused on the social and legal constructions of girl offenders and the impact of gendered juvenile justice decision-making. This subsection specifically encapsulates interviews done with juvenile justice professionals who (1) work directly with (or formerly worked with) girls who are on probation and part of their probation requirements includes residential treatment, or (2) work directly in (or formerly worked directly in) a youth correctional facility (detention and residential placements). Interviews with both current and former professionals were completed in order to capture a contemporary understanding of correctional issues as well as former (and perhaps critical) perspectives. The sample includes directors of residential facilities (n=5), correctional therapists (n=11), counselors/line staff (n=7), correctional social workers/case managers (n=13), and probation officers (n=19). All but five interviewees are female and all but thirteen are

⁸⁰ In some states, funds for child welfare or social service placements and youth corrections commitments come from the same bureaucratic budget and are under one general "human services" division. In other states, commitment and juvenile parole are separate, but probation, social service residential placements, and detention are funded from the same authority.

Caucasian. The average occupational length in the juvenile corrections field was eight years (shortest time=4 years; longest time=20 years). In total, this Article draws on fifty-five in-depth, open-ended interviews performed in the Western United States and throughout seven different facilities (five long-term, two short-term). Some of the facilities resembled group homes, were privately-run, and treated only social service placements (probationers); others contained both probation and committed girls; and yet other facilities were public, state-run, and housed only committed girls.

For the most part, the interviews lasted from one to three hours and took place at the residential facility (n=17) or staff's office (n=25). Thirteen interviewees felt uncomfortable talking about sexuality issues at their places of work and consequently met me at locations of their choosing. When interviews were completed at residential facilities, staff took me on tours or allowed me to sit in on non-confidential programming. I used these observational opportunities to contextualize and to corroborate the assertions made during the interviews.

Each one of the seven facilities varied in terms of daily routine and programming, although some basic rules applied to all of them. When girls entered long-term residential facilities, they were placed on a one-month to ninety-day probation, during which staff performed needs assessments and girls were exposed to behavioral expectations and disciplinary rules. In some facilities, staff then organized and separated girls according to their mental health needs, age, or offenses. During the probation period, girls were not allowed to move or speak without permission. As girls showed they could follow rules for appropriate behavior, they slowly gained rewards and privileges, ranging from better (single room) accommodations, choice of daily vocational and educational activities, freedom to move around the campus, off-campus recreational activities, and weekend furloughs. The length of residential stay for both probation and committed girls ranged from eight months to four years, depending on their sentence, their age when they entered the facility, their mental health needs, the availability of aftercare placement, and the number of girls waiting for an open bed/placement.

Short-term residential facilities (detention) function much differently than long-term placements. The structure of detention is such that it uniformly accommodates the highest common denominator for both boys and girls. Accordingly, girls wear underwear similar to boys (boxers) and never possess their own pairs—laundry from all detained residents is meshed together. Like boys, girls have ninety-second daily showers, are offered the same caloric amount of food, and experience lock-down hours, regardless of whether their behavior was positive or negative. Unlike boys, girls of different backgrounds in terms of mental health needs, age, and

offense severity are housed in the same series of cells. On the whole, girls who were recently committed by juvenile court stayed in these detention facilities from two to five months, as they waited for an appropriate and open residential placement.

C. PREGNANCY, PROMISCUITY, AND PROSTITUTION

Overall, this current research on the juvenile justice system shows that practitioners identify similar environmental factors for girls' sexual deviance: "bad" families, poverty, drug addiction, associations with older/military men, and educational deficits. What differs is that in the contemporary era, the construction of sexual deviance and sexual abuse histories has shifted from a defective moral foundation to a psychological problem—one that can be identified through risk assessment and treated through secure confinement, cognitive behavioral methods, and medically overseen contraception. Despite this paradigm shift, there still exist the underlying assumptions that girls are sexually manipulative and that there is a singular accepted sexual path for young women to take: heterosexual propriety. When a girl deviates from such a path, the source of the problem lies with her flawed choices, damaged personality, and inability to take responsibility, rather than the structural conditions that shape her life or the men who are counterparts in such activities. Such inability to control sexual impulses and to avoid risky sexual behavior is often viewed as cause for further detention and commitment.⁸¹ Despite a juvenile justice system that has deinstitutionalized noncriminal behavioral problems, pushed more juveniles to adult court, and widened the net for identifying sexually assaultive male youth, the capture and commitment of girls for sexual indecency mirrors that of the earlier era, even as the process and definitions have changed.

Several interviewees elucidate this notion, showing recognition of girls' histories, while ultimately dismissing them and resting on concepts of choice and responsibility; similar to the early eras that concentrated on immigrant girls, such inability to take responsibility was racialized. The "problem" of pregnancy and prostitution often had the face of a girl of color:

⁸¹ One example of this that I see frequently in my case files and interview research involves the following scenario: a requirement of the girls' probation is a strict curfew that begins at dusk. In their homes, however, evenings are difficult, as this is when fighting occurs and drunkenness and drug use are at their peaks. Girls run from the home to avoid this environment—usually to a boyfriend whom she is forbidden to see by the court—and such violations of probation requirements are used to revoke and detain. While the details of her home life are documented, a girl is assessed as refusing to take responsibility and making bad choices, especially in terms of her "unhealthy" sexual relationship and behavior.

I do consider girls' sexual choices to be a risk factor. It does bump them up on one domain [on their initial risk assessment] because it is all part of not taking responsibility. If she is out there [referring to sexual promiscuity]. . . that does not show she can take responsibility for her actions or show discipline, and usually this also means she is breaking the terms of her probation, with curfew or running or not going to school, sometimes, if she is in the life [prostitution], well, those behaviors are criminal offenses and she deserves revocation.

—Probation officer

I have a girl right now, she's older, African American, where her transition options are for her to go live with the boyfriend, who I think is a pimp, or mom, who is not doing well at all. On parole, drinking. . . . It's not good and I really doubt she'll be able to make different choices when she gets out. Our main focus right now is to do all we can to keep her from getting pregnant.

—Probation officer

Pregnancy is probably the biggest problem for us to deal with, especially with the Hispanic girls. A lot of these girls get pregnant right away [after they are released] because it is the only thing going for them, given their homes, and school, and what have you. Regardless of the treatment we find them, they just don't get it. They don't make other choices when it comes to sex.

—Therapist

In the study's judicial districts, very few girls were actually committed for serious offenses. Most girls were placed or committed—including in the state-run, centralized youth correctional facilities—for failing to comply with the terms of their probation, and this failure was directly linked to psychological and behavioral problems. This meshes with previous feminist research that has shown how girls and women are constructed as mentally ill more often than boys and men within the criminalized population.⁸² When female offenders enter the penal institution, their deviant behaviors are interpreted in terms of unmitigated psychiatric problems, while the social and economic situations surrounding their actions remain documented but largely ignored. This tends to be in accordance with the view that “boys are bad and normal, girls are mad and abnormal.”⁸³

“Psychiatrization” refers to the process of placing deviant or criminal behavior under the umbrella of psychiatry, resulting in offenders being

⁸² Daphne Laberge, Daphné Morin & Victor Armony, *The Gendered Construction of Expert Discourse: An Analysis of Psychiatric Evaluations in Criminal Court*, 9 CRITICAL CRIMINOLOGY 22 (2000).

⁸³ *Id.*

increasingly likely to receive the label of “mentally ill patient.”⁸⁴ The process of psychiatrization involves the definition of a behavior as an illness, or symptom of an illness, syndrome, disorder, or disease, which requires psychiatric attention. As deviance designations shift from crime to illness, the person is no longer defined as bad but comes to be defined as ill. Accordingly, the person is no longer considered to be acting completely according to his or her “free will” and is no longer fully responsible for his or her behavior—the behavior is the consequence of the “illness.” The process of psychiatrization also requires the dominance of psychological and medical technology, including psychoactive medications and behavior modification techniques, and collaboration, such as with law enforcement or child welfare agencies.⁸⁵ In the contemporary era of juvenile justice, girls’ non-normative sexuality—whether it was promiscuity, participation in the sex industry, or alternative sexual identity—received this psychiatric reduction. Such collaboration and belief in psychological responses to girls’ sexual “deviance” was highlighted in this director’s explanation:

In the old days, our facility used to house girls who needed somewhere to go—either because their families kicked them out or they were out of control and running the streets. Nuns used to run the program. Then the girls got more serious. Had a lot more serious psychological problems, especially abuse. They were rougher and meaner and more manipulative and the nuns couldn’t handle them. This is when we transformed into what we are now—an end of the line before she goes to the state facility, where we can give her one last chance for treatment and improve her life.

—Director, girls’ residential facility

Similar to juvenile justice efforts in earlier eras, practitioners also spoke about the focus on controlling pregnancy. Unlike before, when efforts were primarily rooted in the moral salvation, the advent of medical technology and pharmaceuticals make it possible to control more effectively through the body, rather than the soul.⁸⁶ Interviewees spoke of control through direct supervision of the body and encouraged, if not compelled, birth control:

⁸⁴ See PETER CONRAD & JOSEPH SCHNEIDER, *DEVIANCE AND MEDICALIZATION: FROM BADNESS TO SICKNESS* (1975); John Monahan, *The Psychiatrization of Criminal Behavior: A Reply*, 24 *HOSP. & CMTY. PSYCHIATRY* 105, 105 (1973).

⁸⁵ CONRAD & SCHNEIDER, *supra* note 84, at 244-45.

⁸⁶ For a full discussion of the social control of teenage pregnancy, see CONSTANCE A. NATHANSON, *DANGEROUS PASSAGE: THE SOCIAL CONTROL OF SEXUALITY IN WOMEN’S ADOLESCENCE* (1991).

We do mandatory birth control. Shots. We are a private facility and can be particular about the girls we take. So if we get a girl who does not want to be on birth control, well then, we don't take her. And we won't take her if she is pregnant or parenting. There are other programs for girls like that.

—Director, girls' facility

If we have a girl who is pregnant when coming in, we will counsel her about options. And yes, sometimes, depending on what is going on with her and her baby, abortion is . . . advised. We had one girl who came in, lots of problems with her baby, but she insisted on having it. She saw it as a way to get attention, money, out of here for a while and hospitalized . . . it [abortion] was a hard sell. So she had it and the baby has lots of problems. Now, we know when she leaves she is going to need a lot of supervision and we will make sure she is on birth control.

—Therapist, residential facility

All of our girls are on birth control. Because if they do weekend furloughs, we cannot have them getting pregnant. Even if they say they are gay, who knows what they will get into. We have them sign forms that they will not have sex or do drugs or drink and when they get back after the weekend, we give them drug and pregnancy tests and occasionally do [gynecological] exams. If they want a furlough, they have to agree to this. These girls can be very manipulative and while we do want to trust them, well, having birth control, tests, gyno exam . . . they know they cannot get away with it. We have to have these measures of control.

—Therapist

Also similar to yester-eras, interviewees blamed the “attraction” of military men for why girls cannot “control their sexuality.” Once again, while interviewees noted the context of girls' lives as explanations for their male associations, they nonetheless reduced such relationships to “bad” choices:

So many of my girls feel that their way out of trouble is getting married to a military guy. They'll have a baby, have money, housing, won't have to worry about work, and if the guy is sent to Iraq or something, they won't have to deal with him. I hear “Oh, I love him,” but it's always listed with all the other so-called benefits. They just don't see how wrong their choice is.

—Social worker, girls' facility

Sometimes I feel like we are still in the 1950s or something, with these girls trying to hook up with military guys. “He loves me, he's always looking out for me. . . .” Sure. Now he says and does all the right things, but I can only imagine what trouble she'll be in when he gets back [from Afghanistan].

—Probation officer

I have one girl who just left and is seventeen. Her military boyfriend wants to marry her and knock her up before he leaves [for Afghanistan]. He thinks, she says, that he

. . . or I guess they . . . will have better housing, more benefits, he'll get an extra two weeks home when she gives birth. Only she doesn't want to have a baby and be alone taking care of it, but I bet she'll get pregnant anyway.

—Social worker, girls' facility

D. SEXUAL ABUSE, PREA, AND THE LBQ GIRL IN CUSTODY⁸⁷

In this study, regardless of whether the facilities were private or public, secure or open, detention or long-term correctional, the rules and treatment of girls' sexual activity remained virtually uniform. In their explanations of girls' sexuality and "sexually acting out" behaviors in the facility, all interviewees expressed girls' sexuality as (1) being a problem and (2) resulting from a treatable condition, most notably sexual abuse.⁸⁸ Overwhelmingly, interviewees' explanations for why girls "sexually act out" in their facilities were based on general or specific psychological disorders (such as personality disorders, reactive attachment disorder, and intermittent explosive disorder). Over three-fourths of the interviewees connected pregnancy, promiscuity, prostitution, and LBQ sexuality to sexual abuse, post-traumatic stress disorder (PTSD), and "unhealthy" boundaries.

As noted previously, the juvenile justice system, beginning in the 1980s, became a triage system, in which juveniles with resources to access private behavioral health facilities found themselves under this form of informal social control, rather than state-run, secure confinement.⁸⁹ In this recent era, however, juveniles often remain in the formal system and are not triaged out.⁹⁰ Indeed, a merger of court-ordered custody and psychological treatment has occurred; one interviewee stated, "[J]uvenile corrections has necessarily had to transform itself into behavioral health facilities." Though not necessarily putting it into action, correctional staff has adopted the

⁸⁷ This Section is a condensed discussion of my research on committed girls, LBQ sexuality, and correctional workers' attitudes. For extended analysis, see Lisa Pasko, *Setting the Record Straight: Girls, Sexuality, & Youth Corrections* (Apr. 20, 2009) (unpublished manuscript, on file with author).

⁸⁸ I am not arguing that sexual abuse is not an important aspect of girls' pathways to court involvement. Indeed, it is. My discussion is focused only on how sexual abuse is understood and constructed by correctional staff.

⁸⁹ FELD, *supra* note 56.

⁹⁰ This is partly due to the fact that health management organizations began refusing to pay for residential and inpatient behavioral health care for adolescents, beginning in early 1990s. The "informal" option began going away, leaving parents who wanted their children confined with only a private pay option. To access residential care, juveniles had to route through the court. This phenomena is discussed in Lisa Pasko & Meda Chesney-Lind, *Under Lock and Key: Trauma, Marginalization, and Girls' Juvenile Justice Involvement* (Mar. 15, 2010) (unpublished manuscript, on file with author).

treatment vernacular. For example, several interviewees illuminated the psychiatrization process and advocated “treating” sexual behavior through behavioral modification therapy and medication. Both of these interviewees show this connection between abuse and “confused” sexuality, as they advocate for treatment:

When girls are sexually abused, their psychological development is disrupted. All the harmful behaviors we see them do, their actions that brought them here, whether it’s drugs, and for a lot of them, we see a lot of drug use, or it’s running away a lot, prostitution, whatever it is, it all stems from this abuse. That is why they got into such things and why they continue to confuse sex and love and violence and sex. It’s all mixed up for them. It’s also why they need somewhere secure, because then it is safe for them to do the intensive therapy they need. . . . We usually do some form of cognitive behavioral approaches, group therapy, vocational therapy, they get lots of services, and the girls see a psychiatrist once a month to monitor whatever meds they need.

—Therapist, residential facility

I think it would be nearly impossible to know if any of these girls were born that way [lesbian] because they have such traumatic histories of sexual abuse. Sex and sexuality are confusing. So if they do like girls even after they leave, I think it is impossible to know if they are born that way or . . . made that way, after years of abuse. These are issues that need to be brought up in therapy, I think.

—Line staff, detention facility

Others were adamant that all girls—even when they do not divulge abuse—have histories of sexual victimization if they identify as LBQ:

No, not every girl in here has told us that they were sexually abused. But we know all of them have been. That’s just the truth. Whenever a girl exhibits these behaviors [sexual activity with other girls], it is always because of PTSD, impulse control disorders, sometime intermittent explosive disorder. . . . There is a history of sexual abuse, whether they tell us or not. But more times than not, it comes out during therapy.

—Director, residential facility

In addition, others attributed (somewhat reluctantly at times) all LBQ activities—inside or outside the penal institution—to being abnormal, the result of some previous trauma. Similar to the correctional environment exposed in Konopka’s work,⁹¹ correctional professionals defined girls’ LBQ sexuality as an illness, albeit not a direct diagnosis but a consequence from disordered psychology. This particular interviewee struggled with her explanation but ultimately offered “pathology” as an explanation for girls’ LBQ sexuality:

⁹¹ See generally KONOPKA, *supra* note 47.

You know some of these girls are very good at using sex for power. And boy, they can be very charming. Even staff defends them, but I know. I can see it, you know what I mean? I don't trust them. Their charm . . . really manipulative, it is because this is what they have learned about sex. It is because of their abuse, and [looking at statistics of girls in the facility], about three-fourths of our girls have sexual abuse histories. So, do I think that a girl is a lesbian because she was sexually abused? No . . . well, that could explain it but not in the . . . [*I offered the word political or identity*] . . . yes, it is not like what you hear in the news or anything. The girls are lesbian because they have been abused. I do think that even if it isn't very PC. Not that I think that about all women who are lesbians. I don't think they are all sexually abused, although [referencing a lesbian celebrity] was sexually abused, so I don't know. . . . But you know what I mean? For these girls, the reason they like other girls is because they want power over them and because their pathology is such that they do not understand healthy relationships or intimacy. It is part of trauma.

—Social worker, residential facility

This interviewee also illustrates the difficulty correctional professionals have with discussing LBQ issues in a more general way, as well as reconciling their personal ideas about LBQ individuals with their education, experiences, and knowledge of the girls under their authority. As this social worker showed, girls under her care suffered from a pathology that affected their choices, including sexual ones, and accordingly, “what you hear on the news” about lesbian and gay politics and identity does not apply to them. They are not the same as girls and women on the outside, and therefore, general discussions and understanding about alternative sexuality also does not apply.

Similar to other findings on the psychiatrization of women in prison, this interviewee also showed how correctional staffs frequently merge language involving “free will” or “rational choice” with mental health determinants. Qualifying their responses with openness for better sex education, especially on “alternative lifestyles,” some interviewees conflated their psychiatric explanations for girls’ within-institution sexual activity with a justice imperative of “taking responsibility,” “being held accountable,” and actively making “better choices.” The following interviewee’s explanation shows this fusion between choice and psychological influences. It also shows how, regardless of the tolerance for same-sex relationships on the outside, within-facility intimacy is an element of sickness and, without proper treatment, could lead to future personal and legal problems:

I don't care what they are on the outside. I don't judge. In here, though, there is no such thing as a lesbian relationship. There are no relationships. There are intimacy issues. Even if they say, “No, I know I like girls,” which we do hear sometimes, we tell them, “not in here you don't.” It's not that I have a problem with it, though. It's because these girls do not know boundaries. They have always had their boundaries violated and that abuse . . . it does lead to confusing sexuality for them. Their PTSD

leads to impulse control problems, too. . . . Part of their therapy is to work through that confusion. Maybe, not confusion, but to work through these psychological problems and respect boundaries. I tell them, “Yes, it is unfortunate what happened to you before you got here, now you have a chance to make better decisions for your life.”

—Therapist, residential facility

Whereas striving for popularity and power in relationships may be viewed as a normal adolescent (if not general) interactional process, for committed/institutionalized girls, the strategies for popularity and power are associated with unhealthy, treatable sexual behaviors and mental health conditions. One interviewee (line staff) elaborated on this linkage between gaining popularity and being LBQ:

It’s not that girls who are butch are popular. I’m not saying that. It’s the opposite actually. It’s that when a girl is able to get with a lot of other girls in here, I think she thinks . . . or maybe other girls think she is well-liked, so they try to do that.

Indeed, over 80% of the interviewees included “power” and “popularity” as reasons for being LBQ within the facility.

While therapists and other staff pathologize girls’ lesbian identities as part of their sexual abuse histories and consequent inability to control impulses and to make “healthy” intimacy decisions, they also simultaneously nullified girls’ lesbian activities as simply part of the institutionalization experience. More than nine-tenths of interviewees either based LBQ activities solely on the “natural” institutionalization experience or combined it with their mental health/sex abuse explanation. As a result, correctional professionals denied that girls’ sexual identity is other than heterosexual or assumed it to be an active temporary choice. Indeed, only eight interviewees attributed girls’ same-sex activity to identity. This deniability was functional in many ways because it removed the need for additional aspects in programming and professional development (incorporation of LBQ treatment groups or professional workshops on LBQ issues) or discussion of potentially uncomfortable subjects (including homophobia). For example, for the interviewees who felt some girls would benefit from an institutional LBQ-specific component in therapy, they also complemented their comments with nullification:

Okay, sure yes, some of these girls are gay and I think if some kind of alternative lifestyle education was given to them, they could feel . . . validated. Well, not validated, as much as I think it could help them understand themselves, too. Even for the girls who do not say they are gay, I think it would be helpful. Still, a lot of them will say they love a girl in here and plan on that [relationship] when they get out, and then years later, will come back for a visit and be married with kids.

—Therapist, residential facility

We are just starting to talk about doing groups for gay and lesbian kids. It's not only good for them but really helpful for their families. Because a lot of them will go home after here and the groups help with acceptance, although frankly, I don't see a lot of resistance from families as much anymore. It does seem like it is more acceptable now. But honestly, I really don't think I have met a single girl [in corrections] who is a lesbian. In the sense that you are born that way. It's just part of the experience in here. So it's more like experimenting. Especially now since it's the cool thing to do.

—Director, residential facility

I do wish we had something more formal when it comes to this area. But the system is very conservative for sure. I would think, though, that if a girl really, you know really, knew she were gay and it wasn't an unhealthy way to get power or popularity in here, she would, you know, stick to it . . . say it. The fact is, though, when they do keep their relationships when they get out and they come back to the facility with their girlfriends, it's almost as if they are just showing the girl off, rubbing it in our faces, "see, see . . . I am with a girl now and there is nothing you can do about it." So even then, I think it is about power and not about really being gay.

—Therapist, residential facility

The first two quotes demonstrate how, on the one hand, staff see an opening for groups about alternative lifestyles and want to address LBQ issues, but on the other hand, they relegate the within-facility lesbian identity as part of the institutionalization experience—a momentary position that will change upon departure. The last quote further shows the reluctance to acknowledge "permanent" LBQ identity within the confines of the residential facility, attributing girls' post-release LBQ relationships to power dynamics and not to orientation or identity.

The refusal to see girls' sexuality as anything but heterosexual or as a result of one form of victimization (sexual) is also a denial of the other factors and experiences on girls' trajectories toward delinquency and incarceration. Specifically, staff attributed girls' post-release relationships with men as evidence of "heterosexuality" and not as strategies for emotional and economic survival (shelter, food, affection, etc.) due to limited skills, educational and vocational deficits, absent families, and the general lack of support and resources, even though they had collected such information. Each of the following interviewees expressed a similar sentiment of "gay while institutionalized":

They are gay on the inside and straight when they get out. I just had a girl who was, "Oh I am in love with [girl]." And I said, "Yeah right, back to your boyfriend you go when you get out. I am sure of it."

—Probation officer

They will be straight when they leave. I have one girl on my caseload right now [who] says she thinks she is gay, but I am pretty sure when she leaves here she will end up with her guy. Probably the same pimp who got her in trouble in the first place.

—Probation officer

Yes, I have known girls who say they are lesbian when they are inside and when they get out they have been in relationships with other women. But they have always had some man around too, so I don't think they are really gay.

—Social worker, detention facility

It's what we call institutional lesbian. It doesn't, I hate to say this, maybe I shouldn't say this, but it doesn't stick when they get out. They go right back to men. It's just something they do on the inside.

—Line staff, detention facility

As shown in these quotes, interviewees equated girls' sexual identity with their activities, and when they had sexual activity with men—regardless if the relationship was potentially coercive (such as prostitution)—their sexual identities must therefore be heterosexual.

Although interviewees psychiatrized or invalidated girls' same-sex behavior, all also recognized that a general hyper-punitive legal response to sexually aberrant behaviors, as well as the overarching policy of recent adult prison reforms, have trumped and replaced previous individualized, case-specific reactions. Correctional staff expected girls' inability to control hyper-sexualization due to psychiatric pathologies or to the institutionalization experience. Regardless, though, they punished and criminally sanctioned girls for such inability. This is primarily since the advent of the Prison Rape Elimination Act (PREA).

In 2003, the U.S. Congress unanimously passed PREA, a “zero tolerance” policy for prison rape. PREA seeks to identify, prevent, and sanction sexual violence in all custodial settings—including juvenile—regardless of whether the facility is federal, state, or local, privately or publicly run. Spearheaded by human rights, faith-based, and prison rape victims' advocacy groups, PREA's genesis can largely be attributed to growing conservative concerns about homosexuality and the spread of AIDS in male prisons, as well as concern about the growing number of white men (who are more frequently victimized) placed in custody.⁹² PREA does address sexual misconduct of staff against inmates, although this is of minor focus. After the passing of PREA, states and agencies were

⁹² Brenda V. Smith, *The Prison Rape Elimination Act: Implementation and Unresolved Issues*, CRIM. L. BRIEF, Spring 2008, at 10, 10-11.

required to comply with all federal standards of reporting or risk losing 5% of criminal justice assistance.

PREA has had the unintended consequence of criminalizing institutionalized girls' sexual activity with each other and, as four interviewees noted, has contributed to the emergence and growth of the female juvenile sex offender population. Indeed, from 1997 to 2006, the number of committed girls with registered sex offenses has increased by 120%.⁹³ PREA is another example of the capillary power of the adult male prison system as well as the net-widening movement to identify sexually abusive youth to spread their agendas and policies to lower institutions of social control. It has made the loss of sexual autonomy an apparent corollary to imprisonment. For girls, this has meant the disappearance of any continuum of permissible sexual behaviors in institutional settings.

PREA not only contradicts what we know about how girls and women "do" their time; it also contradicts how women and girls do friendship in general: through verbal and physical affection. Research on women and prison has shown that sexuality and intimacy are complicated in prison and that consensual sexual relationships, the creation of a pseudo-family, and emotional dyads among inmates are common phenomena.⁹⁴ Certainly for some women, their prison relationships are highly transient; when they leave prison, they re-enter heterosexual relationships. For other female inmates, their relationships are long-term, through incarceration and freedom. As such, they may identify as lesbian prior to coming to prison or in their post-incarceration social worlds. We can also assume this to be true for girls. For example, in Pasko's research, one out of six girls in the sample identified as lesbian prior to incarceration.⁹⁵

Adhering to PREA and what many interviewees (n=42) deemed overall "more conservative" institutional and bureaucratic attitudes, every facility adopted an overarching rule of "no touching allowed," which extended to all physical contact among girls and between girls and staff. This rule was enforced partly to reduce staff exploitation of residents, partly to curtail girls' false accusations of staff abuse, but mostly because staff felt girls could not fully grasp the difference between appropriate and

⁹³ See MELISSA SICKMUND, T.J. SLADKEY & WEI KANG, CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT DATABOOK (2008), available at <http://www.ojjdp.ncjrs.gov/ojstatbb/cjrp/>.

⁹⁴ See BARBARA OWEN, IN THE MIX: STRUGGLE AND SURVIVAL IN A WOMEN'S PRISON (1998) 134-42; Christopher Hensley, Richard Tewksbury & Mary Koscheski, *The Characteristics and Motivations Behind Female Prison Sex*, 13 WOMEN & CRIM. JUST. 125, 126-32 (2002).

⁹⁵ Lisa Pasko, *Gendered Nature of Juvenile Justice in Hawaii* (Aug. 2006) (unpublished Ph.D. dissertation, University of Hawaii at Manoa, on file with the author).

inappropriate physicality. Only with permission were girls allowed some form of physical exchange. The following excerpts illustrate these sentiments:

Sometimes in groups girls will cry when talking about something bad that happened to them. I think it's natural then to want to give a hug. If they ask permission, they can give the girl who is upset, a one-armed hug.

—Therapist, residential facility

The system, it really has become so conservative, so afraid. Before, well, we'd expect some sexual activity among the girls. I mean, it is part of their experience here, ask any of them. And we would just handle it on a case by case basis and determine if it really was assault or consensual . . . well, no sex is truly consensual in here, but . . . something we could handle in session, not with the police, but now, any touching, anything sexual. Completely not allowed and we have to report it.

—Director, residential facility

The system is conservative, but not like before [laughing]. We want them to be good little girls because now it's all about record-keeping and making sure no one gets sued. We don't want any incidents and when you give girls some freedom, with freedom comes mistakes and bad choices, and well, incidents.

—Line staff

Most staff did not agree with a strict application of PREA in girls' facilities and did not like having their discretionary decisions tamed; regardless, they enforced the policy. They recognized how arresting and adjudicating girls for sexual activity could lead them to becoming registered sex offenders, further complicating their success upon release:

With PREA . . . it affects girls because of calling police on inappropriate touching, but I am not sure if enforcement really goes anywhere. My sense is that the police still are like, "What? You called us for this?" But still, it is policy, and when an investigation occurs, it could lead some girls' sexually acting out to getting additional charges and when they are released, being on the registry.

—Probation officer

Other interviewees felt that following PREA and the reduced possibility of physical and sexual contact turned the work they did into micro-management of behaviors (or threat of behaviors) and took away from larger therapeutic goals:

Now we cannot even have girls sit next to each other in our van because of PREA. We have to eliminate any possibility that the girls will sexually act out. So we have a van with four rows but because we either have to have staff sit in between girls or only have one girl in a row. Our van that would normally fit fourteen girls and four

staff now fits at best five girls with one sitting up front or if we can spare four other staff besides someone who drives, we can transport nine girls. So much for outings.

—Social worker, residential facility

In addition, the criminalization of girls' sexual activity is at odds with the psychiatrization of it. Many of the correctional professionals saw their work as treating and addressing girls' sexually aberrant behaviors, abuse histories, and lack of understanding about appropriate boundaries in therapy. However, PREA policies turned their work into the policing of girls' sexual behaviors, which often conflicted with therapeutic goals, as this interviewee explained:

We just had a situation in here where two girls were fondling each other during an activity. Did it behind staff's back. Real sneaky. When we looked into it, the one girl who was a couple years older than the other one seemed to instigate it. We did call the police to have her arrested. . . . It's not what I would prefer for her. I wish we had more discretion like the old days and could just handle it in session. Getting arrested for something you are supposed to be in therapy for . . . it doesn't work out well sometimes.

—Therapist, residential facility

Lastly, several interviewees, while critical of PREA, rationalized its application by viewing physical affection and sexual identity as privileges—privileges that were removed once the girls were committed or detained. Within the boundaries of normal teenage development, experimentation in and exploration of sex, intimacy, and relationships are deemed normal or only marginally deviant (depending on culture and location). For girls in residential placement and detention, this otherwise acceptable passage through adolescence is truncated. One interviewee, who self-identified as “queer” during the interview, put it candidly:

I do struggle with this sometimes. I want to be supportive of them [referring to LBQ girls in custody]. It's hard, though, because I cannot come out to them. I have my own worries. And the bottom line is, you don't get that choice when you are in here. Freedom to express your sexuality is just that, a freedom.

—Therapist, residential and detention facility

As this therapist demonstrated, even when staff can intimately identify with the complexities of sexuality and the difficulties of “coming out,” the rules and policies of juvenile corrections keep them from exercising such understanding. When girls enter custody, regardless of their pathway to the facility (court-sentenced commitment or social service placement), they lose sexual agency. Instead, they encounter a system of punitive sanctions for sexual behaviors and identities that fall outside the heteronormative framework.

IV. CONCLUSION

This Article examines the complexities of the juvenile justice system's construction, control, and overall reaction to girls' sexuality throughout the last one hundred years. Despite, and occasionally due to, transformations in juvenile justice processing and corrections (deinstitutionalization, demise of rehabilitation, increase in direct files and punitive sanctions, growth of private treatment centers, and re-characterization of juvenile sexual offense), the correctional focus—through one definition or another—continues to be on girls' sexual behavior as cause for legal response, detention, and commitment. In the early eras, courts and corrections noted poor moral character and various environmental causes for girls' sexually immoral behavior: bad families, alcohol or drug use, poverty, immigrant status, and the lure of the military man. Girls were incarcerated for immorality, incorrigibility, and truancy, but underlying the recorded charge was usually some form of "sexual offense." Despite these external factors, girls were made to be responsible for their own choices and occasionally their own victimization.

In the modern era, we have seen a shift from the moral domain to medical authority, with the same environmental conditions (understood "immigrant" becomes "minority") as leading girls to risky sexual behaviors. While girls are not directly arrested and adjudicated for sexual immorality, they are indirectly sanctioned: a higher risk assessment score and probation violations place them at a higher possibility of being incarcerated. Regardless of structural constraints and difficulties, the focus remains on girls' "bad" choices; they are still told to take responsibility for their decisions, as the context of such decisions remains recorded but rarely used as mitigation. Additionally, in the early eras, the juvenile justice system had more discretion and individualization in controlling and reforming girls' moral core. In the contemporary era, the correctional discretion is more tamed, and the focus is more on the control and micro-management of girls' bodies and sexuality, rather than on their moral, Christian foundations.

Throughout the years, correctional facilities have similarly conceptualized girls' within-institution sexual activity: (1) nullifying it as a fleeting way to deal with revenge, loneliness, or popularity enhancement; (2) pathologizing it as an abnormality—an illness—resulting from either a stand-alone mental disease (early years) or from another psychological disorder (contemporary era); and (3) criminalizing it. Furthermore, the shift in focus to a treatment-oriented, incident-reduced, sexually vapid environment has created a culture in which such medical and criminal conceptualizations are indirect: alternative sexuality is not only seen as stemming from sexual abuse or the institutionalization experience, it is also

indirectly criminal because of PREA. Despite a shift away from labeling prostituting girls as sex offenders in the contemporary era, girls may still become sex offenders due to within-institution activity. Indeed, sexuality is frequently reduced to action and choice, privilege and freedom, which girls in custody are not allowed to “enjoy.” As such, many staff—evidenced in the contemporary research as well as documented in previous work—insisted that girls were heterosexual and that their same-sex attraction was temporary and a method of manipulation and power over other girls and staff. Rarely did staff conceptualize or acknowledge girls’ LBQ behavior as identity.

Deniability, however, has been functional in many respects because it allows staff’s work to be uncomplicated by the intricacies of human sexuality, and it removes any critical discussion about sexual norms, homophobia, tolerance of LBQ individuals, or institutional critique of hetero-affirmative practices and punitive policies, such as PREA. Specifically, if LBQ identities are not organic or permanent, but fleeting and changing, then recognition of LBQ issues is unnecessary. It allowed them to place all girls within a singular “straight” category with one generic set of rules applicable to all. The primary sexuality focus can remain on the control of girls’ bodies as potentially prostituting or pregnant.

This historical examination and current study’s findings suggest that sexual stereotypes and heteronormative policies leave girl offenders, especially LBQ girls, few options for treatment and services that are more open to and understanding of their experiences and environments. It also denies them girl-sensitive treatment for sexual abuse that comes without judgment or micro-management of their choices and orientations. Indeed, the heteronormative construction of sexuality and the enforcement of conservative heterosexual choices and identity can have profound impacts on girls in the youth correctional system, and these damaging effects often go unnoticed.